SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

AND RELATED AMENDMENTS

Volumes 1, 2
H.R. 3755
PUBLIC LAW 98-460
98th Congress

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration

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REPORTS, BILLS,
DEBATES, AND ACT

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration
Office of Policy and External Affairs
Office of Legislation and Congressional Affairs

PREFACE

This 2 volume compilation contains historical documents pertaining to P.L. 98-460, Social Security Disability Benefits Reform Act of 1984, and related disability amendments. The book contains congressional debates, a chronological compilation of documents pertinent to the legislative history of the public law and listings of relevant reference materials.

Pertinent documents include:

- Committee reports
- Differing versions of key bills
- The Public Laws
- Legislative history

The books are prepared by the Office of Legislation and Congressional Affairs, Legislative Reference Office, and are designed to serve as helpful resource tools for those charged with interpreting laws administered by the Social Security Administration.

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Calendar No. 930

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2d Session } { No. 97-618

RATE OF CERTAIN TAXES PAID TO VIRGIN ISLANDS

OCTOBER 1 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 7093]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill as amended do pass.

The amendment to the text is shown in italic in the reported bill.

I. SUMMARY

Virgin Islands Taxes

The Treasury and the Government of the Virgin Islands take the position that present law imposes a 30-percent tax on the non-Virgin Islands recipient of certain Virgin Islands source passive investment income, and that present law also imposes withholding at the source by the V.I. payor of such income. The bill will reduce this tax to 10 percent when the recipient is a U.S. citizen, resident alien, or corporation and imposes a corresponding withholding obligation on the V.I. payor of such income. The bill will allow the V.I. Government further to reduce this 10-percent rate in its discretion. The bill will not affect payments of V.I. source passive income to non-U.S. persons.

Social Security Disability Insurance (DI)

In addition, the bill will make several changes in the social security disability insurance program relating to the continuing disability investigation (CDI) process. The bill will continue DI benefits and Medicare coverage, for certain terminated beneficiaries pursuing an appeal, through the Administrative Law Judge (ALJ) hearing; allow the Secretary to slow the CDI process; requires the Secretary to obtain medical evidence available for the 12-month period preceding the CDI review; and require the Secretary to report semiannually on various aspects of the CDI process.

II. EXPLANATION OF THE BILL

A. Rate of Certain Taxes Paid to Virgin Islands (sec. 1 of the bill and new secs. 934A and 1444 of the Code)

Present Law

Virgin Islands taxation in general

Under the Revised Organic Act of 1954, the U.S. Internal Revenue Code is generally applied in the Virgin Islands as the local territorial tax law, except that tax proceeds are paid into the treasury of the Virgin Islands. This system has been interpreted to require that, in applying the Internal Revenue Code in the Virgin Islands, the name "Virgin Islands" is substituted, where appropriate, for the name "United States" where it appears in the U.S. Code (the so-called "mirror image" system).

Corporate and individual "inhabitants" of the Virgin Islands are taxed on their worldwide income by the Virgin Islands and, by paying such tax to the Virgin Islands, are relieved of any income tax liability to the Federal Treasury, even on their U.S.-source income. All corporations chartered in the Virgin Islands are considered to be inhabitants of the Virgin Islands. In certain circumstances, a United States corporation may also qualify as an inhabitant of the Virgin Islands.

The U.S. Internal Revenue Code limits the power of the Virgin Islands government to reduce its income tax (sec. 934). The Virgin Islands may not reduce its taxes attributable to income derived from sources within the United States. With respect to non-U.S. source income, the Virgin Islands may not reduce its corporate tax except to U.S. and V.I. corporations that meet a so-called "80–50 test." This test allows the Virgin Islands to reduce taxes only for those U.S. and V.I. corporations that have derived for the past three taxable years (or applicable part thereof) at least 80 percent of their gross income from V.I. sources and at least 50 percent [1] of their gross in-

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[1] Under the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, the percentage of a corporation's gross income that must be derived from the active conduct of a trade or business in the Virgin Islands is increased from 50 percent to 65 percent. This increase will be phased in over three years. For taxable years beginning after Dec. 31, 1982, the percentage limitation will be 55 percent, for taxable years beginning after Dec. 31, 1983, the percentage limitation will be 60 percent, and for taxable years beginning after December 31, 1984 and thereafter the percentage limitation will be 65 percent.

That Act did not affect the percentage—80 percent—of gross income that must be derived from Virgin Islands sources.

come from the active conduct of a trade or business within the Virgin Islands. Acting within the constraint of the 80–50 test, the Government of the Virgin Islands has established further criteria for tax reductions, such as a $50,000 minimum investment and certain employment criteria.

Taxation of passive income in the Virgin Islands

U.S. law generally imposes a 30-percent tax on the gross amount of dividends, interest, royalties, and other fixed or determinable annual or periodical income (hereinafter sometimes referred to as passive investment income) paid by U.S. persons to nonresident aliens and foreign corporations when that income is not effectively connected with the conduct of a U.S. trade or business by the foreign person. This 30-percent rate is often reduced, or eliminated, by income tax treaties. U.S. law also generally imposes on the payor of such passive investment income a duty to withhold the tax due (secs. 1441 and 1442).

Under the mirror system, the Virgin Islands imposes a similar 30-percent tax on passive investment income paid by V.I. persons to non-V.I. persons, including U.S. persons. The Virgin Islands cannot now forgive this tax, since the tax is upon the recipient and not upon the V.I. payor. A U.S. recipient of passive income from the Virgin Islands may generally take a foreign tax credit for any such tax (subject to limits) against its U.S. tax liability. Although there is some dispute about the underlying tax liability of the recipient of passive investment income from the Virgin Islands, it is the Internal Revenue Service's position that the recipient is liable for the tax (Rev. Rul. 78–327, 1978–2 C.B. 196).[2]

In addition, there is a dispute about the authority of the Virgin Islands to require withholding of this tax (as opposed to its authority to impose the underlying tax). This dispute has been the subject of litigation. The U.S. Court of Appeals for the Third Circuit held that the Virgin Islands did not have the power to impose withholding.[3] The basis of this decision was a Treasury Regulation that provided that U.S. persons were not required to withhold on payments of passive investment income to V.I. persons: the Third Circuit mirrored that Regulation to hold that V.I. persons did not have to withhold on payments to U.S. persons. The Treasury Department has since revoked the Regulation in question. Therefore, according to the IRS, V.I. persons who pay passive income to U.S. persons must withhold tax at a 30-percent rate. However, some persons have questioned the validity of the IRS revocation of that Regulation. The revocation occurred simultaneously with issuance of a Revenue Procedure that continued the rule that U.S. persons need not withhold on payments of passive investment income to V.I. persons. Therefore, some persons allege that the revocation of the Regulation was invalid and that the Virgin Islands does not have the power to require withholding of the tax. It is understood that these issues are again in controversy.

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[2] No inference should be drawn from this discussion as to the correctness of the view of either party about this dispute or about the dispute as to the related withholding obligation.

[3] *Vitco v. Government of the Virgin Islands*, 560 F. 2d 180 (3d Cir. 1977), *cert. denied*, 435 U.S. 180 (1978).

Guamanian taxation of passive income

Like the Virgin Islands, Guam is a possession of the United States and has a tax system generally mirroring the Internal Revenue Code. Until 1972, passive investment income paid by Guamanian persons to U.S. persons was subject to a 30-percent Guamanian tax. As is the case with V.I. taxes today, this tax was creditable (subject to limits) against U.S. tax liability through the foreign tax credit mechanism. In 1972, finding that the effect of the Guamanian passive income tax had been to discourage U.S. investment in Guam, Congress repealed the tax.[4]

Reasons for Change

The current 30-percent tax on the gross amount of passive investment income paid by V.I. persons to U.S. persons discourages investment by U.S. persons in the Virgin Islands. Because no deductions are allowed, the tax on this income, in many cases, is higher than the regular corporate or individual tax would be if deductions were allowed. Although the United States allows a foreign tax credit for taxes paid to the Virgin Islands, such credits generally cannot offset U.S. tax on U.S. source income. Therefore, the 30-percent tax on gross V.I. source passive investment income frequently results in such income being taxed at a higher rate than similar income earned by U.S. persons in the United States. This disincentive has had the effect of retarding investments by U.S. persons in the Virgin Islands. The Committee has limited the effect of the bill to certain U.S. persons, because the Committee does not intend to enable foreign persons to use the Virgin Islands as a conduit to make investments in the United States.

Explanation of Provisions

The bill will generally limit the Virgin Islands tax on certain passive investment-type income from sources within the Virgin Islands that is not effectively connected with the conduct of a trade or business in the Virgin Islands and that is received by U.S. citizens, resident aliens of the United States, and U.S. corporations, to 10 percent of the gross amount received. The bill will continue present law for dividends paid to such persons out of earnings and profits accumulated during taxable years beginning before the effective date (the day after the date of enactment). It will treat post-effective date dividends as first coming out of earnings and profits accumulated during taxable years beginning before the effective date.

The bill will allow the Government of the Virgin Islands, in its discretion, to reduce this 10-percent rate (or to eliminate the tax altogether). The Government of the Virgin Islands will have the discretion to reduce (or eliminate) the tax on the basis of criteria it chooses. The bill will also limit the complementary withholding tax on such income to the 10-percent (or lower) rate.

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[4] Congress' method of repealing the Guamanian tax was to repeal the 30-percent U.S. tax on passive investment income paid by U.S. persons to Guamanian persons. Repeal of the Guamanian tax thus occurred through "mirroring" the repeal of the U.S. tax.

The 10-percent rate of tax is available only to U.S. citizens, resident aliens and corporations. The bill will not affect the tax treatment of payments by V.I. persons to non-U.S. persons, to U.S. trusts, estates, or partnerships, or to V.I. residents.

The bill makes clear the Virgin Islands' right prospectively both to impose the tax and to collect it by requiring withholding. The bill is not intended to affect disputes now pending with respect to prior years between various taxpayers and the V.I. Government as to whether under existing law the Virgin Islands can tax U.S. recipients non-resident in the Virgin Islands on passive income from Virgin Islands sources.

Effective Date

The new Virgin Islands tax rates will generally apply to amounts received after the date of enactment. However, the withholding obligation will apply to payments made after the date of enactment.

Revenue Effect

It is estimated that this provision will have a negligible revenue impact.

B. Provisions Relating to Social Security Disability Insurance (DI)

1. Continuation of DI benefits to certain individuals pursuing appeal (sec. 2 of the bill and sec. 223 of the Social Security Act)

Present Law

A social security disability insurance (DI) beneficiary who is found by the State agency to be no longer eligible for benefits continues to receive benefits for two months after the month in which he ceases to be disabled. (As an administrative practice, individuals are now generally found to be "not disabled" no earlier than month in which the agency makes the termination decision.) The individual may request a reconsideration of the decision and, if the denial is upheld, he may appeal the decision to an Administrative Law Judge (ALJ). The individual is not presently eligible for benefits during the appeals process. However, if the ALJ reverses the initial termination decision, benefits are paid retroactively.

Reason for Change

In the early stages of the continuing disability investigations (CDI) review process, while reviews have been focused on cases most likely to be found ineligible, States have been terminating benefits in approximately 45 percent of the cases reviewed. Of those cases which appeal, approximately 65 percent have benefits reinstated by an administrative law judge. This wide variation between the decisions made by State agencies and ALJs, a long recognized problem, stems from a number of factors. For example, the beneficiary can introduce new medical evidence at the ALJ hearing; the ALJ hearing is the first face-to-face contact between the reviewed beneficiary and a decision-maker; and the standards of disability used by State agencies and ALJs differ in some important aspects.

The committee believes that the lack of uniformity of decisions between State agencies and ALJs is a fundamental problem in the disability determination and appeals process which must be dealt with administratively and must be carefully considered when the Committee takes up substantive legislation. In the meantime, the Committee believes that some emergency relief is warranted for workers who are having benefits terminated by State agencies and then—in more than half the cases appealed—having their benefits reinstated by an ALJ.

The committee does not intend that its decision to extend benefits during the appeals process should be considered a judgment that it disagrees with the standards being applied by the State agency. It is clearly the responsibility of the administering agency to make the

policy determinations which implement a statute. The Social Security Disability Amendments of 1980 properly mandated a vigorous effort to eliminate ineligible individuals from the benefit rolls. This legislation does not in any way represent a reversal of that mandate but rather is a temporary expedient to help deal with some of the problems incident to the implementation of that mandate.

The committee expects that every effort will be made to collect overpayments from beneficiaries in cases where the final decision is to terminate benefits. While there is provision to waive overpayments in cases where recovery is clearly inappropriate, the Committee expects such waivers to be granted only when fully justified and after all alternatives for repayment—including repayment over a period of time—have been explored.

Explanation of Provision

The committee amendment will continue DI benefits and medicare coverage (at the individual's option) through the month preceding the month of the hearing decision for terminated beneficiaries pursuing an appeal. These additional DI payments would be subject to recovery as overpayments, subject to the same waiver provisions now in current law, if the initial termination decision were upheld.

Effective Date

This provision will be effective for termination decisions occurring between the date of enactment and July 1, 1983, but in no case would payments be made for months after June 1983. Cases now pending an ALJ decision would also be covered by this provision, although lump sum back payments would not be authorized. Individuals terminated before the date of enactment who have not appealed the decision would qualify for continued benefits only if they are still within the allowable period for requesting a review.

2. Secretarial authority to control flow of continuing disability investigation reviews (sec. 3 of the bill and sec. 221(i) of the Social Security Act)

Present Law

As mandated by the Social Security Disability Amendments of 1980, all DI beneficiaries except those with permanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility. Beneficiaries with permanent impairments may be reviewed less frequently. The provision in present law specifies a minimum level of review.

Reason for Change

The committee believes that the requirement of the 1980 amendments mandating a periodic review of the continuing eligibility of disability beneficiaries is essential for ensuring that benefits go only to those who are disabled within the meaning of the law. The Committee also believes that every effort should be made by the Secretary, in co-

operation with the States, to ensure that these reviews are carefully considered and processed in a timely fashion.

The committee recognizes that some States may have experienced unavoidable difficulties in implementing the periodic review procedures. For this reason, the Committee amendment authorizes the Secretary to take into account the capabilities and workloads of the State agencies in assigning cases to the States for review. To some extent, actions already implemented administratively may have relieved the situation in some States, but this amendment will make clear the Secretary's authority to provide such relief even if this means that the statutory schedule of reviewing one-third of the caseload each year cannot *initially* be met. The Committee emphasizes, however, that it continues to view the integrity of the disability rolls as a matter of high national priority which must be achieved in all States by the prompt implementation of a thorough program of periodic review.

The committee notes that the full cost of State agency administration is borne by the social security trust funds. It is expected that the Secretary will request and make available to the States adequate resources to achieve full compliance with the 1980 amendments as rapidly as possible. In particular, the Committee insists that this authority shall be used only where the State is unable to carry out the full workload despite a good faith effort to achieve the necessary staffing and otherwise take advantage of the resources made available. The Committee also expects the Administration to undertake all necessary actions to assure that the program of periodic review is properly and evenhandedly implemented on a nationwide basis.

Explanation of Provision

The committee amendment provides the Secretary of Health and Human Services the authority to slow—on a State-by-State basis—the flow of cases sent to State agencies for review of continuing eligibility. The Secretary is instructed to take into consideration State workload and staffing requirements, and is authorized to slow reviews only in States that demonstrate a good faith effort to meet staffing requirements and process claims in a timely fashion.

Effective Date

This provision will be effective on enactment.

3. Medical evidence requirement (sec. 4 of the bill and sec. 221 of the Social Security Act)

Present Law

Although current law does not specify a time period for the collection of medical evidence, current procedures, detailed in the guidelines used by State agencies, require the Secretary to seek to obtain all medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

The adoption of this procedure was announced by the Administration in May 1982. Previously, any requirements as to the length of the period over which medical evidence should be sought were left up to the States. For some individuals, medical evidence was gathered over more than a 12-month period. For others, medical evidence was gathered over a shorter period.

Reason for Change

The committee regards as a high priority the careful development and consistency of decisions to terminate or continue disability benefits. This provision is intended to contribute to both of these objectives. It is not the committee's intention that this provision require the Secretary to pay for medical evidence which is not useful for an evaluation of the individual's impairment.

Explanation of Provision

The committee amendment puts into law the requirement that the Secretary must attempt to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

Effective Date

This provision will be effective on enactment.

4. Report to Congress (sec. 5 of the bill and sec. 221(i) of the Social Security Act)

Present Law

There is no requirement for periodic reporting to the Congress by the Secretary of Health and Human Services with respect to continuing disability investigations.

Explanation of Provision

The committee amendment requires the Secretary to report to the Senate Finance Committee and the House Ways and Means Committee semiannually on the number of: Continuing eligibility reviews, termination decisions, reconsideration requests, and termination decisions which are overturned at the reconsideration or hearing level.

Effective Date

This provision will be effective on enactment.

III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Budget Effects

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the budget effects of H.R. 7093, as reported.

Budget receipts

The committee estimates that the tax provision relating to the Virgin Islands will have a negligible revenue effect.

The Treasury Department agrees with this statement.

Buget outlays

According to the Congressional Budget Office, the provisions relating to social security disability insurance would result in an increase in Federal outlays of $60 million in fiscal year 1983 and would reduce Federal outlays by $20 million in fiscal year 1984, due exclusively to the temporary payment of benefits through the appeals process. Any outlay effects in fiscal years 1985 through 1987 would be negligible.

Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee on the motion to report the bill. H.R. 7093, as amended, was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

Regulatory Impact

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of H.R. 7093, as reported.

Provisions relating to rate of taxes paid to Virgin Islands

Numbers of individuals and businesses who would be regulated.—The bill does not involve new or expanded regulation of individuals or businesses.

Economic impact of regulation on individuals, consumers and businesses.—The bill does not involve economic regulation.

Impact on personal privacy.—This bill does not relate to the personal privacy of individual taxpayers.

Determination of the amount of paperwork.—The bill will involve some paperwork requirements for the Virgin Islands and affected taxpayers in determining withholding changes under the bill.

Provisions relating to social security disability insurance

The disability insurance amendments will make additional benefits available to certain individuals. While there may be some additional forms which must be filed as a consequence of this change, the economic circumstances of affected individuals will clearly be improved. The bill will not impact on personal privacy.

Other Matters

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates and agrees with the methodology used and the resulting estimates (as indicated in Part III of this report). The Director submitted the following statement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 30, 1982.

Hon. ROBERT DOLE,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 403 of the Budget Act, the Congressional Budget Office has examined H.R. 7093, as ordered reported by the Committee on Finance on September 28, 1982. The bill reduces the 30 percent tax on non-Virgin Island passive investment (dividends, royalties, interest) to 10 percent. However, the bill will continue the current 30 percent rate for dividends paid to individuals out of earnings and profits accumulated during taxable years beginning before the effective date of the bill.

This bill does not provide any new or increased tax expenditures. The Congressional Budget Office also estimates that the bill will have a negligible effect on budget receipts.

A Disability Insurance provision would permit payments to cases appealing a termination decision through an administrative law judge hearing. The provision would permit payments through July 1983. This would add an estimated $60 million to federal outlays in fiscal year 1983 and would reduce federal outlays by $20 million in 1984. Any outlay effects in fiscal years 1985 through 1987 and the budget authority effects in all years would be negligible.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

New Budget Authority

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the committee states that the bill has a negligible effect on budget authority in all years.

Tax Expenditures

In compliance wih section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee states that the bill involves no new or increased tax expenditures.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the provisions of H.R. 7093, as reported by the committee).

VI. ADDITIONAL VIEWS OF SENATOR LONG ON H.R. 7093

The social security disability program was enacted in 1956. At the time it was passed, Congress believed it was adopting a narrowly drawn program which would serve only the most severely disabled. The actuaries projected that its cost would be modest and that it could be financed over its entire future history by a tax rate of less than one-half of one precent. Over the years, these early cost estimates have proven much too low. The number of people drawing benefits has grown far beyond anything that was anticipated in 1956. The long-range cost of the program is now projected to be some three an one-half times as great as was expected in 1956. By 1980, it was clear to Congress that this was a program out of control.

In 1980, the Congress enacted legislation designed to bring the social security disability insurance program back under control. A major element of the 1980 amendments was a requirement that the Administration begin a thoroughgoing periodic review of the eligibility of all beneficiaries. This review has been undertaken and, as was anticipated, a large portion of the cases reviewed have been found to be ineligible. Yet the Finance Committee in this bill recommends the extraordinary procedure of continuing to pay benefits to individuals who have been found to be ineligible for those benefits until they have exhausted a lengthy administrative appeals process.

I believe that continuing benefits is a fundamentally incorrect approach to this situation. The individuals being terminated from the disability rolls are people who have been found not to meet the requirements for eligibility. The present review process was mandated because of deep Congressional concern that the cost of the disability program had grown out of control. Lax administration was a major reason for the uncontrolled growth of the program. Because of this lax administration, many people were put on the benefit rolls who did not meet the stringent requirements that Congress established for this program.

The social security disability program from its very inception was intended as insurance against the virtually total loss of earnings ability arising from severe disabilities. Time and again Congress has reaffirmed the intent to limit benefits under this program only to those people who cannot work. Unfortunately, the program has not always been administered in a way which carries out this mandate. As a result, individuals have been put on the benefit rolls even though their disabilities are not so severe that they are no longer capable of substantial work activity. Some of these individuals are in fact handicapped, but they are not so disabled as to meet the standards of the social security disability program.

The Committee proposal will result in significant expenditures of social security trust fund monies. These expenditures will go to pay benefits primarily to people who do not qualify for those benefits. While the legislation provides for recovering these incorrect payments at a later date, most of those payments will not in fact be recovered.

The Administration believes that they will be able to get back about half of the incorrect payments, and that may be a highly optimistic estimate. The payment of benefits during appeal will tend to aggravate the existing serious problems which exist within the social security appeals system. Moreover, there is a danger that this legislation will be viewed as undermining the mandate of the 1980 Amendments for vigorous administration to assure that benefits are paid only to eligible individuals.

The Nature of the Social Security Disability Program

When the social security disability program was enacted in 1956, it was intended to be a program for those individuals who are so disabled that they cannot engage in any kind of substantial work activity. There are many people who suffer handicapping ailments, and these individuals are deserving of great sympathy. However, the social security disability program was not intended as a pension to be paid to anyone with a handicap. If the social security trust funds are to be used to pay benefits to all those who have suffered a medical condition which restricts their earnings capacity, the Congress will need to enact very substantial increases in the social security tax rate to fund the program.

This is not to say that Congress should not address the problems of handicapped individuals. A great deal can be done through a variety of programs to assist these individuals to regain the ability to work and to encourage the expansion of employment opportunities. Consideration needs to be given to improving those programs and to strengthening the incentives in the tax laws for hiring the handicapped. But the social security disability insurance program is based on a different premise and addresses a different population. The social security program is insurance against that catastrophic situation in which a worker becomes so disabled that he has totally lost the ability to support himself.

The limited intent of Congress with respect to this program can be seen by looking back at its legislative history. In 1957, when the program was newly enacted, the actuaries projected that, its costs would represent less than one-half percent of taxable payroll. By 1980, that cost was projected at 1.5 percent of payroll—more than 3½ times as much.

Despite the intent of Congress that this should be a program narrowly limited to people who have totally lost the ability to earn a living, there has been a continual tendency to put on the rolls individuals who are less severely disabled. In part this may arise from a misunderstanding of the purposes of the program. In part it may arise from the unwillingness to expend the funds necessary to administer the program tightly.

The Congress has reaffirmed its original intent to restrict this program to the most severely disabled individuals when it has reviewed the program. In 1967, for example, it appeared that courts were applying a rule which would give benefits to any individual with a disability sufficiently severe to keep him from doing his usual work or any other work available in his locality.

DI FINANCIAL FORECASTS IN EARLIER TRUSTEES' REPORTS

[Intermediate Assumptions]

Year of earlier trustees' report	Long-range cost (in percent of taxable payroll)	Cost estimates for CY 1980 (dollars in billions)
1957	0.42	$1.0
1960	0.35	1.5
1965	0.63	2.0
1967	0.85	3.2
1972	1.18	NS
1977	3.68	17.4
1980	1.50	[1] 15.9
1982 [1]	1.50	[2] 15.9

[1] Actual for 1980.
[2] Estimate.
NS—Not shown in report.
Source: Congressional Research Service, July 1982.

DISABILITY INSURANCE PROGRAM COSTS, 1957–82

[In millions]

Calendar year	Total costs
1957	$59
1958	261
1959	485
1960	600
1961	956
1962	1,183
1963	1,297
1964	1,407
1965	1,687
1966	1,947
1967	2,089
1968	2,458
1969	2,716
1970	3,259
1971	4,000
1972	4,759
1973	5,973
1974	7,196
1975	8,790
1976	10,366
1977	11,946
1978	12,954
1979	14,186
1980	15,872
1981	[1] 17,658
1982	[1] 18,508

[1] Estimated based on the Alternative II-B assumptions contained in the 1982 OASDI Trustees' Report.
Source: Social Security Bulletin, Annual Statistical Supplement, 1980.

DI BENEFICIARIES, YEAR-BY-YEAR, 1957–82

Calendar year	Disabled workers	Total DI beneficiaries [1]
1957	149,850	149,850
1958	237,719	268,057
1959	334,443	460,354
1960	455,371	687,451
1961	618,075	1,027,089
1962	740,867	1,275,105
1963	827,014	1,452,472
1964	894,173	1,563,366
1965	968,074	1,739,051
1966	1,097,190	1,970,322
1967	1,193,120	2,140,214
1968	1,295,300	2,335,134
1969	1,394,291	2,487,548
1970	1,492,948	2,664,995
1971	1,647,684	2,930,008
1972	1,832,916	3,271,486
1973	2,016,626	3,558,982
1974	2,236,882	3,911,334
1975	2,488,774	4,352,200
1976	2,670,208	4,623,757
1977	2,837,432	4,860,431
1978	2,879,774	4,868,490
1979	2,870,590	4,777,412
1980	2,861,253	4,682,172
1981	2,776,519	4,456,274
1982 est.[2]	2,723,000	4,374,000

[1] Includes spouses and children of disabled workers.

[2] 1982 OASDI Trustees' Report, intermediate II-B assumptions.

Source: Social Security Bulletin, annual statistical supplement, 1980.

The Congress felt this was a far broader definition of disability than was appropriate for the social security disability insurance program. To reemphasize the original intent, Congress amended the law to make it clear that an individual "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy

exists for him, or whether he would be hired if he applied for work" (sec. 223(d) of the Social Security Act).

Despite the clear Congressional intent that the social security disability insurance program be limited to the most severely disabled, the program continued to experience growth beyond anything that could be explained by changes in the legislation or demographic trends. The annual costs of the program increased from a little more than $250 million in 1958 to over a billion dollars in 1962, to more than $3 billion by 1970, more than $10 billion by 1976 and more than $18 billion in 1982.

According to an analysis done in 1978 by former Chief Actuary Robert Myers, the incidence of persons receiving disability benefits increased from 4.5 per one thousand insured workers in 1968 to 6.0 per one thousand in 1972, and to 6.9 per one thousand in 1975—in effect a 50 percent increase over a seven-year period in the rate at which workers were coming onto the disability rolls. There is no evidence to indicate that this increase was in any way based on real increased incidence of disabling conditions among the population at large.

A June, 1977 study by the actuaries of the Social Security Administration cited a variety of factors as responsible for the growth in the benefit rolls. Possible explanations included the increased attractiveness of benefits under a system in which benefit levels had been substantially increased, changing attitudes on the part of individuals with impairments, and increased emphasis on vocational factors resulting in more allowances on appeal. The actuaries also cited the results of trying to hold down administrative costs during a period of increased caseloads and the tendency in such circumstances to give claimants the benefit of the doubt. This problem was described by the actuaries as follows:

> All of this put tremendous pressure on the disability adjudicators to move claims quickly. As a result the administration reduced their review procedures to a small sample, limited the continuing disability investigations on cases which were judged less likely to be terminated, and adopted certain expedients in the development and documentation in the claims process. Although all of these moves may have been necessary in order to avoid an unduly large backlog of disability claims, it is our opinion that they had an unfortunate effect on the cost of the program.
>
> By claiming that it is difficult to maintain a proper balance between sympathy for the claimant and respect for the trust funds, we do not mean that disability adjudicators consciously circumvent the law in order to benefit an unfortunate claimant. What is meant is that in a public program designed specifically to help the people, such as Social Security, whose operations are an open concern to millions of individuals, and where any one decision has an insignificant effect on the overall cost of the program, there is a natural tendency to find in favor of the claimant in close decisions. This tendency is likely to result in a small amount of growth in disability incidence rates each year, such as that experienced under the DI program prior to 1970, but it can become highly significant during long periods of difficult national economic conditions." (SSA Actuarial Study No. 74, January 1977, p. 8.)

COMPARISON OF CONTINUING DISABILITY INVESTIGATIONS (CDI'S) PROCESSED TO TOTAL DISABLED-WORKER BENEFICIARIES OVER THE YEARS

Fiscal year	CDI's processed (DI and concurrent cases only)	DI-worker beneficiaries (in millions)	Number of CDI's per 1,000 DI-worker beneficiaries
1970	[1] 167,000	1.493	111.8
1973	[1] 142,000	2.017	70.4
1974	[1] 120,000	2.237	53.6
1975	[1] 116,000	2.489	46.6
1976	[1] 129,000	2.670	48.3
1977	107,220	2.834	37.8
1978	83,651	2.880	29.0
1979	94,084	2.870	32.8
1980	94,550	2.861	33.0
1981	168,922	[2] 2.835	59.6
Oct. 1, 1981 to June 28, 1982	243,765	[2] 2.723	89.5

[1] Figures proved by SSA in 1977, but not currently verifiable.
[2] Estimates based on intermediate II-B assumptions in the 1982 Trustees' Report.

Source: SSA and Social Security Bulletin, Annual Statistical Supplement, 1980.

The 1980 Amendments

In view of the enormous growth in disability insurance program costs and caseloads, the Congress enacted legislation in 1980 designed to bring the program back under control. The 1980 legislation established limitations on benefit amounts designed to deal with the problem of a program in which benefit levels were unreasonably high in relation to earnings levels. Congress was, however, also concerned with the evidence of loose administration, and mandated several changes designed specifically to tighten up the disability determination process. In order to assure that improper awards to new claimants were avoided, Congress required the Social Security Administration to reinstate its former practice of reviewing most State agency allowances before payments are started. To deal with the problem of improper allowances on appeal, the 1980 Amendments required the Secretary to begin reviewing cases which are allowed in the appeals process. Under this provision, the Social Security Appeals Council is required to reexamine a significant sample of cases decided by administrative law judges and to reverse those cases which have been improperly decided.

The 1980 legislation also required that the Administration report the progress in implementing this review program and provide an analysis of the reasons why administrative law judges so frequently overturn initial agency decisions.

Finally, Congress in the 1980 law specifically required that all disability beneficiaries be reexamined on a periodic basis. This require-

ment was designed to assure that those who were not eligible for benefits would not continue on the rolls indefinitely once they began receiving benefits. In general, the Administration was required to review each claimant's eligibility at least once every three years; a less frequent review is permitted in cases which are determined to be permanent.

Individuals Being Terminated Are Ineligible

The Congress required a periodic review in the 1980 amendments because of indications that many ineligible people were, in fact, receiving benefits. The rapid growth of the disability caseloads over the preceding 10 years was one indication of this. The substantially reduced level of administrative review during that same period also led to concern that ineligible persons were receiving benefits. Subsequent to the enactment of the 1980 amendments, these concerns were verified in studies conducted both by the Social Security Administration and the General Accounting Office. In March 1981, the GAO issued a report entitled "More Diligent Follow-up Needed To Weed Out Ineligible Social Security Administration Disability Beneficiaries." Based on the evidence then available, this report concluded that "there could be about 584,000 persons on the DI rolls who may not meet the program's eligibility criteria." The annual benefit drain for cash benefits alone (not including medicare) was estimated to be as high as $2 billion. On the basis of its findings, the GAO report recommended that the Department give high priority to implementing a more vigorous continuing disability review program.

On the basis of the legislative mandate in the 1980 amendments and the findings of its own internal studies and those of GAO, the Social Security Administration did undertake a vigorous program of reviewing the eligibility of disabled beneficiaries. During the first eight months of fiscal year 1982, a total of 267,000 reviews were completed. Forty-seven percent of these cases (121,000) were found to be ineligible. Although this is a very high rate of ineligibility, it is consistent with the evidence found in earlier studies. In conducting these reviews, the Administration has utilized techniques designed to target the first reviews on those parts of the caseload where ineligibility was more likely to be found. During the Finance Committee consideration of this bill, an Administration spokesman stated that the overall ineligibility rate is expected to be about 25 percent by the time the process is fully implemented.

While these continuing disability reviews are conducted by State agencies, the Social Security Administration monitors the accuracy of their decisions by conducting a sample reexamination of State agency findings. For the period from October 1981 through March 1982 (the latest available findings) these quality control samples show a 97.5 percent net accuracy rating. In other words, after reexamination of all of the sampled cases (including obtaining additional evidence where this seemed appropriate), the Social Security Administration would have disagreed with the finding of the State agency in only 2½ percent of the cases. This means that by the standards of disability which are applied by the agency, nearly all the cases being terminated are, in fact, ineligible for benefits.

CONTINUING DISABILITY INVESTIGATION (CDI) CONTINUANCES AND CESSATIONS BY STATE AGENCIES, DI AND SSI COMBINED, FISCAL YEARS 1977–82[1]

Fiscal year	Total number of CDI reviews	Continuances	Cessations	Continuance rate (in percent)	Cessation rate (in percent)
1977	150,305	92,529	57,776	62	38
1978	118,819	64,097	54,722	54	46
1979	134,462	72,353	62,109	54	46
1980	129,084	69,505	59,579	54	46
1981	208,934	110,134	98,800	53	47
10/1/81–5/28/82	266,725	145,321	121,404	54	47

[1] Reflect continuance and cessation rates only at the State agency level—not at the district office or at the hearing or appeal levels of adjudication. These figures differ from the previous table in that they exclude CDI's where no new medical determination of disability by the State agency was required. Other factors have affected the individual's entitlement, such as his return to work.

Source: SSA, July 1982.

REQUESTS FOR ALJ HEARINGS—RECEIVED, PROCESSED, AND PENDING TOTAL CASES

Fiscal years	Requests received	Processed	Pending (end of year)
1979	226,200	210,775	90,212
1980	252,000	232,590	109,636
1981	281,700	262,609	128,164
1982	[2] 326,300	300,000	[2] 155,064

[1] Includes DI, OASI, SSI, and Black Lung cases.
Source: Estimate provided by SSA, OHA, July 1982.

ADMINISTRATIVE LAW JUDGE REVERSAL RATES—DISABILITY INSURANCE INITIAL DENIALS AND TERMINATIONS, FISCAL YEARS 1979–82

Fiscal year	Percent of cases reversed	
	Initial denials	Terminations
1979	56.4	59.5
1980	59.4	63.8
1981	59.0	61.5
1st quarter 1982	57.3	65.4

Source: SSA, July 1982

Problems in the Appeals Process

If an individual's benefits are terminated because he is found no longer to be disabled, he is entitled to seek a further review of the issue. The first review takes place as a matter of reconsideration by a different decisionmaker in the State agency. Most reconsideration decisions uphold the initial finding of ineligibility. The claimant then is entitled to ask for a hearing before an administrative law judge. At the present time, the administrative law judges are reversing a very high proportion of cases appealed to them. During the first quarter of 1982, 65 percent of terminations which were appealed to administrative law judges were being restored to benefit status. While this is a very high reversal rate, it is not strikingly different from the administrative law judge reversal rate in prior years, nor from the administrative law judge reversal rate of initial claims.

The high reversal rates at the hearings level have been a matter of concern to the Congress for a number of years. On its face, a system in which most appealed cases are reversed is a system in trouble. Simply as a workload matter, such a situation leads to an unduly large number of appeals. The committee proposal to pay benefits during appeal will aggravate this problem. Moreover, a high reversal rate tends to cast doubt on the validity of the entire decisionmaking process and to invite efforts to game the system.

The 1980 amendments included a requirement that the Social Security Administration conduct a study of the factors involved in the large numbers of ALJ reversals. This study found that markedly different eligibility standards were being applied in the appeals process from the standards used by the agency. In a sample of administrative law judge decisions, the Social Security Office of Assessment using agency standards would have allowed 13 percent of the sample—while the administrative law judges had allowed 64 percent of the sample. This study indicates that a very significant part of the administrative law judge pattern of high reversals occurs because the appeals process simply does not follow the same eligibility standards as the agency.

There will always be some reversals which can be attributed to differences of judgment in close cases, evidence obtainable only through personal appearance, and changes in condition between initial decision and hearing. But reversals for these reasons represent only a small part of the caseload. Most reversals are due to the application of easier eligibility standards.

There can be no justification for continuing a system in which different standards of eligibility are applied at the appeals level than are applied at the initial determination level. Such a situation invites universal appeals, denies those who do not appeal of a fair opportunity to receive benefits, and creates a revolving door situation in which one part of the agency puts an individual on the rolls after another part of the same agency has taken him off the rolls. It is the responsibility of the administering agency, in this case the Social Security Administration, to develop the procedures and guidelines which will carry out the requirements of a law. Policy decisions should be made by the agency and should be carried out by all parts of the agency including those charged with conducting hearings. It is not the function of an

Table 1. Percent Distribution of Sample Case Allowances and Denials, by Decision-maker and Basis for Decision 1/

	Original ALJ Decision	Appeals Council Decision	Office of Assessment Decision Using DDS Standards
ALLOWANCES			
Total	64%	48%	13%
Medical alone	18	15	6
Medical/Vocational inability to engage in SGA:			
Directed by medical-vocational rule	14	11	5
Specific reasons: RFC less than sedentary	18	9	0
Pain combined with significant impairment(s)	5	3	0
Mental disorders combined with significant physical impairment(s)	5	4	(2/)
Other medical/vocational	5	6	2
DENIALS			
Total	36	52	87
Impairment not severe	11	16	39
Impairment does not prohibit past work	9	13	28
Directed by medical-vocational rule	13	19	13
Impairment does not prohibit other work	1	2	4
Other	2	3	3

NOTE: Detail may not add to totals due to rounding.

1/ Percentages shown are for the combined total of DI and SSI claims. Although there are some differences between the allowance/denial rates for DI claims and SSI claims (e.g., the Appeals Council would have allowed about 49% of DI claims and 45% of SSI claims), these differences do not appear to be significant and do not affect the findings of the review.

2/ About 0.4%.

Source: SSA January 1982 Study

administrative law judge to make agency policy. It is his function to assure claimants that the agency policy is being carried out in their case. This responsibility of the administrative law judge was described in a 1977 study of the Social Security appeals process by the Center for Administrative Justice. The final report of that study describes the proper roll of the administrative law judge as follows:

> The protection of ALJ decisional independence in the APA is significant. Once appointed the ALJ's position is permanent; he may be removed only "for cause" after formal adjudicatory hearing. Moreover, the ALJ's compensation is determined by the Civil Service Commission, not by his agency. Cases must be assigned in rotation, the ALJ may not be assigned tasks inconsistent with his duties as an ALJ and, with respect to the *facts* at issue in a particular case, the ALJ may not be approached by anyone, including the employing agency, save on the record. Moreover, the ALJ may not be made subject to the supervision or control of any person who has investigative or prosecuting functions for the agency.
>
> On the other hand, certain aspects of the ALJ's activities are clearly subject to agency control. ALJ's are not "policy" independent. They represent an extension of "the agency" and the agency may control their exercise of discretion by regulation, guidelines, instructions, opinions and the like in order to attempt to produce decisions as similar as possible to those "the agency" would have made. There is no prohibition even on consultation with agency employees on questions of law or policy in a particular case.

(Sources: *Final Report: Study of the Social Security Administration Hearing System.* Center for Administrative Justice, October 1977, p. 244–5.)

It appears that the Social Security Administration in the past has not carried out its responsibility to assure that administrative law judges do in fact implement agency policy as to how and under what standards the question of disability is to be determined.

This situation should be greatly improved in the near future. The Social Security Administration has undertaken to publish in Social Security Rulings (which are binding on administrative law judges) a much more detailed explanation of the criteria to be applied in determining whether or not an individual is eligible for disability benefits. The greater part of these rulings will have been published by the end of October of this year and this project is expected to be essentially completed with the publication of the January, 1983 Social Security Rulings. The Administration is to be commended for undertaking to correct this problem and should continue to monitor the situation and to publish further guidelines as necessary.

To assure that the administrative law judges are in fact carrying out the agency policy as published in these rulings, the Social Security Appeals Council has the ongoing responsibility of reviewing cases allowed by administrative law judges. This responsibility was reaffirmed in the 1980 legislation and the Administration should give a high priority to implement that responsibility. If the agency suc-

ceeds in conforming the policy applied in the appeals process to the authoritative agency policy standards, the rate of reversals on review should fall dramatically. This in itself should tend to reduce the appeals workload to more manageable levels, since claimants will no longer be encouraged to appeal in all cases (as they are by the present system). Once these changes are fully implemented, it can be expected that reversals at the hearing level will tend to occur only where there is in fact a failue to apply the agency standards at the initial and reconsideration levels, or where the claimant's condition has in fact worsened since the initial agency determination.

Initial Problems Are Being Corrected

The present Administration is to be commended for moving rapidly and effectively to implement the review requirements mandated by the Congress. It is unfortunately inevitable that there will be some difficulties encountered in undertaking any major new initiative. In the case of the disability review process, this situation was aggravated by the very large number of cases involved (267,000 during the first eight months of fiscal 1982) and by the complications of operating under contractual arrangements with a network of State agencies.

Sadly, there were some cases of improper terminations and even some cases of terminations involving individuals with such severe disabilities as to leave no room for doubt. It is remarkable that such situations were rare and that the Administration has been able to maintain a 97.5 percent accuracy rate. Still, every effort should be made to avoid burdening those individuals who are without any question eligible, and the Administration has in fact been sensitive to this need.

Since the implementation of this program, the Administration has made numerous changes in its procedures directed specifically at assuring that truly eligible individuals are continued in benefit status and, insofar as appropriate, are spared the burden of unnecessary reviews.

A letter to the Committee on Finance from the Commissioner of Social Security outlines the following twelve different steps the agency has taken to improve its procedures in ways which help assure a high degree of accuracy:

Excerpt From September 16, 1982, Letter From Commissioner of Social Security

1. In March, SSA initiated a policy of determining that, in general, a person's disability ceases as of the time the beneficiary is notified of the cessation. This change reduces situations where the beneficiary is faced with the need to pay back past benefits because of a retroactive determination.

2. Since May, SSA has mandated that States review *all* medical evidence available for the past year—a directive which ensures that every State is looking at every piece of evidence that might be pertinent to a case.

3. SSA has underway, in two States, a study to test the value of obtaining more than one special mental status examination in cases where evidence from the beneficiary's

treating source is incomplete or inadequate. This is intended to determine whether a person's mental condition can drastically change from one day to another. One criticism of SSA's practice of getting only one mental status examination is that it gives a misleading "snapshot" of a person.

4. Since March, SSA has required State agencies to furnish detailed explanations of their decisions in all cases in which a person's disability has ceased.

5. To insure quality in CDI cases, SSA conducts a quality review of a sample of cases before benefits are stopped. In June 1982, SSA doubled the number of quality reviews of termination cases. The quality has been holding very high at 97.5 percent. In addition, to demonstrate the importance of quality in the CDI process, SSA established an interim accuracy goal for the State agencies will cut waiting for publication of regulations.

6. SSA has consistently monitored State agency resources and workloads closely and adjusts the flow of cases to the individual States to avoid backlogs when problems have arisen in their acquiring adequate resources. The selective moratoriums on new CDI cases that SSA has implemented for August and September (and even earlier in some States) has been easing problems in specific States that have had unusually large backlogs.

7. Starting in October, SSA will use a new procedure for beginning a CDI review: each beneficiary will have a face-to-face interview with an interviewer in the local Social Security office. The interviewer will explain how the review works and what the beneficiary's rights are, obtain information about the beneficiary's medical care and treatment and current condition, and—in some cases—conclude the review process where it is clearly warranted based on the beneficiary's current medical condition.

This will correct the single most glaring anomaly in the CDI process. Recipients whose cases are selected for review under the 1980 Congressional mandate rarely, if ever, come face-to-face with a decisionmaker until and unless the case is pursued to the third level of review and appeal—a process which may drag on as much as 6 months to a year after benefits have been stopped. This one flaw in the program is perhaps more to blame than any other factor for the seemingly senseless "horror stories" we have all seen from time to time of people being dropped from the rolls despite glaringly obvious disabilities.

8. To improve the quality of determinations in difficult cases where it is necessary to determine a person's capacity to do work-related activities despite a severe impairment, SSA is requiring that the determinations as to remaining capacity be more detailed and explicit so that the basis for the final decision is clear.

9. SSA has taken many actions to improve the quality of consultative examinations purchased by the Government in

cases where medical evidence from a person's physician is unavailable or incomplete.

10. SSA has been very sensitive to the need for special handling of cases involving psychiatric impairments. SSA has met with mental health groups to obtain their recommendations for improvements and is reevaluating all guidelines for evaluation of mental impairments. SSA has also encouraged the States to increase the number of psychiatrists on their staffs in order to enhance their ability to review cases involving mental impairments. Secretary Schweiker has asked the American Psychiatric Association for assistance in recruiting psychiatrists for the States.

11. SSA has added more than 140 Administrative Law Judges to what is already perhaps the largest single adjudicative system in the world, bringing their total number to more than 800 and providing them with significantly more support staff to help reduce the backlog of cases that has been a chronic problem in past years.

12. Based on our findings in the first year of the CDI program, SSA has broadened the definition of the permanently disabled who need not be subject to the every-three-year CDI process mandated under the law. As a result, SSA expects to exempt an additional 165,000 beneficiaries from the CDI process during the next fiscal year—which will mean reducing the total from about 800,000 to about 640,000, a major reduction in workloads for the State agencies.

Included in these measures is an important change under which a personal interview is conducted by a Social Security Administration employee before a case is even sent to a State agency for review. This personal interview assures that claimants will be acquainted with the implications of the process and will have the opportunity to present their views and to make available any relevant evidence. Moreover, the face-to-face interview creates a situation in which obviously inappropriate reviews can be detected at the very beginning of the process. In such situations, the case is not even sent to the State agency but is referred back to the Social Security central office with a recommendation that further review be discontinued.

These actions should reduce to an absolute minimum the incidence of improper terminations. Together with the administrative steps being taken to improve the appeals process, these changes eliminate any possible basis for continuing benefit payments beyond the point of the initial State agency determination.

Finance Committee Approach Inadvisable

The Committee has recommended an approach which would continue benefits during the appeals process. This approach has nothing to recommend it. If the bulk of initial decisions denying benefits were incorrect, the proper approach would be to change the initial decision process rather than to pay benefits to those who happen to appeal that initial decision. In fact, however, the evidence available to the Committee does not indicate that the bulk of initial decisions are wrong.

Rather, it indicates that over 97 percent of the decisions are correct. Consequently, the Committee bill will result in spending social security trust fund money primarily to pay improper benefits. Some of this money will be subsequently recovered; most of it will not. Except in those cases where the individual's benefit is continued on appeal (and this will frequently be an improper continuation) the amendment does nothing but postpone the day of reckoning. Moreover, it will leave the terminated beneficiary with the burden of a substantial overpayment at that point.

The implications of the Committee amendment may be even more than the short-term improper expenditure of many millions of dollars in social security trust funds. The history of the social security disability program seems to show a fair degree of volatility in the application of adjudicative standards. The Congress has faced a continuing need to reemphasize its original intent that the definition of disability be applied strictly and narrowly. In the 1980 Amendments Congress spoke forcefully and, thus far, effectively to this issue. There is a distinct danger that these amendments would be viewed by all adjudicators as a reversal of this Congressional intent. This bill could be seen as a Congressional judgment that most, or a substantial proportion, of the agency's terminations are incorrect. If this occurs, it could cause the State agencies to allow more claims.

In addition, the Committee provision is bound to have substantial impact on the appeals process, probably in ways which will undermine the attempts of the Administration to bring the appellate process back into line with the agency policy. Simply on a workload basis, the decision to pay benefits through the hearing level will stimulate additional appeals from individuals with little expectation of ultimately winning reinstatement. In addition, the hearings officers like the State agencies may read into this legislation a subtle message that Congress is reversing its earlier concern over the integrity of the benefit rolls.

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Calendar No. 936

97TH CONGRESS
2D SESSION

H. R. 7093

[Report No. 97-648]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 8), 1982
Received; read twice and referred to the Committee on Finance

SEPTEMBER 30 (legislative day, SEPTEMBER 8), 1982
Reported by Mr. DOLE, with an amendment to the text and an amendment to the title

[Insert the part printed in italic]

AN ACT

To amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDUCTION IN INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

(a) Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Continued Payment of Disability Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1983.

"(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under para-

graph (1), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

"(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

"(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended—

(1) by inserting "(1)" after "(i)";

(2) by inserting ", subject to paragraph (2)" after "at least every 3 years"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.".

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 4. MEDICAL EVIDENCE.

(a) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) In any case of a medical review of the continuing disability of an individual, before making a final determination with respect to any such individual, the Secretary shall make every reasonable effort to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated such individual with respect to his impairment or impairments within the preceding 12-month period.".

(b) The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 5. REPORT BY SECRETARY.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.".

Amend the title so as to read: "An Act to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes.".

Calendar No. 936

97TH CONGRESS
2D SESSION

H. R. 7093

[Report No. 97-648]

AN ACT

To amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income.

SEPTEMBER 30 (legislative day, SEPTEMBER 8), 1982

Reported with an amendment to the text and an amendment to the title

LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 73

September 29, 1982

Yesterday, September 28, 1982, the Senate Committee on Finance met to mark up seven non SSA-related bills and S. 2942, a bill introduced by Senator Cohen (R, ME) with 19 cosponsors that would continue disability insurance (DI) benefits through the end of the administrative appeals process. The bill would also allow the Secretary to modify, if appropriate, the congressionally mandated requirement that the status of non-permanently disabled beneficiaries be reviewed every 3 years. By voice vote, the committee marked up S. 2942 to:

1. On a temporary basis, permit a DI beneficiary to elect to have benefits and Medicare coverage continued through the Administrative Law Judge (ALJ) hearing. The continued benefits would be treated as overpayments and subject to recovery if the ALJ affirmed the termination decision but would be subject to the waiver requirements of present law. This would be effective for termination decisions made by State agencies on or after the date of enactment but no payment could be continued beyond June 1983. (Cases now pending an ALJ decision would also be covered by this provision, although retroactive payments would not be authorized.)

2. Permit the Secretary of HHS to reduce, on a State-by-State basis, the flow of cases sent to State agencies for periodic review of continuing eligibility, if appropriate, based on State workloads and staffing requirements. The Secretary could not reduce the flow of cases unless the State made a good faith effort to meet proper staffing requirements and process reviews in a timely manner. Also, the Secretary would have to make annual reports to the Senate Committee on Finance and House Committee on Ways and Means on adjustments in the flow of cases. (Under present law, all DI beneficiaries except those with permanent impairments must be reviewed at least once every 3 years to determine their continuing eligibility.)

3. Require the Secretary, in reviewing the continuing eligibility of a DI beneficiary, to obtain all relevant medical evidence for the past 12 months before making a termination decision. (This provision incorporates in the law SSA's current policy on obtaining medical evidence.)

4. Require the Secretary to make semiannual reports to the Senate Committee on Finance and the House Committee on Ways and Means on the results of continuing Disability Investigations (CDI) reviews including the number of terminations appealed to the reconsideration or hearing levels or both, and the number of reversals on those appeals.

Chairman Dole asked that the language in S. 2942 as marked up by the committee be combined with a House-passed bill, H.R. 7093, which concerns taxes in the Virgin Islands. The filing of minority reports and continuing discussion of the cut off date for payments through the ALJ level make the timing of full Senate action uncertain at this point.

and more in international trade. Just recently, we were advised that of the jobs created in this country over the last 10 years, fully one-third of all the new jobs have been created through exports.

I observe further, Mr. President, that enactment of this bill today is particularly timely in view of August's record $7 billion trade deficit. If we continue to run at that rate for a 12-month period, that will result in an $84 billion trade deficit. That is clearly something that this country cannot afford.

Mr. President, I would be remiss if I did not thank a number of people who have worked very, very diligently on this bill and on the conference report. First, I am deeply grateful to the chairman of the Committee on Banking, Housing, and Urban Affairs (Mr. GARN) for the total cooperation he has given in this matter. He has, as chairman of our committee, scheduled the necessary hearings and markups expeditiously. He has been immensely supportive of the legislation, of which he, himself, is an original cosponsor.

I thank Senator RIEGLE, the ranking minority member on the committee who has, at every turn, supported the legislation fully, has worked to make it better, has offered prefecting amendments. This bill could not have been as good a bill as it is today without his determined help.

I am especially grateful to Senator THURMOND, who has been extremely helpful in understanding the nature of this bill. He has done a superb job in counseling us in our deliberations with the Judiciary Committee on the House side.

Mr. President, there are many others I could and should thank on this. Senator BRADLEY has made an important contribution. As much as anyone else, Senator STEVENSON, who was one of the prime movers of this bill in the last Congress, deserves our thanks and congratulations. I would be remiss in those particular instances if I did not point them out. Of course, without the help of all the members of the committee, we would not have this excellent bill before us today.

Mr. GARN. Will the Senator yield?

Mr. HEINZ. I am happy to yield.

Mr. GARN. The distinguished Senator from Pennsylvania is overgenerous. I appreciate the lavish praise, but I think the record should be set straight that I had very little to do with this bill except stay in the background. Senator HEINZ has totally taken this over from the beginning, last year and this year. He deserves 99 percent of the credit for this bill, about to become law within a few days if it survives the House.

Again, I appreciate his praise, but it is vastly overstated in view of the time and effort that he, himself, has put in through his service as chairman of the International Finance Subcommittee of the Banking Committee.

Mr. HEINZ. Mr. President, I thank the distinguished Senator from Utah. I reserve the remainder of my time.

Mr. RIEGLE. Mr. President, I thank the Senator from Pennsylvania for his kind comments and most gracious words. I commend him for his exceptional leadership on this effort and for his success in bringing it to a conclusion today.

The adoption of the Export Trading Company Act marks the happy conclusion of more than 3 years of congressional consideration of legislation to encourage the formation and operation of export trading companies. The first bill on the subject was introduced in August 1979 by the former Senator from Illinois, Adlai Stevenson, who chaired the International Finance Subcommittee at the time.

The legislation has enjoyed wide bipartisan support in the Senate from its introduction. The distinguished current chairman of the International Finance Subcommittee, the senior Senator from Pennsylvania, Mr. HEINZ, was an early and avid supporter of this legislation, and it has been carried to consummation in this Congress under his leadership.

I, too, was an early cosponsor of this legislation in both the 96th and 97th Congresses, and am delighted to support adoption of the conference report. I believe the Export Trading Company Act can significantly expand U.S. exports and, thereby, U.S. jobs. Banks will have an opportunity to invest in export trading companies through bank holding companies. Antitrust concerns can be clarified for all exporters under procedures established in the act. The Commerce Department and the Export-Import Bank are directed to give particular attention to the promotion of exports through U.S. export trading companies.

Mr. President, this legislation has been carefully considered. There have been dozens of days of hearings over the past 3 years on this bill or earlier versions of it. The legislation has passed the Senate twice by unanimous rollcall votes. The conference report is the product of arduous negotiations involving several committees in the House and the Senate. The legislation is supported by the present administration, as it was by President Carter and his administration.

I urge adoption of the conference report. Our growing trade deficit leaves no room for further delay in providing U.S. producers with new opportunities to expand exports.

Mr. PROXMIRE. Mr. President, I support this conference report.

The legislation before us would authorize the establishment of export trading companies by bank holding companies and provide for antitrust clearance for such trading companies and exporters under the jurisdiction of the Justice Department's Antitrust Division and the Commerce Department.

Similar legislation has passed the Senate twice before. I voted in favor of the Senate-passed bills with substantial reservation. When those bills went to the House, the House Banking and Judiciary Committees did an outstanding job of refining the Senate bill. My hat goes off to Chairman ST GERMAIN and Chairman RODINO.

This legislation will place administrative responsiblity for the banking sections where it belongs: in the Federal Reserve. No antitrust clearance will be given without the concurrence of the Justice Department.

I believe we have achieved a balance in this bill between the need to provide legislation to encourage exports and the need to provide strong provisions to prevent unsafe unsound banking practices or violations of our antitrust laws.

We all hope very much that this legislation will increase our exports, particularly among small- and medium-sized businesses.

Mr. President, the International Finance Subcommittee of the Banking Committee has worked long and hard on this legislation. The legislation could not have been accomplished without the hard work of Senator HEINZ and his willingness to compromise.

I commend this legislation to my colleagues.

Mr. RIEGLE. Mr. President, I yield back the remainder of the time on this side of the aisle.

Mr. HEINZ. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Pennsylvania has 2 minutes, 45 seconds.

Mr. HEINZ. Mr. President, I want to make one last comment. We are nearing passage on this major jobs bill. When it passes the Senate, it will go to the House. The House, at this moment, is still engaged in their debate on the so-called balanced budget constitutional amendment. At the conclusion of that debate, there will then be an opportunity for the House to take up this bill and pass it.

Over in the House, too, this has been a very bipartisan bill. It has been championed by Representative ST GERMAIN, chairman of the House Committee on Banking; it has been championed by DON BONKER, of Washington, chairman of the House export task force.

It has been acted on favorably by the House Foreign Affairs Committee, where Chairman ZABLOCKI has lent his total support to this bill. The chairman of the House Judiciary Committee, Congressman RODINO, has been incredibly helpful in facilitating passage.

I not only hope that the House passes this bill tonight, but I urge all Members in the House who have supported this bill to do everything in their power, including Speaker O'NEILL, who I know strongly favors this bill, to facilitate its passage. We

Maine, I wonder if the Senator from Kansas would be prepared at this time to establish the status of H.R. 7093, the Virgin Islands source income and disability proposal.

I yield to the Senator, Mr. President.

Mr. DOLE. Mr. President, I ask unanimous consent that we might move to the consideration of H.R. 7093.

Mr. LONG. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE and Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I wonder if the Senator from Louisiana will withhold so the Senator from Maine might have a brief discussion on that.

Mr. LONG. Mr. President, I am more than willing to withhold my objection with the understanding the Chair will recognize me so that I might object after this subject is discussed.

Mr. DOLE. Mr. President, let me just say one thing. There is a section of this bill that is controversial. Part of it is not.

H.R. 7093 would reduce to 10 percent the 30-percent withholding tax withheld at source by U.S. Virgin Islands payers of certain Virgin Islands source passive investment income when the recipient is a U.S. individual or corporation.

The bill would allow the Virgin Islands government to further reduce the 10-percent rate at its discretion.

It is not that particular provision that is in controversy. The provision that is in some—I do not say controversy, but there is some question about it—the provision relates to the social security disability insurance; and I yield to the distinguished Senator from Maine so that he may address the question of the Senator from Louisiana.

Mr. COHEN. Mr. President, I thank the Senator from Kansas for this opportunity to discuss an amendment that was offered by Senator LEVIN and me and others. In fact, it is an amendment that was cosponsored by Senators DOLE, ARMSTRONG, HEINZ, RIEGLE, DURENBERGER, METZENBAUM, BIDEN, BOREN, BURDICK, CANNON, CHAFEE, COCHRAN, CRANSTON, DIXON, LEAHY, PELL, SASSER, STAFFORD, QUAYLE, and DODD.

The purpose of our proposal is to provide immediate relief to the thousands of disabled individuals whose benefits are being erroneousy terminated and subsequently restored after a lengthy appeals process has run its course. Our legislation also would slow down the rate of reviews so that these disability investigations may proceed at a more measured pace.

In response to a congressional mandate, the Social Security Administration has been reviewing the eligibility of hundreds of thousands of individuals with nonpermanent disabilities. In my judgment, Congress was correct in mandating periodic reviews to identify those individuals who have recovered sufficiently to be able to resume working. The implementation of this law, however, has created chaos and inflicted pain that Congress neither envisioned nor desired when it enacted what was intended to be a sound management tool. And we in Congress share a large measure of responsibility for failing to establish specific guidelines for selecting the cases and conducting the investigations.

On May 25, Senator LEVIN and I held a hearing in our Oversight of Government Management Subcommittee to investigate numerous reports from all over the country that truly disabled people were having their benefits terminated. What we found was most distrubing. Benefits were being discontinued in more than 40 percent of the cases reviewed—far above the 20-percent rate originally predicted by the General Accounting Office. Yet, more than two-thirds of the claimants who appealed were eventually reinstated to the program after a hearing before an administrative law judge. The tragedy is that in waiting for reinstatement these severely disabled persons and their families must go without benefits for many months—or even a year—due to the tremendous backlog of cases.

Witnesses at our hearing recounted case after case in which truly disabled individuals lost their benefits and suffered financial hardship and emotional trauma because of an unjust system. Our hearing revealed a disturbing pattern of misinformation, conflicting standards, incomplete medical examinations, inadequately documented reviews, bureaucratic indifference, erroneous decisions, financial and emotional hardships, and an overburdened system.

Rectifying such fundamental deficiencies will require comprehensive legislation, and I applaud Senator DOLE for his willingness to thoroughly review the disability program. It will, however, take time for Congress to effect the needed changes in the disability review process. In the interim, it is essential that we act to provide immediate relief to the disabled individuals whose benefits are being terminated and then reinstated, and to slow down the reviews so that they may proceed more rationally.

Our legislation has two parts: First, it would direct the Secretary of Health and Human Services to determine on a State-By-State basis the appropriate volume of reviews. Second, it would continue disability payments until the administrative law judge stage of the appeals process. Both steps could be easily and quickly implemented.

Slowing down the number of cases reviewed would help both claimants and the State agencies which conduct the investigations. Currently, case files are literally overflowing out of boxes,

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VIRGIN ISLANDS SOURCE INCOME AND DISABILITY PROPOSAL—H.R. 7093

Mr. BAKER. Mr. President, if I could have the attention of the distinguished chairman of the Finance Committee, the distinguished ranking minority member and the Senator from

and unreasonable burdens have been placed on many State agencies, particularly in those States where personnel freezes have prevented the hiring of needed staff. By directing the Secretary to proceed with the reviews at a pace which recognizes the necessity for careful evaluations and a more even workload, our legislation would improve the quality of the decisions and lessen the huge backlog of cases. S. 2942 provides the Secretary with the flexibility that he needs to make adjustments in the States workload after consulting with the State administrators.

In addition, by continuing benefits pending appeal, this legislation would eliminate the needless financial burden now imposed on disabled people who are mistakenly removed from the program, despite being unable to resume work. Currently, claimants who are successful in appealing their termination decisions receive back benefits, but only after months of disruption and delay. Our proposal would prevent the interruption of benefits which these individuals eventually would receive anyway.

To control the cost of this proposal and to discourage frivolous appeals, S. 2942 would require individuals whose terminations are upheld by an administrative law judge to repay the benefits paid pending appeal. Unless it would cause hardship or create an inequity to do so.

Again, I emphasize that fundamental reforms in the SSA review procedures are absolutely essential. Indeed, Senator LEVIN and I, along with several other Senators, have proposed comprehensive legislation to make the system more equitable and efficient. Congress would, however, be remiss in waiting for comprehensive legislation to solve these urgent problems. While we should continue to seek long-term reforms, including a medical improvement standard, we should act immediately to provide protection for the disabled Americans who are the victims of a faulty and unfair system.

Surely when we are dealing with the most disabled workers in our society, we should enact every safeguard to insure that the Government does not add another burden to the ones they already must bear.

I would like to thank Senator DOLE for working with us in fashioning a solution to this problem, and I commend Senator LEVIN for his distingished leadership and hard work on this issue.

Mr. President, the reason why this issue has come to the Senate is that we have a serious situation in the whole area of reviewing our social security disability payments.

Congress, in the past, has mandated—and I see the Senator from Louisiana, who really is one of those who was in the forefront of causing this review, this mandated review, of social security disability payments, which I think he correctly perceived at that time had gotten out of hand.

As a result of that congressional mandate, this administration has gone forward with a great deal of enthusiasm to carry out that congressional mandate and, I submit, long before they were adequately prepared to carry it out. As the result of this review which has been mandated by Congress, we have seen evidence of thousands of cases being reviewed in a very cursory manner, with very little notice being given to the social security disability recipients—a notice which says, "Your case is coming up for review."

We have truth in lending, we have truth in labeling, but we do not have any truth, apparently, in notifying people who are our most seriously disabled people in this country that their cases are not only coming up for review but also that the Social Security Administration is not going to take into account any past medical evidence, and that they would have the burden of bringing their doctor foward with new evidence to support their claims of disability.

Suddenly, they are examined by a strange doctor for 10 to 15 minutes, and it is run through a computer—no face-to-face interviews, no personal contact. It is all done by way of administrative fiat, and suddenly they are cut off the disability rolls.

The cases are appealed, and better than 60 percent of all cases that have been terminated under this review process have been reversed on appeal. That appeal takes 9 months, a year, sometimes 15 months. So you have people who are severely disabled, who go without those benefits, not as a welfare grant but something they paid for when they were working. They go without those benefits for up to a year, and almost two-thirds have them reinstated.

We found a situation where there was, No. 1, insufficient notice to the recipient, the beneficiary, of what was going to take place. No. 2, there is no personal, no human, contact with the agency whatsoever.

No. 3, the agency has done something which is inconsistent with the rule of law, in my judgment. The Agency has excluded the consideration of pain as a disabling factor, even when it is supported by sound medical evidence.

No. 4, as the Senator from Louisiana correctly notes in his dissenting views, we saw the use of a different standard by the agencies, as opposed to the administrative law judges. The agencies were using one standard and the administrative law judges were using another.

As I said earlier, we have seen a 15- to 20-minute medical examination and a 60-percent reversal record.

I take this opportunity to quote from the dissenting views of the distinguished Senator from Louisiana. I thank the Senator for his generosity in providing them to me.

I note the statement on page 7 of those views:

> The high reversal rates at the hearings level have been a matter of concern to the Congress for a number of years. On its face, a system in which most appealed cases are reversed is a system in trouble. Simply as a workload matter, such a situation leads to an unduly large number of appeals. The committee proposal to pay benefits during appeal will aggravate this problem. Moreover, a high reversal rate tends to cast doubt on the validity of the entire decisonmaking process and to invite efforts to game the system.

It seems to me that that is correct in the first instance. We have a system in serious trouble because of it being understaffed. They do not have adequate staff in many States. We have people who are not properly trained in some instances. We have no face-to-face contact to eliminate the most egregious cases we heard about in our committee. We have the elimination of pain as a consideration of a disabling factor, and we have a different standard.

We have thousands of people who are really disabled and being denied their benefits when they should not be denied.

I support what the Senator from Louisiana has done in the past and agree that we have too many people on the rolls. GAO said 20 percent should be taken off. We found that the system is taking 40 percent off, only to have two-thirds reversed.

It seems to me that we are creating unnecessarily a great deal of pain and suffering for people who are truly in need of these payments because of their disabilities.

It was with this notion in mind that Senator LEVIN and I held our hearings in the Government Oversight Committee and then presented the matter to the Finance Committee, to see if we could find some way of providing temporary relief.

What we propose are two things: Aside from any kind of comprehensive revision of the present review process, what we proposed was, No. 1, to slow down the review of these cases, to allow the Administrator, on a State-by-State basis, to decide where he could justifiably slow down the review process so that there would not be the kind of errors which are taking place.

Second, we proposed that we continue the disability payment through the appeals process to the administrative law judges. This, as I understand it, is the biggest point of contention of the Senator from Louisana. I have read his views, and I understand the basis for them.

What we have found, for example, is that a fundamental error is being made at the lower level. Whether it is because the administration is making one policy and the administrative law judges are following another, I do not know. That is the basic problem. We

should have one standard, one rule of law, but we have two, and maybe we have three or four.

The problem is that the administrative law judges are applying the rule of law as interpreted by our courts, as they interpret our laws, and the administration is following a different policy.

What we have, I think, is a situation where our most disabled citizens find themselves victims of confusing, conflicting, chaotic laws, in the administration of our laws.

What we propose to do is to continue the payment through the appeals process, so that the two-thirds of the people who are being unjustifiably denied now will not be denied in that appeals process.

I would go further. I would eliminate the reconsideration process, because that is simply a rubberstamp of the lower administrative decision. Eighty-five percent of the cases are affirmed.

I would mandate a face-to-face interview and then to directly to the administrative law judge, eliminating reconsideration of the initial decision.

The Senator from Louisana makes a valid point: We do not want to encourage people to file frivolous appeals claims. By the same token if people have paid into a social security disability fund through their wages and then you find they are being terminated and two-thirds are being reinstated on appeal, it seems to me that the equities clearly come down on the side of those who are being erroneously terminated.

Mr. President, it was with that notion in mind that I had requested Senator DOLE to consider the amendment Senator LEVIN and I had offered.

I point out that there are those who would go much further at this stage, Senator METZENBAUM, Senator HEINZ, Senator RIEGEL, and others would like to go to a comprehensive review right now, and I have not supported that because I think we need time to fully debate the issue. We should debate on an extensive basis in the committees—the Committee on Finance and the Committee on Government Oversight—and on the floor a more comprehensive approach as to how we are going to terminate people on disability payments.

People are commiting suicide because of the termination of disability payments. There are people like Mr. Gage. I will not take the Senate's time to go through the whole sorry history of someone who had been a diabetic from age 12; partially blind, with tunnel vision; could not walk without assistance; and yet had benefits terminated, went into the hospital, had a heart attack, and died. Nine months later, the agency said they made a mistake. They went back and notified the widow: "By the way, your husband is dead. We terminated his benefits. We made a mistake. We sorry."

We have had people who have been in iron lungs having their benefits terminated. I had a man in Maine in a body cast and his benefits were terminated.

So we have a situation where the review process is out of control, and what this measure is designed to do is to put a sense of equity back into the system, recognizing it is a short-term solution until such time as this Congress has an opportunity to take a comprehensive approach.

Having said that, I point out as a result of the hearings that we have had, as a result of the kind of meetings that the Secretary of HHS has had with Members of the Senate, they have taken steps to correct some of the more egregious deficienices in the current review process.

I commend the administration for that. But the most egregious effort and deficiency is we are still terminating people who now have to go through the appellate process that takes 9 months to a year to 15 months, only to have that reinstated. That is a fundamental inequity that should not be tolerated for any length of time.

So what we hope to do is to have a consideration of this measure on a temporary stopgap basis until such time as this Congress can review whether or not its congressional mandate is being carried out in a manner which it intended.

I do not beleive that to be the case right now. I think that congressional intent is not being carried out but rather that there is severe pain and suffering being inflicted upon citizens who should not tolerate it.

(Mrs. HAWKINS assumed the chair.)

So, Madam President, that is the basis for the amendment that was included and cosponsored by the distinguished chairman of the Finance Committee and so many other Members of this Senate, and I hope that the Senator from Louisiana will take that into account in choosing whether or not to exercise his right to object.

Mr. LONG. Madam President, when this debate opened a different Presiding Officer was in the chair, and it was agreed that I would withhold my objection and that the Chair would recognize me to object after we had had a colloquy on this subject.

Let me explain some of the background of this matter. It was many years ago, about 1956, when some of the people associated with the labor movement came to the Senator from Louisiana and urged this Senator to lead the charge to have disability covered under social security.

At that time the Senator from Louisiana told these gentlemen that while I would enjoy undertaking that responsibility and would be proud to do so, we would have a better chance of prevailing upon the Senate to accept such a proposal if we could persuade the former chairman of the Finance Committee, Walter George, who at that time was chairman of the Foreign Relations Committee, to be the principal sponsor of the amendment. Senator George was persuaded to do that and we prevailed in the Senate.

I do not believe we would have prevailed if Senator George, with the enormous prestige he had at that time as a former chairman of the Finance Committee and as the chairman of the Foreign Relations Committee, had not been willing to lead the charge for us, because his eloquence, prestige, and stature made a great difference.

Madam President, we prevailed in this Senate by a very close vote. With the change of a single vote, we would not have prevailed.

At that time the overwhelming majority of Democrats voted for the position I was advocating, and most of those on the other side of the aisle voted against it.

I was proud of having been a part of that matter in the beginninng. Madam President, the Senator from Louisiana, who controls the floor at this moment, had he not been interested in seeing the program enacted even more than he was interestred in having credit for doing something as a Senator, could very well have been known as the father of this disability program. For the good of the country and in order that the program could become law, the Senator from Louisiana yielded the opportunity to the Senator from Georgia, Mr. Walter George, to be the sponsor of the amendment and the person responsibile for this program being in effect.

But if this Senator had not voted for it, in fact if any one of us who had voted for that amendment had not voted for it, it would not have become the law at that time. It might never have become the law, for all we know.

The thing we were cautioned about in the hearings on the proposal, and the grave alarm that was expressed throughout the country then, and it proved to be well taken, was that if we enacted a disability program as a matter of right under social security, we were going to have enormous numbers of people claiming that they were totally disabled when they are not really disabled—though they may have a handicap, perhaps a severe handicap, they are not totally and permanently disabled.

Madam President, I have with me the speech that Walter George made at that time, a very eloquent speech, may I say, the closing speech on that subject in the Chamber, and he explained that this amendment was drawn in such a fashion that there would be a very close limitation on the number of people who would be drawing these benefits, that this new program was only for people who were very severely disabled and unable to engage in any substantial gainful activity.

The Senator spelled out in his speech the limitatins on eligibility and the costs that we could expect from such a proposal.

Madam President, that is what I voted for. that is what I supported. That is what I sponsored. And that is what the Senate voted for.

Now we did that in good faith and when Walter George stood here telling the people of this Nation what we expected of this program, he was sincere just as I am sure every Senator who voted for this program was.

What is the No. 1 fault of the program today? It is not the horror stories people are talking about of someone being rejected from the rolls. No; from any fair and impartial point of view, the No. 1 thing that is wrong is that the public is paying for three and a half times as many beneficiaries under this program as it was expecting to be paying for.

Madam President, you can go all over the country and find horror stories the other way around, about people who are not disabled at all who are on those rolls.

Just let me give you one example. I know this from a person who was a former alcoholic and who told me about it. I am informed that under the rules right now, people who were alcoholics and who had been put on the rolls as being disabled, and I am not challenging that, even after they had reformed and joined alcoholics anonymous and were no longer alcoholics and were available to the work force, they just remained on the rolls and they continue to remain on the rolls.

Madam President, I have been told by many housewives of their trying to hire domestic help and having person after person come to apply and tell them: "We are available to work providing you can pay us on a cash basis with no records kept, because we are on the disability rolls as being totally and permanently disabled." To look at these people you would not have the impression they had any problem at all.

The point is that as of right now the taxpayers are paying $16 billion a year for a program which should be costing them about $5 billion a year. I do not know of any Federal activity where a program is exceeding what is should be costing by a greater degree than this one right here.

The Department is trying to do something about that.

(Mr. SPECTER assumed the chair.)

Mr. SYMMS. Mr. President, will the distinguished gentleman from Louisiana yield at that point?

Mr. LONG. I yield.

Mr. SYMMS. Did I understand the Senator to say that the program is costing three times as much as it is supposed to?

Mr. LONG. Three and a half times what it ought to be costing.

Mr. SYMMS. Three and a half times. I thank the Senator for bringing that point to this body.

Mr. LONG. I am saying this because if you take the number of people actually on the rolls in 1980, it is about three and a half times the number of people that were originally estimated to be on the rolls in 1980. Similarly, the cost of the program as a percent of taxable payroll is about three and a half times the percent of payroll originally estimated for this purpose.

Mr. President, we in the Committee of Finance as a matter of responsibility brought to the Senate and the Senate passed and the House concurred in a measure in 1980 calling upon the Department to review these cases and to remove from the rolls those who did not belong on the rolls, and the Department is trying to do that.

The Department has responded to the 1980 congressional mandate. The problem now is not that the examiners are putting too many people on the rolls, because examiners have been directed to review and to tighten up on the determinations, and they are trying to do what Congress mandated. But all one had to do is to appeal from the decision of the examiner, when the examiner says that this person should not be on the rolls, and about two times out of three the administrative law judge will restore the person to the rolls.

The Department has made a study of this matter to see how accurate the determinations have been, and their estimate is that in about 97 percent of the cases the examiner was right.

Mr. COHEN. Mr. President, if the Senator will yield, the Department is being overruled in two-thirds of the cases.

Mr. LONG. Exactly, overruled by its own administrative law judges, who used different standards than the examiners used.

But the Department has made a study of this matter, and in its review of the decisions made by the examiners, the Department found that the decisions of the examiners were correct 97 percent of the time, using the Department's eligibility standards—even though they have been reversed about two-thirds of the time by the administrative law judges.

So the evidence tends to reveal at least in view of the Department, and I am inclined to believe this is substantially correct, that the error is not as much on the part of the examiners as it is on the administrative law judges in putting these people back on the rolls, people who do not belong there.

These administrative law judges can contend that in some instances they are following the decisions of Federal courts, and I would assume that to be the case.

But when those judges have overruled the Department's decision in many cases, Mr. President, they have been in error, too, and that ought to be corrected.

In the judgment of this Senator, the answer is not to pass laws that are going to put more people on the rolls, and not to pass laws to stop the review we required in 1980, and not to pass laws to continue on the rolls people who have been found to be ineligible.

Mr. COHEN. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. COHEN. The Senator raises an issue of who has made the more accurate assessment of the disability. Was the Senator aware, for example, that under the administration's policy there is no personal contact whatsover with the recipient or the beneficiary at the administrative level? They never see the people, they never talk to them. It is done by a computer.

They select a name out of it, they look at the records which includes a recommendation of one doctor who may have seen this person for 10 or 15 minutes, who puts it in the file, and that is it, and they say "disability terminated."

The only time that person out there has any human contact with the system is at the administrative law judge level. Let me just read what our committee received in testimony from what the New England director of the Association of ALJS said about that:

> With regard to the speed in which such review of termination cases are performed, we have found in a vast majority of the cases that there has been poor development of the medical record at the state agency level. In all fairness to the state agencies, we believe that such poor development is due in large part to an extremely large state agency workload, under-staffing of the state agencies, and arbitrary time constraints imposed on the state agencies for processing cases. . . . The Administrative Law Judges often feel that the hearing level has become the "dumping ground" for the hurried state agency process.

If you look to where the error is being made, it seems to me that you'll find it at the agency level. If you want to do business and treat people solely in this country by computer, then you turn to the administration's process, just terminate them based upon what the computer says. But if you really want to deal fairly with people who are disabled, you ought to have some personal contact.

Mr. LONG. Mr. President, let me make my point. There are three and a half times as many people on these rolls as we thought ought to be on the rolls. I voted for the program and helped to enact it into law. We have three and a half times as many people as we told the taxpayers we were going to pay benefits to.

Mr. COHEN. GAO says 20 percent.

Mr. LONG. I do not care what GAO says about present law. I am talking about the program we originally inacted. I was here and voted on it. I know what we voted on, and I recall the legislative record as if it were yesterday.

Mr. President, we have 3½ times as many people on the rolls as we told the Senate were going to be on the rolls when we offered the original disability amendment in 1956.

Regardless of what percentage you want to say are ineligible we can all

agree that there are many people on these rolls that do not meet the definition of disability in the law and who are costing the taxpayers a great deal of money.

So far as I am concerned, Mr. President, I expect that we will vote on this matter in the session that is to occur after the elections. The Senate can do whatever it wants to do about the matter. I do not think the bill ought to be passed, but I do think, Mr. President, it serves a purpose to consider it at that time rather than at this time because, assuming the bill passes, I personally think the President should veto it. The administration has said they do not support the measure. In my judgment, it is going to cost the taxpayers at least $1 billion a year if we pass this bill. The committee report does not state that it is going to cost that much, but it certainly is going to cost a lot of money.

In any event, this is something we can vote on and settle in the lame-duck session. I hope the President will veto it if it does come to his desk, and in the event he vetoes it at that point, he can be under less politicial pressure in making his decision. He will be able to look at what is best for the country, not on the basis of whether or not he would be regarded as being brutal, but on the basis of doing his duty.

Mr. BAKER. Mr. President, I have no desire to bring this to an end, but we have a lot of work to do, and I wonder if the Senators will acknowledge that the Senator from Louisiana has already indicated he wishes to be recognized for the purpose of making an objection to proceeding to the item? There is going to be a lot of time to debate this later.

Mr. LONG. Mr. President, I ask unanimous consent that a statement of my views appear in the RECORD.

There being no objection, the materials was ordered to be printed in the RECORD, as follows:

ADDITIONAL VIEWS OF SENATOR LONG ON H.R. 7093

The social security disability program was enacted in 1956. At the time it was passed, Congress believed it was adopting a narrowly drawn program which would serve only the most severely disabled. The actuaries projected that its cost would be modest and that it could be financed over its entire future history by a tax rate of less than one-half of one percent. Over the years, these early cost estimates have proven much too low. The number of people drawing benefits has grown far beyond anything that was anticipated in 1956. The long-range cost of the program is now projected to be some three and one-half times as great as was expected in 1956. By 1980, it was clear to Congress that this was a program out of control.

In 1980, the Congress enacted legislation designed to bring the social security disability insurance program back under control. A major element of the 1980 amendments was a requirement that the Administration begin a thoroughgoing periodic review of the eligibility of all beneficiaries. This review has been undertaken and, as was anticipated, a large portion of the cases reviewed have been found to be ineligible. Yet the Finance Committee in this bill recommends the extraordinary procedure of continuing to pay benefits to individuals who have been found to be ineligible for those benefits until they have exhausted a lengthy administrative appeals process.

I believe that continuing benefits is a fundamentally incorrect approach to this situation. The individuals being terminated from the disability rolls are people who have been found not to meet the requirements for eligibility. The present review process was mandated because of deep Congressional concern that the cost of the disability program had grown out of control. Lax administration was a major reason for the uncontrolled growth of the program. Because of this lax administration, many people were put on the benefit rolls who did not meet the stringent requirements that Congress established for this program.

The social security disability program from its very inception was intended as insurance against the virtually total loss of earnings ability arising from severe disabilities. Time and again Congress has reaffirmed the intent to limit benefits under this program only to those people who cannot work. Unfortunately, the program has not always been administered in a way which carries out this mandate. As a result, individuals have been put on the benefit rolls even though their disabilities are not so severe that they are no longer capable of substantial work activity. Some of these individuals are in fact handicapped, but they are not so disabled as to meet the standards of the social security disability program.

The Committee proposal will result in significant expenditures of social security trust fund monies. These expenditures will go to pay benefits primarily to people who do not qualify for those benefits. While the legislation provides for recovering those incorrect payments at a later date, most of those payments will not in fact be recovered. The Administration believes that they will be able to get back about half of the incorrect payments, and that may be a highly optimistic estimate. The payment of benefits during appeal will tend to aggravate the existing serious problems which exist within the social security appeals system. Moreover, there is a danger that this legislation will be viewed as undermining the mandate of the 1980 Amendments for vigorous administration to assure that benefits are paid only to eligible individuals.

THE NATURE OF THE SOCIAL SECURITY DISABILITY PROGRAM

When the social security disability program was enacted in 1956, it was intended to be a program for those individuals who are so disabled that they cannot engage in any kind of substantial work activity. There are many people who suffer handicapping ailments, and these individuals are deserving of great sympathy. However, the social security disability program was not intended as a pension to be paid to anyone with a handicap. If the social security trust funds are to be used to pay benefits to all those who have suffered a medical condition which restricts their earnings capacity, the Congress will need to enact very substantial increases in the social security tax rate to fund the program.

This is not to say that Congress should not address the problems of handicapped individuals. A great deal can be done through a variety of programs to assist these individuals to regain the ability to work and to encourage the expansion of employment opportunities. Consideration needs to be given to improving those programs and to strengthening the incentives in the tax laws for hiring the handicapped. But the social security disability insurance program is based on a different premise and addresses a different population. The social security program is insurance against that catastrophic situation in which a worker becomes so disabled that he has totally lost the ability to support himself.

The limited intent of Congress with respect to this program can be seen by looking back at its legislative history. In 1957, when the program was newly enacted, the actuaries projected that, its costs would represent less than one-half percent of taxable payroll. By 1980, that cost was projected at 1.5 percent of payroll—more than 3½ times as much.

DI FINANCIAL FORECASTS IN EARLIER TRUSTEES' REPORTS

[Intermediate Assumptions]

Year of earlier trustees' report	Long-range cost [in percent of taxable payroll]	Cost estimates for CY 1980 [dollars in billions]
1957	0.42	$1.0
1960	0.35	1.5
1965	0.63	2.0
1967	0.85	3.2
1972	1.18	NS
1977	3.68	17.4
1980	1.50	[1] 15.9
1982 [2]	1.50	[2] 15.9

[1] Actual for 1980.
[2] Estimate.
NS—Not shown in report.
Source: Congressional Research Service, July 1982.

DISABILITY INSURANCE PROGRAM COSTS, 1957–82

[In millions]

Calendar year	Total costs
1957	$59
1958	261
1959	485
1960	600
1961	956
1962	1,183
1963	1,297
1964	1,407
1965	1,687
1966	1,947
1967	2,089
1968	2,458
1969	2,716
1970	3,259
1971	4,000
1972	4,759
1973	5,973
1974	7,196
1975	8,790
1976	10,366
1977	11,946
1978	12,954
1979	14,186
1980	15,872
1981	[1] 17,658
1982	[1] 18,508

[1] Estimated based on the Alternative II-B assumptions contained in the 1982 OASDI Trustees' Report.
Source: Social Security Bulletin, Annual Statistical Supplement, 1980

DI BENEFICIARIES, YEAR-BY-YEAR, 1957–82

Calendar year	Disabled workers	Total DI beneficiaries [1]
1957	149,850	149,850
1958	237,719	268,057
1959	334,443	460,354
1960	455,371	687,451
1961	618,075	1,027,089
1962	740,667	1,275,105
1963	827,014	1,452,472
1964	894,173	1,563,366
1965	988,074	1,739,051
1966	1,037,190	1,970,322
1967	1,193,120	2,140,214
1968	1,285,300	2,335,134
1969	1,384,291	2,487,548
1970	1,452,948	2,664,995
1971	1,647,684	2,930,008
1972	1,832,916	3,271,486
1973	2,016,626	3,558,982
1974	2,236,882	3,911,334
1975	2,488,774	4,352,200
1976	2,670,208	4,623,757

DI BENEFICIARIES, YEAR-BY-YEAR, 1957–82—Continued

Calendar year	Disabled workers	Total DI beneficiaries [1]
1977	2,837,432	4,860,431
1978	2,879,774	4,868,490
1979	2,870,590	4,777,412
1980	2,861,263	4,662,172
1981	2,776,519	4,456,274
1982 estimated [2]	2,723,000	4,374,000

[1] Includes spouses and children of disabled workers.
[2] 1982 OASDI Trustees' Report, Intermediate II–B assumptions.
Source: Social Security Bulletin, annual statistical supplement, 1980.

Despite the intent of Congress that this should be a program narrowly limited to people who have totally lost the ability to earn a living, there has been a continual tendency to put on the rolls individuals who are less severely disabled. In part this may arise from a misunderstanding of the purposes of the program. In part it may arise from the unwillingness to expend the funds necessary to administer the program tightly.

The Congress has reaffirmed its original intent to restrict this program to the most severely disabled individuals when it has reviewed the program. In 1967, for example, it appeared that courts were applying a rule which would give benefits to any individual with a disability sufficiently severe to keep him from doing his usual work or any other work available in his locality.

The Congress felt this was a far broader definition of disability than was appropriate for the social security disability insurance program. To reemphasize the original intent, Congress amended the law to make it clear that an individual "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work" (sec. 223(d) of the Social Security Act).

Despite the clear Congressional intent that the social security disability insurance program be limited to the most severely disabled, the program continued to experience growth beyond anything that could be explained by changes in the legislation or demographic trends. The annual costs of the program increased from a little more than $250 million in 1958 to over a billion dollars in 1962, to more than $3 billion by 1970, more than $10 billion by 1976 and more than $18 billion in 1982.

According to an analysis done in 1978 by former Chief Actuary Robert Myers, the incidence of persons receiving disability benefits increased from 4.5 per one thousand insured workers in 1968 to 6.0 per one thousand in 1972, and to 6.9 per one thousand in 1975—in effect a 50 percent increase over a seven-year period in the rate at which workers were coming onto the disability rolls. There is no evidence to indicate that this increase was in any way based on real increased incidence of disabling conditions among the population at large.

A June, 1977 study by the actuaries of the Social Security Administration cited a variety of factors as responsible for the growth in the benefit rolls. Possible explanations included the increased attractiveness of benefits under a system in which benefit levels had been substantially increased, changing attitudes on the part of individuals with impairments, and increased emphasis on vocational factors resulting in more allowances on appeal. The actuaries also cited the results of trying to hold down administrative costs during a period of increased caseloads and the tendency in such circumstances to give claimants the benefit of the doubt. This problem was described by the actuaries as follows:

"All of this put tremendous pressure on the disability adjudicators to move claims quickly. As a result the administration reduced their review procedures to a small sample, limited the continuing disability investigations on cases which were judged less likely to be terminated, and adopted certain expedients in the development and documentation in the claims process. Although all of these moves may have been necessary in order to avoid an unduly large backlog of disability claims, it is our opinion that they had an unfortunate effect on the cost of the program.

"By claiming that it is difficult to maintain a proper balance between sympathy for the claimant and respect for the trust funds, we do not mean that disability adjudicators consciously circumvent the law in order to benefit an unfortunate claimant. What is meant is that in a public program designed specifically to help the people, such as Social Security, whose operations are an open concern to millions of individuals, and where any one decision has an insignificant effect on the overall cost of the program, there is a natural tendency to find in favor of the claimant in close decisions. This tendency is likely to result in a small amount of growth in disability incidence rates each year, such as that experienced under the DI program prior to 1970, but it can become highly significant during long periods of difficult national economic conditions." (SSA Actuarial Study No. 74, January 1977, p. 8.)

COMPARISON OF CONTINUING DISABILITY INVESTIGATIONS (CDI'S) PROCESSED TO TOTAL DISABLED-WORKER BENEFICIARIES OVER THE YEARS

Fiscal year	CDI's processed (DI and concurrent cases only)	DI-worker beneficiaries (in millions)	Number of CDI's per 1,000 DI-worker beneficiaries
1970	[1]167,000	1.493	111.8
1973	[1]142,000	2.017	70.4
1974	[1]120,000	2.237	53.6
1975	[1]116,000	2.489	46.6
1976	[1]129,000	2.670	48.3
1977	107,220	2.834	37.8
1978	83,651	2.880	29.0
1979	94,084	2.870	32.8
1980	94,550	2.861	33.0
1981	168,922	[2] 2.835	59.6
Oct. 1, 1981 to June 28, 1982	243,785	[2] 2.723	89.5

[1] Figures provided by SSA in 1977, but not currently verifiable.
[2] Estimates based on intermediate II–B assumptions in the 1982 Trustees Report.
Source: SSA and Social Security Bulletin, Annual Statistical Supplemental, 1980.

THE 1980 AMENDMENTS

In view of the enormous growth in disability insurance program costs and caseloads, the Congress enacted legislation in 1980 designed to bring the program back under control. The 1980 legislation established limitations on benefit amounts designed to deal with the problem of a program in which benefit levels were unreasonably high in relation to earnings levels. Congress was, however, also concerned with the evidence of loose administration, and mandated several changes designed specifically to tighten up the disability determination process. In order to assure that improper awards to new claimants were avoided, Congress required the Social Security Administration to reinstate its former practice of reviewing most State agency allowances before payments are started. To deal with the problem of improper allowances on appeal, the 1980 Amendments required the Secretary to begin reviewing cases which are allowed in the appeals process. Under this provision, the Social Security Appeals Council is required to reexamine a significant sample of cases decided by administrative law judges and to reverse those cases which have been improperly decided.

The 1980 legislation also required that the Administration report the progress in implementing this review program and provide an analysis of the reasons why administrative law judges so frequently overturn initial agency decisions.

Finally, Congress in the 1980 law specifically required that all disability beneficiaries be reexamined on a periodic basis. This requirement was designed to assure that those who were not eligible for benefits would not continue on the rolls indefinitely once they began receiving benefits. In general, the Administration was required to review each claimant's eligibility at least once every three years; a less frequent review is permitted in cases which are determined to be permanent.

INDIVIDUALS BEING TERMINATED ARE INELIGIBLE

The Congress required a periodic review in the 1980 amendments because of indications that many ineligible people were in fact receiving benefits. The rapid growth of the disability caseloads over the preceding 10 years was one indiction of this. The substantially reduced level of administrative review during that same period also led to concern that ineligible persons were receiving benefits. Subsequent to the enactment of the 1980 amendments, these concerns were verified in studies conducted both by the Social Security Administration and the General Accounting Office. In March 1981, the GAO issued a report entitled "More Diligent Follow-up Needed to Weed Out Ineligible Social Security Administration Disability Beneficiaries." Based on the evidence then available, this report concluded that "there could be about 584,000 persons on the DI rolls who may not meet the program's eligibility criteria." The annual benefit drain for cash benefits alone (not including medicare) was estimated to be as high as $2 billion. On the basis of its findings, the GAO report recommended that the Department give high priority to implementing a more vigorous continuing disability review program.

On the basis of the legislative mandate in the 1980 amendments and the findings of its own internal studies and those of GAO, the Social Security Administration did undertake a vigorous program of reviewing the eligibility of disabled beneficiaries. During the first eight months of fiscal year 1982, a total of 267,000 reviews were completed. Forty-seven percent of these cases (121,000) were found to be ineligible. Although this is a very high rate of ineligibility, it is consistent with the evidence found in earlier studies. In conducting these reviews, the Administration has utilized techniques designed to target the first reviews on those parts of the caseload where ineligibility was more likely to be found. During the Finance Committee consideration of this bill, an Administration spokesman stated that the overall ineligibility rate is expected to be about 25 percent by the time the process is fully implemented.

While these continuing disability reviews are conducted by State agencies, the Social Security Administration monitors the accuracy of their decisions by conducting a sample reexamination of State agency find-

ings. For the period from October 1981 through March 1982 (the latest available findings) these quality control samples show a 97.5 percent net accuracy rating. In other words, after reexamination of all of the sampled cases (including obtaining additional evidence where this seemed appropriate), the Social Security Administration would have disagreed with the finding of the State agency in only two and one-half percent of the cases. This means that by the standards of disability which are applied by the agency, nearly all the cases being terminated are in fact ineligible for benefits.

CONTINUING DISABILITY INVESTIGATION (CDI) CONTINUANCES AND CESSATIONS BY STATE AGENCIES, DI AND SSI COMBINED, FISCAL YEARS 1977–82 [1]

Fiscal year	Total number of CDI reviews	Continuances	Cessations	Continuance rate (in percent)	Cessation rate (in percent)
1977	150,305	92,529	57,776	62	38
1978	118,819	64,097	54,722	54	46
1979	134,462	72,353	62,109	54	46
1980	129,084	69,505	59,579	54	46
1981	208,934	110,134	98,800	53	47
Oct. 1, 1981 to May 28, 1982	266,725	145,321	121,404	54	47

[1] Reflect continuance and cessation rates only at the State agency level—not at the district office or at the hearing or appeal levels of adjudication. These figures differ from the previous table in that they exclude CDI's where no new medical determination of disability by the State agency was required. Other factors have affected the individual's entitlement, such as his return to work.

Source: SSA, July 1982.

REQUESTS FOR ALL HEARINGS—RECEIVED, PROCESSED, AND PENDING TOTAL CASES

Fiscal years	Requests received	Processed	Pending (end of year)
1979	226,200	210,775	90,212
1980	252,000	232,590	109,636
1981	281,700	262,609	128,164
1982	[1] 326,300	300,000	[1] 155,064

[1] Includes DI, OASI, SSI, and Black Lung cases.

Source: Estimate provided by SSA, OHA, July 1982.

ADMINISTRATIVE LAW JUDGE REVERSAL RATES—DISABILITY INSURANCE INITIAL DENIALS AND TERMINATIONS, FISCAL YEARS 1979–82

Fiscal year	Percent of cases reversed	
	Initial denials	Termination
1979	56.4	59.5
1980	59.4	63.8
1981	59.0	61.5
1st quarter 1982	57.3	65.4

Source: SSA, July 1982.

Problems in the Appeals Process

If an individual's benefits are terminated because he is found no longer to be disabled, he is entitled to seek a further review of the issue. The first review takes place as a matter of reconsideration by a different decision maker in the State agency. Most reconsideration decisions uphold the initial finding of ineligibility. The claimant then is entitled to ask for a hearing before an administrative law judge. At the present time, the administrative law judges are reversing a very high proportion of cases appealed to them. During the first quarter of 1982, 65 percent of terminations which were appealed to administrative law judges were being restored to benefit status. While this is a very high reversal rate, it is not strikingly different from the administrative law judge reversal rate in prior years, nor from the administrative law judge reversal rate of initial claims.

The high reversal rates at the hearings level have been a matter of concern to the Congress for a number of years. On its face, a system in which most appealed cases are reversed is a system in trouble. Simply as a workload matter, such a situation leads to an unduly large number of appeals. The committee proposal to pay benefits during appeal will aggravate this problem. Moreover, a high reversal rate tends to cast doubt on the validity of the entire decision-making process and to invite efforts to game the system.

The 1980 amendments included a requirement that the Social Security Administration conduct a study of the factors involved in the large numbers of ALJ reversals. This study found that markedly different eligibility standards were being applied in the appeals process from the standards used by the agency. In a sample of administrative law judge decisions, the Social Security Office of Assessment using agency standards would have allowed 13 percent of the sample—while the administrative law judges had allowed 64 percent of the sample. This study indicates that a very significant part of the administrative law judge pattern of high reversals occurs because the appeals process simply does not follow the same eligibility standards as the agency.

There will always be some reversals which can be attributed to differences of judgment in close cases, evidence obtainable only through personal appearance, and changes in condition between initial decision and hearing. But reversals for these reasons represent only a small part of the caseload. Most reversals are due to the application of easier eligibility standards.

TABLE 1. PERCENT DISTRIBUTION OF SAMPLE CASE ALLOWANCES AND DENIALS, BY DECISIONMAKER AND BASIS FOR DECISION [1]

(In percent)

	Original A.L.J. decision	Appeals Council decision	Office of Assessment decision using DDS standards
ALLOWANCES			
Medical alone	18	15	6
Medical vocational inability to egage in SGA:			
Directed by medical-vocational rule	14	11	5
Specific reasons:			
RFC less than sedentary	18	9	0
Pain combined with significant impairment(s)	5	3	0
Mental disorders combined with significant physical impairment(s)	5	4	(2)
Other medical/vocational	5	6	2
Total	64	48	13
DENIALS			
Impairment not severe	11	16	39
Impairment does not prohibit past work	9	13	28
Directed by medical-vocational rule	13	19	13
Impairment does not prohibit other work	1	2	4
Other	2	3	3
Total	36	52	87

[1] Percentages shown are for the combined total of DI and SSI claims. Although there are some differences between the allowance/denial rates for DI claims and SSI claims (e.g., the Appeals Council would have allowed about 49 percent of DI claims and 45 percent of SSI claims), these differences do not appear to be significant and do not affect the findings of the review.
[2] About 0.4 percent.

Note.—Detail may not add to totals due to rounding.
Source: SSA January 1982 Study.

There can be no justification for continuing a system in which different standards of eligibility are applied at the appeals level than are applied at the initial determination level. Such a situation invites universal appeals, denies those who do not appeal of a fair opportunity to receive benefits, and creates a revolving door situation in which one part of the agency puts an individual on the rolls after another part of the same agency has taken him off the rolls. It is the responsibility of the administering agency, in this case the Social Security Administration, to develop the procedures and guidelines which will carry out the requirements of a law. Policy decisions should be made by the agency and should be carried out by all parts of the agency including those charged with conducting hearings. It is not the function of an administrative law judge to make agency policy. It is his function to assure claimants that the agency policy is being carried out in their case. This responsibility of the administrative law judge was described in a 1977 study of the Social Security appeals process by the Center for Administrative Justice. The final report of that study describes the proper roll of the administrative law judge as follows:

"The protection of ALJ decisional independence in the APA is significant. Once appointed the ALJ's position is permanent; he may be removed only "for cause" after formal adjudicatory hearing. Moreover, the ALJ's compensation is determined by the Civil Service Commission, not by his agency. Cases must be assigned in rotation, the ALJ may not be assigned tasks inconsistent with his duties as an ALJ and, with respect to the *facts* at issue in a particular case, the ALJ may not be approached by anyone, including the employing agency, save on the record. Moreover, the ALJ may not be made subject to the supervision or control of any person who has investigative or prosecuting functions for the agency.

"On the other hand, certain aspects of the ALJ's activities are clearly subject to agency control. ALJ's are not "policy" independent. They represent an extension of "the agency" and the agency may control their exercise of discretion by regulation, guidelines, instructions, opinions and the like in order to attempt to produce decisions as similar as possible to those "the agency" would have made. There is no prohibition even on consultation with agency employees on questions of law or policy in a particular case." (Source: "Final Report: Study of the Social Security Administration Hearing System." Center for Administrative Justice, October 1977, p. 244-5.)

It appears that the Social Security Administration in the past has not carried out its responsibility to assure that administrative law judges do in fact implement agency policy as to how and under what standards the question of disability is to be determined.

This situation should be greatly improved in the near future. The Social Security Administration has undertaken to publish in Social Security Rulings (which are binding on administrative law judges) a much more detailed explanation of the criteria to be applied in determining whether or not an individual is eligible for disability benefits. The greater part of these rulings will have been published by the end of October of this year and this project is expected to be essentially completed with the publication of the January, 1983 Social Security Rulings. The Administration is to be commended for undertaking to correct this problem and should continue to monitor the situation and to publish further guidelines as necessary.

To assure that the administrative law judges are in fact carrying out the agency policy as published in these rulings, the Social Security Appeals Council has the ongoing responsibility of reviewing cases allowed by administrative law judges. This responsibility was reaffirmed in the 1980 legis-

lation and the Administration should give a high priority to implementing that responsibility. If the agency succeeds in conforming the policy applied in the appeals process to the authoritative agency policy standards, the rate of reversals on review should fall dramatically. This in itself should tend to reduce the appeals workload to more manageable levels, since claimants will no longer be encouraged to appeal in all cases (as they are by the present system). Once these changes are fully implemented, it can be expected that reversals at the hearing level will tend to occur only where there is in fact a failure to apply the agency standards at the initial and reconsideration levels, or where the claimant's condition has in fact worsened since the initial agency determination.

INITIAL PROBLEMS ARE BEING CORRECTED

The present Administration is to be commended for moving rapidly and effectively to implement the review requirements mandated by the Congress. It is unfortunately inevitable that there will be some difficulties encountered in undertaking any major new initiative. In the case of the disability review process, this situation was aggravated by the very large number of cases involved (267,000 during the first eight months of fiscal 1982) and by the complications of operating under contractual arrangements with a network of State agencies.

Sadly, there were some cases of improper terminations and even some cases of terminations involving individuals with such severe disabilities as to leave no room for doubt. It is remarkable that such situations were rare and that the Administration has been able to maintain a 97.5 percent accuracy rate. Still, every effort should be made to avoid burdening those individuals who are without any question eligible, and the Administration has in fact been sensitive to this need.

Since the implementation of this program, the Administration has made numerous changes in its procedures directed specifically at assuring that truly eligible individuals are continued in benefit status and, insofar as appropriate, are spared the burden of unnecessary reviews.

A letter to the Committee on Finance from the Commissioner of Social Security outlines the following twelve different steps the agency has taken to improve its procedures in ways which help assure a high degree of accuracy:

(Excerpt from September 16, 1982 letter from Commissioner of Social Security)

1. In March, SSA initiated a policy of determining that, in general, a person's disability ceases as of the time the beneficiary is notified of the cessation. This change reduces situations where the beneficiary is faced with the need to pay back past benefits because of a retroactive determination.

2. Since May, SSA has mandated that States review all medical evidence available for the past year—a directive which ensures that every State is looking at every piece of evidence that might be pertinent to a case.

3. SSA has underway, in two States, a study to test the value of obtaining more than one special mental status examination in cases where evidence from the beneficiary's treating source is incomplete or inadequate. This is intended to determine whether a person's mental condition can drastically change from one day to another. One criticism of SSA's practice of getting only one mental status examination is that it gives a misleading "snapshot" of a person.

4. Since March, SSA has required State agencies to furnish detailed explanations of their decisions in all cases in which a person's disability has ceased

5. To insure quality in CDI cases, SSA conducts a quality review of a sample of cases before benefits are stopped. In June 1982, SSA doubled the number of quality reviews of termination cases. The quality has been holding very high at 97.5 percent. In addition, to demonstrate the importance of quality in the CDI process, SSA established an interim accuracy goal for the State agencies without waiting for publication of regulations.

6. SSA has consistently monitored State agency resources and workloads closely and adjusts the flow of cases to the individual States to avoid backlogs when problems have arisen in their acquiring adequate resources. The selective moratoriums on new CDI cases that SSA has implemented for August and September (and even earlier in some States) has been easing problems in specific States that have had unusually large backlogs.

7. Starting in October, SSA will use a new procedure for beginning a CDI review: each beneficiary will have a face-to-face interview with an interviewer in the local Social Security office. The interviewer will explain how the review works and what the beneficiary's rights are, obtain information about the beneficiary's medical care and treatment and current condition, and—in some cases—conclude the review process where it is clearly warranted based on the beneficiary's current medical condition.

This will correct the single most glaring anomaly in the CDI process. Recipients whose cases are selected for review under the 1980 Congressional mandate rarely, if ever, come face-to-face with a decisionmaker until and unless the case is pursued to the third level of review and appeal—a process which may drag on as much as 6 months to a year after benefits have been stopped. This one flaw in the program is perhaps more to blame than any other factor for the seemingly senseless "horror stories" we have all seen from time to time of people being dropped from the rolls despite glaringly obvious disabilities.

8. To improve the quality of determinations in difficult cases where it is necessary to determine a person's capacity to do work-related activities despite a severe impairment, SSA is requiring that the determinations as to remaining capacity be more detailed and explicit so that the basis for the final decision is clear.

9. SSA has taken many actions to improve the quality of consultative examinations purchased by the Government in cases where medical evidence from a person's physician is unavailable or incomplete.

10. SSA has been very sensitive to the need for special handling of cases involving psychiatric impairments. SSA has met with mental health groups to obtain their recommendations for improvements and is reevaluating all guidelines for evaluation of mental impairments. SSA has also encouraged the States to increase the number of psychiatrists on their staffs in order to enhance their ability to review cases involving mental impairments. Secretary Schweiker has asked the American Psychiatric Association for assistance in recruiting psychiatrists for the States.

11. SSA has added more than 140 Administrative Law Judges to what is already perhaps the largest single adjudicative system in the world, bringing their total number to more than 800 and providing them with significantly more support staff to help reduce the backlog of cases that has been a chronic problem in past years.

12. Based on our findings in the first year of the CDI program, SSA has broadened the definition of the permanently disabled who need not be subject to the every-three-year CDI process mandated under the law. As a result, SSA expects to exempt an additional 165,000 beneficiaries from the CDI process during the next fiscal year—which will mean reducing the total from about 800,000 to about 640,000, a major reduction in workloads for the State agencies.

Included in these measures is an important change under which a personal interview is conducted by a Social Security Administration employee before a case is even sent to a State agency for review. This personal interview assures that claimants will be acquainted with the implications of the process and will have the opportunity to present their views and to make available any relevant evidence. Moreover, the face-to-face interview creates a situation in which obviously inappropriate reviews can be detected at the very beginning of the process. In such situations, the case is not even sent to the State agency but is referred back to the Social Security central office with a recommendation that further review be discontinued.

These actions should reduce to an absolute minimum the incidence of improper terminations. Together with the administrative steps being taken to improve the appeals process, these changes eliminate any possible basis for continuing benefit payments beyond the point of the initial State agency determination.

FINANCE COMMITTEE APPROACH INADVISABLE

The Committee has recommended an approach which would continue benefits during the appeals process. This approach has nothing to recommend it. If the bulk of initial decisions denying benefits were incorrect, the proper approach would be to change the initial decision process rather than to pay benefits to those who happen to appeal that initial decision. In fact, however, the evidence available to the Committee does not indicate that the bulk of initial decisions are wrong. Rather, it indicates that over 97 percent of the decisions are correct. Consequently, the Committee bill will result in spending social security trust fund money primarily to pay improper benefits. Some of this money will be subsequently recovered; most of it will not. Except in those cases where the individual's benefit is continued on appeal (and this will frequently be an improper continuation) the amendment does nothing but postpone the day of reckoning. Moreover, it will leave the terminated beneficiary with the burden of a substantial overpayment at that point.

The implications of the Committee amendment may be even more than the short-term improper expenditure of many millions of dollars in social security trust funds. The history of the social security disability program seems to show a fair degree of volatility in the application of adjudicative standards. The Congress has faced a continuing need to reemphasize its original intent that the definition of disability be applied strictly and narrowly. In the 1980 Amendments Congress spoke forcefully and, thus far, effectively to this issue. There is a distinct danger that these amendments would be viewed by all adjudicators as a reversal of this Congressional intent. This bill could be seen as a Congressional judgment that most, or a substantial proportion, of the agency's terminations are incorrect. If this occurs, it could cause the State agencies to allow more claims.

In addition, the Committee provision is bound to have substantial impact on the appeals process, probably in ways which will undermine the attempts of the Administra-

tion to bring the appellate process back into line with the agency policy. Simply on a workload basis, the decision to pay benefits through the hearing level will stimulate additional appeals from individuals with little expectation of ultimately winning reinstatement. In addition, the hearings officers like the State agencies may read into this legislation a subtle message that Congress is reversing its earlier concern over the integrity of the benefit rolls.

Mr. BAKER. Mr. President, let me yield to the Senator from Maine and then to the Senator from Louisiana.

Mr. COHEN. Mr. President, I ask unanimous consent that the findings of the Subcommittee on Governmental Affairs be printed in the RECORD.

There being no objection, the findings were ordered to be printed in the RECORD, as follows:

VIII. FINDINGS

The Subcommittee's principal finding is that many severely disabled persons are being erroneously terminated from the disability insurance program, only to wait without benefits through a lengthy appeals process after which 67 percent are eventually reinstated in the program.

If present trends continue, by the end of 1983, more than 200,000 people will have had their benefits discontinued only to have them reinstated many months later after a hearing before an Administrative Law Judge. In the meantime, they will suffer both financial hardship and emotional trauma. Already some disabled people have committed suicide and others have lost their homes after losing their benefits.

The Subcommittee finds that this needless and unjustifiable result is attributable to several factors—some of which are longstanding problems and others which were created by the way the current reviews were being conducted. The Subcommittee found the following:

(1) Many states have been ill-prepared to handle the flood of CDI cases because of insufficient staff to process the reviews. States received less than a month's notice that thousands of CDI cases would be forwarded to their offices. State hiring freezes have prevented some states from hiring needed additional staff. The tremendous increase in reviews has created a severe strain on state agencies' ability to quickly and thoroughly review cases.

(2) The Social Security Administration does not fully inform disability recipients when notifying them that their cases are under review. The letter sent by the SSA does not stress the gravity of the review but merely says that the agency is checking to determine whether the claimant "continues to meet the eligibility requirements."

Insufficient time is allowed for the recipient to fully respond to the state disability determination.

(3) The initial decision entitling the claimant to benefits is not presumed to be valid. Beneficiaries are having to prove all over again that they are disabled. This burden of proof is not, however, explained to beneficiaries and their doctors, who understandably believe that they have to show only a lack of medical improvement. Inadequate notice to beneficiaries hinders the development of a full and complete medical record. Beneficiaries are not notified that their existing medical history on file with the Social Security Administration is not considered in the decision.

(4) State agencies are poorly developing the medical evidence essential to the disability determination. In reviewing claimants' files, states are disregarding an medical evidence that is more than two or three months old, thus providing a very distorted and incomplete picture of the claimant's condition. Because the SSA does not require a showing of medical improvement before benefits are terminated, many severely disabled people have been dropped from the program, although their medical conditions have actually deteriorated or remain unchanged.

(5) The SSA is placing an undue reliance on consultative examinations in the review process. The high rate of consultative examinations is attributable to the rush to issue decisions based only on new medical evidence and to the practice of soliciting information from treating physicians in a format which is not useful to the disability determination.

(6) Different, and in some cases, conflicting standards are used for disability determinations, depending on whether the decision is being made by a state claims examiner or an ALJ. The POMS which govern state agency decisions and are issued without public review and comment do not accurately reflect the intent of the federal regulations, and account in part for the differences in allowance rates at the state and ALJ levels.

(7) The appeals process is clogged and lengthy. On average, a claimant has to wait from nine months to a year to obtain a hearing before an ALJ. There is no face-to-face contact between a decision maker and the claimant prior to the ALJ hearing, so that state decisions are based solely on a review of the claimant's file.

The combined effect of these and other factors is that this process is not a "review" of disability at all, but rather a re-determination of disability based on inconsistent and more strict criteria, without notice to beneficiaries or their treating physicians of the ture nature of the CDI process.

Mr. THURMOND. Mr. President, I rise in support of H.R. 7093 to continue paying social security disability benefits through the appeals process.

The distinguished Senator from Maine, Mr. COHEN, and I have both introduced legislation directed at this problem of premature termination of disability payments. Severe hardships have been inflicted unnecessarily on hundreds of disabled individuals and their families whose social security disability payments have been suddenly terminated upon review of their case files. While approximately two-thirds of those terminated are eventually reinstated when they appeal the unfavorable decisions, the appeals process can take months and many families may be financially devastated before the unfavorable decisions can be overturned.

Mr. President, this legislation is designed to prevent further, unnecessary hardships to social security disability recipients whose cases are reviewed. It would give the benefit of the doubt to the disabled recipient by continuing these payments until an administrative law judge hears the appeal and rules against the appellant. This authority to pay benefits pending appeal would expire in June 1983. It is, therefore, simply a temporary measure which will grant relief to disabled individuals and their families while Congress undertakes a more comprehensive review of the social security system.

Mr. President, I believe this is a fair, compassionate measure of minimal cost, and I hope the Senate will adopt it.

Mr. BAKER. I yield to the Senator from Louisiana for the purpose of making an objection.

Mr. LONG. I object.

The PRESIDING OFFICER (Mr. SPECTER). Objection is heard.

VIRGIN ISLANDS TAX REDUCTION

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate Calendar No. 936, H.R. 7093.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, that matter has been cleared with Mr. LONG and others on this side of the aisle, so there is no objection.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands-sourced income.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Finance with an amendment, as follows:

On page 4, after line 14, insert the following:

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

(a) Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection: "Continued Payment of Disability Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1983.

"(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the

ferent sections of the country. It was retained, essentially unchanged, as the organizational basis of the nation's fiscal system until the passage of the Federal Reserve Act in 1913.[30]

Before moving on to the raucous election of 1840 that brought to a close this period in the Senate's history, I would like to pause, as I have occasionally in previous statements, to look at some of the less monumental, but perhaps no less important, events in the Senate's own internal development during this period. For, while major issues were debated and catastrophes like the Panic of 1837 were dissected, bills and resolutions were introduced and rules were adopted and changed that shaped and directed the day-to-day life of the Senate and affected the lives of our predecessors.

Physically, the Senate was growing. Two new states joined the Union during this period, raising the number of senators from 48 to 52. To preserve the delicate balance established in the wake of the Missouri Compromise, Arkansas, a slave state, had been admitted in 1836, followed by Michigan, a free state, in 1837. All four of the new senators turned out to be faithful Democrats, much to the joy of the administration.

The Senate chamber was filling up not only with senators but with reporters, the predecessors of our observers up in the gallery above. There was a great flurry of activity among the "scribblers" that made its way into the Senate rules. In earlier statements, I have discussed the opening of the Senate chamber to observers and the first admittance of designated reporters into its midst to record the Senate's activities in 1802. During the next few years, these reporters and those who had come to join their ranks were seated in the eastern gallery, above the presiding officer, and this was the arrangement in 1835.

On February 27, 1835, Senator Alexander Porter of Louisiana introduced a motion that a committee of three be appointed to look into "the expediency of so arranging the seats in the Senate chamber as will promote the convenience of members, and facilitate the dispatch of public business." Among the eventual recommendations of that committee was the following, "That the reporters be removed from the eastern gallery, and placed on the floor of the Senate, under the direction of the Secretary." The proposal was approved during the Twenty-Fourth Congress, and thus, for the first time specific provision was made for the press in the Senate's Standing Rules.[31]

This was the situation when the Senate eyed the press in 1838 as it was considering changes in Rule 47, which listed the persons who might be admitted to the Senate floor. Buried in the changes was the following provision permitting ". . . two reporters for each of the daily papers, and one reporter for each tri-weekly paper published in the City of Washington . . ." to be seated in the chamber.[32] The press, both in Washington and the rest of the country, apparently overlooked this change, which was adopted on the last night of the session in the usual close-of-session rush. But not for long. It slowly dawned on them that all but the Washington press were to be excluded from the chamber where, before, many had sat. Rumor had it that the measure had been slipped through by Senator John Niles of Connecticut, who loathed the press.

The out-of-town reporters had mobilized by the second session of the Twenty-Fifth Congress and they convinced new Senator John Norvell of Michigan to present their memorial, protesting that:

> By the rule of the Senate they are deprived of the opportunity and privilege of obtaining information of Congressional proceedings for their respective papers; that the provision of the Senate exclusively furnishing the facilities they ask to city reporters, does not furnish the people of the country with full reports of what takes place until several days after the date of such transactions . . .; and praying that the Senate may assign them such seats on the floor or in the galleries, as may enable them to discharge their duties to those whose agents they are.[33]

In January 1939, the committee to which the memorial was referred proposed that the front seats of the eastern gallery be set apart for the out-of-town reporters as well as the local ones. The report generated a debate that runs for almost four pages of the *Congressional Globe* and elicited some rather violent remarks from Senator Niles:

> He was somewhat surprised at a proposition that the body should sanction, and in some manner endorse, the vile slanders that issue daily from these letter writers by assigning them seats within the chamber. Who were these persons who styled themselves reporters. Why miserable slanderers, hirelings hanging on to the skirts of literature, earning a miserable subsistence from their vile and dirty misrepresentations of the proceedings here, and many of them writing for both sides . . . Perhaps no member of that body had been more misrepresented and caricatured than himself by those venal and profligate scribblers, who were sent here to earn a disreputable living by catering to the depraved appetite of the papers they work for . . .[34]

Apparently, many Senators agreed with Senator Niles. His motion to table the memorial finally passed 20 to 17.

The reporters were not about to take such insults lying down. Niles and the other supporters of their exclusion were excoriated in editorial after editorial. Here is just a sample of their invective:

> The bitter hostility of such men as Niles to a Free Press is easily accounted for as it tears the Lion's Skin from the Jackass, and distinguishes the braying of that stupid beast from the roar of the Noble Monarch of the Wood.
>
> . . . then for Doctor Niles of Connecticut. Nature made him an ostler (stableboy). Chance, and his own roguery made him a United States Senator . . . Never was fellow meaner than this same Niles who with the fancies of a dolt makes pretensions to the intellect of the most talented man in the country. His manners are bad, and his breeding worse . . .
>
> On Saturday last the poor reporters who had petitioned for a separate seat in the eastern gallery of the Senate, were rowed up Salt River by the locofoco (radical Democrats) members, who seemed to be in a terrible fury with the letter writers for not allowing them to have more talent and decency than they possess.[35]

Despite their outrage, here the matter stood at the end of the Twenty-Fifth Congress. For the next 3 years, out-of-town reporters, aided by local journalists, used all sorts of subterfuges to get around this exclusionary rule, but the rule stuck. It was not until 1841, when the Whigs became a majority in the Senate, that the rule would be changed and the doors were once again opened to the reporters.

As the 1840 elections approached, the Senate once again became infused with presidential fever. Both Clay and Webster hoped to receive their party's nomination at the Whig convention in Harrisburg.

Webster was fifty-seven-years-old in 1839, and had begun to take on the appearance of a venerable statesman. The Webster paunch had become as noticeable as the famous dome and the fierce brows. His steps was heavier, his manner even more deliberate. In his customary dress—the black, long-tailed coat with gold buttons and buff-colored vest and pantaloons, he moved through the streets of Washington and Boston like a revolutionary frigate under full sail.

Unlike his rival, Clay, whose feelings were always close to the surface and who was addicted to profane tantrums in times of stress and disappointment, Webster was sanguine, almost glacial, in his ability to accept temporary defeat. As one of his biographers, Irving Bartlett, points out, even before Van Buren's 1837 inauguration, Webster had begun to plan for 1840. In a candid letter to a supporter, he outlined his plans for the next four years. He would leave the Senate for two years. (He did not—agreeing to stay after much imploring by New England businessmen.) During this period he would travel, keep himself before the public, and at the same time get his personal financial difficulties under control so that, upon his return to political life he would not have to divide his efforts between the Senate and his very lucrative law practice. Meanwhile, he reasoned, Van Buren would have revealed enough of the vulnerability of administrative policies to be effectively attacked.[37]

Clay, however, was also busy laying his plans. From the beginning of Van Buren's administration, he too had pictured himself as the "Little Magician's" opponent in 1840. Yearning for the nomination manifested itself in his letters, and as the summer of 1837

determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

"(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

"(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing."

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended—

(1) by inserting "(1)" after "(i)";

(2) by inserting ", subject to paragraph (2)" after "at least every 3 years"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.".

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 4. MEDICAL EVIDENCE.

(a) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) In any case of a medical review of the continuing disability of an individual, before making a final determination with respect to any such individual, the Secretary shall make every reasonable effort to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated such individual with respect to his impairment or impairments within the preceding 12-month period.".

(b) The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 5. REPORT BY SECRETARY.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.".

Mr. STEVENS. Mr. President, I ask unanimous consent that there be a time agreement of 10 minutes equally divided on this bill.

Mr. ROBERT C. BYRD. Will the Senator make that 30 minutes?

Mr. STEVENS. We will make that 30 minutes at the request of the minority leader.

Mr. DOLE. There is an amendment that is going to be accepted.

Mr. STEVENS. And I ask unanimous consent that the time agreement be in the usual form and that the time limit on the amendment be 15 minutes on a side.

Mr. DOLE. All right.

Mr. ROBERT C. BYRD. Only one amendment, one or two?

Mr. STEVENS. How many amendments are there?

Mr. DOLE. One.

Mr. STEVENS. The only amendment to be in order is the amendment agreed to by the Senators from Kansas and Michigan.

Mr. ROBERT C. BYRD. So there will be no surprise amendments that may come in here.

Mr. STEVENS. Mr. President, that will be 15 minutes on each side on an amendment to be offered by the Senator from Kansas and agreed to by the Senator from Michigan and 30 minute time limit on the bill with no other amendments to be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, on September 28, the Finance Committee approved several disability insurance amendments to H.R. 7093. They deal with two problems in the continuing disability investigation (CDI) process mandated by the Social Security Disability Amendments of 1980—the lack of benefits during the appeals process and the rate at which States must review beneficiaries. There are four provisions in all, two of which were contained in S. 2942, introduced by Senator Cohen and others.

Briefly, the bill would continue disability insurance payments and medicare coverage, at the individual's option, through the hearing decision issued by the administrative law judge (ALJ). Repayment would be required if the ALJ upholds the decision to terminate benefits. This provision would apply to individuals who have appeals pending at the time of enactment and to those who are terminated and appeal before July 1, 1983. However, the committee bill does not allow for any payments to be made under this provision beyond July. I will offer and amendment to improve the way this is sunsetted.

Also, the bill would authorize the Secretary of Health and Human Services to slow the continuing eligibility reviews, taking into consideration State agency workload and processing time. The Secretary would be authorized to grant waivers only to States that demonstrate a good faith effort to meet their staffing needs and process the reviews in a timely fashion.

Two additional provisions are included which would require the Secretary to gather medical evidence over the 12-month period preceding review—a practice recently adopted by the administration—and also require the Secretary to report to Congress semiannually on the number of terminations and appeals requests.

These amendments do not, of course offer a solution to the key structural problems in the disability insurance program—such as the lack of uniformity in decisionmaking between State agencies and ALJ's. Nor do they deal with other substantive issues—such as whether the individual must have experienced medical improvement before he can be terminated from the rolls. However, these amendments do provide an emergency solution to the suffering of families who are temporarily denied benefits pending an ALJ hearing. Among the many options, it seems to be one with broad bipartisan support. Since the provision allowing benefits to be continued past termination is sunsetted, the committee's bill acknowledges that futher substantive legislation will be required.

REASONS FOR ACTION NOW

In the early stages of the periodic review process, States have been terminating benefits in approximately 45 percent of the cases reviewed. Of those cases which appeal, approximately 65 percent have benefits reinstated by an administrative law judge. This wide variation between the decisions made by State agencies and ALJ's is a long recognized problem and stems from a number of factors. For example, the beneficiary can introduce new medical evidence at the ALJ hearing; the ALJ hearing is the first face-to-face contact between the reviewed beneficiary and the decisionmaker; and the standards of disability used by State agencies and ALJ's differ in some important aspects.

The lack of uniformity of decisionmaking is a fundamental problem which must be dealt with administratively and which must be carefully considered when the committee takes up substantive legislation. In the meantime, some emergency relief is clearly warranted for workers who are having benefits terminated by State agencies and then—in more than half the cases appealed—having their benefits reinstated by an ALJ.

The committee's decision to extend benefits during the appeals process should not be considered a judgment that it disagrees with the standards being applied by the State agencies. Likewise, this legislation does not in any way represent a reversal of the

1980 mandate that the Social Security Administration work diligently to remove ineligibles from the benefit rolls. Rather, it is a temporary expedient to help deal with some of the problems incident to the implementation of that mandate.

Another problem addressed by this legislation is the unavoidable difficulty some States are experiencing in implementing the periodic review procedures. The bill authorizes the Secretary to take into account the capabilities and workloads of the State agencies in assigning cases to the States for review. To some extent, actions already implemented administratively may have relieved the situation in some States, but this bill will make clear the Secretary's authority to provide such relief even if this means that the statutory schedule of reviewing one-third of the caseload each year cannot initially be met. We consider it essential, however, that the intent of the 1980 amendments not be violated. The accuracy of the decision granting or terminating DI benefits must be achieved in all States by the prompt implementation of a thorough program of periodic review.

It should be noted that the Secretary of Health and Human Services and the Social Security Administration have already taken a number of important steps to respond to many of the criticisms which have been leveled against the CDI process. I believe these are important steps—particularly the new face-to-face interviews for beneficiaries at their local social security offices. I urge the administration to continue its efforts to improve the quality and the accuracy of the reviews.

BACKGROUND ON THE 1980 AMENDMENTS

I would like to take this opportunity to remind my colleagues why we have a continuing disability investigation review process. During the 1970's, the Congress became alarmed at the rapid growth of the disability rolls and the rising cost of the program. Between 1970 and 1980, the cost of DI rose fivefold, from $3.3 billion to $15.8 billion. Between 1970 and 1977 alone, the number of disabled workers on the rolls almost doubled, from 1.5 million to 2.9 million. Counting spouses and children, the benefit rolls swelled from 2.6 million to 4.8 million people. Almost two-thirds of the people who came on the rolls since the beginning of the program in 1957 came on between 1970 and 1981.

The DI program, as a result, was seriously underfinanced and deficits were reported by the Social Security Board of Trustees on 15 occasions. Furthermore, the Congress learned that the then existing continuing review criteria and procedures were inadequate and resulted in the continued payment of benefits to many persons who had medically or otherwise recovered from their disability.

The Social Security Disability Amendments of 1980 were enacted as a response to this rapid growth in cost and in the number of beneficiaries. The amendments passed the Senate by a vote of 87 to 1 and had the express purpose of weeding out ineligibles and controlling program costs.

A number of significant reforms in the act tightened administrative oversight and control of the DI benefit rolls. The provision of current concern mandated that, effective January 1, 1982, DI beneficiaries must be reexamined at least once every 3 years to determine their continuing eligibility for benefits. This continuing disability investigation requirement specifies a minimum level of review.

SSA accelerated the CDI process in response to SSA quality control studies and also a GAO report which revealed a significant number of ineligibles on the rolls. SSA began the new review in March 1981 rather than waiting until January 1982, using procedures to target reviews on those most likely to be ineligible. It is estimated that the periodic review will save the trust funds $700 million in fiscal year 1983 and $1 billion in fiscal year 1984.

A DIFFICULT SITUATION

Although allowance rates vary widely among States, recent data indicates that only about 54 percent of cases reviewed are found to continue to meet eligibility requirements. In other words, 46 percent of those reviewed are being terminated from the benefit rolls. For those individuals that appeal, administrative law judges are reversing the State agency decisions—and reinstating benefits—in 60 to 65 percent of the cases.

This is clearly a difficult situation: Some States are feeling hard pressed to meet the workload demands of the stepped-up review. People who have been on the rolls for many years—having never been reexamined—are now coming up for review and having benefits terminated. Many people are confused about the process and the importance of providing sound medical evidence on their condition. Significant discrepancies between State agencies—responsible for performing CDI's and determining eligibility—and the ALJ's is causing great concern about the reliability and fairness of the disability determination process.

It is my hope that this emergency legislation will provide us the opportunity to consider carefully the major problems in the disability determination and appeals process in the Finance Committee.

I might point out in closing that there are no easy or obvious solutions to these problems. H.R. 6181, introduced by Representatives PICKLE and ARCHER, was marked up in the House Ways and Means Committee last March and was reported out of the committee on May 26. The bill has not yet made it to the House floor. Opinions vary widely and in all these months a consensus has not been reached. Forging a consensus will take time and cooperation.

Mr. President, before I ask unanimous consent to print in the RECORD a more detailed description of the disability provisions, I would like to express my thanks, and those of Senator ARMSTRONG, chairman of the Social Security Subcommittee, to the dedicated group of Senators who have devoted so much time to working out a consensus on this limited response to the problems created by the new continuing disability investigation process. Senators COHEN and LEVIN, who became interested in the CDI procedure as a result of oversight hearings they held in the Government Affairs Subcommittee last May, approached the problem in a compassionate yet reasonable and constructive manner. They, along with Senators HEINZ and DURENBERGER on the Finance Committee, were instrumental in gaining support for these provisions. Senators METZENBAUM and RIEGLE were also actively involved in the deliberations.

Now, Mr. President, I ask unanimous consent to print in the RECORD a detailed description of the disability provisions in the bill and the amendment.

There being no objection, the material ordered to be printed in the RECORD, as follows:

PROVISIONS RELATING TO SOCIAL SECURITY DISABILITY INSURANCE (DI)

CONTINUATION OF DI BENEFITS TO CERTAIN INDIVIDUALS PURSUING APPEAL

Present law.—A social security disability insurance (DI) beneficiary who is found by the State agency to be no longer eligible for benefits continues to receive benefits for two months after the month in which he ceases to be disabled. (As an administrative practice, individuals are not generally found to be "not disabled" no earlier than month is which the agency makes the termination decision.) The individual may request a reconsideration of the decision and, if the denial is upheld, he may appeal the decision to an Administrative Law Judge (ALJ). The individual is not presently eligible for benefits during the appeals process. However, if the ALJ reverses the initial termination decision, benefits are paid retroactively.

Explanation of provision.—The Committee amendment would continue DI benefits and medicare coverage (at the individual's option) through the month preceding the month of the hearing decision for terminated beneficiaries pursuing an appeal. These additional DI payments would be subject to recovery as overpayments, subject to the same waiver provisions now in current law, if the initial termination decision were upheld.

Effective date.—This provision would be effective for termination decisions occurring between the date of enactment and July 1, 1983, but in no case would payments be made for months after June 1983. Cases now pending an ALJ decision would also be covered by this provision, although lump sum back payments would not be authorized. Individuals terminated before the date of enactment who have not appealed the decision would qualify for continued benefits only if they are still within the allowable period for requesting a review.

SECRETARIAL AUTHORITY TO CONTROL FLOW OF CONTINUING DISABILITY INVESTIGATION REVIEWS

Present law.—As mandated by the Social Security Disability Amendments of 1980, all DI beneficiaries except those with permanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility. Beneficiaries with permanent impairments may be reviewed less frequently. The provision in present law specifies a minimum level of review.

Explanation of provision.—The Committee amendment would provide the Secretary of Health and Human Services the authority to slow—on a State-by-State basis—the flow of cases sent to State agencies for review of continuing eligiblity. The Secretary would be instructed to take into consideration State workload and staffing requirements, and would be authorized to slow reviews only in States that demonstrate a good faith effort to meet staffing requirements and process claims in a timely fashion.

Effective date.—This provision would be effective on enactment.

MEDICAL EVIDENCE REQUIREMENT

Present law.—Although current law does not specify a time period for the collection of medical evidence, current procedures, detailed in the guidelines used by State agencies, require the Secretary to seek to obtain all medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

The adoption of this procedure was announced by the Administration in May, 1982. Previously, any requirements as to the length of the period over which medical evidence should be sought were left up to the States. For some individuals, medical evidence was gathered over more than a 12-month period. For others, medical evidence was gathered over a shorter period.

Explanation of Provision.—The Committee amendment would put into law the requirement that the Secretary must attempt to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

Effective Date.—This provision would be effective on enactment.

REPORT TO CONGRESS

Present Law.—There is no requirement for periodic reporting to the Congress by the Secretary of Health and Human Services with respect to continuing disability investigations.

Explanation of Provision.—The Committee amendment would require the Secretary to report to the Senate Finance Committee and the House Ways and Means Committee semiannually on the number of: continuing eligibility reviews, termination decisions, reconsideration requests, and termination decisions which are overturned at the reconsideration or hearing level.

Effective Date.—This provision would be effective on enactment.

DOLE AMENDMENT

This amendment would make two changes in the disability provisions of the committee bill, H.R. 7093. It would:

Continue disability payments through the ALJ hearing to terminated beneficiaries pursuing an appeal before October, 1983. This would extend the provision in H.R. 7093 by 3 months. (No payments under this provision would continue beyond June 1984.)

In reviewing an individual's continuing disability, require the Secretary to consider all evidence in the individual's file and require that such evidence be discussed in the denial notices.

CBO COST ESTIMATES

H.R. 7093: $35 million in fiscal year 1983, −$15 million in fiscal year 1984.

H.R. 7093 as amended: $60 million in fiscal year 1983, $60 million in fiscal year 1984.

This amendment would increase the cost of H.R. 7093 by $25 million in fiscal year 1983 and $75 million in fiscal year 1984.

Mr. DOLE. Mr. President, I wish to thank the distinguished Senator from Louisiana, Senator LONG, for his cooperation. Senators METZENBAUM, LEVIN, COHEN, ARMSTRONG, DURENBERGER, and others, including Senator RIEGLE, Senator HEINZ, Senator HATCH, have worked with me to find something we might all agree on in the area of continuing disability investigations. The bill (H.R. 7093) was postponed prior to the election. Senator LONG wanted to take another look at it. He has now consented to its consideration with an amendment which I shall offer as a part of my amendment to which he has no objection.

This bill is a step in the right direction. I certainly commend my colleagues for their patience. I also commend the Social Security Administrator John A. Svahn, and Secretary Schweiker of the Department of Health and Human Services for their willingness to help us work out some of these very real problems.

Mr. President, I ask unanimous consent that the committee amendment be agreed to and considered as original text.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I thank Senator DOLE for his leadership on this issue and the speed with which he has moved this bill out of his committee. I commend him.

I and several of my colleagues have been working on a legislative solution to the problems in the review process of social security disability for over a year now. The situation has reached a crisis point. My staff has documented at least 32 deaths of persons who were told by SSA that their benefits were being terminated because they were no longer disabled and who then died shortly thereafter of their disabling condition.

Most Senators are by now all too familiar with the frequent stories of truly disabled persons who have been callously and erroneously removed from the social security disability rolls. SSA would have us believe these are isolated instances, but the sheer number belies that possibility.

The tragedy is that while two-thirds of those who appeal their termination decision eventually have their benefits restored by an administrative law judge, they are often left with no other source of income during this long appeal process. Of the 32 deaths, in almost every case a surviving relative, the treating physician, or some other interested person has stated their belief that the wrongful termination decision and resulting loss of benefits was a contributing factor in the person's death.

It is a tragic fact that, in despair at losing their benefits, a number of individuals have committed suicide. Other victims have been forced back into institutional care. Families have had to separate. And for many, these callous and unfair procedures have brought financial ruin.

The bill before us today is a short-term, emergency measure. Much more needs to be done. I understand that the chairman of the Senate Finance Committee agrees that comprehensive reform legislation must be enacted next year. I urge him to act quickly on such legislation.

In the meantime, this measure is desperately needed. Perhaps at least some of those 32 persons who died would be alive today if they had not suffered the stress associated with the loss of benefits. This bill would have allowed them to continue to receive those benefits pending their appeal. Some of those persons were granted their appeals posthumously. We cannot allow this intolerable situation to continue any longer. We must pass this measure immediately.

I do not agree with the July 1, 1983 date for the sunsetting of this provision to extend benefits pending appeal. I believe that this provision should become a permanent part of the social security disability law. This would merely place SSDI recipients in the same position as SSI recipients who already have the right to elect to continue to receive benefits pending their appeal to an administrative law judge. However, the one positive aspect of this July 1 deadline is that it will provide a strong incentive to the Congress to enact more comprehensive legislation to correct the existing problems in the disability program as soon as possible.

I believe that the provision of the bill requiring the Social Security Administration to obtain all relevant medical evidence from treating institutions and individuals will be extremely beneficial to recipients who are subject to continuing disability investigations. At the present time, it is my belief that the Social Security Administration is not, in all instances, making a vigorous enough effort to obtain such evidence. The recipient's treating physician is the person in the best position to provide the most comprehensive and qualified report on the individual's medical condition. The treating physician usually has an historical perspective.

On the individual's condition which is simply not available to a physician performing a consultative examination on behalf of the State disability agency. Such a consultative examination is, at best, a brief, one-time glimpse of that person's condition. In

the case of many mental disabilities and some physical disabilities, an individual's outward symptoms of his or her disabling condition may be in remission during particular periods. In a recent report, the General Accounting Office concurred with this view:

To base a decision on only the recent examination—often a purchased consultative examination—could give a false reading of that person's condition. This is especially true for those impairments subject to fluctuation or periodic remission, such as mental impairments.

The provision of this bill requiring SSA to obtain treating physician evidence is a reaffirmation of the importance of such evidence and is a signal to SSA that more credence should be given to such evidence. It is very possible that with this increased and improved effort to obtain such evidence, there will be much less of a need for consultative examinations, thus saving the Government money as well as improving the quality of decisions. Of course the sponsors of this legislation recognize that in certain circumstances, it will not be possible for SSA to obtain reports from the treating physician despite every reasonable effort. An example of such a circumstance would be the death of the physician, the destruction of past medical records or other similar circumstances.

Finally, I am very pleased about the inclusion of the provision requiring SSA to give consideration to all evidence in the recipient's file, including the medical evidence upon which the original determination that the individual was disabled was based. This provision simply follows a recent GAO recommendation to this effect which GAO has transmitted to SSA and Congress.

Many recipients mistakenly believe that SSA is presently considering all the medical evidence in their file when it undertakes a CDI review. They rely, to their detriment, on the sometimes voluminous medical evidence which they submitted at the time of the initial determination of eligibility. With this provision, SSA must now consider all historical medical evidence and, if SSA determines that the disability has ceased, it must provide the recipient with a statement explaining why this evidence is no longer sufficient. For example, there may be more recent evidence available that the individual's condition has now improved to the point that they no longer meet the definition of disability.

Of course, in some cases, SSA may find that the original decision granting disability benefits was clearly erroneous and not in accordance with the law. In that instance, where the initial decision was incorrect, SSA may terminate benefits even though the individual's medical condition has not improved. This is the reason for the last sentence of the amendment offered by Senator DOLE. This bill in not intended to preclude SSA from reversing clearly erroneous incorrect decisions. However, the bill is not intended to change any current case law on the subject of when a showing of medical improvement is required. It merely clarifies that SSA may terminate benefits where their initial determination was legally incorrect at the time it was made.

UP AMENDMENT NO. 1413

(Purpose: To extend the effective date of continued payment of disability benefits and to require that a complete medical history be obtained prior to making a final determination)

Mr. DOLE. Mr. President, I send an amendment to the desk for myself, Mr. COHEN, Mr. LEVIN, Mr. METZENBAUM, Mr. DURENBERGER, Mr. HEINZ, Mr. RIEGLE, Mr. SASSER, Mr. BIDEN, and Mr. JEPSEN and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself and others proposes an unprinted amendment numbered 1413.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, lines 22 and 23, strike out "June 1982" and insert in lieu thereof "June 1984".

On page 6, strike out lines 12 through 17 and insert in lieu thereof the following:

" '(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

'(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

'(B) prior to October 1, 1983.' ".

On page 8, line 8, before the quotation marks insert the following: "In making such final determination the Secretary shall consider all evidence available in such individual's case record relating to such impairment or impairments, including medical evidence used in making the initial determination that the individual was under a disability and medical evidence used in any subsequent review, determination, or judicial review relating to such impairment or impairments. Nothing in the preceding sentence shall be considered to preclude the Secretary from finding an individual to be ineligible on the basis that such individual is not disabled within the meaning of the term disability for purposes of initial determinations under this title even if such individual's medical condition has not improved or otherwise changed since any prior determination of his eligibility. Discussion of such evidence shall be included in the statement of the case required to be provided under section 205(b).".

Mr. DOLE. Mr. President, I shall take a couple of minutes to explain this important amendment.

One of the disability provisions agreed to by the Finance Committee and incorporated in the bill before us now has caused confusion and concern. The problem pertains to the payment of disability benefits through the administrative law judge (ALJ) hearing and, in particular, the sunsetting of the provision in July 1983.

Under the committee bill, no payments will be made under this provision for months after June 1983. In other words, people terminated from the rolls after that date will not be provided any additional payments during the appeals process; instead, existing law will prevail. This was clearly understood.

The amendment has another effect, however, which I believe was unintended. Since no payments can be made past June 1983, this means that even someone terminated today, next month, or any time prior to July, will not be granted payments through their entire appeal—unless their hearing happens to be held before July. Since an ALJ hearing can take up to 6 months to 1 year to receive, many of the people terminated from the rolls in the next 6 to 9 months will not receive payments through the ALJ hearing—only until July.

The amendment I now offer on behalf of myself and Senators COHEN and LEVIN would correct this problem and, since action has been delayed on this bill, extend the date when the provision sunsets by 3 months. In particular, it would insure that people who are terminated from the rolls before October 1, 1983 will be eligible to receive payments through th ALJ hearing, as long as that hearing is held before July 1, 1984. In the event the hearing should take longer, payments would not be continued beyond June 1984.

I believe this amendment is consistent with the committee's desire to sunset the provision while not violating the concept that for a temporary period of time payments should be continued through the ALJ hearing.

This amendment would also put into law a requirement that, in reviewing the continuing eligibility of beneficiaries, all evidence in the individual's record be examined. In the case of a denial decision, such evidence would be discussed in the denial notice.

These are limited changes in the disability provisions of H.R. 7093 and have broad support.

According to the Congressional Budget Office, this amendment would increase the cost of the disability provisions in fiscal year 1983 from $35 million to $60 million.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Social Security Commissioner Svahn. This letter details steps already taken by the Social Security Administration dealing with many of the concerns raised by Members of this body in connection with the disability program. I commend Commissioner Svahn for taking these administrative steps to improve the disability review process.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMISSIONER OF SOCIAL SECURITY,
Baltimore, Md., September 16, 1982.

Hon. ROBERT J. DOLE,
Chairman, Senate Finance Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: As you know, the Administration shares your concern and that of other members of the Finance Committee with regard to the fair and equitable carrying out of the provisions of the 1980 Amendments for better assuring the integrity of the Social Security disability rolls through the periodic review of the continuing disability status of people receiving disability benefits. This process of continuing disability investigations—the so-called CDI process—has been a source of major concern to us, as well as to the Congress and the public generally and we have been moving in both legislative and administrative areas to deal with problems that have arisen in this area.

Secretary Schweiker and I have been strongly supportive of major elements of a Ways and Means Social Security Subcommittee bill, now awaiting action in the House, that would lead to improvements in the quality and fairness of the CDI process. We feel that the House bill—H.R. 6181, with provisions paralleled in several bills pending before the Senate—would provide us with the additional tools necessary to accomplish this.

However, pending completion of action on that legislation, we have given the very highest priority to those actions which we can take administratively—in close concert with the States—to implement a fundamental reform of the CDI program. These reforms will, I believe, go a long way toward solving many of the problems and resolving many of the issues that have led to the current concern about the CDI process.

Indeed, these reforms will take us about as far as we can go toward those ends without substantive legislation along the lines of the provisions in H.R 6181 that we support to correct some of the anomalies in present law and practice which have helped make this program far more complex and controversal than any other administered by this agency.

Twelve major steps SSA is taking to reform the CDI process are as follows:

(1) In March, SSA initiated a policy of determining that, in general, a person's disability ceases as of the time the beneficiary is notified of the cessation. This change reduces situations where the beneficiary is faced with the need to pay back past benefits because of a retroactive determination.

(2) Since May, SSA has mandated that States review all medical evidence available for the past year—a directive which ensures that every State is looking at every piece of evidence that might be pertinent to a case.

(3) SSA has underway, in two States, a study to test the value of obtaining more than one special mental status examination in cases where evidence from the beneficiary's treating source is incomplete or inadequate. This is intended to determine whether a person's mental condition can drastically change from one day to another. One criticism of SSA's practice of getting only one mental status examination is that it gives a misleading "snapshot" of a person.

(4) Since March, SSA has required State agencies to furnish detailed explanations of their decisions in all cases in which a person's disability has ceased.

To insure quality in CDI cases, SSA conducts a quality review of a sample of cases before benefits are stopped. In June 1982, SSA doubled the number of quality reviews of termination cases. The quality has been holding very high at 97.5 percent. In addition, to demonstrate the importance of quality in the CDI process, SSA established an interim accuracy goal for the State agencies without waiting for publication of regulations.

(6) SSA has consistently monitored State agency resources and workloads closely and adjusts the flow of cases to the individual States to avoid backlogs when problems have arisen in their acquiring adequate resources. The selective moratoriums on new CDI cases that SSA has implemented for August and September (and even earlier in some States) has been easing problems in specific States that have had unusually large backlogs.

(7) Starting in October, SSA will use a new procedure for beginning a CDI review: each beneficiary will have a face-to-face interview with an interviewer in the local Social Security office. The interviewer will explain how the review works and what the beneficiary's rights are, obtain information about the beneficiary's medical care and treatment and current condition, and—in some cases—conclude the reviews process where it is clearly warranted based on the beneficiary's current medical condition.

This will correct the single most glaring anomaly in the CDI process. Recipients whose cases are selected for review under the 1980 Congressional mandate rarely, if ever, come face-to-face with a decisionmaker until and unless the case is pursued to the third level of review and appeal—a process which may drag on as much as 6 months to a year after benefits have been stopped. This one flaw in the program is perhaps more to blame than any other factor for the seemingly senseless "horror stories" we have all seen from time to time of people being dropped from the rolls despite glaringly obvious disabilities.

(8) To improve the quality of determinations in difficult cases where it is necessary to determine a person's capacity to do work-related activities despite a severe impairment, SSA is requiring that the determinations as to remaining capacity be more detailed and explicit so that the basis for the final decision is clear.

(9) SSA has taken many actions to improve the quality of consultative examinations purchased by the Government in cases where medical evidence from a person's physician is unavailable or incomplete.

(10) SSA has been very sensitive to the need for special handling of cases involving psychiatric impairments. SSA has met with mental health groups to obtain their recommendations for improvements and is reevaluating all guidelines for evaluation of mental impairments. SSA has also encouraged the States to increase the number of psychiatrists on their staffs in order to enhance their ability to review cases involving mental impairments. Secretary Schweiker has asked the American Psychiatric Association for assistance in recruiting psychiatrists for the States.

(11) SSA has added more than 140 Administrative Law Judges to what is already perhaps the largest single adjudicative system in the world, bringing their total number to more than 800 and providing them with significantly more support staff to help reduce the backlog of cases that has been a chronic problem in past years.

(12) Based on our findings in the first year of the CDI program, SSA has broadened the definition of the permanently disabled who need not be subject to the every-three-year CDI process mandated under the law. As a result, SSA expects to exempt an additional 165,000 beneficiaries from the CDI process during the next fiscal year—which will mean reducing the total from about 800,000 to about 640,000, a major reduction in workloads for the State agencies.

In summary, we believe that with the implementation of these administrative steps, we can very substantially improve the quality and the fairness of the CDI process, prevent the kinds of mistakes that have lead to true horror stories and given rise to some exaggerated concerns, and move toward guaranteeing the integrity of the disability rolls in a way that is equitable and humane as well as effective and efficient. While we do support legislation—such as the provisions we have sought in H.R. 6181, including face-to-face evidentiary proceedings at the very first level of appeal—to enable us to further improve the process, we believe that with the steps outlined above, substantial progress is now being made.

Sincerely,

JOHN A. SVAHN.

Mr. COHEN. Mr. President, I rise in support of the amendment offered by my distinguished colleague from Kansas (Mr. DOLE) and in support of the bill H.R. 7093.

Mr. President, I ask unanimous consent that a list of cosponsors, including Senator LEVIN and myself be added not only to the bill itself but also to the amendment (UP No. 1413) offered by Senator DOLE.

The PRESIDING OFFICER. Without objection, it is so ordered.

The list of cosponsors follows:

Senator Cohen, Senator Levin, Senator Dole, Senator Armstrong, Senator Metzenbaum, Senator Heinz, Senator Riegle, Senator Durenberger, Senator Chafee, Senator Sasser, Senator Quayle, Senator Cochran, Senator Biden, Senator Boren, Senator Burdick, Senator Thurmond, Senator Cannon, Senator Dixon, Senator Leahy, Senator Cranston, Senator Pell, Senator Stafford, Senator Dodd, Senator Nunn, Senator Gorton, Senator Kennedy, Senator Eagleton, Senator Pryor, Senator Chiles, and Senator D'Amato.

● Mr. BOREN. Mr. President, I am pleased to cosponsor the amendment offered by my distinguished colleagues from Michigan and Maine. This change in the law has been desperately needed as thousands of disabled persons across the country have seen their benefits terminated arbitrarily. My field offices in Oklahoma have been inundated with complaints of unjustified disability terminations. In the past year, I have received over 550 calls from disability recipients from all over the State who are no longer drawing their disability benefits.

The amendment considered by the Senate today will continue disability payments to social security recipients until all appeals are exhausted. This change will allow an individual in the process of appealing a decision concerning his disability certification will continue to receive benefits until an administrative law judge determines he is not disabled.

Cutting off someone's disability benefits before he's had a chance for a full hearing is sort of like declaring someone guilty before they are proven innocent. We should not penalize

those with true needs because of bureaucratic backlogs. I am the first one to want to reduce Federal spending, but it is not right to use Government delays to deny funds to those who are truly helpless for physical reasons.●

Mr. COHEN. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. LEVIN. I yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas.

The amendment (UP No. 1413) was agreed to.

Mr. COHEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COHEN. Mr. President, I rise in support of the disability reform amendments included in H.R. 7093.

Section 2 of this legislation contains amendments that Senator LEVIN and I, along with 28 of our colleagues, have sponsored to provide a short-term solution to the grave problems affecting the Social Security Administration's reviews of individuals receiving disability benefits.

The purpose of our proposal is to provide immediate relief to the thousands of disabled people whose benefits are being erroneously terminated and subsequently restored after a lengthy appeals process has run its course.

The Social Security Administration, in response to a congressional mandate, has been reexamining the eligibility of hundreds of thousands of individuals with nonpermanent disabilities. In my judgment, Congress was correct in mandating periodic reveiws to identify those individuals who have recovered sufficiently to be able to resume working. Unless we eliminate from the program those individuals who no longer require assistance, we will limit our ability to provide fully for those who do. The implementation of this law, however, has created chaos and inflicted pain that Congress neither envisioned nor desired when it enacted what was intended to be a sound management tool.

The problem is not with principle of the periodic reviews, but rather with the manner in which they are being conducted. And we in Congress share a large measure of responsibility for failing to establish specific guidelines for selecting the cases and conducting the investigations.

Last May, Senator LEVIN and I held a hearing in our Oversight of Government Management Subcommittee to investigate numerous reports from all over the country that truly disabled people are having their benefits terminated as a result of the new reviews.

What we found was most disturbing. Benefits are being discontinued in more than 40 percent of the cases reviewed—far above the 20 percent rate predicted by the General Accounting Office. In the State of Maine alone, benefits for more than 1,200 people have been ended since the reviews began, despite the fact that in a number of cases the claimants still appear to be severely disabled and unable to work. And about two-thirds of the claimants who appeal are eventually reinstated to the program after a hearing before an administrative law judge.

The situation is both absurd and cruel. It makes no sense to inflict pain, uncertainty, and financial hardship on disabled workers and then tell them, "Sorry, we made a mistake." It makes no sense to overburden the State agencies and further clog the appeals process with cases where the individuals clearly remain disabled.

The tragedy is that, in waiting for reinstatement, these severely disabled persons and their families must go without benefits for months—or even a year or more—due to the tremendous backlog of appeals. One of my constituents, who was reinstated to the program last August, has been without his disability checks for 16 months. Lacking any income and too proud to accept welfare, this desperate man recently attempted to take his own life.

This is not an isolated example. Witnesses at our hearing recounted case after case in which truly disabled individuals lost their benefits and suffered financial hardship and emotional trauma because of an unjust system.

We identified several flaws in the continuing disability investigations:

First. The SSA does not provide the claimants with an adequate notice explaining the gravity of the review and the beneficiaries' responsibilities. Instead, a misleading notice is provided which simply informs the claimant that his case is "under review" to determine if he "continues to meet" the requirements;

Second. No face-to-face interview is held with the claimant until the hearing before an administrative law judge. This absence of personal contact gives the claims examiner an incomplete picture of the claimant's condition and reinforces the beneficiary's feeling of bureaucratic indifference;

Third. Decisionmakers use different and, at times, conflicting standards to determine disability. For example, there is confusion of the proper evaluation of a claimant's pain;

Fourth. In a number of cases, the medical files which the claims examiners rely on are incomplete and lack current medical evidence from the treating physician;

Fifth. No presumption of validity is accorded the initial decision which entitled the claimant to receive benefits. Instead, as the General Accounting Office has said, a system of "zero-based eligibility" is used, in which the claimant must prove all over again that he is entitled to benefits; and

Sixth. In a number of cases, individuals whose medical conditions have actually deteriorated since they started receiving benefits many years ago are having their benefits ended.

In short, our hearing revealed a disturbing pattern of misinformation, incomplete medical examinations, inadequately documented reviews, bureaucratic indifference, erroneous, decisions, financial and emotional hardships, and an overburdened system.

The Social Security Administration has taken some steps, such as improving the notice, to remedy these problems. But rectifying such fundamental deficiencies will require comprehensive legislation. I applaud Senator DOLE for his willingness to thoroughly review the disability program next year. Since it will take time for Congress to consider reforms in the disability program, we must act now to provide short-term relief to disabled individuals whose benefits are being terminated and then reinstated.

Our legislation has three parts: First, it would direct the Secretary of Health and Human Services to determine on a State-by-State basis the appropriate volume of cases so that these investigations may proceed at a more measured pace; second, it would continue disability payments until the administrative law judge stage of the appeals process; and third, it would mandate a more thorough evaluation of the medical evidence pertaining to each case.

Slowing down the number of cases reviewed would help both claimants and the State agencies which conduct the investigations. Currently, case files are literally overflowing out of boxes, and unreasonable burdens have been placed on many State agencies, particularly in those States where personnel freezes have prevented the hiring of needed staff. By directing the Secretary to proceed with the reviews at a pace which recognizes the necessity for careful evaluations and a more even workload, our legislation would improve the quality of the decisions and lessen the huge backlog of cases. It provides the Secretary with the flexibility that he needs to make adjustments in the States' workload after consulting with the State administrators.

In addition, by continuing benefits pending appeal, this legislation would eliminate the needless financial burden now imposed on disabled people who are mistakenly removed from the program, despite being unable to resume work. Currently, claimants who are successful in appealing their termination decisions receive back benefits. but only after months of disruption and delay. Our proposal would prevent the interruption of benefits which these individuals eventually would receive anyway.

To control the cost of this proposal and to discourage frivolous appeals, our bill would require individuals

whose terminations are upheld by an administrative law judge to repay the benefits paid pending appeal unless repayment would cause a severe financial hardship.

Again, I emphasize that fundamental reforms in the SSA review procedures are absolutely essential. Senator LEVIN and I, along with several other Senators, have proposed comprehensive legislation to make the system more equitable and efficient. Congress would, however, be remiss in waiting for comprehensive legislation to solve these urgent problems. While we should continue to seek long-term reforms, including a medical improvement standard, we should act immediately to provide protection for the disabled Americans who are the victims of a faulty and unfair system.

Disability benefits are not welfare. A worker earns this insurance through the social security taxes that are deducted each week from his paycheck, and he must have worked a minimum amount of time in order to qualify for those payments. He must also be so disabled that he not only cannot perform the work that he had been doing but cannot engage in any kind of substantial gainful activity which exists anywhere in the country.

Surely when we are dealing with the most disabled workers in our society, we should enact every safeguard to insure that the Government does not add another burden to the ones they already must bear.

I would like to thank Senator DOLE for working with us in fashioning a solution to this problem, and I commend Senator LEVIN for his distinguished leadership and hard work on this issue.

I urge the adoption of the legislation.

I want to take this opportunity to thank Senator DOLE again for the extraordinary courtesy and interest he has shown to all of us who have been working on this matter since early last summer, and as a result of Senator DOLE's participation and meetings and negotiations not only among the members but with the administration, we were able to bring this measure to the floor today.

So I think all of us owe him a measure of gratitude which is really significant.

Mr. HEINZ. Mr. President, I am pleased to add my support for this emergency piece of legislation regarding the social security disability program, and I want to commend Senator DOLE and Senator ARMSTRONG for giving this emergency legislation the priority it deserves.

The four major provisions of this Finance Committee bill—continuation of benefits through the administrative law judge's decision, legal authority for the Secretary to slow down the reviews where it is necessary, the obligation to collect all medical evidence pertaining to the individual's disability, and periodic reports to Congress—are all found in S. 2731, the comprehensive continuing disability investigation (CDI) reform bill which Senator DURENBERGER and I introduced on July 14. Therefore, it is as a cosponsor of the Cohen/Levin bill (S. 2942), a supporter of this bill before us today, and an author of similar provisions, that I must point out to my colleagues that this emergency legislation does not completely solve the problem of the unfair terminations of hundreds of thousands of disabled individuals.

What this bill does is very important, nonetheless. It means that for the immediate future, at least, individuals who have been wrongly terminated will not be financially ruined because they have been deprived of their benefits during a lengthy appeals process. I have seen cases in my own State of Pennsylvania—and elsewhere across the country—where individuals have lost their homes and sustained other financial damages because They were deprived of their benefits during a long appeals process which resulted in a determination that they never should have been kicked off the rolls at all. The continuation of benefits through the administrative law judge's decision is a major, positive step.

The bill also gives the Secretary the discretion to slow down the reviews. I want to be among the first to let the Secretary know in clear and uncertain terms that we expect him to invoke this authority in the coming months. The backlogs which are contributing to hasty processing of disability reviews must be cleared up. I support the selective moratorium which the Social Security Administration announced in August—indeed I would have gone much further and imposed a total moratorium until the end of this year. I also support SSA's reduction in the number of planned reviews for fiscal year 1983—from the 806,000 originally proposed in the President's fiscal year 1983 budget to the current projection of 640,000. But 640,000 is still far in excess of the 506,000 reviews processed in fiscal year 1982—and it is a number which every piece of evidence I have seen suggests cannot be intelligently managed or handled. When the Federal Government starts running 500,000 to 800,000 people per year through a mass reexamination mill, there are bound to be too many instances where individual rights are violated and mistaken judgments rendered.

What we really want to see is better quality in the disability review process. That is why this bill will give the force of the law to the requirement that the Social Security Administration must—at a minimum—seek and obtain all relevant medical information from all medical personnel and institutions which have diagnosed or treated the individual in the past 12 months. And the bill also requires SSA to consider the original medical evidence supporting the disability award, along with all subsequent medical evidence.

Despite the obvious merits of these three provisions, I must point out that we have not given beneficiaries the additional protections they deserve against unfair terminations; namely, before kicking someone off the rolls who was correctly awarded benefits in the past, the Secretary should have the burden of showing that the individual has improved medically or that the individual is the beneficiary of some advance in medical therapy or technology which makes the individual able to work.

Furthermore, this bill does not have any provisions to ease the transition back to work for individuals who are severely disabled, who have been on the rolls for years, and who are now denied benefits because they do not meet the current standards. These people need adjustment benefits and vocational rehabilitation during this transition period.

I want my colleagues to know that we will be taking up these issues early next year. Until we address these issues, comprehensively, we will not have solved the problem of unfair terminations of hundreds of thousands of disability beneficiaries.

In the meantime, I would urge that the Social Security Administration heed this message: Congress is concerned that beneficiaries are not being given the benefit of the doubt; that bureaucrats have become overly zealous in kicking people off the rolls with the thinnest of justifications; and that we want to see a change in the adjudicative climate from one which presumes benefits are erroneously being paid to one which seeks to find out who no longer qualifies for benefits and why.

The goal of reviewing the disability status of beneficiaries is sound and necessary; but entitlement rights of individuals must not be summarily abridged by a process that is often thoughtless and inhumane. I urge the Social Security Administration to use the next few months and prepare itself to come forward to the Congress with some concrete proposals on medical improvement and other provisions which will restore the balance in a review system that now appears to be out of control.

Mr. President, the continuing disability review process is so plagued with problems at this time that emergency relief is crucial. We are, quite literally, putting lives in jeopardy by the hapazard manner in which these reviews are being conducted and decisions reached. Indeed, the Southern Governors's Association recently adopted a resolution condemning the fact that disabled persons are being "unjustly and abruptly removed from the social security disability rolls as a result of a hasty and erroneous review." The Southern Governors' Association, in this resolution which I ask unanimous consent be entered at this point in the RECORD, calls upon

Congress "to clarify the disability review process, to provide safeguards that will protect eligible disability benefit recipients, and to provide fair and just treatment for those whose disability benefits are terminated."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SOUTHERN GOVERNORS' ASSOCIATION,
Atlanta, Ga., September 16, 1982.

Hon. H. JOHN HEINZ,
Chairman, Committee on Aging,
Washington, D.C.

DEAR SENATOR HEINZ: Enclosed is a set of the resolutions adopted by the Southern Governors' Association at the conclusion of our 48th annual meeting.

As chairman of the Southern Governors' Association, I am most pleased to transmit these resolutions to you and to urge your support of these policies.

In your position as chairman of the Select Committee on Aging, I urge that you give special attention to the resolution entitled "Clarify Social Security Disability Benefit Review Process" (No. 16).

Yours sincerely,
WILLIAM P. CLEMENTS, Jr.,
Chairman.

SOUTHERN GOVERNORS' ASSOCIATION RESOLUTION—CLARIFY SOCIAL SECURITY DISABILITY BENEFIT REVIEW PROCESS

Whereas the social security disability insurance program provides much needed support for the disabled people in our nation; and

Whereas the Social Security Administration has instituted an accelerated program of review of the existing disability rolls as a part of the Administration's budget incentives for fiscal 1982; and

Whereas the states administer this program under regulations and rules established by the Social Security Administration; and

Whereas this accelerated review program has resulted in an initial termination of benefits to more than 40 percent of the recipients whose cases have been reviewed since March 1981; and

Whereas over two-thirds of those recipients whose benefits were terminated after initial review have had their benefits reinstated on appeal; and

Whereas severe hardships have resulted to those disabled persons unjustly and abruptly removed from the social security disability rolls as a result of a hasty and erroneous review; and

Whereas the administration of the social security disability benefit program has been made unduly burdensome and chaotic to the states; and

Whereas review of the social security disability rolls should be conducted on a careful, regular and periodic basis and decisions on disability determination should be made in a uniform fashion: Now, therefore, be it

Resolved, That the Southern Governors' Association call upon Congress to clarify the disability review process, to provide safeguards that will protect eligible disability benefit recipients, and to provide fair and just treatment for those whose disability benefits are terminated.

Mr. HEINZ. Similar cries for congressional action have come from State officials in my own State of Pennsylvania, as well as from State officials all across the country.

Congress simply cannot tolerate such capriciousness in a Federal program which affects the lives and the livelihood of the millions of disabled workers and their families who rely on this social security income to survive.

Our action today in passing this emergency legislation would merely be a first step—but a vital one—toward fulfilling the responsibility Congress has to reform the disability program in a comprehensive way. I am pleased to endorse this bill and I urge my colleagues to vote its immediate passage.

Mr. COHEN. Mr. President, I have always believed that the problems plaguing the Social Security Administration's disability reviews required both short-term emergency action and long-term comprehensive reforms. I should like to ask the distinguished chairman of the Finance Committee, who has been so instrumental in expediting the emergency legislation that we are considering today, what his plans are for considering comprehenisve legislation. I know that the Senator from Kansas shares my concern that there are fundamental deficiencies in the system that the Finance Committee will want to examine.

Mr. DOLE. As the Senator from Maine knows, several comprehensive bills to alter the disability insurance program have been referred to the Finance Committee, including legislation introduced by Senator LEVIN and Senator COHEN.

It is my intention that the Finance Committee would consider this legislation early next year and that comprehensive reform legislation would be reported by the committee as soon as possible in the next Congress.

Mr. COHEN. A key component of most of the bills that have been introduced is a medical improvement standard. Such a standard would require the Social Security Administration to show that the beneficiary's medical condition had improved before his eligibility for benefits could be terminated. Of course, exceptions would be made for cases involving fraud or a clear mistake in the original decision entitling the claiment to benefits. Because of the complexity of the medical improvement issue, I believed that it was more appropriate for inclusion in long-term legislation, rather than in a short-term bill. I do hope, however, that the distinguished chairman will be able to provide assurances that the Finance Committee will seriously consider a medical improvement standard during its examination of disability legislation early next year.

Mr. DOLE. I am certain that the medical improvement issue will be fully debated by the Finance Committee. While I cannot predict what action the committee will take on this issue, I can assure the Senator that I realize its importance to him and many other Members.

As the Senator knows, our staffs spent many hours trying to work out langauge on the medical improvement issue, but the complexity of this issue requires hearings and further study. I look forward to working with interested Senators as we seek to resolve this issue next year.

Mr. COHEN. I thank the Senator for his assurances.

● Mr. ARMSTRONG. Mr. President, I urge immediate passage of the pending bill providing emergency benefits for the disabled. Once passed this bill will correct a tragic and terrible flaw responsible for terminating benefits to the Nation's disabled.

Here is the situation we face: Social security disability insurance is the Nation's largest disability-connected cash benefit program. About 4.2 million Americans receive benefits, at a current annual cost of $17 billion. Just 10 years ago, 3 million Americans received $4 billion in benefits. Obviously, there has been explosive program growth.

In response to concerns about rapid increases in costs, poor administration, and work disincentives, President Carter in 1980 signed a law that requires Federal and State officials to review disability rolls, and to end benefits for those no longer eligible. This law required a dramatic increase in the amount of management review and oversight of the program. It was badly needed. Both the General Accounting Office and the Social Security Administration found lax administration, gross inconsistency in awarding benefits, and horrendous fraud. In fact, GAO estimates that as many as 20 percent of those now receiving benefits are clearly ineligible, at an annual taxpayer cost of $2 billion.

Prior to 1980, there were no legislative requirements for periodic determination of disability for or even most persons receiving disability benefits. This oversight was corrected by the 1980 law. Congress required disability beneficiaries to be reexamined at least once every 3 years, unless their conditions were expected to be permanent. The law also required disability determinations to be made according to Federal written regulations. States failing to comply would have their authority to make disability determinations preempted by the Secretary of Health and Human Services.

As a result of the 1980 law, the Social Security Administration has sent 1.6 million disability determination cases to States for review. Of these, 46 percent have had benefits terminated at the initial decision level. In other words, half of those now receiving assistance are being denied further benefits. Colorado is a classic example. In Colorado, 17,106 persons receive social security disability. About half of the cases have been reviewed, and State officials have terminated 40 percent of those cases.

Here is the problem: Both in Colorado and nationwide, many cases are being appealed to administrative law judges. Of cases appealed, more than 60 percent have had their benefits restored. There are a number of reasons for this high reversal rate: shoddy

staff work at the time of initial decision; beneficiaries can be represented by legal counsel before administrative law judges; the law judges use a different set of standards in determining disability; and other factors.

In any event, reversals are high, and benefits are being restored to a large number of disabled. Here is the problem: Once a State terminates benefits, benefits, and even though the case is appealed to an administrative law judges—and there is a better than 60 percent chance benefits will be restored, and retroactively.

What does all this mean to a person who is initially declared ineligible for benefits, only to have the benefits restored under appeal?

It means havoc through an unnecessary disruption of their life and income. Think about it. Imagine you received disability benefits for 8 years, then receive a notice that your case is being reviewed, then a notice that your benefits are being terminated. Benefits end, you appeal the decision, it takes 6 months for the case to be heard—then the benefits lost during appeal are paid back retroactively. In the meantime, you are behind on mortgage payments, rent, utilities—and the necessities of life.

Hence this legislation now before the Senate. The bill has two major provisions. It pays full benefits while cases are appealed; second, it gives the Secretary authority to slow down case review by States unable to give full and careful review to each and every case.

These reforms—coupled with a number of administrative changes now underway—will make more responsible the continuing disability review program. I urge immediate passage of this bill providing emergency benefits for the disabled.

Let me conclude with a word of thanks to a number of people responsible for this legislation. Senators COHEN and LEVIN spearheaded the efforts, with the assistance of Senator HEINZ, and others. Senator DOLE ably shepherded the bill through quick Senate Finance Committee passage. In drafting the final bill, I received helpful legislative guidance from the Disabled American Worker Security, a Colorado organization representing the State's disabled.●

● Mr. DOMENICI. Mr. Chairman, I rise in support of the provisions of H.R. 7093 which correct some of the recent problems in the social security disability program.

In 1980 Congress passed legislation requiring the Social Security Administration to review all nonpermanent disabilities once every 3 years. We were concerned about GAO reports that as many as 20 percent of the disability recipients did not meet the eligibility criteria, and that incorrect payments could be as high as $2 billion to $4 billion each year.

The administration shared our concern and made a great effort to implement the congressional mandate. But it has become clear that rushing this process has led to hardship for many disabled recipients. In its efforts to weed out those people who are quite able to work, the disability program has denied benefits to some individuals who clearly are not capable of self-support.

This is the problem we must must solve: How do we administer the program so that we can weed out the clearly ineligible, without harming those recipients who are too disabled to work?

The administration has announced some modifications in the way it handles reviews of disability cases that should substantially improve the situation. By easing the administrative burden and allowing States more time to develop evidence in each case, the disability units will make fewer errors that disadvantage recipients.

The legislation before us provides further protection for the beneficiary. It insures that cases will be developed fully, with adequate evidence, so that the disability recipient will receive the best possible decision.

For those disability recipients who do not agree with the results of the review, this legislation would allow them to continue to receive benefits while they appeal the decision. This provision protects recipients who are later determined to be eligiole from an unfair termination of benefits. To help preserve the financial integrity of the social security trust funds, the bill requires that benefits to which a recipient is not entitled be paid back. The provision is also time limited; Congress can deal with the problem if it persists when it considers the solvency of the social security system.

Mr. President, I believe this legislation strikes a critical balance between protecting disability beneficiaries from the abuse of hasty decisions while exercising our responsibility as guardians of the disability trust fund. It allows the administration to carry out the congressional mandate to weed out the many recipients who are able to work. At the same time it insures that no recipients will be unfairly denied disability benefits to which they are entitled.●

Mr. DOLE. Mr. President, I want to thank particularly Senators COHEN and LEVIN for their leadership in this area. I think this has been a constructive effort even though it did not go as far as some had wanted. In my view, however, it will give us time to take a hard look at the problem.

I want to commend all the interested Senators, but particularly Senators COHEN and LEVIN who started working on this early in the year. They led the effort to make what I consider to be appropriate changes in the disability review procedures.

Mr. HEINZ. Mr. President, this emergency piece of legislation is absolutely necessary, and I am pleased to see it come to the Senate floor today. I want to commend both Senator DOLE and Senator ARMSTRONG for their prompt and effective response to the problems with social security disability, which were brought out in great detail at the August 18 hearing of the Finance Committee. I am an original cosponsor of S. 2942, and I note with satisfaction that the basic provisions of this Finance Committee bill are very close to those embodied in S. 2731, the comprehensive continuing disability (CDI) reform legislation that Senator DURENBERGER and I introduced on July 14.

Having said that, I want to point out that this bill has a serious omission: It fails to require that the Social Security Administration—before it may terminate benefits—show that an individual who was correctly awarded disability benefits has either experienced significant medical improvement or else that the individual is the beneficiary of advances in medical or vocational technology which clearly make the individual capable of working, despite the impairment.

Such a provision is absolutely essential to insure that we do not terminate individuals whose medical conditions have not improved—and may even have deteriorated—since that time they were originally awarded disability benefits. A sample study done by the Social Security Administration found that only 51 percent of those removed from the disability rolls had actually improved; and 35 percent were in the same or even worse medical condition.

I remind my colleagues that the statutory definition of disability has not changed since 1967—and yet today, fewer people are being admitted to the disability rolls than ever before. Forty-five percent of the beneficiaries being reexamined are being terminated by the Social Security Administration.

In fact, as the Senator from Kansas knows, I had intended to offer an amendment to the debt ceiling bill on this very subject of medical improvement.

Mr. DOLE. I thank the senior Senator from Pennsylvania for the work he has done to bring the problems relating to the social security disability program to the attention of the Finance Committee and the Congress. I could not support an amendment on medical improvement at this time, however, regardless of the merits of such a proposal. Without a unanimous consent agreement, we could not bring this bill to the floor, and as the Senator from Pennsylvania has pointed out again and again, we need some emergency legislation to alleviate this problem. And time is running out.

Mr. HEINZ. Will the Senator from Kansas work next year with me and other Senators who I know share my concerns to develop medical improvement legislation which makes allowances for advances in medical technology?

Mr. DOLE. I shall certainly want to join you in looking at this issue next year—as part of a comprehensive review of the disability program. As the Senator from Pennsylvania knows, members of the staff of the Finance Committee have been exploring precisely such language, along with Aging Committee staff and the staffs of other interested Senators: ARMSTRONG, COHEN, LEVIN, DURENBERGER, METZENBAUM and RIEGLE. I think a lot of progress has been made in understanding the implications of such legislative language. We are not yet at the point where all the concerns about medical improvement have been resolved. But we certainly haven't ruled it out, not by any means.

Mr. HEINZ. Will the chairman of the Finance Committee agree to hold hearings early in the next session of Congress to deal with the medical improvement issue and the other major unresolved issues in the disability program?

Mr. DOLE. The issue is an important one, and I agree that we should hold hearings on this subject. We will address the issue early in next year's session.

Mr. HEINZ. I thank the distinguished Senator from Kansas. The continuing disability reviews are so riddled with problems that emergency relief is critical at this juncture. This bill does some of what needs to be done as part of comprehensive legislation. I support the bill as a vital first step to assure at least limited relief to some 640,000 individuals targeted for review in fiscal year 1983. But we cannot consider any CDI procedural reform complete until action is taken reflecting the need for explicit, stringent medical improvement language.

At this time, I ask unanimous consent to enter into the RECORD a letter from the American College of Cardiology in support of my proposed amendment on medical improvement. The endorsement by this prestigious group of medical professionals is certainly compelling testimony that medical improvement is a sound and necessary approach to meaningful CDI reform.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN COLLEGE OF CARDIOLOGY,
Bethesda, Md., September 20, 1982.

Hon. H. JOHN HEINZ III,
Chairman, Special Committee on Aging, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the American College of Cardiology, representing more than 11,500 physicians, scientists and educators, I am pleased to provide you and your committee with our views on an amendment to the Social Security disability program relating to termination of disability benefits.

We support your amendment to the Social Security disability program which is designed to limit or eliminate the termination of disability benefits by the Social Security Administration in the absence of clinical findings of significant medical improvement in an individual's medical condition. The College believes that the persons affected by your amendment should include those with demonstrable medical improvement due to healing, correction of the disabling impairment, absence of symptoms, or application of new and effective therapies.

In addition to the above, we would like to call to your attention the fact that there are some people who, when initially determined to be disabled by accepted medical criteria, never, or very rarely improve medically. Such is the case of heart patients whose conditions are correctable neither surgically nor medically. Therefore, for these patients, assuming proper initial adjudication and determination of disability, periodic review is both inappropriate and unnecessary. It also would not be cost effective. In addition, we believe that a person's mental status must be considered independent of other medical improvement.

Please let me or Roger C. Courtney, J.D., Director of Government Relations for the College know if we can provide you with any additional assistance.

Sincerely,
SUZANNE B. KNOEBEL, M.D.F.A.C.C.,
President.

Mr. LEVIN. Mr. President, the provisions of this bill are to become effective immediately upon passage. I have been asked, and would therefore like to clarify, how this bill will affect those persons who have been terminated, but who are presently in the process of appealing that termination decision. It is the intention of the sponsors, Senator COHEN and myself, that the disability benefits will be recommenced for those persons appealing their termination decision or those persons eligible to appeal their termination, once they file their appeal. We do not intend that benefits be paid retroactively, but that benefits be recommenced as of the date of this act. I would like to ask the chairman of the Finance Committee, the Senator from Kansas, Senator DOLE, if that is his understanding of how this bill will affect persons presently appealing.

Mr. DOLE. That is my understanding, Senator LEVIN. I am glad that we had the opportunity to clarify that for the record.

The PRESIDING OFFICER. Is all time yielded back?

Mr. COHEN. I yield back my time.

Mr. LEVIN. First, let me add my thanks to my friend from Kansas who has played a critical role in this effort to correct an egregious problem. Let me add that Senator LONG has been most helpful, as well.

Senator COHEN and I have been working on this matter now for many, many months. This is the end of a long process. It really started with some hearings before the Subcommittee on Oversight of Government Management that he chairs with such distinction, and of which I am the ranking member.

This legislation will prevent gross injustice to about 200,000 Americans who will be removed from the social security disability rolls who should not be removed. They will be reinstated by an administrative law judge, but that will come after 9 to 12 months of tremendous anxiety and suffering.

This legislation addresses an egregious, urgent problem. Individuals—who have been workers in this country—who have contributed to social security under the expectation that if disabled they will be protected—who subsequently have become totally disabled and therefore eligible for social security disability—are being unfairly and unjustifiably terminated from the program. They are caught in the dragnet of the social security disability review process which was well intended but disasterously enacted. That review process was not intended to kick eligible persons out of the disability program; it was intended to get rid of people who do not belong there.

The program is having the unintended effect of terminating eligible persons, and it is imperative that we do something now to alleviate the pain of this wrongdoing. This legislation will do just that—it will both slow down the number of cases being reviewed and of greater importance continue the payment of benefits until such time as an individual has the opportunity for a hearing before an administrative law judge. This latter provision would be effective only through September 1983, hopefully giving Congress sufficient time to address the underlying substantive problems in the review process.

Let me go into a little of the background of this issue.

Significant structural and managerial failings in the social security disability program have been well documented in critical reports and investigations by the House Ways and Means Committee, the General Accounting Office, and the National Commission on Social Security.

Without going into great detail, the problems in the program include: Unmanageably large caseloads at all levels; unreasonably long delays in processing cases and in scheduling appeals; conflicting standards for making disability determinations at the State and appeals level; inadequate managerial standards and procedures for acquiring and evaluating medical evidence.

When the current Social Security Administration management team assumed responsibility for this program in January 1981, it inherited that list of problems I just outlined and a program which had been managed primarily from crisis to crisis with little recovery between crises. And it also inherited the mandate that there be reviews every 3 years of those cases which had not been previously reviewed.

Rather than waiting until 1982 as the Congress had recommended, the Social Security Administration decided to accelerate the periodic review process. In March 1981, SSA started sending to the States the first of 357,000 cases to be reviewed by the end of the

year, although previously the States had only reviewed less than 160,000 cases per year.

The predictable and resulting overload of cases piled onto an inadequate and troubled process, lengthened delays, increased confusion over the standards for reviewing disability, and lead to hundreds of thousands of erroneous and unjust benefit terminations. The outcry from these results has come from all across the Nation.

Even normally dry statistics on what has happened speak with rare clarity and passion. In 1979 and 1980, the Social Security Administration reviewed approximately 160,000 cases for continuing eligibility. In 1981, the number rose abruptly with little warning to State agencies, to 357,000. SSA plans to send 567,000 cases in fiscal year 1982 to the States for review and, orginally, 840,000 cases in fiscal year 1983. This 1983 figure has recently been reduced by SSA to a projected 640,000. This is coupled with the fact that the SSA has not been staffed sufficiently, nor has it staffed the State agencies sufficiently, to handle the increased workload. Thus, it is no surprise that delays and backlogs have dramatically increased.

What is most striking, however, is the eventual outcome in the cases reviewed under this overburdened system. Between March 1981 and April 1982 SSA reviewed 405,000 cases and nearly half—191,000—were terminated from the program. This rate of termination far exceeds the 10-percent projection of GAO or the 20-percent projection of SSA. The tragedy derives from the fact that 67 percent or two-thirds of the appeals of termination decisions to the administrative law judges result in reversals a year or so later. During that 9 to 12 month appeal period, however, the terminated beneficiary suffers without benefits and without accompanying medical coverage. So, of the 109,000 persons whose benefits were terminated between March 1981 and April 1982, half of those persons will appeal the decision to an administrative law judge and two-thirds will be reinstated. That means 36,000 people will have to go without needed disability income and medical coverage for anywhere from 9 months to a year, when in fact they never should have been terminated in the first place.

If the present volume of reviews continues it will mean that through 1983, the Social Security Administration will have terminated and subsequently reinstated over 200,000 individuals who deserve to remain on disability. That is the real tragedy—the unnecessary and unjustified suffering of 200,000 severely disabled people and their dependent families whose benefits are stopped while they wait reinstatement to a program they never should have been dropped from in the first place.

Mr. President, as much as we do not want people in the disability program who do not belong there, we must, with at least equal fervor, want to keep truly disabled people in this program.

On June 24, Senator COHEN and I introduced a comprehensive reform bill designed to correct the problems and abuses in the disability review process. It would streamline and strengthen the procedures for reviewing cases, establish standards for reviewing eligibility, require uniformity in standards throughout the system, and require a showing of medical improvement or an error in the initial decision before benefits could be terminated.

But it will take some time for that legislation to get enacted. The Senate Finance Committee wants to study the issues carefully and review the various proposals for reform. Such study takes time, and for this Congress, time is running out. Meanwhile, eligible persons are continuing and will continue to be terminated from the disability program. Real substantive reform will have to wait for next year, but we in good conscience cannot let another several months, let alone a year, go by under the present circumstances. We have to provide immediate relief from a system we know to be unjust. We have to give the State disability offices and administrative law judges some breathing room to do competent reviews, and we have to lessen the hardship to those who pursue an appeal to the administrative law judge. We can do this by slowing down the number of reviews and continuing the benefits through the appeals stage.

I urge my colleagues to join us in support of this measure.

Before I close my remarks, I want to make it clear that this amendment, in terms of the standards now applied in disability reviews, does not change current law. It maintains the status quo. We are not, by this amendment, overturning current caselaw. We are merely stating that the language of this amendment itself does not address the question of whether or not there should be a showing of medical improvement.

I also want to take this opportunity to thank the many Senators who have strongly supported Senator COHEN and myself in these efforts, Senator HEINZ, Senator METZENBAUM, Senator RIEGLE, Senator SASSER, and Senator DURENBURGER.

Again let me thank the Senator from Maine for his great effort in this legislation. Since we will be continuing benefits to persons who appeal, I think we can now look at more comprehensive reform next year. We will have stopped the massive injustices while we are taking the necessary time to critically evaluate the social security disability program.

Finally, without long and complex work of the staff of a number of Senators this needed legislation would not have been accomplished. I particularly want to pay tribute to Linda Gustitus and Barbara Savage of my staff for their wonderful effort.

● Mr. PRYOR. Mr. President, I strongly support H.R. 7093, as amended by the Finance Committee. This legislation corrects serious inequities which now exist in the social security disability insurance program.

This needed legislation amends the Social Security Act to provide continued disability insurance and medicare benefits through the hearing and appeal process until a final decision on the case is rendered. It provides authority to the Secretary of Health and Human Services to determine on a State-by-State basis that the mandated review of nonpermanent disability cases every 3 years by the State disability determination offices may be slowed down where it is appropriate to do so. The Secretary will decide the appropriate number of cases to review in each State, based on backlog and staffing considerations. The legislation also addresses the current weakness whereby the State disability determination agencies do not consider complete medical histories of the individuals they review. The legislation instructs the Secretary to make every reasonable effort to seek and obtain all relevant medical evidence which exists within the preceeding 12-month period. The legislation also provides that the Secretary make semiannual reports to Congress with respect to the disposition of continuing reviews.

Each Member of Congress has heard of numerous horror stories involved in recent administrative efforts to weed the disability program of ineligible beneficiaries. No one can argue with a need for continuing reviews of nonpermanent disability recipients. However, when Congress mandated such reviews in 1980, I believe it did not intend the review process to cause so much unnecessary hardship for so many people. Literally, many thousands of individuals have had their benefits taken away although they are still disabled and their benefits are eventually reinstated after a lengthy appeal process.

When I questioned the Social Security Administration at at May 1982 hearing by Governmental Affairs Committee on this issue and in particularly about a case of a Vietnam veteran who had his jaw wired shut and had lost a leg, two fingers, his spleen and parts of both his stomach and buttocks, but who despite these injuries had his benefits terminated. I was told "mistakes do occur." Well, mistakes may occur but they are occuring all too often and they are resulting in horrendous hardships.

Several others who have been denied continued disability benefits have reportedly died shortly after the denial determinations. In September 1982, the Los Angeles Times documented 11 individuals who were cut off from or denied social security disability benefits because they were "well enough" to work and have died this year of the same disability for which they had re-

quested benefits. At least one of these reported deaths occurred in Arkansas. Some of the families of these individuals have plainly stated that it was the denial letter that killed the claiment.

Mr. President, I would like to share some of the findings of the field hearings which I held regarding the social security disability review process that was recently held in Fort Smith, Ark. on November 19. The field hearing was authorized by the Special Committee on Aging and the Governmental Affairs Subcommittee on Civil Service, Post Office, and General Services. I was particularly interested in holding the hearing in Arkansas because of the unique situation in the State regarding this program. The State of Arkansas has the second highest percentage of individuals age 65 and over—second only in the Nation to Florida. Arkansas has an unemployment rate of 10.6 percent which is the highest rate in region VI and ranks 48th in per capita income level. In addition to these nationwide statistics, 51 out of every 1,000 Arkansans are disabled and receiving social security disability.

Since the Social Security Disability Amendments of 1980, the annual cessation rate in Arkansas has risen to 48.7 percent, higher than the average cessation rate for the entire Dallas region, yet about two-thirds of the approximately 50 percent who appeal are eventually reinstated at some level during the appeals process.

Testimony at the hearing was heard from several witnesses who have had their benefits terminated and eventually reinstated. The lengthy appeals process that these individuals must endure can take anywhere from 6 to 18 months during which the beneficiary may be receiving no income and suffering from great financial, emotional, and physical strain.

Mrs. Anna Lee McNoel from Fort Smith who suffers from acute asthma, spastic colon, colitis, chronic anemia, and has only one arm was heard at the hearing. Her benefits were terminated and subsequently reinstated. She was informed by the Social Security Administration that she could do sedentary work. When Mrs. McNoel asked what that meant the worker replied, "You could be a secretary."

Several other beneficiaries also testified of the hardships, and confusion and stress they experienced while appealing initial denials of their disability benefits.

Other witnesses who testified included several local attorneys and physicians of the beneficiaries, the director of the State of Arkansas Disability Determination Office, and the three administrative law judges from the Office of Hearings and Appeals in Fort Smith. All had very shocking stories to relate regarding the resulting problems of the continued review process. They also endorsed several proposed solutions including much of what is in this legislation.

Although the Social Security Administration was requested to appear at the hearing to present testimony and answer questions, they refused my request.

I was very disappointed by the refusal and I feel that in this instance, they failed to respond adequately to the concerns of Congress and the approximately 2 million disability beneficiaries who are being reviewed over the next few years.

Mr. President, when I concluded the hearing in Fort Smith I pledged my support to make immediate corrections in this unfair system which has caused so much pain and anguish to so many individuals. I, therefore, strongly endorse this emergency measure offered today and I urge my colleague to also support this needed legislation.

Let me also add that I intend to pursue more lasting solutions to this problem in the 98th Congress.

I would also like to commend Senators LEVIN, METZENBAUM, DOLE, COHEN, and others for their work in developing this legislation and bringing it to the floor today.

I ask unanimous consent that a copy of my prepared statement at the Fort Smith field hearing, a relevant newspaper article from the Arkansas Democrat, and an editorial on the same subject from the Southwest Times Record be printed in the RECORD following my remarks.

The material referred to follows:

OPENING STATEMENT OF SENATOR DAVID PRYOR

I am pleased to be here today to hold a joint hearing of the U.S. Senate Special Committee on Aging and the Subcommittee on Post Office, Civil Service and General Services of the Governmental Affairs Committee on "Social Security Disability: The Effects of the Accelerted Review Process." I would like to thank both Senator John Heinz of Pennsylvania, who chairs the Aging Committee, and Senator Ted Stevens of Alaska, Chairman of the Governmental Affairs Subcommittee, for authorizing me to hold this official Senate hearing here in Fort Smith.

I believe it is most appropriate that we have brought this meeting to Arkansas, and particularly to Fort Smith. Our state has the highest disability rate in the nation—approximately 51 out of every 1,000 Arkansans are receiving Social Security disability. And, although Arkansas has the highest number of individuals applying for disability, it has the highest denial rate for initial applications.

With the institution of the continuing disability eligibility reviews which were mandated by the Social Security Disability Amendments for 1980 and which began in March, 1981, about 49 percent of those Arkansans who are being reviewed are being told they are no longer eligible for benefits. About two-thirds of the approximately 50 percent who appeal are eventually reinstated at some level during the appeals process.

These figures alone indicate that there are some serious problems associasted with these continuing disability reviews. But these statistics become even more alarming when viewed as representative of the thousands of individuals who have been erroneously terminated and whose lives are being needlessly and adversely affected.

One case which has received some notoriety wes reported in the Wall Street Journal. It involved a Vietnam veteran who had his jaw wired shut and had lost a leg, two fingers, his spleen and parts of both his stomach and buttocks, who despite these injuries had his benefits terminated. When I questioned a Social Security administrator about this case I was told "Mistakes do occur."

Another case, which was the focus of a recent Governmental Affairs Subcommittee hearing involved a man with acute diabetes who had only limited vision in one eye and suffered from the effects of a stroke, arteriosclerosis and heart disease. This elderly man was suddenly cut from the rolls after seven years. In August of 1981 he began the appeals process. Although the Social Security Administration was quick to terminate, the reinstatement was not so rapid. Finally in February, 1982, they admitted their mistake and agreed to restore benefits retroactive to July, 1981. Unfortunately, the claimant had died the previous November.

Several others who have been denied continued disability benefits have reportedly died shortly after the denial determination. In September 1982 the Los Angeles Times documented eleven individuals who were cut off from or denied Social Security disability benefits because they were "well enough" to work and have died this year of the same disabilities for which they had requested benefits. At least one of these reported deaths occurred in Arkansas. Some of the families of these individuals have plainly stated that it was the denial letter that killed the claimant.

A recent Arkansas Democrat newspaper article gave the details of several Arkansans who have experienced serious financial, mental and physical hardships when their benefits were denied. Mistakes do occur. But they are occurring too often and they are too damaging to the lives they affect. Many times there is no way for the claimant to continue to pay his rent or buy his food during the appeals process. And, in most cases when disability is cut off, so is the Medicare which is so important in paying the ongoing medical bills which many of the claimants continue to incur.

Before we more closely explore the causes of these problems, and, hopefully, some potential solutions, it may help to briefly review the history of the disability program itself, and the application and review process.

The disability insurance program had its beginnings in 1956, when the Congress authorized cash benefits for totally disabled workers 50 or over. Since then, benefits have been expanded to include dependents, the age-50 eligibility requirement for disability has been eliminated, and health benefit coverage through the Medicare program has been added. In addition, action was taken to raise taxes and further define the term "disability".

In 1980 the Congress passed the Social Security Amendments of 1980, which included provisions which sought to make certain management improvements. A cap was placed on total family benefits, benefits for younger disabled workers were reduced, Medicare benefit coverage was expanded and the Secretary of Health and Human Services was given the authority to set up performance standards for the state disability determination agencies to follow.

Another provision, which at the time of passage was considered only a minor change, was a requirement that the Secretary of Health and Human Services conduct reviews of all non-permanently disabled beneficiaries every three years. Permanently disabled individuals were to be reviewed

periodically as well, but the length of time between the reviews was up to the discretion of the Secretary. The three-year reviews came about in response to a General Accounting Office report that estimated that approximately 20 percent of all individuals on Social Security disability were on the rolls erroneously.

It is important to note that although concern over the financial stability of the Social Security system dates back to the late 1970s, the Disability Insurance Trust Fund is the only one of the three Social Security Trust Funds which is considered to be in good financial condition. In fact, this fund is predicted to show a surplus over both the short and long run, even under pessimistic economic assumptions. This may, to some degree, be due to the tightening up of eligibility criteria.

The reviews were originally scheduled to begin in January, 1982, and were expected to net $10 million in savings over fiscal years 1982 through 1985. However, the reviews were begun in March of 1981, and, despite an increase of 400 percent in the number of reviews between 1980 and 1982, staffing levels were increased by only 27 percent nationally. Social Security recently revised their savings estimates, saying that the reviews will produce a net savings of between $2.6 and $3.2 billion between fiscal years 1982 and 1985. I am certainly in favor of achieving government savings by eliminating ineligible recipients, but let us look more closely at what has transpired.

The Social Security Adminstration chooses which cases are to be reviewed on the basis of likelihood of medical improvement or ineligibility. Cases are submitted to the state office. The state office notifies the beneficiary of his upcoming review, and that he should submit evidence of his continued disability. If the claimant is found to be eligible by the state agency, he is notified of his continued benefits.

In the case where a beneficiary is found no longer eligible, he is informed of that fact and told of his right to submit additional medical evidence and reevaluation. If the beneficiary is still considered ineligible, he is notified and told that he has the right to appeal the decision within 60 days to an Administrative Law Judge. This is the first opportunity for the individual to meet face-to-face with a decision-maker. Should the ALJ rule against the claimant, the next step of appeal is through the Appeals Council, a 15-member panel within the Office of Hearings and Appeals which may rule on the ALJs decision. If the claimant is not satisfied with the Appeals Council decision his final appeal would be to the Federal district court.

The fact that so many individuals are being terminated from benefit status only to be reinstated during the appeals process indicates that the accelerated reviews have created some serious problems in the disability program.

Among them are:

The number of cases—in 1980 about 100,000 cases were reviewed; 650,000 will be reviewed in 1983 and thereafter;

Accelerated review—the reviews were instituted 10 months ahead of time, which did not allow enough lead time for staff preparation;

Criteria changes—individuals under review who have not improved medically may still be terminated due to changed criteria; and

Appeal delays—the appeals process may take anywhere from 6 to 12 to 18 months—during which most claimants are not receiving benefits.

These are only a few of the most apparent problems which we will explore today.

There has been widespread Congressional concern over this topic. Earlier this year I attended an oversight hearing of the Senate Governmental Affairs Committee on this topic, and the Senate Aging Committee, of which I am a member, has also explored the issue and has put together a report which outlines many of the problems in the review process.

There have also been some administrative reforms instituted as of October 1982. But I believe the time has come for the Congress to face head-on these many concerns. Just as financing of the Social Security System is one of the very most crucial issues we now face in terms of financial costs, so reform of the current disability review process is critical in terms of real human costs. This will be documented through the testimony we hear today.

I have already pledged my full support to legislation by Senators Cohen and Levin which would extend benefits through the appeals process. This legislation will be a key provision of legislation expected to be considered in the upcoming lame duck session of the Congress.

However, additional, more comprehensive legislation is necessary, and the Congress must address this in 1983. I intend to remain very actively involved in that process.

I look forward to hearing today's testimony.

[From the Arkansas Democrat, Oct. 31, 1982]

MASS DISABILITY CHECK CUTS "CAUSING A LOT OF GRIEF"

(By Carl T. Hall)

Out of every 100 Arkansans who get monthly disability checks from the Social Security Administration, about 49 are being found well enough to go back to work and are having their payments stopped.

Included in that category are people who apparently have no reason to complain. Some are even being investigated for fraud. Others have been ordered by the courts to repay the government, usually because they were receiving disability checks while working on the side.

But about half of those affected by the cutoffs do complain, and about 60 percent of the complainers are being upheld when they take their cases before administrative law judges, who hear appeals. Hundreds of those who lose ultimately sue in federal court.

"It's still too soon to tell how the courts are going to go on this," said James W. Stanley, a North Little Rock lawyer whose firm is handling about 75 pending appeals.

The new wave of scrutiny on disabled Social Security recipients began in early 1981, after the General Accounting Office audited the rolls and found evidence of gigantic waste and abuse.

People who didn't qualify were draining off an estimated $2 billion a year, the study said.

"The necessity of making these reviews was obvious," said Dee O'Neil, program analyst at the Dallas regional office of the Social Security Administration.

Social Security responded to the GAO audit by first conducting some studies of its own which confirmed that something needed to be done and doubled the GAO's estimate of waste. Congress stepped in and directed that all recipients be reviewed at least once every seven years. Many have to be reviewed every three years.

In the year that ended May 28, 5,054 Arkansans were asked to prove they were still disabled by Social Security's standards. Of that number, 2,709, or 54 percent, were judged to be "capable of performing some type of substantial work activity."

For the most recent three-month period, the figure dropped to 48.8 percent in Arkansas, which is still higher than the National average and is second-highest in the five-state region headquartered in Dallas. (Officials said they can't explain the variations.)

Critics complain that the system is unfair and clumsy. They say much of the money being saved on people judged healthy enough to work is being lost on the 30 percent of them who successfully appeal, a process that can drag on for as long as a year.

But the sharpest criticism, concerns the effect on the honest recipients whose lives are disrupted. Bewildered by the form letters and frightened at the prospect of losing their income, some people say they are being forced into bankruptcy or onto welfare, face foreclosure on or eviction from their homes only to be reinstated to the disability rolls after having fought the system for months.

"I can understand people's feeling," said Herbert R. Louks, Social Security district manager in Little Rock.

That comes as little comfort to people like Hazel Boyer, a 50-year-old North Little Rock woman who hasn't worked since 1977. She sufferes from lower intestinal problems that cause her to lose control of her bowels.

Mrs. Boyer said she got a termination letter in the fall of 1981 from the Social Security office. She continued receiving checks through March 1982 but now has to pay some of them back.

Last Christmas, Mrs. Boyer suffered a heart attack. She said she can't walk more than a half a block now without feeling ill. Social Security was told about the heart attack, but Mrs. Boyer who has only a fifth-grade education, said: "They didn't say nothing—just "you'll hear from us."

Right now with a federal suit against Social Security pending, Mrs. Boyer is surviving on $70 a month in food stamps and the help of her family. But she said her crisis has led to two divorces in the family and has strained everyone's resources.

Because of the Social Security Administration's decision, Mrs. Boyer also lost her right to Medicare and faces about $20,000 in unpaid medical bills.

"I can tell you it hasn't been easy . . . I'm always depressed. It was a terrible thing to do at the time they did it," she said.

Joe Bledsoe, 55, of Pettus said he worked at two jobs for about 20 years, putting in 16-hour days regularly as a washroom attendant and working in a packing house. He never finished the third grade.

Suffering already from a heart condition and high blood pressure, Bledsoe underwent surgery for kidney trouble in 1979 and had to stop working. He got his first disability check in November 1979.

His last check was in February. "I get $69 worth of food stamps every month and my wife has a part-time job," he said "But, she has to drive so far, most of it goes back into the gas tank. It's getting hard."

Social Security isn't welfare. All the people being cut from the disability rolls are sidelined workers who, after long absences from the labor market, are expected to find a job during a recession. Some are trying and failing, often hampered by their history of incapacity. "Every one of these disability cases makes a story in itself," Stanley said.

At the Social Security office in Little Rock, B. J. Hauser, assistant district manager, said these sad stories are also familiar

to him and his staff, but he added that is only part of the picture.

"We often think, 'Gosh, it would be nice to do something for this person.' Your heart may bleed for this person, but what can you do? He just doesn't fit into the program," Hauser said.

Administrators at the Little Rock office point with pride to their employees' record of generosity. The local Social Security office was the only federal agency to receive a gold award last year from the Pulaski County United Way Campaign.

"We're not a bunch of cold-hearted people," Louks said.

Lawyers representing the claimants don't necessarily argue with that point. But they say the system itself is wrong and needs changing.

"There is a need for this kind of review," said Anthony Bartels, a Jonesboro lawyer. "But right now, I'd say it's a little cold. They're just wholesale terminating people, and it's causing a lot of grief."

Bartel said he knows of two people, both on disability because of mental illness, who received termination notices and committed suicide soon afterward. However, he said there was no proof the suicides was a direct result of the cutoffs. Regardless, Bartels said, "There are a lot of injustices taking place."

A publication called Social Security Forum, produced by a lawyers' group, reprinted a letter recently from Joseph M. McGuire, a disability case examiner in Texas.

In the letter, McGuire said it was his opinion—based on nine years' experience—that "20 percent of the truly disabled and needy claimants are being victimized" in the rush to get the shirkers off the disabled list.

". . . We are doing irreparable damages to the lives of many of our fellow citizens." McGuire wrote.

Social Security administrators like Bill Shadle, staff assistant in Little Rock, agree that some "horror stories" may have occurred where obviously disabled people were cut off by mistake. But they say steps are being taken to improve the system.

A key change now being implemented will affect the manner in which initial notice of review is given to recipients. Personal letters will be used instead of form letters.

"The real horror stories, like people who were on life support systems and were cut off, will be nipped in the bud," by this change, Shadle said. The idea is not only to save money but to avoid serious mistakes in making disability determinations.

The personal contact also will allow officials to better explain the system to recipients.

Officials say they expect the rate of removal from the rolls to decrease by about 50 percent because, today, mostly people with treatable conditions have been checked. Those whose conditions are not likely to show any improvement with time or treatment, and who are more likely to pass the review, haven't been checked yet.

Standards are also being revised. People with certain types of health problems won't have to worry about losing benefits, O'Neil said, because the list of allowable health problems is being expanded.

Meanwhile, the U.S. District Court at Little Rock, has assigned the job of screening the burgeoning Social Security caseload to a federal magistrate. About 200 cases are pending.

Also, federal officials are investigating 79 cases in Arkansas where people may have deliberately gotten more disability benefits than they deserved.

In June, a Texarkana man convicted of failure to report work activity was ordered to repay $11,348 he had received while supposedly being unable to work.

A year before that, a Hot Springs man was convicted of using false information to obtain another Social Security card so that he could collect benefits and work at the same time. He was ordered to pay back $2,024.40.

"It's kind of hard for me to say I'm proud of what's been done when there's some guy who's been cut off, but the program has done what we expected it to do," said Louks.

A figure on the amount of savings that has been created by the removals isn't available yet, officials said. But O'Neil said the early indications are that the initial estimates will prove accurate.

"We're talking about maybe $4 billion in taxpayers' money here. This is something we had to do, and now that we've had some experience, we expect to be doing it better," O'Neil said.

IT'S "NO DEAL" FOR 75.7 PERCENT IN ARKANSAS

(By Mike Masterson)

James Biggs sat alone on the railroad tracks beside his rural trailer home. Frustrated and despondent over losing his Social Security disability benefits, he could not understand why the system that so willingly helped him for years had now cut him off cold.

Raising a shotgun barrel to his chest, he drew a long, deep breath and asked for forgiveness. His finger gently squeezed the trigger and a muffled explosion sent him reeling sideways onto the tracks. A dozen iron pellets had shredded his heart. He was dead instantly.

Three weeks later, an administrative law judge ruled that Biggs should never have been removed from the disability rolls. He granted the man's back benefits to the widow and family.

Biggs, a mental patient, died last year in Ola, Ark. Those who knew about his condition said he was the victim of a system in this state and nationwide that has cut thousands of persons from the disability rolls.

Records from the latest Commerce Clearing House Unemployment Report show Arkansas leading the nation in the number of people initially denied for disability benefits. Nearly 76 people of every 100 who apply in Arkansas are denied. Only Puerto Rico denies more.

Evidence abounds that many disabled Arkansans also have suffered enormous trauma after being cut from existing rolls during an ongoing review process that has become contradictory and confusing to almost everyone.

In addition Arkansas may be the only state, according to 1981 records, that does not have a state agency to monitor the handling of disability claims and the overall performance of the state's Social Security disability services office.

The absence of such a watchdog agency has been cited as one reason why Arkansas leads the nation in initially denying benefits. Critics charge that the disability office in Little Rock and those in other states exist only as "puppets" of the various federal regional Social Security offices in their quest to cut spending.

In Arkansas, state disability director Ken Patton, who is appointed by the governor, answers directly to regional officials in Dallas. The Dallas officials, in turn, respond to the national Social Security Administration headquarters in Baltimore, Md.

In other states, disability program directors must respond also to state agencies that exist as buffers between the needs of the state and those of the Social Security Administration, one source said.

All of Arkansas' disability claims and those in other states, are currently under review by congressional order. Every claim filed in Arkansas is automatically reviewed and "graded" in Dallas for adherence to the increasingly restrictive Social Security definitions of disability.

Patton said if the Arkansas office grants too many claims that regional federal officials disagree with, his office could be in danger of "being taken over and run by Social Security."

Patton said that while Arkansas may lead all other states in the number of initial claims that it denies, Arkansas also leads the nation in the number of disabled people on the rolls in proportion to population.

"About 51 of every 1,000 people in Arkansas are drawing disability," he said. "If you want to be fair, you'll print that."

He said his office denies so many initial claims because "more people apply for disability in Arkansas than anywhere else. For every 10 who apply in Oklahoma, we have 15 in Arkansas," he said. "Consequently, we have to deny more."

The director blamed the larger number of applicants here on the fact that opportunities for welfare assistance in Arkansas are limited, implying that many who seek disability are not actually disabled by definition. An administrative law judge who has heard hundreds of disability cases and who frequently overrules the claims denials from Patton's office during appeals, disagreed with the director.

"It doesn't matter whether 100 or 1,000 people apply for disability in Arkansas," he said. "When you're measuring our state's performance record, it is based only on the percentage per 100 who apply for benefits. And Arkansas is the best in the country—or the worse, depending on your perspective—for denying people initially."

The judge, who asked not to be identified, said he believed more people apply for disability in Arkansas "because there are a lot more elderly, minority and illiterate people here than in other states. And those people may well be disabled."

Records show that claimants who are denied benefits and who pursue the lengthy appeal process wind up having their benefits reinstated about 60 percent of the time.

Administrative law judges who hear those appeals traditionally have reversed decisions of the Social Security claims examiners in the majority of cases. Claims examiners collaborate with physicians retained by Social Security in making the initial determinations for each case. Their decisions are based on medical records.

Patton said that Arkansas in recent years has had an award winning office with "one of the best records in the nation for processing claims quickly and accurately in the eyes of Social Security.

"We really are not a so-called denying state with disability claims," he said. We actually allow a lot more claims in proportions to our population.

Patton said his Little Rock office denied his own uncle who was suffering with heart disease. "You can imagine how badly I felt a few weeks later when my uncle died of that same heart problem. But we didn't have any choice. He didn't meet the criteria for disability that Social Security has set out for us to follow.

"I wish we could allow everyone who applies, but we can't" he continued. "I know we have problems. But if we don't strictly adhere to the guidelines and definitions that Social Security has given us, they will come in and take over the office. That would mean 161 people out of work."

The situation has led Patton to unlist his phone number for the first time in 16 years. "I could take the abusive calls," he said, "but it was too much when they started on my kids."

In the *Congressional Record* of June 22, 1982. Patton said that a professional organization he belonged to estimated that "at least 20 percent of the recipients whose benefits are being cut in Arkansas are unable to work."

The state office of disability determination will review some 39,000 cases this fiscal year and about 44,000 disability cases next year, according to a recent report issued by Patton's office.

The story of James Biggs' suicide, while painting an extreme picture of how wholesale disability cuts have hurt Arkansans, is not an isolated example of such despair.

A similar thing happened just over a year earlier when Dale M. Barnett, a 58-year-old Baptist minister with a history of serious mental and heart disorders, shot and hanged himself in his Harrison home after losing his benefits.

An administrative law judge found that the claims examiner who decided to drop Barnett from the rolls had not considered all of the available medical evidence, particularly the more recent information about the man's heart ailment.

The judge reinstated the dead man's benefits that were later paid to his family.

Others like Wanda Coleman, 48, of Green Forest (who attended her October disability hearing in Harrison hobbling on a cane from the crippling effect of multiple sclerosis, wearing dark prescription glasses for impaired vision and taking medication to avoid a second heart attack) also cannot understand why they have been purged from the system.

The claims examiner in Little Rock who cut her name from the list of eligible recipients after six years wrote in an opinion that the woman "could sit eight hours a day and perform unskilled work in a clerical position." But the examiner had never seen the woman.

At the hearing before an administrative law judge, her back was hurting so badly that she could only sit for a few minutes at a time in the witness chair. When the judge asked her to pick up papers on a desk, her hands trembled uncontrollably and the papers shook. After a 20-minute interview, her benefits were reinstated by the judge, who said she should never have been cut in the first place.

Ralph Irvan of Fort Smith wasn't as fortunate. He died last year, 18 days after his disability application was denied by the Appeals Council in Arlington, Va. The council reversed the decision of an administrative law judge who, in turn, had overruled the initial state decision to dent Irvan's claim.

In his ruling, the judge said Irvan was so weak at his hearing that he could "barely hold his head up," and said the man had to be force fed by squeezing food down his throat. "Of course he was eligible," said the judge.

An autopsy showed that Irvan's internal organs were filled with milignant tumors.

The situation is such in Arkansas and elsewhere that claim examiners who initially approve or deny the application say they feel "trapped" between the increasingly restrictive Social Security Administration definitions of disability and the people they frequently must reject because of those guidelines.

Whereas up until 1977, people who applied for disability were examined for functional limitations, vocational problems and other such social limitations, today's decisions are based primarily on medical evidence that proves a person cannot work at any job anywhere in the country

There is no consideration given to the availability of such jobs in a given area, only that a person could perform a type of job "somewhere" in the United States.

Adding to the complications of those cut from the rolls of existing benefits is that Social Security disability payments are also tied to Medicare and Medicaid eligibility. So people losing their disability benefits are also cut from those rolls.

The claims examiners who are forced to adhere strictly to the Social Security definitions of what constitutes a disabled person are also frustrated at being frequently overruled by administrative law judges who routinely apply a more liberal set of criteria to judge a person's condition.

Ironically, there are also some claims examiners who secretly agree with the findings of those judges, according to discussions with several examiners at their national convention in Hot Springs. But none wanted to be identified for fear of political retribution. "The worse thing about it is that we, the claims examiners, come out looking like the bad guys because we are forced to follow these rigid eligibility guidelines," said one examiner.

If examiners fail to keep up with the large volume of reviews, they face the possibility of losing annual merit raises, one outspoken examiner said. "It makes most of us sick, but who wants to risk losing their raise by taking more time with their reviews?"

Even Patton acknowledged that in some cases he has called some administrative law judges to ask if they would overrule his office's denial decision when the disabled person's appeal reached the judge.

"I'm not proud of it," he said, "but I've done it because I knew that person was disabled, they just didn't meet the precise definitions we have to use."

Richard Simmons, deputy director for the Social Security Administration, said efforts are under way that would force the administrative law judges to use only the Social Security guidelines and definitions in making their decisions.

Observers believe the net effect of that change (while making the decisions more uniform), would tighten down even more on the number of disabled people who are reinstated by the judges.

Recent allowance rates for initial claims and CDI decisions, State-by-State, DI and SSI combined

[In percent]

	Allowance rate
Initial claims: [1]	
Rhode Island	41.5
South Dakota	41.3
Vermont	41.2
Nebraska	40.2
Alaska	39.5
Delaware	38.9
Wisconsin	38.6
District of Columbia	38.5
Minnesota	37.2
Utah	36.6
Arizona	36.5
Iowa	36.1
Hawaii	35.6
Indiana	34.7
Kansas	34.6
Maine	34.3
Connecticut	33.9
North Carolina	33.9
New Jersey	33.7
Missouri	33.0
Ohio	32.8
North Dakota	32.8
Illinois	32.6
Montana	32.5
Pennsylvania	31.9
New Hampshire	31.6
Colorado	31.6
Nevada	31.5
Wyoming	31.1
Virginia	31.0
South Carolina	30.9
Oregon	30.9
Washington	30.8
Florida	30.7
Texas	30.3
Tennessee	30.2
Idaho	29.6
California	28.9
Oklahoma	28.7
Kentucky	28.5
Maryland	28.2
Massachusetts	28.0
Michigan	27.8
Alabama	27.6
Mississippi	27.5
Georgia	26.7
New York	25.4
West Virginia	25.3
Louisiana	25.2
New Mexico	25.1
Arkansas	24.3
Puerto Rico	19.3
Initial CDI decision: [2]	
South Dakota	79.6
Alaska	72.8
New Hampshire	69.8
Hawaii	69.6
Nebraska	69.3
Minnesota	68.3
Vermont	67.6
Wyoming	67.6
Washington	67.0
Delaware	66.1
Maryland	64.5
North Dakota	63.5
Utah	62.6
Iowa	62.6
Colorado	62.2
Montana	61.3
Arizona	60.8
Missouri	60.4
North Carolina	60.2
Mississippi	60.1
Massachusetts	59.9
Oregon	59.7
Virginia	59.4
Connecticut	59.3
Kentucky	58.3
South Carolina	58.0
Ohio	57.9
Maine	57.8
Nevada	57.7
District of Columbia	57.4
Kansas	56.6
Alabama	56.2
West Virginia	55.9
Rhode Island	55.7
Indiana	55.4
Pennsylvania	55.3
Tennessee	54.8
Michigan	54.5
Florida	54.1
Georgia	53.5
Illinois	52.4
California	52.1
Idaho	51.5
Oklahoma	51.5
Wisconsin	49.8
Texas	49.0
Nevada	48.7
Arkansas	48.2
New York	47.5
Louisiana	46.8
New Mexico	38.8
Puerto Rico	29.0

[1] For fiscal year 1981.

[2] For period October 1981 to May 1982. Does not take appellate actions into account and excludes non-medical determinations.

Source: SSA, July 1982.

[From the Fort Smith (Ark.) Southwest Times Record, Nov. 14, 1982]

SOCIAL SECURITY CUTBACKS BORDER ON TERRORIZATION

(By Jack Moseley)

Grabbing away the crutches of a one-legged man and kicking him in the shin is not going to cure the problems of the Social Security System.

That makes about as much sense as trying to fix a blown engine by popping in a new oil filter. It just won't work.

But what a bunch of federal bureaucrats are doing to sick and disabled Americans is even worse than attacking a cripple. In some instances, it borders on terrorizing those least able to defend themselves, stripping them of dignity creating added anxiety for heart and lung patients, forcing them onto welfare rolls and forgetting they even exist. The coldest, cruelest form of man's inhumanity to man must be bureaucratic indifference in a government that is intended to be "of, by and for the people."

I'm talking about the current wave of underserved cutoffs of Social Security disability benefits here and across the nation. This will be the subject of public hearings in Fort Smith next Friday by Sen. David Pryor. Hopefully, those hearings will be a step toward correcting an awful mess that is inflicting misery on far too many people.

I'm a hard-nose when it comes to disabled and handicapped people. I have quoted John Kennedy that "life itself is not always fair." I have deplored welfare cheats and those who abuse other public benefit programs. I have argued that the taxpayers cannot afford to put elevators in every two-story school house in America for the benefit of those in wheelchairs. But I have never denied a public responsibility for those who cannot work because of physical and mental conditions totally beyond their control, especially for those who paid into the Social Security System the same as most of us.

As I understand it, here is what has happened:

Under the Carter administration, Congress passed a law ordering regular reviews of people drawing disability benefits to eliminate ongoing cash payments to people who had recovered from one disability or another and were still receiving monthly government checks. That made sense. Then under the Reagan administration, this review procedure was accelerated. Meanwhile, Social Security was getting into deep financial trouble, but the Disability Trust Fund was strong and healthy. It was so healthy, in fact, that last week money was borrowed from this fund to meet the financial obligations of Social Security to millions of retirees.

Now, bureaucrats charged with reviewing whether people are entitled to continued disability benefits appear to have worked themselves into a zealous frenzy to see just how many people they can disqualify, regardless of medical evidence to the contrary.

Look at a few local examples:

Under the law, any person with an I.Q. of less than 60 is considered disabled. But that didn't carry much weight for a 47-year-old man with an I.Q. of 43. Cared for by his mother, who happened to be hospitalized when his benefits were cut off, this man appealed to an administrative law judge and won back his benefits. But until the appeal hearing, there was no money coming in for his care.

A local man was sent to a doctor selected by the government. The physician found that his back was 75 percent disabled. But the bureaucrats ruled that he was 75 percent physically fit and chopped off his disability.

A western Arkansas physician was angered that his heart patient was being cut off disability. "How can you stupid bastards even consider that this lady is capable of any type of gainful employment?" he wrote. The lady had a medical history showing her right ventricle is one and a half times normal, her heart pumps at only 40 percent normal, she is physically weak and in constant danger of a heart attack.

Would you believe this? A 23-year-old man, borderline retarded since brain surgery and blind in one eye (limited vision in the other), is confined to a Fort Smith nursing home and has to be told when to eat, bathe and dress. But he had his benefits cut off.

Fortunately, people like this have a way to fight back, even though they and their families find themselves without benefits while they're fighting. They can appeal the bureaucrats' decisions to one of three local administrative law judges who reexamine the evidence. These judges, by the way, usually are the first representatives of the federal government to actually see those appealing their cases face to face in an open, on-the-record hearing. The decisions to cut off benefits have been made by bureaucrats shuffling stacks of government forms that frightened, confused, and threatened the people who tried to fill them out.

Now, even the judges are receiving pressure from Washington to hold down the number of cases in which they reinstate benefits for disabled people. There have been rumors that the Fort Smith appeals office "could be closed" if things don't go more to the whims of Washington. All rulings against the bureaucrats from here now automatically go to Washington for yet another review.

Before anyone gets the idea the local law judges are just a trio of bleeding hearts wildly giving away Social Security dollars, consider a few more facts. Arkansas has the lowest rate of approved disability claims in the country. And it is the fourth lowest among the 50 states in reinstating benefits for those who appeal bureaucratic decisions to halt payments. The local judges do reinstate more disability claims than their counterparts in other Arkansas cities, but U.S. Rep. John Paul Hammerschmidt is the only Arkansas congressman who has a personal representative helping disabled constituents gather and present medical evidence in appeal cases. That means local people frequently have their appeals better organized and feel more confident because they have a member of the congressman's staff sitting next to them at the hearing.

There is no question that the Social Security system is in serious trouble, and the very real problems must be faced. No one is suggesting that people who do not deserve benefits should receive them.

But insanely whacking benefits from people those benefits are intended to help is WRONG. That will not solve Social Security's problems. It makes about as much sense as re-arranging the deck chairs on the Titanic; it will not change the ultimate fate of the ship.

Meanwhile, people right here where we live are hurting and being hurt because someone in Washington is playing games with statistics spit out of computers. Each of those statistics is a human being. Don't they deserve to be treated as such?

● Mr. RIEGLE. Mr. President, I am extremely pleased that finally after 22 months since this administration started reviewing social security beneficiaries, we are beginning to take steps to correct this urgent problem. Many of us in Congress have been fighting for months and months for immediate action, and now, almost 2 years after the onset of the continuing disability investigations, we are taking the first steps toward seriously dealing with this wretched and heartbreaking situation.

I am convinced that all Americans would be outraged if they were fully aware of congressional inaction in the face of the unnecessary suffering and hardship that millions of our disabled citizens have experienced and continue to experience as a result of the way the administration is implementing the disability reviews. I will not rehash the stories of those individuals found no longer disabled by social security who a few days or months later have died from their disabilities. Nor will I relate the numerous stories of disabled persons who, upon learning that their benefits were terminated, committed suicide. I also will not now supply my colleagues with a list of the hundreds of thousands of beneficiaries who, after having their benefits stopped, had these critical funds restored by an administrative law judge after months and months of appeals. The entire process implemented by this administration has been needless and heartless and must be changed.

While H.R. 7093 clearly does not solve the problems in our social security disability program, it does nonetheless provide relief in the form of continuing benefits through the appeals process. It does not adequately address the manner in which the Social Security Administration is implementing the review process and it fails to confront the serious problem of the high reversal rate we are seeing for beneficaries who chose to appeal their termination decision. However, hopefully, during the opening weeks of the 98th Congress, we will swiftly move to enact comprehensive legislation that will not simply patchup but will reform the unacceptable practices and procedures that are inflicting serious harm on a group of Americans least able to fight back.

Mr. President, it is important to note that it was not the intent of the section of the amendment to H.R. 7093 dealing with the meaning of disability to alter the standards relating to the determination of when an individual is under a disability. The question relating to the legality of the current standards of determining when an individual is under a disability should be undertaken at the time Congress considers comprehensive legislation during the 98th Congress.

Mr. President, recognizing that H.R. 7093 is simply a first step in dealing with a situation that clearly requires comprehensive reform, I urge all of my colleagues to support this meas ure.●

SOCIAL SECURITY DISABILITY REVIEWS

Mr. ROBERT C. BYRD. Mr. President, 2 years ago the Congress enacted legislation to phase in periodic and

systematic review of social security disability cases. This legislation was intended to improve the administration of the disability program, by insuring the removal of beneficiaries from the disability rolls who had medically recovered and could return to productive employment.

The reviews were to be phased in over time so that State agencies would be able to prepare for greatly increased workloads. However, when the Reagan administration took office, it moved to accelerate the review process. In the past year, hundreds of thousands of diabled individuals have had their disability benefits abruptly terminated, with little advance notice, only to have benefits reinstated after many months of waiting to appeal the termination decision.

Many of those whose benefits were cut have never seen the State examiner, but have had their case decided by a review of their file, which often does not contain recent or pertinent medical information. The waiting period for a review of the termination decision can be as long as a year. And, for many people—who are without other income—this is simply too late. Seriously ill people are forced to sell their homes or take other desperate, irreversible actions. Regrettably, most of us in this body have heard of suicides by individuals, who grew terribly despondent during this waiting period limbo. Other people have actually died from their disability during this time.

I know of one constituent of mine, Mrs. John Carter, whose plight was highlighted by the Charleston Gazette for the people of the State. Mrs. Carter attempted to go back to work when her disability benefits were cut. She worked less than 3 days before she collapsed. Mrs. Carter aggravated her disabilities in her employment attempt and subsequently underwent surgery. It is unclear how permanent the health damage will be. I ask unanimous consent that the August 29 article on disability from the Charleston Gazette be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. A majority of individuals who are being forced to undergo this painful process are truly disabled. Almost two-thirds of those who appeal have their benefits restored.

This legislation will give the Congress time to study the disability review process. More legislation may be needed to insure that Social Security Administration officials do not continue a pattern of cruel benefit terminations in an effort to meet overzealous cost savings goals.

Mr. President, all social security beneficiaries have worked and paid into the disability trust fund in the same fashion they have paid into the retirement fund. The social security commitment is the same in each case. These people have earned and been promised the right to modest economic assistance in the event they become disabled. They should be secure in this right.

With the Government rolling back on this commitment to disabled Americans, it further undermines confidence in the social security system and leads to distrust of Government by the American public. I hope passage of today's legislation is still another step toward instilling and restoring confidence. Without a doubt, we will be taking others in the not too distant future. I commend Senators LEVIN, METZENBAUM, DOLE, and COHEN for the spirit in which this bipartisan compromise legislation was reached.

(EXHIBIT 1)

[From Outlook, Aug. 29, 1982]

DISABILITY—QUESTION OF BENEFIT ELIGIBILITY LEAVES THOUSANDS IN LIMBO

(By Beth Spence)

Two months after her disability Social Security benefits were cut off, Anna Carter went back to the work she knew best—waitressing.

She lasted less than three days before she collapsed and had to be carried out of the restaurant by her disabled husband, John.

That was in May. Today the 51-year-old Mrs. Carter is in a wheelchair with both her legs in knee-high casts. She has had one operation on her feet and faces further surgery, but she already has been told she probably will never again walk unaided.

"I went back to work because I was thinking we couldn't make it on what John gets a month on his disability," said Mrs. Carter, a serene-looking woman with a hint of Virginia in her Monroe County speech. "We were have a hard enough time with both our checks."

Mrs. Carter's case is not unique. Across the country, thousands of disabled people have been cut from the Social Security rolls during the past year and a half.

Between May 1, 1981, and May 28, 1982, state disability determination boards terminated benefits for 106,862 persons—or more than 44.4 percent of the cases reviewed. In West Virginia, 1,509 people lost their benefits.

A majority of the cases—Social Security officials say 55 percent—eventually are won on appeal, but lawyers representing disabled clients are frustrated with the length of time it is taking to process the appeals.

They also say tremendous pressure to deny claims is being placed on examiners who make the determinations and on administrative law judges who hear the appeals.

Joseph D. Coffman, manager of the Charleston Social Security office, said the reason for the increased number of re-evaluations is 1979 congressional action requiring review of all claims at least once every three years to make sure recipients still qualify for benefits.

Thomas H. Zerbe, managing attorney for the West Virginia Legal Services Plan in Lewisburg, argues that the review is being used as an excuse to terminate benefits for recipients whose conditions have not improved.

"Sometimes this results in a disabled individual being forced to go against his doctor's advice and return to work while his case is pending," Zerbe said. "The consequences can be tragic."

Anna Carter can attest to that. A sickly child, Mrs. Carter can remember that her father had to carry her from room to room when at 9 she developed a condition doctors diagnosed as an inflammation of the bones in her legs.

Through the years, the infection has recurred in different parts of her body. Mrs. Carter says the initial attack left her legs so weak that even as an adult her ankles turn if she steps on something as small as a matchstick.

At 16 she quit school to get married and she and her husband moved to Virginia. By the time she was 19, she was divorced, on her own, and had a child to support.

She took a job waiting tables, but was soon forced to take a second job at a ribbon factory to make ends meet. For six years, she worked 16 hours a day—an 8-hour shift at the restaurant, followed by an 8-hour shift at the factory.

When the ribbon factory closed, she worked for three years at a book-binding factory, standing on her feet 8 hours a day.

During that time her health began to deteriorate. Between 1949 and 1980 Mrs. Carter had 23 operations, including the removal of 16 inches of her intestines, part of her stomach, her gall bladder, a disc from her back and a large gland from her neck.

In addition, she was diagnosed as having angina, for which she takes nitroglycerine, and an aneurysm in her temple.

Mrs. Carter qualified for Social Security disability benefits in 1973, after she had to quit working at the small grocery store she and Carter, her second husband, bought after they were married in 1967.

One of her more severe health problems is dumping syndrome, a condition in which food passes rapidly through the body. She developed the problem after 75 percent of her stomach was removed in 1963.

"When I eat, it goes right through me," she explains, "I got to where I only weighed 98 pounds and the doctor told me to eat six times a day and lie down for an hour after I eat."

By following her doctor's instructions, Mrs. Carter had managed to spend more than a year off the operating table when she was told by Social Security officials to go for an examination early in 1981.

"The doctor told me to move my neck and hands, which I did, and touch my toes, which I couldn't do, and that was the examination," she explained.

In February, examiners determined that Mrs. Carter again could work in a store, and she was told that her checks would be cut off in March and her Medicare benefits would end in April.

"I knew I had to go to work," she said. "I thought I was lucky to find the job I did."

The first day, her heels bothered her, but she thought they would be all right, that she just had sore feet because she wasn't used to standing all day.

"For the three days I worked I never ate a mouthful of food because I knew the owner would let me go if I had to keep going to the bathroom," Mrs. Carter explained.

The second day her feet were worse. "The third day I just couldn't put weight on my heels. John had to come and get me and carry me out. If he couldn't have helped me, I would have had to crawl."

Her doctor said the infection, which has spread through her body since childhood, had been touched off again and she should not bear weight on her feet.

"But you know how it is, sometimes you have to get around," she said. "I let the dog out and she was in heat. A male dog came around and I just forgot about my feet. I took two steps toward the dog and I must have hit the back of my heel on the doorsill. The tendons snapped in both my heels."

Mrs. Carter had to have the tendons wired back to the bones in her ankles. Complications developed in her right leg, which doctors have told her will require further surgery, and a large sore has appeared on her ankle.

"I asked if I would walk and the doctor said he was afraid I'd never walk like I did," she said.

As Mrs. Carter's medical bills mount and her appeal drags on, she and her husband are trying to sell their two-story farmhouse just outside Alderson in Monroe County. They plan to move to Virginia and care for Carter's aging mother in exchange for food and shelter.

"We had planned on this for our retirement home," said Carter, who has had a heart attack and triple bypass surgery. "We've been more contented here than anywhere we ever lived. But we just can't make it."

Social Security officials are convinced that situations like Mrs. Carter's are rare.

"We are concerned that some people have been taken off the rolls who are indeed disabled, although we believe that number is small," said John Trollinger, deputy press officer for the Social Security Administration in Baltimore.

Trollinger said the agency has found an error rate of only 3 percent in monitoring state decisions.

In West Virginia, Social Security disability claims are reviewed by the Disability Determination Section of the state Division of Vocational Rehabilitation.

A.J. Allen, administrator of the DDS, said reviews show that the conditions of a number of individuals have improved, making them no longer eligible for benefits. Others weren't disabled in the first place, he said.

Allen said he believes "far too many claims" denied by examiners are being reversed by administrative law judges.

Asked if the Reagan administration has set a national goal of terminating 25 percent of the cases reviewed, Allen said bruskly, "No. But we'll probably terminate more than that."

Trollinger cited a number of reasons for the high number of reversals by administrative law judges.

"Sometimes the condition may have worsened," he said. "Sometimes medical evidence can be presented that wasn't available when the decision was made to terminate benefits. And when the administrative law judge hears the case, he or she has the ability to look at the person. Sometimes you can tell a lot more when you see someone."

For Janet Friedman, the paralegal in Lewisburg who is handling Mrs. Carter's appeal, the reversals aren't happening quickly or often enough.

"I feel that attitudes are changing," Ms. Friedman said. "I'm just not winning the cases I used to win. One examiner as much as said to me that he wanted to decide the case in favor of the client, but he was afraid it would be kicked back to him.

"It's a waste of time, energy and money," she said. "They hired more people in DDS when they had to start making the decisions, they get rooms at Holiday Inns, hearing assistants are paid. Where's the saving? It seems like the money is being redirected instead of going to recipients."

A case that was decided quickly, according to Ms. Friedman, involved a client whose benefits were cut off in March. His hearing was Aug. 11 and the decision to restore his benefits made on Aug. 19.

But that was "unusually fast," according to Zerbe. More typical is the case of a client who was terminated in March 1981, had a hearing in November and didn't get a decision until the following June.

"So many of these people are being asked to do without benefits for more than a year and, because our funds have been cut, we're having to turn away clients," Zerbe said. "There's not only an injustice here, but peoples' ability to respond legally is being cut off."

Zerbe said examiners and administrative judges have admitted privately they are under a lot of pressure to get people off the disability rolls.

He said decisions in favor of the clients—both by DDS officials and administrative law judges—are being carefully scrutinized, while decisions against clients are not being monitored.

Trollinger said his statistics show more reviews of cases decided against clients. "We have reviewed twice as many reviews that terminated benefits as those that allowed benefits," he said.

Social Security "is such a political football and no one wants to cut old age and survivors off," according to Zerbe. "This seems to be a way that required no congressional action and no one had to take the heat."

No one, that is, except people like Anna and John Carter, who can't hide their bitterness toward the Reagan administration.

Wiping tears from her eyes, Mrs. Carter said, "When I woke up after that last surgery, if President Reagan had been standing at the foot of my bed, I would have told him what I thought. Just think, all of this for 2½ days work."

"This is all on account of Reagan," Carter said. "Because of him, what walking she'll be doing will be on crutches."

● Mrs. HAWKINS. Mr. President, the much needed benefits of disabled individuals in this country are being unjustly terminated due to the Social Security Administration's continuing disability investigation (CDI) process. To correct this situation, I have cosponsored a measure that imposes a temporary, moratorium on new disability terminations under the program of accelerated CDI's. It is essential at this time to remedy the Social Security Administration's (SSA) procedure for determining continuing disability for those that receive disability benefits. Today we have an opportunity to pass reform legislation on the CDI process.

In 1980 Congress passed the Social Security Disability Amendments of 1980. This legislation mandated the SSA to review the eligibility of current recipients at least once every 3 years unless the disability was permanent. In March 1982 the SSA accelerated the periodic review process. The subsequent increase in the number of cases reviewed nationally is astounding: In 1980 the SSA reviewed 185,000 cases for continuing disability; in 1981 351,000 cases were reviewed; in 1982, 567,000 cases were reviewed; and the estimate for 1983, is 806,000 cases.

The review program was enacted in good faith—to insure that disabililty benefits were awarded to those truly in need. The effect of the periodic review of disability cases, however, was disastrous. Between March 1981 and April 1982, the SSA reviewed 405,000 cases and 45 percent of those cases had their disability benefits terminated. Of those who appealed their terminations, 67 percent had their benefits reinstated. The irony is that eligible disabled individuals were temporarily deprived of benefits—and waited 9 to 12 months for eventual reinstatement. The only alternative for some was to accept welfare. Worse yet, because of the high volume of CDI's, reviewers no longer have the time to make considered and equitable decisions.

In May the Subcommittee on Oversight of Governmental Management held hearings to determine why benefits were discontinued, only to be reinstated at a later date. Later, in August, the Senate Finance Committee held hearings on the social security disability insurance program. As a result of these hearings, several bills were introduced to correct the inequities caused by the acceleration of CDI's. Senator HEINZ introduced S. 2731, which affects the CDI process in basically three ways: By first, improving the managment and administration of CDI's; second, by providing more protection against improper terminations; and finally by helping those legitimately terminated to return to the labor force more easily. In addition, Senators METZENBAUM, MOYNIHAN, and CHAFEE introduced S. 2739, which makes four basic changes in the current SSA review procedure. First, there could be no termination unless a recipient's medical condition improved or the original determination of disability was clearly erroneous. Second, the SSA must attempt to obtain medical evidence from the treating physician before requiring a consultative examination at the taxpayers' expense. Third, even though disabilities are not listed in the SSA regulations, they shall be considered of equal severity. And finally, benefits will be continued pending the final decision by the administrative law judge. Other valuable proposals have been introduced, too.

However, while these proposed solutions are most constructive, we must provide our disabled with a speedier solution.

I am therefore pleased to support H.R. 7093 today. The provisions contained in H.R. 7093 will give our disabled immediate, temporary relief. This measure does so by: First, continuing payment of disability benefits through appeal; second, permitting the Secretary to slow the CDI process; third, requiring the Secretary to review medical evidence for the 12-month period preceding the CDI, and finally, requiring the Secretary to report semiannually on various aspects of the CDI process. Although this legislation is intended to be only a short-term solution to the CDI problem, I fully support it. It provides badly needed relief to those who receive disability benefits and it gives Congress time to find an acceptable permanent solution to the review procedure.●

The PRESIDING OFFICER. The bill is open to further amendment. If

there be further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. Is all time yielded back on the bill?

Mr. COHEN. Yes.

Mr. LEVIN. I yield back the remainder of my time.

Mr. COHEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read a third time, the question is, Shall it pass? The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Maryland (Mr. MATHIAS), the Senator from Illinois (Mr. PERCY), the Senator from Indiana (Mr. QUAYLE), the Senator from Delaware (Mr. ROTH), the Senator from Vermont (Mr. STAFFORD), the Senator from Idaho (Mr. SYMMS), and the Senator from Wyoming (Mr. WALLOP), are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY), would vote "yea".

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Texas (Mr. BENTSEN), the Senator from Delaware (Mr. BIDEN), the Senator from California (Mr. CRANSTON), the Senator from Illinois (Mr. DIXON), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Colorado (Mr. HART), the Senator from Alabama (Mr. HEFLIN), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Maine (Mr. MITCHELL), the Senator from Georgia (Mr. NUNN), the Senator from Rhode Island (Mr. PELL), the Senator from Michigan (Mr. RIEGLE), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN), the Senator from Michigan (Mr. RIEGLE), the Senator from Illinois (Mr. DIXON), and the Senator from Rhode Island (Mr. PELL) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 70, nays 4, as follows:

[Rollcall Vote No. 394 Leg.]

YEAS—70

Abdnor	Ford	Melcher
Andrews	Garn	Metzenbaum
Armstrong	Glenn	Moynihan
Baker	Gorton	Murkowski
Baucus	Grassley	Nickles
Boren	Hatch	Packwood
Boschwitz	Hatfield	Pressler
Bradley	Hawkins	Proxmire
Brady	Hayakawa	Pryor
Burdick	Hollings	Randolph
Byrd, Robert C.	Huddleston	Rudman
Cannon	Humphrey	Sarbanes
Chafee	Inouye	Sasser
Chiles	Jackson	Schmitt
Cochran	Jepsen	Simpson
Cohen	Kassebaum	Specter
D'Amato	Kasten	Stennis
Danforth	Kennedy	Stevens
DeConcini	Laxalt	Thurmond
Denton	Leahy	Tower
Dole	Levin	Warner
Durenberger	Lugar	Weicker
East	Mattingly	
Exon	McClure	

NAYS—4

Byrd, Harry F., Jr.	Helms	Zorinsky
	Long	

NOT VOTING—26

Bentsen	Hart	Percy
Biden	Heflin	Quayle
Bumpers	Heinz	Riegle
Cranston	Johnston	Roth
Dixon	Mathias	Stafford
Dodd	Matsunaga	Symms
Domenici	Mitchell	Tsongas
Eagleton	Nunn	Wallop
Goldwater	Pell	

So the bill (H.R. 7093), as amended, was passed.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Will the majority leader yield for a moment?

Mr. BAKER. Yes.

Mr. LEVIN. I ask unanimous consent that Senators BOREN, LEAHY, BOSCHWITZ, DECONCINI, and JEPSEN be added as cosponsors of the amendment which we adopted as part of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The title was amended so as to read:

"An Act to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes.".

lands, will only worsen as we are successful in stopping the drug before it reaches our borders. Currently, we are able to locate, at best, 10 percent of the domestically grown marihuana—obviously a low-risk factor for the grower. Second, there is a tremendous need for greater coordination between Federal, State, and local law enforcement officials. In addition, greater financial and manpower resources must be committed to bringing the cultivation under control.

Finally, we must begin immediately to improve our knowledge of where and how much of the plant is being grown in the United States. The paucity of reliable data is appalling. How can we target resources effectively if we do not even know where our target is?

I think we should all be grateful for a recent issue of Newsweek magazine which made a rather intensive study of this matter in an issue 3 or 4 weeks ago.

We have developed technology in our satellites, which we are only beginning to put to work. The time to move is now, before the problems gets any further out of hand.

I shall ask unanimous consent that three articles regarding domestic marihuana cultivation be printed in the RECORD. There are interesting articles and will bring to my colleagues a flavor of just what is going on in the marihuana fields of California.

Let me call attention to the fact that California is only one of the many States in which marihuana is being grown in enormous quantities. Hawaii, Mississippi, Florida, and many other States are involved in this same activity.

These stories are from the San Francisco Examiner, the Bureau of Land Management newsletter known as BLM Newsbeat, and the third story is also from BLM Newsbeat.

Mr. President, I ask unanimous consent to have printed in the RECORD these three articles to which I have made reference.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the San Francisco (Calif.) Examiner, Nov. 7, 1982]

SEARCH AND DESTROY: VIET-STYLE WAR AGAINST POT FARMERS

(By Ivan Sharpe)

GARBERVILLE, HUMBOLDT COUNTY—The white-and-gold Huey helicopter with its tense flak-jacketed and heavily armed occupants zoomed over the ridge with a thumping roar just as it did 20 years ago on Vietnam combat missions.

San Francisco Police Sgt. Richard Cairns, one of the seven men squeezed into the cabin, gripped his M-16 and prepared to jump. He was ready to blast at anyone who took a shot at him.

As a narcotics officer, he'd seen the little drug wars that often erupted on San Francisco street corners. The growers claimed they didn't hurt anybody, but he didn't agree.

He didn't think of himself as a crusader, but he felt a grim satisfaction. He couldn't do anything about heroin in Mexico or cocaine in Colombia, but he was going to enjoy cutting down some of the most highly prized pot in the world right here in Humboldt County.

Here they were, living in their little utopia, he thought, cultivating and harvesting the bright-green sinsimella plants as if they were tomatoes or turnips. Well, the law said growing marijuana was a crime.

And if some hippie decided to make a stand in his pot field, he was ready to defend himself like everybody else in the state Bureau of Narcotics Enforcement's tiny paramilitary task force.

It was a clear day, just after lunch. A KERG-FM talk show in Garberville was being swamped with angry calls from pot growers, who talked excitedly of military-style assaults and helicopters blackening the skies. But there was only one chopper, albeit busy, lent by U.S. Customs to the state.

The shattering whump-whump-whump of the chopper as it cleared the treetops north of Alderpoint and about 20 miles northeast of Garberville paralyzed the small family in the trailer atop the ridge.

Cairns could see a man outside the trailer squinting at the helicopter hovering a few feet above the ground. As he turned and started to run back toward the trailer, Cairns jumped and charged after him up the hill, yelling to him to halt.

In moments, Cairns had the man on the ground with his arms handcuffed behind his back.

The initial assault team had split up after jumping out of the chopper. Two had headed down the hill toward the pot gardens. Two had joined Cairns. They pointed their guns at the trailer and yelled at its occupants, "Police! Come out. We have a search warrant."

Nothing happened. They could see figures moving inside. The tension grew. They imagined guns being aimed at them behind the windows. A state agent banged on the door.

Finally, they came out—cowed and frightened. A 49-year-old woman and her two small children, and two other women.

The dichotomy between growers and cops in southern Humboldt County is curious. Both sides firmly believe with moral certainty that right is on their side. And they are downright paranoid about the other.

The Garberville area is like the Wild West, where long-haired men with guns—former hippies, refugees from the cities and the campuses, adventurers, thieves—and their sometimes scruffy women righteously defend lifestyle and property.

Kent Pollock, publisher of the Star Route newspaper in Redway, is sympathetic to the growers. He believes marijuana should be legalized.

Winner of numerous journalism awards, including a shared Pulitzer Prize when he worked on big newspapers back East, he bought the tiny bimonthly seven months ago and increased circulation to 3,600. A popular feature is a full page of "Marijuana Obituaries," which detail raids in the county (this year deputies seized a record 12,894 plants).

"Part of the problem up here," he explains, "is that both sides don't understand each other. Of course there are some crazy growers who would shoot at planes. And it would be foolish to ignore that. On the other hand, the vast majority of people growing pot in the hills are peaceful families with children.

"What I think is wrong here is that this whole problem is a manifestation of a law that's out of kilter with society. It's that simple. Here we are in an era when a joint is no big deal and yet we have agents in the woods armed and camouflaged as if they were fighting in Vietnam.

"And yet there are thousands up here who used to be on welfare and now grow pot. They don't feel like criminals. They are producing what this country wants. Are these raids worth the real social and mental havoc they create?"

This widely-held view has divided the county's officialdom, chiefly along the lines of how much outside law enforcement help the county should seek and who should control it. But recent violence on the pot farms is hardening opposition to the pot growers.

Eureka businessman Danny Walsh, chairman of the Board of Supervisors, is losing sympathy with the growers. "As long as violence is involved, they are getting what they deserve," he says.

"These guys are a bunch of phonies," says the outgoing sheriff of Humboldt County, Gene Cox. "They're blowing smoke, buddy. If they are such heroes, how come there are five dead people this past year directly connected to narcotics, mostly in Humboldt? Is this what America wants?

"These guys won't admit they are doing something illegal. And yet they don't want it legalized. There's too much big money in it right now. They're hollering like a wounded eagle right now, because they are getting hurt in the pocketbook."

Pete Mouriski is the field agent in charge of the state's narcotics task force. He doesn't see pot growers as any different from heroin dealers in San Francisco.

"I think they are crooks and that's the way we go about it. I think I'm helping society. I'm anti-dope, I believe weed is evil, and I love doing what I do," he says.

He scoffs at growers' complaints about the helicopter. It can be frightening, he admits, but he sees it as mostly a work-saving device that gets agents to the scene of a raid quicker than by vehicle.

This year's sweep by up to 20 agents and reserve deputies in the extreme northern counties began near the Oregon-California border Oct. 11, and then moved south, not attracting public notice until they made 13 raids in the more populated area around Garberville.

In a Eureka motel room recently, the 38-year-old Mouriski tallied up the results of the sweep: 2,227 growing plants, 1,186 pounds of processed weed, with a total weight of 9,099 pounds. And eight arrests.

It doesn't bother him that he has been accused of running a military-style operation.

"Of course we're fearful. We'd be fools if we weren't," he says. "Everyone has weapons. They are committing a felony and they stand to lose a lot of money. I've no doubt in my mind that given the opportunity, some of them would shoot at law enforcement people."

The mother had been dressing the children for a rare pickup-truck ride to Garberville to buy some animal feed, to be followed by an even rarer treat—dinner in a restaurant.

The 52-year-old man lying in front of her with his face in the dirt was her husband. She yelled "Fascists!" at the grim-faced law enforcement officers.

The mother felt miserable. So this was it, the end—after all those lonely nights with no neighbors to talk to, the cruel winds and the snow, the crummy water system, the flickering television set, the back-breaking toil to establish a home.

They had quit city life 18 months ago. He was a driver and she a teacher. A year or so before, they had been driving around Garberville on vacation. They decided to buy 50 acres, isolated but with an enchanting view.

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On Friday, December 3, the Senate passed, by a vote of 70 to 4, H.R. 7093, a House-passed tax bill that includes amendments to the disability program. Three of the disability-related provisions as passed by the Senate are the same as reported by the Senate Finance Committee on September 28, 1982 (and described more fully in Legislative Bulletin Number 73, September 29, 1982) as follows:

- Permit the Secretary of HHS to reduce, on a State-by-State basis, the flow of cases sent to State agencies for periodic review of continuing eligibility, if appropriate, based on State workloads and staffing requirements, even if this means that the initial periodic review of the rolls cannot be completed within 3 years.

- Require the Secretary, in reviewing the continuing eligibility of a DI beneficiary, to obtain all relevant medical evidence for the past 12 months before making a termination decision.

- Require the Secretary to make semiannual reports to the Senate Committee on Finance and the House Committee on Ways and Means on the results of continuing disability investigations.

Under an amendment offered by Senator Dole (R., KS), incorporating proposals by Senators Cohen (R., ME), Levin (D., MI), and Long (D., LA), the bill as reported by the Senate Finance Committee was modified as follows:

- To permit, on a temporary basis, a DI beneficiary to elect to have benefits and Medicare coverage continued through the Administrative Law Judge (ALJ) hearing. The continued benefits would be treated as overpayments and subject to the waiver requirements of present law. This would be effective for benefits beginning January 1983 with respect to termination decisions made by State agencies between enactment and October 1983, but the last month for which payment could be continued would be June 1984. (Cases now pending a reconsideration or an ALJ decision would also be covered by this provision, although retroactive payments would not be authorized.)

- To require the Secretary when making a continuing disability investigation (CDI) determination to consider all evidence in an individual's case record relating to his or her impairment and to discuss the evidence in the denial notice if the decision was unfavorable.

- To include an explicit statement that the amendments are not to be construed as a medical improvement standard for termination in CDI cases.

The bill will now go back to the House of Representatives for consideration.

□ 1230

REDUCING RATE OF CERTAIN TAXES PAID TO VIRGIN ISLANDS

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Island source income, with the Senate amendments thereto, to concur in the Senate amendment to the title of the bill, to disagree to Senate amendments 2, 3, and 4, and to concur in the Senate amendment numbered 1 to the text of the bill with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments to the text of the bill and the House amendments to the Senate amendment numbered 1, as follows:

Senate amendments:

(1) Page 4, after line 12, insert:

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

(a) Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection: "Continued Payment of Disability Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability.

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income, (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

"(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

"(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

"(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

"(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

"(B) prior to October 1, 1983.".

(2) Page 4, after line 12, insert:

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended—

(1) by inserting "(1)" after "(i)";

(2) by inserting ", subject to paragraph (2)" after "at least every 3 years"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secre-

tary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.".

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

(3) Page 4, after line 12, insert:

SEC. 4. MEDICAL EVIDENCE.

(a) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) In any case of a medical review of the continuing disability of an individual, before making a final determination with respect to any such individual, the Secretary shall make every reasonable effort to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated such individual with respect to his impairment or impairments within the preceding 12-month period. In making such final determination the Secretary shall consider all evidence available in such individual's case record relating to such impairment or impairments, including medical evidence used in making the initial determination that the individual was under a disability and medical evidence used in any subsequent review, determination, or judicial review relating to such impairment or impairments. Nothing in the preceding sentence shall be considered to preclude the Secretary from finding an individual to be ineligible on the basis that such individual is not disabled within the meaning of the term disability for purposes of initial determinations under this title even if such individual's medical condition has not improved or otherwise changed since any prior determination of his eligibility. Discussion of such evidence shall be included in the statement of the case required to be provided under section 205(b).".

(b) The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

(4) Page 4, after line 12, insert:

SEC. 5. REPORT BY SECRETARY.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Represenatitives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benfits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.".

Amend the title so as to read: "An Act to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes.".

House amendments to Senate amendment numbered 1: In lieu of the matter proposed to be inserted by Senate amendment numbered 1, strike out all after the enacting clause of the House engrossed bill and insert in lieu thereof the following:

SECTION 1. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

(a) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to possessions) is amended by inserting after section 934 the following new section:

"SEC. 934A. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

"(a) GENERAL RULE.—For purposes of determining the tax liability incurred by citizens and resident alien individuals of the United States, and corporations organized in the United States, to the Virgin Islands pursuant to this title with respect to amounts received from sources within the Virgin Islands—

"(1) the taxes imposed by sections 871(a)(1) and 881 (as made applicable to the Virgin Islands) shall apply except that '10 percent' shall be substituted for '30 percent', and

"(2) subsection (a) of section 934 shall not apply to such taxes.

"(b) SUBSECTION (a) RATES NOT TO APPLY TO PRE-EFFECTIVE DATE EARNINGS.—

"(1) IN GENERAL.—Any change unde subsection (a)(1), and any reduction under section 934 pursuant to subsection (a)(2), in a rate of tax imposed by section 871(a)(1) or 881 shall not apply to dividends paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction.

"(2) ORDERING RULE.—For purposes of paragraph (1), dividends shall be treated as first being paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction (to the extent thereof)."

(b) WITHHOLDING.—Subchapter A of chapter 3 of such Code (relating to withholding of tax on nonresident aliens and foreign corporations) is amended by adding at the end thereof the following new section:

"SEC. 1444. WITHHOLDING ON VIRGIN ISLANDS SOURCE INCOME.

"For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts reveived from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 (as modified by section 934A) shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be."

(c) TECHNICAL AMENDMENT.—Subsection (a) of section 934 of such Code is amended by inserting before the period at the end thereof "or in section 934A".

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart D of part III of subchapter N of chapter 1 of such Code is amended by inserting after the item relating to section 934 the following new item:

"Sec. 934A. Income tax rate on Virgin Islands source income."

(2) The table of sections for subchapter A of chapter 3 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1444. Withholding on Virgin Islands source income."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

(2) WITHHOLDING.—The amendment made by subsection (b) shall apply to payments made after the date of the enactment of this Act.

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection: "Continued Payment of Disability Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

"(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

"(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

"(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

"(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

"(B) prior to October 1, 1983.".

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended—

(1) by inserting "(1)" after "(i)";

(2) by inserting ", subject to paragraph (2)" after "at least every 3 years"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each state after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.".

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.

(a) IN GENERAL.—Section 205(b) of the Social Security Act is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

"(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B)."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.

SEC. 5. CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures the beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

SEC. 6. REPORT BY SECRETARY.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews fo continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.".

SEC. 7. OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS.

(a) IN GENERAL.—Subsections (b)(4)(A), (c)(2)(A), (e)(8)(A), (f)(2)(A), and (g)(4)(A) of section 202 of the Social Security Act are each amended—

(1) by striking out "by an amount equal to the amount of any monthly periodic benefit" and inserting in lieu thereof "by an amount equal to one-third of the amount of any monthly periodic benefit"; and

(2) by adding at the end thereof the following new sentence: "The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10.", shall be rounded to the next lower multiple of $0.10.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) of this section shall apply with respect to monthly insurance benefits payable for months in the 60-month period beginning December 1, 1982. After the close of such 60-month period, the provisions of the Social Security Act to which such amendments relate shall read as they would if this section had not been enacted.

Mr. ROSTENKOWSKI (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments and the House amendment to Senate amendment 1 thereto be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ARCHER. Mr. Speaker, reserving the right to object, and I shall not object, I would like to engage in a brief colloquy with my friend and colleague, the chairman of the Subcommittee on Social Security of the Committee on Ways and Means, the gentleman from Texas (Mr. PICKLE).

It is my understanding that the first section of this bill is a noncontroversial bill relating to the Virgin Islands. However, the other body has added to this bill, by amendment, provisions that affect the continuing disability investigations, or CDI's. That body has sent us the basic language, but it is my understanding that the gentleman from Texas, after consultation with a number of colleagues and with the administration, has worked out some adjustments to accommodate the language in this section to make it relatively noncontroversial, at least from his point of view.

As the gentleman knows, I am not particularly happy about the resolution of CDI problems in the legislation before us. I feel very strongly that the disability insurance program requires further review and very likely some major improvements.

I also am extremely concerned about the way in which important, far-reaching legislation is developed in such a short period of time. When we do this sort of thing, we often make mistakes. I have a feeling that this may be another instance of acting in haste so that we can repent at leisure.

The disability insurance program, although in relatively good financial condition today, Mr. Speaker, probably needs the kind of reform which this legislation does not address in any way.

For example, many Members have thought for a long time that the entire hearings and appeals process should be shortened, without abridging the rights of anyone, to save both taxpayers and claimants a great deal of time and money.

I would hope that the chairman of the subcommittee would agree that what we are doing here today should in no way be construed to deter any efforts which might come later to effect the kind of reform which a number of my colleagues and I have in mind and have discussed with him so often in the past.

I wonder if the gentleman from Texas would like to comment.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I am happy to yield to the gentleman from Texas.

Mr. PICKLE. I thank the gentleman for yielding.

Mr. Speaker, I assure the gentleman that there will be no lessening of efforts next year to try to find substantive reform in the manner in which we handle disability reviews. It is a very serious problem and has plagued all of us because we have many people throughout the country who have been injured, or felt they have been, by the review; yet we must find a better solution.

What we are offering here today is the result of a general compromise between the Members of the House and the other body. What we have done simply is that we have taken the Senate bill and accepted three provisions: First, in termination cases we would continue benefits, if the individual so requests, until there has been a decision by an ALJ. This provision would apply only for a limited period of time. Second, we would give the Secretary of the HHS authority to slow down numbers of the reviews. Third, we would provide that reports would be made to the Congress semiannually.

Now, we went one step further: We have said that by January 1, 1984, there will be a face to face evidentiary hearing at reconsideration in termination cases. We engaged in colloquy with many Members and secured agreement from them to assure that we are testing to see how this procedure will work. We are trying to avoid any controversial reform at this point.

Having said that, I think we all recognize we are trying to find a better way to handle it in the future, but we do not close the record at this point. I think there is general agreement, but I assure the gentleman again that that will be something we will have to consider next year or in the months ahead.

We have also in this bill provided further relief in the area of the public pension offset.

Mr. ARCHER. Mr. Speaker, further reserving the right to object, I would be happy to yield to the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, I want to thank my good friend, the gentleman from Texas (Mr. ARCHER), for yielding.

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I rise in strong support of the amendments made to this bill with respect to social security disability, and I urge my colleagues to support this measure. Moreover, I ask my colleagues to accept this language, with the amendments, and send it over to the other body so that we can get some type of legislation passed this year.

Mr. Speaker, the choice before us today is very plain. There is no question that substantial changes need to be made in the social security disability law. To those who plan to make those changes in the 98th Congress, I pledge my fullest support. But today is the day that we are faced with a more immediate, and more pressing choice: What will we do and what will we say to the disabled of this country?

Last March, the Reagan administration followed the letter of the law in beginning the reviews of social security disability recipients all across the country. In a program with 2.4 million Americans involved, there is bound to be some abuse; no one argues that such a review is not necessary or desirable. The issue, however, is not whether or not the legislation is necessary—it is whether or not it is being done properly and well.

The evidence indicates that it is not.

The overwhelming evidence is of people in comas being terminated from the disability rolls. It is of individuals committing suicide when they learn that their benefits are ending when they have no other source of income. It is of people dying after being told that they are "no longer disabled." In my own hometown, one man attempted suicide when hearing of his potential termination. That man is now crippled from the neck down. The Los Angeles Times and the New York Times are just two of countless newspapers across this Nation that have documented several other examples. We cannot argue that a problem does not exist.

A problem does exist—a very serious one. It exists because a legitimate change was made in the law, but no parameters were provided to effect those changes. In Massachusetts, the review backlog is almost 7 months. In New Jersey, it is almost 9. New England as a whole is not much better, and the problem is getting worse. We need to take action, and we need to take action now.

This bill is not perfect. While, to its credit, it slows down the reviews process and continues benefit payments through the administrative law judge level, it does not address the issue of medical improvement. Next year, Next Congress, is a better time to fully review the disability program. But today we need to act, and this bill is a good compromise, and a good solution. I commend my colleague and friend from Texas, Mr. PICKLE, for allowing this bill to come to the floor.

You know, it is all quite fitting that this debate take place in the "People's House." We represent the people here—all of the people: the perfectly healthy and the totally disabled. They are waiting for us to provide some guidelines to the Social Security Administration so that the unfairness associated with this worthy review concept is eliminated. Terminate those who are able to work, yes; but don't terminate them when they clearly cannot.

This is not a political issue, and it is not being done for political gain. It is being done because it is right. When the other body passed this bill, they did so by a 70-to-4 vote. Those of us in the People's House owe this to all the citizens of America. The situation in past months needs to be corrected, and it does not speak highly of anyone in Government. I say to my colleagues on both sides of the aisle who have supported these disability reforms, pass this bill, send it to the Senate, and send a message to all Americans, disabled and healthy, that we truly are the People's House.

Thank you, Mr. Speaker.

Mr. ARCHER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Vermont (Mr. JEFFORDS).

(Mr. JEFFORDS asked and was given permission to revise and extend his remarks.)

Mr. JEFFORDS. Mr. Speaker, I rise in support of the legislation.

Mr. Speaker, I would like to thank the gentleman for yielding, and commend the gentleman from Texas for bringing this legislation to the attention of the House in a very timely fashion.

I rise in support of H.R. 7093, as presented to us today. This bill addresses the serious problems we face in the area of disability review.

Congress has been addressing this issue for many months, and I feel we are now presented with a good solution to the problem. In brief, H.R. 7093 in this form will continue disability benefits and medicare through appeal to the ALJ hearing level for those under CDI review. The Secretary of HHS will have the authority to slow down the number of reviews being sent to the State agencies for review to levels below those required by the 1980 amendments. The Secretary will also be required to report to the Finance and Ways and Means Committees semiannually on all aspects of the CDI process. Face-to-face evidentiary hearings will be required at the reconsideration level of the appeals process no later than January 1, 1984. H.R. 7093 contains language designed to guarantee that the Social Security Administration will take every possible step to fulfill the intent of this law. Finally, a section will be added to the Senate version of this bill that remedies problems caused by the expiration of the public pension exception clause.

In Vermont a number of disability insurance recipients have gone close to a year without benefits while their case was under review, only to have their benefits reinstated at the ALJ level. The tragedies that occurred from this procedure have been documented. and I am happy to see this body address the problem in a straight forward way.

While the administration correctly responded to a congressional request to increase the review rate of disability recipients—and I commend the Social Security Administration for doing so—the continued reports of people being wrongfully removed from the disability rolls, and the disappearance of many of these people's only income in

the form of disability insurance benefits during the review process, is wrong. We must respond to these problems immediately.

The proposed amendments to this bill do not alter the intent of the Senate-passed bill—which is a basically sound solution to the problem. This version of H.R. 7093 will simply be a stronger statement by Congress on the disability issue, and will effect immediate improvements in the disability situation.

I encourage my colleagues to vote for this bill.

Thank you.

Mr. ARCHER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Nebraska (Mr. DAUB).

Mr. DAUB. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of these interim amendments. I do urge the distinguished chairman, the gentleman from Texas (Mr. PICKLE) to continue to give his full attention to this serious problem of the method by which we send cases to the administrative law judge level.

Mr. Speaker, the review of disability cases currently underway should not cause undue hardship to those innocent elderly who are truly deserving and disabled. It was in 1980 before I was a Member of this distinguished body that the Congress enacted the Disability Amendments of 1980 which mandated periodic review of disability determinations and it was President Carter and the Secretary of HEW Joseph Califano who asked for the weeding out of those who were abusing the system.

Last year Congress had presented to us a GAO report which found that an alarming $2 billion was being handed out each year to people who were no longer disabled. This week another study's findings were released indicating that this figure may well be as high as $4 billion each year. Over half of this abuse is occurring because beneficiaries did not report the fact that they had returned to work or that their condition had improved. Certainly it is important to decrease this abuse so that benefits for those truly deserving can be protected.

However, it has become clear that in a large number of cases, elderly and disabled individuals have undergone severe hardship when their benefits have been discontinued unjustly. Often benefits are stopped abruptly while it may be 12 to 18 months before benefits can be restored through the appeal process.

Despite the difficulties for the disabled that have occurred because of this stepped-up review process, there has been a problem getting action on this issue by the Ways and Means Social Security Subcommittee in the House. I commend the chairman of the subcommittee, Mr. PICKLE, for the sensible interim approach his subcommittee has taken on this issue with H.R. 7093.

Although this compromise does not represent a long-term solution to the problems of the continuing disability investigation program, allowing recipients to continue to draw benefits while they appeal their review decision to the administrative law judge level as provided in H.R. 7093, will alleviate the most serious hardships endured by those truly deserving. It is my sincere hope that a sound, long-term, final solution to the problems with the disability program will be discussed and agreed upon as soon as possible in the new 98th Congress.

Mr. ARCHER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Arkansas (Mr. HAMMERSCHMIDT).

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. I thank the gentleman for yielding.

Mr. Speaker, I concur with the actions being taken here today.

Mr. Speaker, I would like to commend the chairman and the ranking minority member of the Social Security Subcommittee, Mr. PICKLE and Mr. ARCHER, for their work in reaching a compromise on this important bill. I am hopeful that the Senate will agree to the House language. I think that we all agree that there is a profound need for us to pass social security disability legislation in this session of Congress. To date, about 200,000 people have been terminated from the disability insurance rolls since the continuing disability review process was begun in March 1981. Of the 50 percent who have appealed their terminations, 67 percent have been returned to the program through the appeals process. Every month that we delay, another 53,000 cases are reviewed by State agencies and about 22,000 beneficiaries terminated. Based on current data, we can expect about 7,500 of these beneficiaries to be erroneously terminated next month. What this means is people with acute, chronic, and often terminal illness will be taken off the disability rolls with, at most, 2 months notice. Many of these people have no income other than money that they receive from the Social Security Administration.

What happens to these individuals and their families is tragic. There are documented cases of people committing suicide after receiving their notices of termination. There are cases of people dying during or directly after the medical examinations imposed on them by the continuing disability reviews. Often this is because they are sent to doctors who are not their own treating physician and have no previous knowledge of their health conditions and the threat these tests may pose to the person's life. And then there is the growing body of evidence uncovering people who have died from conditions that the Social Security Administration said they did not have or that were not serious enough to keep them from working.

I have never been one who believes that we should pass Federal legislation based on anecdotal information, but the stories that we are hearing come from every State in the Nation and many of these have been clearly substantiated. I feel compelled to read you four examples that appeared in a recent article in the Los Angeles Times so that you can begin to feel these "statistics."

Thomas A. Alvey, 47, of La Habra. He died August 26 of heart disease six months after he had been declared fit for work and no longer eligible for disability benefits. After his benefits were cut off, the former supermarket manager was forced to subsist on an $81.67 monthly Federal stipend and help from his mother, whose only income was from social security.

Ernestina Orozco, 45, of La Puente. A mother of two teenagers, she was to have been informed by the Social Security Administration that her two types of cancer were not sufficiently serious to keep her from working. But on August 9—two days before the notification was mailed—Mrs. Orozco died of cancer of the colon.

Willie Simmons, 47, of Reseda. He was removed from the disability rolls in February because his extremely painful "multiple neurological degenerative disease" were not considered debilitating enough to keep him from working as a hospital clerk. He died of those multiple ailments in May.

Victor Graf, 59, of Stockton he had been receiving disability benefits because of a heart condition. He received a letter from social security in July saying his disability payements would cease in September. He visited his cardiologist on August 2 to get more medical evidence in an attempt to show disability evaluators they has erred in his case. But within six hours after he left the doctor's office, Graf died of a heart attack.

To correct actions taken by Congress in 1980 and signed into law by President Carter—we are asking today for the passage of a simple emergery bill to better protect the disability insurance recipients until comprehensive legislation can be taken up next year. We are seeking to slow down the review process so that the State staff responsible for adjudication will have the time to do thorough, accurate assessments. The administration must see some merit to a slowdown as the Social Security Administration has implemented a limited slow down within the confines of the existing law. We are seeking to extend the benefits to persons who chose to appeal their terminations through the administrative law judge process. We do this for three reasons: First, 67 percent of the appealed terminations have been wrong; second, there is clearly established legal principle that legitimately awarded benefits should not be taken away without due process; and third, people who have been erroneously terminated have faced additional, devastating hardships such as the loss of their homes, the loss of their cars and bankruptcy. It is not taking about 11 months from the time one is terminat-

ed to the time one actually receives a check after a reversal at the administrative law judge level. Even for those persons who are reinstated and receive retroactive benefits, it is often too late to save their homes for the mortgages have already been foreclosed. Many will never have another opportunity to own a home again. Furthermore, during the appeals process, beneficiaries are deprived of their medicare benefits. Since they have substantially reduced income, many cannot afford the necessary medical care and prescriptions that their health condition requires. Many people's health has severely deteriorated during this protracted time period.

Mr. Speaker, I believe that this bill, which will continue benefits and medicare, will substantially improve the lives of thousands of people throughout the Nation. I thank all my colleagues who have worked so hard to get this bill before the House today and strongly urge its passage.

Mr. ARCHER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Pennsylvania (Mr. WALKER).

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, what I have not heard yet in all this colloquy, but could the gentleman give us some explanation as to just exactly what it is we are doing? There seems to be some disagreement, if I heard correctly, as to whether or not what we are doing is substantive or whether or not what we are doing is basically going around—because this is a program that for all its merits, and it has many, has risen in cost over the last 25 years by 1,500,000 percent.

Now, if we are doing something which is going to be a substantive kind of change in this program and we are doing it in haste, we are doing it at the end of a session, we are doing it with a Senate add-on, then I think the House ought to be aware of that and maybe we ought to be a little more cautious about just where we are going.

I have not heard an explanation yet as to just what we are doing and how much it is going to cost us.

Mr. ARCHER. Mr. Speaker, further reserving the right to object, I would say to the gentleman that this bill does not go nearly as far in reform as I would like to see, as I mentioned, in the hearings and appeals process. However, it is my understanding that there will be a net benefit both to the Government and to the claimants out of the terms that have been put into this bill. I am given some assurance, and I cannot speak for the administration, that the administration feels that this on balance will be beneficial, although it does not go nearly as far as many of us would like to have gone.

Mr. WALKER. If the gentleman will yield further, could the gentleman explain to us how we are going to get the net benefit to the recipients and to the Government?

Mr. ARCHER. The gentleman from Texas (Mr. PICKLE) was beginning to describe that, and I yield to the gentleman to continue with his explanation.

Mr. PICKLE. If the gentleman will yield further, let me repeat again for you: What we are doing with this stopgap measure is to continue benefits to the administrative law judge level.

Second, we give authority to the Secretary of HHS to slow down some of the review; and, third, we require the Secretary to issue reports back to the Congress periodically.

We went one step further to say that there must be a face-to-face evidentiary hearing at reconsideration in termination cases and the Secretary of HHS must give information to the claimants that they should bring their evidence in, present all facts at the reconsideration level. It also requires that HHS tell all of its field offices to stress the importance of the reconsideration level.

We are trying to say to everybody, the intent is to move this evidence up so we can see it; but we are not closing the record at this point. That is a very controversial thing. I think after a period of 6 months to a year, we will have a lot more experience in knowing how to handle it. We are not going to say that we are just going to forget it, I assure you.

What we are trying to do is test what is the best way. I believe what we arrived at is what is the best thing to do, under the circumstances, for those people having their benefits cut off. I think this is the general agreement.

Mr. Speaker, the House passed H.R. 7093 on September 20, 1982. As passed by the House, H.R. 7093 would make it clear that only a 10-percent tax will be imposed on passive income from the Virgin Islands when the recipient is a U.S. individual or corporation and that there will be a corresponding withholding obligation on the Virgin Islands payor of the income. The bill also allows the Virgin Islands government to reduce this 10-percent rate at its discretion.

At present, U.S. tax laws are applied, under a "mirror image" system, as the local tax law in the Virgin Islands. It is the position of the Internal Revenue Service that a non-Virgin Island person who is a recipient of passive income from the Virgin Islands is subject to a 30-percent Virgin Islands tax. Without inference regarding the correctness of this position under present law, the bill imposes the 10-percent tax rate I have described.

The Senate passed H.R. 7093 December 3, 1982, by a vote of 70 to 4 with amendments attached that deal with the social security disability reviews.

This Congress has struggled all year with the problem of the continuing disability investigations in social security. The Committee on Ways and Means recognized this problem early—raised in the Congress, held hearings on it and passed legislation, H.R. 6181, to deal with it.

That legislation is good legislation, but I recognize and the committee recognizes that we cannot solve this problem now in a lameduck session. However, we believe some progress can be made now, recognizing that more progress must be made in the near future.

Two things are needed: relief and reform. Beneficiaries need relief. And substantive reform is the only way to provide permanent relief.

The bill before us, which consists of Senate amendments to a House bill would: First, continue benefits for those appealing to an ALJ for a limited time—basically from now until next June on terminations made by October of 1983; second, give the Secretary of HHS authority to slow down the number of reviews being considered; and third, provide that reports be made to Congress every 6 months on the continuing disability reviews.

The bill also contains a section dealing with the handling of medical evidence in reviewing termination cases.

We propose that we accept the first three provisions which I have outlined—benefits to the ALJ on a limited basis, authority to slow down the reviews, and regular reports to Congress.

We propose to drop the section regarding the handling of medical evidence.

We would also add some changes which will move us toward more substantive reform without at this time getting into or bogged down by controversial matters. We would require that by no later than January 1, 1984, a face-to-face evidentiary hearing be provided in termination cases at the reconsideration level. And we would require that the Secretary take all steps possible to insure that this process be a meaningful one.

We would not, however, make any changes in this bill regarding closing the record or the acceptability of medical evidence at various stages of review.

Finally, we provide a more permanent solution in the area of the public pension offset.

The problem we face is that passing so-called stopgap legislation which simply extends benefits in disability termination cases will make the problems facing claimants worse. I think most Members agree with this. Lack of action on reforms during this session of Congress means that it is likely to be 1984 before anything substantive can be done, expecially since the consideration of financing legislation will be the first priority of 1983.

The Subcommittee on Social Security has concluded that an earlier face-to-face meeting between the beneficiary and decisionmaker and a generally "beefed-up" reconsideration process was the only practical option to enable SSA to handle these reviews expeditiously and get the beneficiary a fair and humane decision as early as possible in the decision. Long delays in

reaching an ALJ and difficulties in hiring more ALJ's do not make that level the best for handling these reviews.

Making sure the reconsideration decisionmaker has all the available evidence is necessary in order to make a good judgment and in order to make that level more meaningful. I recognize, however, that fears are too great at this time to ask Congress impose any legal restrictions in this area without further experience.

We have made our intention clear that reconsideration must be strong, but we have reserved for the next Congress the final judgment on what the law itself should say about admissibility of evidence at each level. Our intent is clear, however, and I repeat: We must make reconsideration a strong level—that is, to make the case early.

All allowances and as many as 50 percent of the denials never reach an ALJ. The fundamental fact is that this process will not work if it is not strong up front. That is where most of the cases will continue to be heard and decided.

We must take this small step toward beefing up reconsideration to insure that we eventually provide the beneficiary with a process whereby he or she can receive a satisfactory decision as early in the process as possible and to insure that we do not continue to bog down our appeal process so that no one, beneficiaries under review or new claimants, can get their cases heard.

Finally, under section 7 of the House amendment, the current public pension dollar-for-dollar offset would be amended so that only one-third of the public pension would be used to reduce the social security spouse's benefit. For example, a person who receives a public pension of $400 per month and is eligible for a spouse benefit of $250 would actually receive a social security benefit of $118. Under current law this person would receive no spouse benefit. This provision will expire in 5 years.

Many Members are concerned about female Government employees in their districts who are nearing retirement age but who were not eligible to receive their public pension prior to December 1, 1982, the date provided in the 1977 Social Security Amendments for the expiration of the public pension exception clause. I gave my word some time ago I would attempt to provide some relief in this area. I acknowledge the able and persistent leadership of Mr. JACOBS in pressing this concern and of Mr. OBERSTAR in working with us to find a good solution.

There is widespread concern that these women made their retirement plans in reliance on the existence of the unreduced spouse's benefit just as much as other women who became eligible for their pensions before December 1, 1982. However, women who were eligible before December 1 have no offset and women who become eligible after December 1 are offset dollar for dollar.

These concerns led my Social Security Subcommittee last year to move to extend the exception clause in a modified version. This has not become law and, in the interim, a Federal district court in Alabama has issued an opinion in the Mathews against Schweiker case that the exception clause and the separability clause in the 1977 amendments are both unconstitutional. The judge's order was that SSA should go back and find the class of males who were denied benefits under the exception clause and pay them full benefits. This decision, if affirmed by the Supreme Court, will mean that action taken now to extend the offset exception for women would also extend it for men, increasing costs dramatically.

This amendment modifies the offset in a manner which will benefit those Government workers who have relatively small public pensions in comparison to their social security spouse's benefit. This is exactly the same group that we were seeking to help by extending the offset. However, this provision does not discriminate on the basis of gender, and, therefore, does not raise the constitutional issues which the original exception clause raised and any extension of it would raise. Costs associated with this amendment are very small—approximately $135 million over the 5 years.

I urge, therefore, that the House accept these amendents to the Senate bill so that we can make progress in this Congress on these important issues.

I include here a factsheet explaining these amendments:

PROPOSED AMENDMENT TO SENATE-PASSED DISABILITY AMENDMENTS, H.R. 7093

Several amendments primarily aimed at relieving the CDI situation were attached by the Finance Committee in September to H.R. 7093, a Ways and Means revenue bill on the Virgin Islands. These amendments would do the following:

Sec. 1. Clarifies the rate of certain taxes paid to the Virgin Islands on Virgin Island source income.

Sec. 2. Continue disability benefits and Medicare coverage through appeal to the ALJ hearing level for beneficiaries who have their benefits terminated as the result of a CDI. The payments under this provision will be effective only through June 1984, for termination decisions made prior to October 1983;

Sec. 3. Give the Secretary authority to slow down the number of cases sent to the State agencies for re-examination, below the rate required by the 1980 amendments to review all beneficiaries at least once every 3 years;

Sec. 4. Requires the State agencies to use all relevant medical evidence from the 12-month period preceding the review and to review all evidence contained in the beneficiary's folder in conducting the review. Senator Long added a requirement to this provision that a beneficiary can still be found ineligible even if his medical condition has not improved since his initial determination.

Sec. 5. Require the Secretary to report to the Finance and Ways and Means Committees semi-annually on the CDI process and percentages of terminations, reconsideration requests, and ALJ reversals.

The disability amendments were approved by the Senate on December 3, 1982, by a vote of 70 to 4. The Virgin Islands amendment has been approved by the House as H.R. 7093 and by the Senate both as H.R. 7093 and as part of H.R. 5470.

The proposed amendment would:

1. Accept Sections 1, 2, 3, and 5 of H.R. 7093.

2. Delete Section 4 of H.R. 7093.

3. Add a new section which requires a face-to-face evidentiary hearing at the reconsideration level. This requirement would be effective no later than January 1, 1984, and would apply only in termination cases.

4. Adds a provision ordering the Secretary to take necessary steps to assure public understanding of the importance Congress attaches to the face-to-face reconsiderations and to the importance of submitting all evidence at that level.

5. Add a new section which could remedy the problems caused by the expiration of the public pension exception clause on December 1, 1982. This section avoids constitutional problems which were posed by an extension of the exception clause but continues to provide at least partial social security spouses benefits—in a non-discriminatory manner—to women who retire from government service. Specifically, the section would reduce the social security spouse benefit by 33% of the government pension and would apply to benefits payable for the 60-month period beginning December 1, 1982.

Following is a fuller explanation of the public pension offset.

PUBLIC PENSION OFFSET

Under current law, all persons who become eligible for a public pension based on noncovered government employment after November 30, 1982 will have any social security spouse's benefit reduced dollar-for-dollar by amounts received as a public pension.

This November 30, 1982 expiration date has not resulted from a recent legislative action. Rather, it has resulted from the language of the public pension offset exception clause which was enacted in 1977.

Last year during consideration of H.R. 3207 by the Social Security Subcommittee of the Committee on Ways and Means, the staff proposed a number of different options with respect to the exception clause. One of the options would have broken the public pension into two pieces: (1) social security equivalent; and (2) private pension equivalent. A person receiving social security as a worker as well as a private pension has only the social security worker's benefit offset against the spouse's benefit. There is good reason, therefore, only to reduce the spouse's benefit by that portion of the public pension which is equivalent to social security. In the proposal the staff presented to the Subcommittee, a percentage of the public pension would have been used to offset the spouse's benefit, with the remainder of the public pension disregarded in the offset computation.

This option was passed over by the Subcommittee in favor of one under which the public pension exception clause would be gradually eliminated over the four-year period from December 1982 through November 1986. Workers who first become eligible subject to full offset of their social security spouses's benefit.

The amount of the public pension offset which would be effective during the phase-out period would be a certain percentage which would be determined based on the date on which the worker first became eligi-

ble to receive a public pension. The following schedule would be used to determine the percentage to be used in the offset:

Date on Which Worker is First Eligible for Public Pension and Offset Percentage:

Dec. 1982 through Nov. 1983—20.
Dec. 1983 through Nov. 1984—40.
Dec. 1984 through Nov. 1985—60.
Dec. 1985 through Nov. 1986—80.

As under the current exception clause, workers would also have to meet the requirements for entitlement to a dependent's benefit as they were in effect and being administered in January 1977 in order to qualify by this new exception clause.

Since no action beyond the Subcommittee level was taken on H.R. 3207, the public pension exception clause expired on December 1, 1982. Attempts to extend the exception clause have been complicated by the Mathews decision which, if affirmed by the Supreme court, would result in the retroactive entitlement of certain males who were denied benefits under the exception clause. This situation has resulted in widespread interest in both the House and Senate in enacting legislation before the end of the session which would address the concerns about the offset but solve the problem in a manner different than extending the exception clause—one which is not discriminatory. A provision under which one-third of a non-government pension would be counted would address the concerns in a non-discriminatory manner.

The two most important points to be made concerning the provision contained in the House amendment are:

(1) The offset would apply to all persons, male and female:

(2) The amount of the public pension which is used to reduce the social security spouse's benefit would be 33% of the government pension.

Thirty-three percent approximates the portion of the CSRS annuity which is equivalent to social security retirement benefits for the average earner.

It should be noted that this approach is not an extension of the exception clause. Under an extension of the exception clause (ignoring possible constitutional questions), few women would be offset and most men would be offset completely. Under the proposal some women would be offset but some men would not be.

Under the new offset provision, a person who receives a public pension of $400 per month and is eligible for a spouse benefit of $250 would actually receive a social security benefit of $118. (This is determined by subtracting the offset amount which is $132 (.33 × $400) from the spouse benefit of $250. Under current law this person would receive no spouse benefits. Under an extended exception clause, if this person were a female she would receive a $250 spouse's benefit. A man would usually receive no spouse's benefit in this case.

Four general conclusions about a proposed solution to count one-third of the government pension in the offset are:

(1) In cases where there is a wide difference between the amounts of the two benefits, with the public pension being larger than the spouse's benefit, the amount of the offset is large. These cases would tend to be males who would already be affected anyway under current law.

(2) In cases where there is a wide difference between the amounts of the two benefits, with the public pension being smaller than the spouse's benefit, the offset is relatively small. These cases would tend to be women who have relatively small pensions based on their own work and relatively large spouse's benefits based on their husband's earnings.

(3) In cases where there is little difference between these two benefits, there is relatively little reduction. These cases would also tend to be women.

(4) Some women who would not be affected by the offset under an extension of the exception clause would be affected under this proposal. However, these women would have to have relatively large public pension.

The Office of the Actuary has estimated that the cost of this proposal. It seems to be approximately $135 million through 1987. (By comparison, the cost of a five year extension of the exception clause for just women in $420 million for this same period.) The cost of the proposal would increase by approximately $100 million if the Mathews decision were reversed.

Mr. WALKER. Mr. Speaker, if the gentleman will yield further, do we have some idea as to the amounts of money as to how much money we are going to spend, how much it is going to cost the States, the amounts of money that we are considering here today?

Mr. ARCHER. I do not believe we have any definitive amounts because this will involve new procedures that are going to have to be implemented before we can really be sure just exactly what the final results are.

Mr. PICKLE. Mr. Speaker, will the gentleman yield further?

Mr. ARCHER. Futher reserving the right to object, Mr. Speaker, I yield to the gentleman from Texas.

Mr. PICKLE. I thank the gentleman for yielding further.

The Social Security Administrator has approved the language and the procedure we have adopted because they think it will be valuable to get this experience. So they approved the legislation we presented.

Mr. WALKER. I thank the gentleman.

Mr. FORD of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Tennessee.

Mr. FORD of Tennessee. I thank the gentleman for yielding.

Mr. Speaker, I want to clear up one matter. Would the record be closed—and I guess I direct my question to the chairman of the Ways and Means Committee, the gentleman from Illinois, Mr. ROSTENKOWSKI. I just want to make sure for the record that the ALJ level, there the record will still remain open; we will not close the record at the State agency level?

Mr. ARCHER. The gentleman is correct.

Mr. FORD of Tennessee. Is that correct? I know in the committee with the legislation in particular, we talked about closing the record at the State agency level, but the record will remain open all the way to the administrative law judge level?

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I will be happy to yield to the gentleman from Texas.

Mr. PICKLE. I thank the gentleman for yielding further.

The gentleman knows full well that I think the record should be closed, at least the case should be made at the beginning and all evidence submitted.

We even offered a substitute for that in our subcommittee and passed it, saying that new evidence could be offered at the ALJ level on a worsening condition. But the question of evidence, medical evidence, is so controversial we are saying in this legislation that we will not close the record at the reconsideration level; that it will stay open. But instead, we are trying to say to everybody: Try to make your case early so we have the evidence. There is general agreement on that.

May I say to the gentleman that the chairman of the Aging Committee, Senator PEPPER, approves; Congressman SYNAR, who worked with us diligently to try to arrive at an agreement, has agreed to this procedure.

I think there is no disagreement with what we are trying to do. I am accepting this as a temporary measure until we can get some more experience.

Mr. FORD of Tennessee. I am not in disagreement with the bill. I just want to make sure that the record will not be closed at the State agency level.

Mr. ROSTENKOWSKI. Mr. Speaker, the House passed H.R. 7093 on September 20, 1982. As passed by the House, H.R. 7093 would make it clear that only a 10-percent tax will be imposed on passive income from the Virgin Islands when the recipient is a U.S. individual or corporation and that there will be a corresponding withholding obligation on the Virgin Islands payor of the income. The bill also allows the Virgin Islands government to reduce this 10-percent rate at its discretion.

At present, U.S. tax laws are applied, under a "mirror image" system, as the local tax law in the Virgin Islands. It is the position of the Internal Revenue Service that a non-Virgin Island person who is a recipient of passive income from the Virgin Islands is subject to a 30 percent Virgin Islands tax. Without inference regarding the correctness of this position under present law, the bill imposes the 10-percent tax rate I have described.

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This Congress has struggled all year with the problem of the continuing disability investigations in social security. The Committee on Ways an Means recognized this problem early—raised it in the Congress, held hearings on it and passed legislation, H.R. 6181, to deal with it.

That legislation is good legislation, but I recognize and the committee recognizes that we cannot solve this problem now in a lame duck session. However, we believe some progress can be made now, recognizing that more

progress must be made in the near future.

Two things are needed: Relief and reform. Beneficiaries need relief. And substantive reform is the only way to provide permanent relief.

The bill before us, which consists of Senate amendments to a House bill would: First, continue benefits for those appealing to an ALJ for a limited time—basically from now until next June on terminations made by October 1983; second, give the Secretary of HHS authority to slow down the number of reviews being considered; and third, provide that reports be made to Congress every 6 months on the continuing disability reviews.

The bill also contains a section dealing with the handling of medical evidence in reviewing termination cases.

We propose that we accept the first three provisions which I have outlined—benefits to the ALJ on a limited basis, authority to slow down the reviews, and regular reports to Congress.

We propose to drop the section regarding the handling of medical evidence.

We would also add some changes which will move us toward more substantive reform without at this time getting into or bogged down by controversial matters. We would require that by no later than January 1, 1984, a face-to-face evidentiary hearing be provided in termination cases at the reconsideration level. And we would require that the Secretary take all steps possible to insure that this process be a meaningful one.

We would not, however, make any changes in this bill regarding closing the record or the acceptability of medical evidence at various stages of review.

Finally, we provide a more permanent solution in the area of the public pension offset.

The problem we face is that passing so-called stopgap legislation which simply extends benefits in disability termination cases will make the problems facing claimants worse. I think most Members agree with this. Lack of action on reforms during this session of Congress means that it is likely to be 1984 before anything substantive can be done, especially since the consideration of financing legislation will be the first priority of 1983.

The Subcommittee on Social Security has concluded that an earlier face-to-face meeting between the beneficiary and decisionmaker and a generally beefed-up reconsideration process was the only practical option to enable SSA to handle these reviews expeditiously and get the beneficiary a fair and humane decision as early as possible in the decision. Long delays in reaching an ALJ and difficulties in hiring more ALJ's do not make that level the best for handling these reviews.

Making sure the reconsideration decisionmaker has all the available evidence is necessary in order to make a good judgment and in order to make that level more meaningful. I recognize, however, that fears are too great at this time to ask Congress impose any legal restrictions in this area without further experience.

We have made our intention clear that reconsideration must be strong, but we have reserved for the next Congress the final judgment on what the law itself should say about admissability of evidence at each level. Our intent is clear, however, and I repeat: We must make reconsideration a strong level—that is, to make the case early.

All allowances and as many as 50 percent of the denials never reach an ALJ. The fundamental fact is that this process will not work if it is not strong up front. That is where most of the cases will continue to be heard and decided.

We must take this small step toward beefing up reconsideration to insure that we eventually provide the beneficiary with a process whereby he or she can receive a satisfactory decision as early in the process as possible and to insure that we do not continue to bog down our appeal process so that no one, beneficiaries under review or new claimants, can get their cases heard.

Finally, under section 7 of the House amendment, the current public pension dollar-for-dollar offset would be amended so that only one-third of the public pension would be used to reduce the social security spouse's benefit. For example, a person who receives a public pension of $400 per month and is eligible for a spouse benefit of $250 would actually receive a social security benefit of $118. Under current law this person would receive no spouse benefit. This provision will expire in 5 years.

Many Members are concerned about female Government employees in their districts who are nearing retirement age but who were not eligible to receive their public pension prior to December 1, 1982, the date provided in the 1977 Social Security Amendments for the expiration of the public pension exception clause. I gave my word some time ago I would attempt to provide some relief in this area. I acknowledge the able and persistent leadership of Mr. JACOBS in pressing this concern and of Mr. OBERSTAR in working with us to find a good solution.

There is widespread concern that these women made their retirement plans in reliance on the existence of the unreduced spouse's benefit just as much as other women who became eligible for their pensions before December 1, 1982. However, women who were eligible before December 1 have no offset and women who become eligible after December 1 are offset dollar for dollar.

These concerns led my Social Security Subcommittee last year to move to extend the exception clause in a modified version. This has not become law and, in the interim a Federal district court in Alabama has issued an opinion in the Mathews against Schweiker case that the exception clause and the separability clause in the 1977 amendments are both unconstitutional. The judge's order was that SSA should go back and find the class of males who were denied benefits under the exception clause and pay them full benefits. This decision, if affirmed by the Supreme Court, will mean that action taken now to extend the offset exception for women would also extend it for men, increasing costs dramatically.

This amendment modifies the offset in a manner which will benefit those Government workers who have relatively small public pensions in comparison to their social security spouse's benefit. This is exactly the same group that we were seeking to help by extending the offset. However, this provision does not discriminate on the basis of gender, and, therefore, does not raise the constitutional issues which the original exception clause raised and any extension of it would raise. Costs associated with this amendment are very small—approximately $135 million over the 5 years.

I urge, therefore that the House accept these amendments to the Senate bill so that we can make progress in this Congress on these important issues.

I include here a fact sheet explaining these amendments:

PROPOSED AMENDMENT TO SENATE-PASSED DISABILITY AMENDMENTS, H.R. 7093

Several amendments primarily aimed at relieving the CDI situation were attached by the Finance Committee in September to H.R. 7093, a Ways and Means revenue bill on the Virgin Islands. These amendments would do the following:

Sec. 1. Clarifies the rate of certain taxes paid to the Virgin Islands on Virgin Island source income.

Sec. 2. Continue disability benefits and Medicare coverage through appeal to the ALJ hearing level for beneficiaries who have their benefits terminated as the result of a CDI. The payments under this provision will be effective only through June, 1984, for termination decisions made prior to October, 1983.

Sec. 3. Give the Secretary authority to slow down the number of cases sent to the State agencies for re-examination, below the rate required by the 1980 amendments to review all beneficiaries at least once every 3 years.

Sec. 4. Require the State agencies to use all relevant medical evidence from the 12-month period preceding the review and to review all evidence contained in the beneficiary's folder in conducting the review. Senator Long added a requirement to this provision that a beneficiary can still be found ineligible even if his medical condition has not improved since his initial determination.

Sec. 5. Require the Secretary to report to the Finance and Ways and Means Committees semi-annually on the CDI process and percentages of terminations, reconsideration requests, and ALJ reversals.

The disability amendments were approved by the Senate on December 3, 1982, by a vote of 70 to 4. The Virgin Island amendment has been approved by the House as

H.R. 7093 and by the Senate both as H.R. 7093 and as part of H.R. 5470.

The Proposed amendment would:

1. Accept Sections 1, 2, 3, and 5 of H.R. 7093.

2. Delete Section 4 of H.R. 7093.

3. Add a new section which requires a face-to-face evidentiary hearing at the reconsideration level. This requirement would be effective no later than January 1, 1984, and would apply only in termination cases.

4. Add a new section which would make it clear the congressional intent is for the SSA to take all necessary steps to assure that the face-to-face reconsideration is a comprehensive evidentiary review of terminations; such objective to be achieved by requiring the Secretary to: (a) issue administrative policy and procedural directives to all field components involved in the adjudication of disability claims that all termination cases are to receive comprehensive evidentiary treatment at the reconsideration level, including the opportunity for legal representation; and (b) issue informational materials to beneficiaries advising them of the importance of the reconsideration decision from an evidentiary standpoint and the desirability of having appropriate legal or other representation at the reconsideration.

5. Add a new section which could remedy the problems caused by the expiration of the public pension exception clause on December 1, 1982. This section avoids constitutional problems which were posed by an extension of the exception clause but continues to provide at least partial social security spouses' benefits—in a non-discriminatory manner—to women who retire from government service. Specifically, the section would reduce the social security spouse benefit by 33% of the government pension and would apply to benefits payable for the 60-month period beginning December 1, 1982.

PUBLIC PENSION OFFSET

Following is a fuller explanation of the public pension offset:

Under current law, all persons who become eligible for a public pension based on noncovered government employment after November 30, 1982 will have any social security spouse's benefit reduced dollar-for-dollar by amounts received as a public pension.

This November 30, 1982 expiration date has not resulted from a recent legislative action. Rather, it has resulted from the language of the public pension offset exception clause which was enacted in 1977.

Last year during consideration of H.R. 3207 by the Social Security Subcommittee of the Committee on Ways and Means. the staff proposed a number of different options with respect to the exception clause. One of the options would have broken the public pension into two pieces: (1) social security equivalent; and (2) private pension equivalent. A person receiving social security as a worker as well as a private pension has only the social security worker's benefit offset against the spouse's benefit. There is good reason, therefore, only to reduce the spouse's benefit by that portion of the public pension which is equivalent to social security. In the proposal the staff presented to the Subcommittee, a percentage of the public pension would have been used to offset the spouse's benefit, with the remainder of the public pension disregarded in the offset computation.

This option was passed over by the Subcommittee in favor of one under which the public pension exception clause would be gradually eliminated over the four-year period from December 1982 through November 1986. Workers who first become eligible to receive a public pension after November 1986 would be subject to full offset of their social security spouse's benefit.

The amount of the public pension offset which would be effective during the phase-out period would be a certain percentage which would be determined based on the date on which the worker first became eligible to receive a public pension. The following schedule would be used to determine the percentage to be used in the offset:

Date on which worker is first eligible for public pension	*Offset percentage*
December 1982 through November 1983	20
December 1983 through November 1984	40
December 1984 through November 1985	60
December 1985 through November 1986	80

As under the current exception clause, workers would also have to meet the requirements for entitlement to a dependent's benefit as they were in effect and being administerd in January 1977 in order to qualify by this new exception clause.

Since no action beyond the Subcommittee level was taken on H.R. 3207, the public pension exception clause expired on December 1, 1982. Attempted to extend the exception clause have been complicated by the *Mathews* decision which, if affirmed by the Supreme Court, would result in the retroactive entitlement of certain males who were denied benefits under the exception clause. This situation has resulted in widespread interest in both the House and Senate in enacting legislation before the end of the session which would address the concerns about the offset but solve the problem in a manner different than extending the exception clause—one which is not discriminatory. A provision under which one-third of a non-government pension would be counted would address the concerns in a non-discriminatory manner.

The two most important points to be made concerning the provision contained in the House amendment are:

(1) The offset would apply to all persons, male and female;

(2) The amount of the public pension which is used to reduce the social security spouse's benefit would be 33% of the government pension.

33% approximates the portion of the CSRS annuity which is equivalent to social security retirement benefits for the average earner.

It should be noted that this approach is not an extension of the exception clause. Under an extension of the exception clause (ignoring possible constitutional questions), few women would be offset and most men would be offset completely. Under the proposal some women would be offset but some men would not be.

Under the law offset provision, a person who receives a public pension of $400 per month and is eligible for a spouse benefit of $250 would actually receive a social security benefit of $118. (This is determine by subtracting the offset amount which is $132 (.33 x $400) from the spouse benefit of $250. Under current law this person would receive no spouse benefit. Under an extended exception clause, if this person were a female she would receive a $250 spouse's benefit. A man would usually receive no spouse's benefit in this case.

Four general conclusions about a proposed solution to count one-third of the government pension in the offset are:

(1) In cases where there is a wide difference between the amounts of the two benefits, with the public pension being larger than the spouse's benefit, the amount of the offset is large. These cases would tend to be males who would already be affected anyway under current law.

(2) In cases where there is a wide difference between the amounts of the two benefits, with the public pension being smaller than the spouse's benefit, the offset is relatively small. These cases would tend to be women who have relatively small pensions based on their own work and relatively large spouse's benefits based on their husband's earnings.

(3) In cases where there is little difference between these two benefits, there is relatively little reduction. These cases would also tend to be women.

(4) Some women who would not be affected by the offset under an extension of the exception clause would be affected under this proposal. However, these women would have to have a relatively large public pension.

The Office of the Actuary has estimated that the cost of this proposal will be approximately $135 million through 1987. (By comparison, the cost of a five year extension of the exception clause for just women is $420 million for this same period.) The cost of the proposal would increase by approximately $100 million if the Mathews decision were reversed.

● Ms. OAKAR. Mr. Speaker, since March 1981, the administration has accelerated implementation of the continuing disability investigation process, the results have been astounding. Approximately 150,000 disability insurance beneficiaries have been eliminated, causing hardship, both financial and emotional, to many defenseless human beings. Even more serious is the claim that this expanded review program has unnecessarily increased the number of cessations in an effort to save the Federal Government money, and that there are discrepancies in determining who is disabled.

As all of my colleagues realize, many disability recipients have been notified that they will no longer be eligible for disability insurance, only to find out later, that their decisions have been overturned, and that they can go back onto the rolls. Sadly, for a handful of recipients, the news arrived too late. Other beneficiaries have become victims of the "waiting game." Backlogs at the State agency level have exacerbated the problems.

In my own State of Ohio, disabled constituents have written, illustrating their review process and the inconsistencies in determining eligibility. One gentleman, a social security disability recipient of 6 years has only one kidney. Recently, he received notification that his benefits are being terminated. At the present time, he is awaiting a decision from the appeals court.

Another constituent, who has been determined disabled, not only by the Social Security Administration, but also by the Veterans' Administration, has been denied further benefit payments.

It appears that a tightening of the regulations determining disability has proved discriminatory in many cases. I hope that by receiving testimony from

our witnesses today, we will be able to determine exactly where the inconsistencies lie.

There is no question that the system needs to be improved, and Secretary Schweiker has made initial steps to alleviate some of the burden that has been placed on the agencies and the beneficiaries. We obviously have to go further. H.R. 7093 can provide further assurances that the disability review system can work efficiently and effectively.

The disability bill before us makes an attempt to improve this critical situation.

I commend Chairman ROSTENKOWSKI and Subcommittee Chairman PICKLE for moving on this legislation.

By striking the Long language, which was agreed to on the Senate floor, stating that one need not prove that medical improvements play a role in determining a disability, we will be taking a further step toward improvement.

Mr. Speaker, members of the Congressional Caucus on Women's Issues have been extremely concerned with the pension offset issue. As Chair of the Aging Committee's Task Force on Social Security and Women, I have been especially concerned about this unfair provision which has reduced social security spousal benefits as a result of the Government pension offset provision contained in the 1977 Social Security Amendments. We are pleased that Congressman PICKLE has responded to our concerns and has proposed an improvement responding to this dire situation. As of December 1, 1982, 5,000 women, retired from public service, dependent on social security spousal benefits, lost a significant portion of their social security benefits. By 1987, the number of women affected by the 1977 Social Security Amendments is expected to reach 25,000. They are harshly affected by a dollar-for-dollar reduction, reducing social security benefits, by the amount of their public pension. For a woman who receives an average monthly public pension of $873, and a spousal benefit of $196 a month, the reduction translates into a matter of financial survival.

Although the offset provision is not completely repealed, this is a good first step and will reduce the hardship suffered by those penalized by the pension offset provision.

Mr. Speaker, it is clear that H.R. 7093 is not the final solution to two serious problems. It is a start, however, that can provide the impetus for greater and strong improvements in the 98th Congress. I support the efforts of the Ways and Means Chairman and urge my colleagues to do also.●

● Mr. VENTO. Mr. Speaker, I rise in support of the compromise amendment to the Senate passed measure H.R. 7093.

Mr. Speaker, the continuing disability investigations accelerated to unreasonable levels by the Reagan administration has worked a very significant hardship on those who have been subjected to it. This measure as amended by unanimous consent by chairman of the subcommittee, Mr. PICKLE, will continue benefits through the administrative law judge level of appeal.

Second, it will send a signal to the Secretary of Health and Human Services to reduce the accelerated CDI's.

Third it will provide an annual report back to Congress concerning the social security disability program.

Mr. Speaker, many problems have resulted from the current CDI's. Individuals without any face-to-face interviews are declared ineligible for social security disability, inadequate notification in terms of recipients rights have also plagued the process. The upshot has been that over 200,000 people have been removed from social security disability, many I know inappropriately.

This measure H.R. 7093, as amended, will provide some much needed relief, but frankly what is most needed is a strong dose of commonsense in the SSA and the Reagan administration. Social security disability eligibility should not be withdrawn unless there are substantive evidence and certainly due process with benefits paid through the appeal procedure for those under CDI's should be provided.

Mr. Speaker, I would find very troublesome the section 4 added by the Senate, it seems to reverse the initial intent of the social security disability review solution that was added to the measure and applaud efforts to remove it.

When the guidelines are established anew for the social security disability we must monitor it carefully to assure that the intent of this measure is fulfilled. The medical record of disability determination should be open through the administrative law judge level, surely this is appropriate.

Hopefully most applicants will make an effort to provide most medical information at the State determination level, however, we should not close our appeal process to facts which would affect the outcome of the determination, especially in light of the record of paper reviews and lack of client notification.

Mr. Speaker, I am also mindful of the Congressman OBERSTAR, spouse benefit measure which I have cosponsored inclusion in this measure and strongly support it and applaud my colleague from Minnesota for his hard work to correct this inequity.

Mr. Speaker, today we should all support these changes and I look forward to a careful and thoughtful consideration of other changes in the 98th Congress.●

Mr. PEPPER. Mr. Speaker, today the House is considering H.R. 7093 with a Senate amendment which is amended by a House amendment respecting the disability insurance program of the country. The author of this amendment was the able gentleman from Texas, Mr. PICKLE. This amendment most favorably affects the disabled people of this country. Mr. PICKLE worked long and hard in the development of this amendment showing his great compassion and concern for the disabled people. I wish in the warmest way to commend my dear friend Mr. PICKLE for his sponsorship of this amendment.

Mr. ARCHER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois (Mr. ROSTENKOWSKI) that the reading be dispensed with?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Illinois?

There was no objection.

A motion to reconsider was laid on the table.

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SOCIAL SECURITY ADMINISTRATION

Number 77

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Today, the House passed, by unanimous consent, with amendments, H.R. 7093 as passed by the Senate on December 3, 1982 (see Legislative Bulletin Number 76). Three of the provisions as passed by the House are the same as those passed by the Senate and would:

- Permit, on a temporary basis, a DI beneficiary to elect to have benefits and Medicare coverage continued through the Administrative Law Judge (ALJ) hearing. The continued benefits would be treated as overpayments and subject to the waiver requirements of present law. This would be effective for benefits beginning January 1983 with respect to termination decisions made by State agencies between enactment and October 1983, but the last month for which payment could be continued would be June 1984. (Cases now pending a reconsideration or an ALJ decision would also be covered by this provision, although retroactive payments would not be authorized.)

- Permit the Secretary of HHS to reduce, on a State-by-State basis, the flow of cases sent to State agencies for periodic review of continuing eligibility, if appropriate, based on State workloads and staffing requirements, even if this means that the initial periodic review of the rolls cannot be completed within 3 years.

- Require the Secretary to make semiannual reports to the Senate Committee on Finance and the House Committee on Ways and Means on the results of continuing disability investigations.

The amendments added by the House would:

- Require the Secretary to provide the opportunity for a face-to-face, evidentiary hearing during reconsideration of any decision that disability has ceased. The reconsideration could be made by HHS or by the State agency that made the finding that disability ceased. The provision would be effective with respect to reconsiderations requested on or after a date to be specified by the Secretary, but no later than January 1, 1984.

- Require the Secretary to take necessary steps to assure public understanding of the importance Congress attaches to the face-to-face reconsiderations discussed above, including advising beneficiaries of the procedures during the reconsideration, of their opportunity to introduce evidence and be represented by counsel at the reconsideration, and of the importance of submitting all evidence at the reconsideration.

- Modify the spouse's governmental pension offset by providing that, for a 5-year period beginning December 1, 1982, only one-third of a person's government pension would be taken into account when applying the spouse's offset. This change would apply to all people subject to the offset--those currently on the rolls as well as future beneficiaries.

H.R. 7093 will now be sent back to the Senate for consideration of the amendments added by the House.

TAX RATE ON VIRGIN ISLANDS SOURCE INCOME

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 7093.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate numbered 1 to the bill (H.R. 7093) entitled "An Act to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income", with the following amendment:

In lieu of the matter proposed to be inserted by said amendment, strike out all after the enacting clause of the House engrossed bill and insert in lieu thereof the following:

SECTION 1. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

(a) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to possessions) is amended by inserting after section 934 the following new section:

"SEC. 934A. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

"(a) GENERAL RULE.—For purposes of determining the tax liability incurred by citizens and resident alien individuals of the United States, and corporations organized in the United States, the Virgin Islands pursuant to this title with respect to amounts received from sources within the Virgin Islands—

"(1) the taxes imposed by sections 871(a)(1) and 881 (as made applicable to the Virgin Islands) shall apply except that '10 percent' shall be substituted for '30 percent', and

"(2) subsection (a) of section 934 shall not apply to such taxes.

"(b) SUBSECTION (a) RATES NOT TO APPLY TO PRE-EFFECTIVE DATE EARNINGS.—

"(1) IN GENERAL.—Any change under subsection (a)(1), and say reduction under section 934 pursuant to subsection (a)(2), in a rate of tax imposed by section 871(a)(1) or 881 shall not apply to dividends paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction.

"(2) ORDERING RULE.—For purposes of paragraph (1), dividends shall be treated as first being paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction (to the extent thereof)."

(b) WITHHOLDING.—Subchapter A of chapter 3 of such Code (relating to withholding of tax on nonresident aliens and foreign corporations) is amended by adding at the end thereof the following new section:

"SEC. 1444. WITHHOLDING ON VIRGIN ISLANDS SOURCE INCOME.

"For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 (as modified by section 934A) shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be."

(c) TECHNICAL AMENDMENT.—Subsection (a) of section 934 of such Code is amended by inserting before the period at the end thereof "or in section 934A".

(d) CLERICAL AMENDMENT.—

(1) The table of sections for subpart D of part III of subchapter N of chapter 1 of such Code is amended by inserting after the item relating to section 934 the following new item:

"Sec. 934A. Income tax rate on Virgin Islands source income."

(2) The table of sections for subchapter A of chapter 3 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1444. Withholding on Virgin Islands source income."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

(2) WITHHOLDING.—The amendment made by subsection (b) shall apply to payments made after the date of the enactment of this Act.

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection: "Continued Payment of Disability Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

"(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

"(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's

(B)(i) Subsection (d) of section 224 of such Act is amended by adding at the end thereof the following new paragraphs:

"(4) EXTENSION OF TIME FOR MAKING ELECTIONS; REVOCATION OF ELECTIONS.—

"(A) EXTENSION.—The time for making an election under section 338 of such Code shall not expire before the close of February 28, 1983.

"(B) REVOCATION.—Any election made under section 338 of such Code may be revoked by the purchasing corporation if revoked before March 1, 1983.

"(5) RULES FOR ACQUISITIONS DESCRIBED IN PARAGRAPH (2).—

"(A) IN GENERAL.—For purposes of applying section 338 of such Code with respect to any acquisition described in paragraph (2)—

"(i) the date selected under subparagraph (B) of this paragraph shall be treated as the acquisition date,

"(ii) a rule similar to the last sentence of section 334(b)(2) of such Code (as in effect on August 31, 1982) shall apply, and

"(iii) subsections (e), (f), and (i) of such section 338, and paragraphs (4), (5), (6), and (8) of subsection (h) of such section 338, shall not apply.

"(B) SELECTION OF ACQUISITION DATE BY PURCHASING CORPORATION.—The purchasing corporation may select any date for purposes of subparagraph (A)(i) if such date—

"(i) is after the later of June 30, 1982, or the acquisition date (within the meaning of section 338 of such Code without regard to this pargraph), and

"(ii) is on or before the date on which the election described in paragraph (2)(C) is made."

"(ii) Subparagraph (A) of section 224(d)(2) of such Act is amended by striking out "under paragraph (1)" and inserting in lieu thereof "(within the meaning of section 338 of such Code without regard to paragraph (5) of this subsection)".

(9) AMENDMENTS RELATED TO SECTION 231.—

(A) Clause (ii) of section 263(g)(2)(B) (defining interest and carrying charges) is amended by striking out "section 1232(a)(4)(A)" and inserting in lieu thereof "section 1232(a)(3)(A)".

(B) Section 1232 (relating to bonds and other evidences of indebtedness) is amended by redesignating subsection (d) as subsection (c).

(C)(i) The next to the last sentence of section 1232(b)(2) (defining issue price) is amended by striking out "(other than a bond or other evidence of indebtedness or an investment unit issued pursuant to a plan of reorganization within the meaning of section 368(a)(1) or an insolvency reorganization within the meaning of section 371 or 374)".

(ii) Subsection (b) of section 1232 is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR EXCHANGE OF BONDS IN REORGANIZATIONS.—

"(A) IN GENERAL.—If—

"(i) any bond is issued pursuant to a plan of reorganization within the meaning of section 368(a)(1) for another bond (hereinafter in this paragraph referred to as the 'old bond'), and

"(ii) the fair market value of the old bond is less than its adjusted issue price,

then, for purposes of the next to the last sentence of paragraph (2), the fair market value of the old bond shall be treated as equal to its adjusted issue price.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) BOND.—The term 'bond' includes any other evidence of indebtedness and an investment unit.

"(ii) ADJUSTED ISSUE PRICE.—The adjusted issue price of the old bond is its issue price, increased by any original issue discount previously allowed as a deduction."

(iii) For purposes of paragraph (4) of section 1232(b) of the Internal Revenue Code of 1954 (as added by clause (ii)), any insolvency reorganization within the meaning of section 371 or 374 of such Code shall be treated as a reorganization within the meaning of section 368(a)(1) of such Code.

"(iv) The amendments made by this subparagraph shall apply to evidences of indebtedness issued after December 13, 1982; except that such amendments shall not apply to any evidence of indebtedness issued after such date pursuant to a written commitment which was binding on such date and at all times thereafter.

(10) AMENDMENT RELATED TO SECTION 235.—Section 235(g)(5) of such Act is amended by striking out "section 253" and inserting in lieu thereof "section 242".

(11) AMENDMENT RELATED TO SECTION 236.—Subsection (c) of section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date) is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF CERTAIN RENEGOTIATIONS.—If—

"(A) the taxpayer after August 13, 1982, and before January 1, 1983, borrows money from a government plan (as defined in section 219(e)(4) of the Internal Revenue Code of 1954),

"(B) under the applicable State law, such loan requires the renegotiation of all outstanding prior loans made to the taxpayer under such plan, and

"(C) the renegotiation described in subparagraph (B) does not extend the duration of or change the interest rate on any such outstanding prior loan,

then the renegotiation described in subparagraph (B) shall not be treated as a renegotiation, extension, renewal or revision for purposes of paragraph (1)."

(12) AMENDMENT RELATED TO SECTION 237.—Paragraph (2) of section 401(d) (as redesignated by section 237 of the Tax Equity and Fiscal Responsibility Act of 1982) is amended by striking out "paragraph (9)(B)" and inserting in lieu thereof "paragraph (1)(B)".

(13) AMENDMENT RELATED TO SECTION 266.—Section 266(c)(3) of such Act is amended by striking out "section 103(f)(2)(C)" and inserting in lieu thereof "section 101(f)(2)(C)".

(14) AMENDMENT RELATED TO SECTION 283.—Section 283(b)(2)(B) of such Act (relating to liability for tax and method of payment) is amended by striking out "January 18" and inserting in lieu thereof "February 17".

(b) AMENDMENTS RELATED TO TITLE III.—

(1) AMENDMENTS RELATED TO SECTION 302.—

(A) Subsection (d) of section 31 (relating to year for which credit allowed) is amended to read as follows:

"(d) YEAR FOR WHICH CREDIT ALLOWED.—

"(1) WAGES.—Any credit allowed—

"(A) by subsection (a) shall be allowed for the taxable year beginning in the calendar year in which the amount is withheld, or

"(B) by subsection (c) shall be allowed for the taxable year beginning in the calendar year in which the wages are received.

For purposes of this paragraph, if more than 1 taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

"(2) INTEREST, DIVIDENDS, AND PATRONAGE DIVIDENDS.—Any credit allowed by subsection (b) shall be allowed for the taxable year of the recipient of the income in which the amount is received."

(B) Paragraph (4) of section 3(i) of the Subchapter S Revision Act of 1982 is hereby repealed.

(2) AMENDMENT RELATED TO SECTION 310.—Subsection (d) of section 310 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date for requirement that obligations be registered) is amended by adding at the end thereof the following new paragraph:

"(4) EFFECTIVE DATE FOR TAX-EXEMPT OBLIGATION.—In the case of obligations the interest on which is exempt from tax (determined without regard to the amendments made by this section)—

"(A) under section 103 of the Internal Revenue Code of 1954, or

"(B) under any other provision of law (without regard to the identity of the holder),

the amendments made by this section shall apply only to obligations issued after December 31, 1983."

(3) AMENDMENT RELATED TO SECTION 336.—Section 7701(a) (relating to definitions) is amended by redesignating paragraph (38) (as added by section 336(a) of the Tax Equity and Fiscal Responsibility Act of 1982) as paragraph (39).

(4) AMENDMENT RELATED TO SECTION 339.—Subparagraph (B) of section 6038A(c)(2) (defining controlled group) is amended by inserting ", (b)(2)(C)," after "(a)(4)".

(5) AMENDMENT RELATED TO SECTION 354.—Paragraph (23) of section 501(c) (relating to exempt organizations) is amended by striking out "25 percent" and inserting in lieu thereof "75 percent".

(c) AMENDMENTS RELATED TO TITLE IV.—

(1) AMENDMENTS RELATED TO SECTION 402.—

(A) The second sentence 6226(g) (relating to determine of court reviewable) is amended by striking out "Only" and inserting in lieu thereof "With respect to the partnership, only".

(B) The second sentence of section 6228(a)(6) (relating to determination of court reviewable) is amended by striking out "Only" and inserting in lieu thereof "With respect to the partnership, only".

(2) AMENDMENTS RELATED TO SECTION 405.—

(A) Subsection (b) of section 405 of the Tax Equity and Fiscal Responsibility Act of 1982 is amended to read as follows:

"(b) PENALTY. —Subsection (a) of section 6679 (relating to failure to file returns as to organization or reorganization of foreign coporations and acquisition of their stock), as amended by section 340(b)(1), is amended by striking out 'section 6035 or 6046' and inserting in lieu thereof 'section 6035, 6046, or 6046A'.'

(B) Paragraphs (2) and (3) of section 405(c) of such Act are amended to read as follows:

"(2) The section heading of section 6679, as amened by section 340(b)(2), is amended to read as follows:

" 'SEC. 6679. FAILURE TO FILE RETURNS, ETC, WITH RESPECT TO FOREIGN CORPORATION OR FOREIGN PARTNERSHIPS.' "

"(3) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to section 6679 and inserting in lieu thereof the following:

" 'SEC. 6679. FAILURE TO FILE RETURNS, ETC., WITH RESPECT TO FOREIGN CORPORATIONS OR FOREIGN PARTNERSHIPS.' "

(2) page 26, line 5 of the House engrossed bill, after "105(d)", "165(c)(3),".

(3) Page 41, after line 8 of the House engrossed bill, insert:

(10) CLARIFICATION OF EFFECTIVE DATE.—Paragraph (2) of section 403(e) of the Economic Recovery Tax Act of 1981 is amended by striking out "and parapraphs (2) and (3)(B) of subsection (d)" and inserting in lieu thereof "paragraphs (2) and (3)(B) of subsection (d), and paragraph (4)(A) of subsection (d) (to the extent related to the tax

election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

"(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

"(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

"(B) prior to October 1, 1983.".

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended—

(1) by inserting "(1)" after "(i)";

(2) by inserting ", subject to paragraph (2)" after "at least every 3 years"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.".

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.

(a) IN GENERAL.—Section 205(b) of the Social Security Act is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

"(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person than the person or persons who made the finding described in subparagraph (B)."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event such date shall not be later than January 1, 1984.

SEC. 5. CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, or their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

SEC. 6 REPORT BY SECRETARY.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.".

SEC. 7. OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS.

"(a) IN GENERAL.—Subsections (b)(4)(A), (c)(2)(A), (e)(8)(A), (f)(2)(A) and (g)(4)(A) of section 202 of the Social Security Act are each amended—

(1) by striking out "by an amount equal to the amount of any monthly periodic benefit" and inserting in lieu thereof "by an amount equal to one-third of the amount of any monthly periodic benefit"; and

(2) by adding at the end thereof the following new sentence: "The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next lower multiple of $0.10.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) of this section shall apply with respect to monthly insurance benefits payable for months in the 60-month period beginning December 1, 1982. After the close of such 60-month period, the provisions of the Social Security Act to which such amendments relate shall read as they would if this section had not been enacted.

Resolved, That the House disagree to the amendments of the Senate numbered 2, 3, and 4 to the aforesaid bill.

Resolved, That the House agree to the amendment of the Senate to the title of the aforesaid bill.

Mr. BAKER. Madam President, I move that the Senate insist on its amendments numbered 2, 3, and 4, that the Senate disagree to the House amendment to Senate amendment 1 and request a conference with the House and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. DOLE, Mr. PACKWOOD, Mr. ARMSTRONG, Mr. LONG, and Mr. HARRY F. BYRD, JR., conferees on the part of the Senate.

APPOINTMENT OF CONFEREES ON H.R. 7093, REDUCING RATE OF CERTAIN TAXES PAID TO VIRGIN ISLANDS

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill, H.R. 7093, to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, with Senate amendments thereto, insist on the House amendments and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois? The Chair hears none and, without objection, appoints the following conferees: Messrs. ROSTENKOWSKI, PICKLE, JACOBS, GEPHARDT, SHANNON, ARCHER, GRADISON, and MARTIN of North Carolina.

There was no objection.

97TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
No. 97-985

TAXES ON VIRGIN ISLAND SOURCE INCOME; DISABILITY BENEFITS

DECEMBER 21 (legislative day of DECEMBER 19), 1982.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 7093]

The committee of conference on the disagreeing votes of the two Houses on the Senate amendments numbered 2, 3, and 4 to the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes, and on the disagreeing votes of the two Houses on the House amendment to the Senate amendment numbered 1 to such bill, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 3, and 4.

That the Senate recede from its disagreement to the House amendment to the Senate amendment numbered 1 and agree to the same with an amendment as follows:

In lieu to the matter proposed to be inserted by the House amendment to the Senate amendment, insert the following:

SECTION 1. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

(a) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to possessions) is amended by inserting after section 934 the following new section:

"SEC. 934A. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

"(a) GENERAL RULE.—For purposes of determining the tax liability incurred by citizens and resident alien individuals of the United States, and corporations organized in the United States, to the

Virgin Islands pursuant to this title with respect to amounts received from sources within the Virgin Islands—

"(1) the taxes imposed by sections 871(a)(1) and 881 (as made applicable to the Virgin Islands) shall apply except that '10 percent' shall be substituted for '30 percent', and

"(2) subsection (a) of section 934 shall not apply to such taxes.

"(b) SUBSECTION (a) RATES NOT TO APPLY TO PRE-EFFECTIVE DATE EARNINGS.—

"(1) IN GENERAL.—Any change under subsection (a)(1), and any reduction under section 934 pursuant to subsection (a)(2), in a rate of tax imposed by section 871(a)(1) or 881 shall not apply to dividends paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction.

"(2) ORDERING RULE.—For purposes of paragraph (1), dividends shall be treated as first being paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction (to the extent thereof)."

(b) WITHHOLDING.—Subchapter A of chapter 3 of such code (relating to withholding of tax on nonresident aliens and foreign corporations) is amended by adding at the end thereof the following new section:

"SEC. 1444. WITHHOLDING ON VIRGIN ISLANDS SOURCE INCOME

"For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 (as modified by section 934A) shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be."

(c) TECHNICAL AMENDMENT.—Subsection (a) of section 934 of such Code is amended by inserting before the period at the end thereof "or in section 934A".

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart D of part III of subchapter N of chapter 1 of such Code is amended by inserting after the item relating to section 934 the following new item:

"Sec. 934A. Income tax rate on Virgin Islands source income."

(2) The table of sections for subchapter A of chapter 3 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1444. Withholding on Virgin Islands source income."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

(2) WITHHOLDING.—The amendment made by subsection (b) shall apply to payments made after the date of the enactment of this Act.

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Continued Payment of Disability Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

"(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

"(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

"(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

"(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

"(B) prior to October 1, 1983.".

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended—

(1) by inserting "(1)" after "(i)";

(2) by inserting ", subject to paragraph (2)" after "at least every 3 years"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on the Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence."

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.

(a) IN GENERAL.—Section 205(b) of the Social Security Act is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

"(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary,

the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.

SEC. 5. CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

SEC. 6. REPORT BY SECRETARY.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.".

SEC. 7. OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS.

(a) ADDITIONAL EXEMPTION.—

(1) Section 334 of the Social Security Amendments of 1977 (Public Law 95-216) is amended by adding at the end thereof the following new subsection:

"(h) In addition, the amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

"(1) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act); and

"(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

"(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

"(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).".

(2) Section 334(f) of such Act is amended by striking out "The amendments" and inserting in lieu thereof "Subject to subsections (g) and (h), the amendments".

(b) REPORT BY SECRETARY.—The Secretary of Health and Human Services shall conduct a study of the provisions of title II of the Social Security Act which require an offset against spouses' and surviving spouses' benefits on account of public pensions, as added by section 334 of the Social Security Amendments of 1977 (taking into account the amendment made by subsection (a) of this section as well as the provisions of such section 334), and shall report to the Congress, no later than May 15, 1983, his recommendations for any permanent legislative changes in such provisions (or in the applicability of such provisions) which he may consider appropriate.

(c) TECHNICAL AMENDMENTS.—Subsections (b)(4)(A), (c)(2)(A), (e)(8)(A), (f)(2)(A) and (g)(4)(A) of section 202 of the Social Security Act are each amended by inserting "for purposes of this title" after "as defined in section 210".

(d) EFFECTIVE DATE.—The amendments made by subsections (a)

and (c) of this section shall be effective with respect to monthly insurance benefits for months after November 1982.

And the House agree to the same.

DAN ROSTENKOWSKI,
J. J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD GEPHARDT,
JAMES SHANNON,
BILL ARCHER,
JIM MARTIN,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
WILLIAM L. ARMSTRONG,
RUSSELL B. LONG,
HARRY F. BYRD, Jr.,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the Senate amendments numbered 2, 3, and 4 to the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes, and on the disagreeing votes of the two Houses on the House amendment to the Senate amendment numbered 1 to such bill, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME

Present law.—The Virgin Islands Government contends that payments of passive investment income by V.I. persons to U.S. persons are subject to a 30-percent tax (on the gross amount of the payment) and a corresponding withholding obligation. Certain U.S. receipents of such income contend that such payments are subject to neither tax nor withholding. (Similiar payments to foreign persons are clearly subject to the tax and the withholding obligation.)

Senate position.—The Senate language (which is identical to the original House language) provides that the rate of V.I. tax on payments of passive investment income from V.I. persons to U.S. persons shall not exceed 10 percent. This treatment would apply to dividend payments out of earnings and profits accumulated in taxable years beginning on or after the date of enactment. The Government of the Virgin Islands would be able to reduce this 10 percent maximum rate in its discretion. The withholding obligation of the payer would in every case correspond to the substantive tax liability of the recipient. Payments to foreign persons would continue to be subject to the 30-percent tax and corresponding withholding.

House amendment.—The House amendment follows the Senate position, but makes two technical changes.

First, the House amendment makes it clear that Congress is taking neither side in the current dispute between U.S. persons and the V.I. Government by striking references to "reductions" in tax.

Second, the House amendment makes it clear that the Virgin Islands will be able to impose and require withholding of a tax of up to 10 percent on payments of passive income to U.S. persons.

Conference agreement.—The conference agreement follows the House amendment with the two technical changes.

CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL

Present law.—A social security disability insurance (DI) beneficiary who is found to be no longer disabled under the provisions of the Social Security Act continues to receive benefits for two months after the month in which his eligibility is determined to have ceased. (As an administrative practice, individuals are now generally found to be "no longer disabled" no earlier than the month in which the individual is notified of the termination decision.)

The individual may request a reconsideration of the decision, and if the termination is upheld, he may appeal the decision to an Administrative Law Judge (ALJ). The individual is not presently eligible for benefits during the appeals process. However, if the initial termination decision is reversed, benefits are paid retroactively.

House bill.—Upon request of the beneficiary, DI benefits and Medicare coverage would continue to be paid through the month preceding the month of the decision pursuant to a hearing before an Administrative Law Judge. These additional DI benefits would be subject to recovery as overpayments, subject to the same waiver provisions now in current law, if the initial termination decision is upheld.

The provision is effective for benefit payments beginning with the first month after the date of enactment for cases where a termination decision has been made before October 1, 1983. In all cases such benefit payments would cease no later than June 1984. For cases where a termination decision was made before the date of enactment and a timely appeal is pending or is filed, benefits could be paid under this provision, but no lump sum back payments would be authorized.

Senate amendment.—Identical to House provision.

Cost effect.—According to the Congressional Budget Office this provision will increase outlays by $75 million in fiscal years 1983–85. There are no costs beyond those years.

Conference agreement.—The conference agreement follows the House provision.

PERIODIC REVIEWS OF DISABILITY CASES

Present law.—The Social Security Disability Amendments of 1980 required the Secretary of Health and Human Services to review the cases of current disability beneficiaries at least once every three years, beginning in January, 1982, to determine whether they are still disabled. Beneficiaries judged to be permanently disabled were to be excluded from this review.

House bill.—The House bill authorizes the Secretary to slow down the number of cases sent to the State disability agencies for re-examination below the rate required by the 1980 amendments. The Secretary's determination of the appropriate numbers of cases to be reviewed in each State shall be based on consideration of the backlogs of such pending reviews, projected numbers of new applicants for disability benefits, and projected staffing levels of State

agencies. The State agency must demonstrate a good faith effort to meet appropriate staffing requirements and to process reviews in a timely fashion. The Secretary is to report annually to the House Committee on Ways and Means and the Senate Finance Committee on the determinations made under this section.

Senate amendment.—Same as House bill.

Cost effect.—Negligible.

Conference agreement.—The conference agreement follows the House provision.

REPORT BY SECRETARY

Present law.—There is no requirement for periodic reports to the Congress by the Secretary of Health and Human Services with respect to continuing disability investigations.

House bill.—Requires the Secretary of HHS to report to the Senate Finance Committee and the House Committee on Ways and Means semiannually on the number of: continuing eligibility reviews, termination decisions, reconsideration requests, and termination decisions which are overturned at the reconsideration or hearing level.

The provision is effective upon enactment.

Senate amendment.—Identical to House provision.

Cost effect.—None.

Conference agreement.—The conference agreement follows the House provision.

EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS

Current law.—The Social Security Act provides for initial determinations of disability by the State agencies authorized by the Secretary to make disability decisions, and for continuing reviews of disability by the Secretary or the State agency. The law also provides for a hearing by the Secretary, and subsequent judicial review, for any individual dissatisfied with determinations made by the State agencies or the Secretary.

House bill.—The House bill requires the Secretary to provide, beginning no later than January 1, 1984, opportunity for a face-to-face, evidentiary hearing prior to reconsideration of decisions to terminate benefits for disability beneficiaries. This requirement does not supplant or affect in any way the requirement of existing law for a hearing by an Administrative Law Judge. The provision applies only to reconsiderations of determinations that the beneficiary is not disabled because the physical or mental impairment on which his eligibility is based is found to have ceased, not to have existed or to no longer be disabling.

Senate amendment.—No provision.

Cost effect.—Negligible.

Conference agreement.—The conference agreement follows the House provision.

CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES

Present law.—The Social Security Act provides for initial determinations to be made by the State agency or the Secretary, and for hearings conducted by the Secretary and judicial review after such hearings for those individuals dissatisfied with the earlier decisions.

House bill.—The House bill requires the Secretary to take all steps necessary to insure public understanding of the importance Congress attaches to the face-to-face reconsideration hearings provided in Section 4. The Secretary is required to assure that beneficiaries will receive reasonable notice and information as to the time and place of the reconsideration, of the opportunities to be represented by counsel and to introduce evidence at the reconsideration, and of the importance of submitting all available evidence concerning the case at the reconsideration.

Senate bill.—No provision.

Cost effect.—None.

Conference agreement.—The conference agreement follows the House provision.

MEDICAL EVIDENCE

Present law.—Although current law does not specify a time period for the collection of medical evidence, current procedures, detailed in guidelines used by State agencies, require the Secretary to seek to obtain all medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

Under both the regulations and the guidelines used by State agencies, an individual must meet the prevailing requirements for eligibility and no medical improvement needs to be shown to find an individual no longer eligible for disability benefits.

House bill.—No provision.

Senate amendment.—Requires the Secretary to make every reasonable effort to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated such individuals with respect to his impairment or impairments within the preceding 12-month period. Requires the Secretary to consider all evidence available in the individual's case file relating to such impairment or impairments in making a determination on the case. States that nothing in the preceding sentence shall preclude the Secretary from finding an individual to be ineligible under the terms of the Social Security Act even if such individual's medical condition has not improved or otherwise changed since any prior determination of his disability.

Cost effect.—No estimate made.

Conference agreement.—The conference agreement does not include the Senate provision.

PUBLIC PENSION OFFSET

Present law.—Prior to 1977, social security spouse's benefits were available only to men, who could meet a dependency test and to

women, all of whom were presumed to be dependent. These provisions were declared in March 1977 (*Califano v. Goldfarb*) unconstitutional since they applied differently to men and women.

The Social Security Amendments of 1977 responded to the Goldfarb decision by providing, except for beneficiaries who are covered by the public pension offset exception clause, that social security dependents' benefits which are paid to spouses of retired, disabled, or deceased workers are reduced dollar-for-dollar by an amount equal to any public pension which the spouse receives as a result of his or her own employment by a Federal, state or local government which is not covered by social security. (Non-covered government employment is defined as employment not covered under section 210 of the Social Security Act on the last day the spouse was employed by the government.)

Under the exception clause (which expired December 1, 1982), the offset would not apply if: (1) a beneficiary is either receiving or eligible to receive a government pension based on non-covered employment for any month in the period December 1977 through November 1982, and (2) the beneficiary, at the time of filing for social security dependents' benefits, meets all the requirements for entitlement as they were in effect and being administered in January 1977. The law in January 1977 required men, but not women, to prove they were dependent on their spouses for at least one-half of their support in order the qualify for the spouse benefit.

House bill.—The House bill provides that during the 60 month period beginning with December 1982, the amount of the public pension used for purposes of the public pension offset shall be an amount equal to one-third of the public pension.

Senate amendment.—No provision.

Cost effect.—According to unofficial estimates of the Congressional Budget Office, the House bill would increase outlays by the following amounts (by fiscal years, in millions of dollars):

1983	15
1984	40
1985	65
1986	85
1987	108
1988	30

Conference agreement.—The Conferees agreed that, in lieu of a modification of the public pension offset clause, the public pension offset would not apply to an individual who becomes eligible for a public pension prior to July 1983 if that individual is dependent upon his or her spouse for one-half support. The one-half support test would be applied according to the pre-1977 law, except that it would apply to both men and women.

The amendment would also require the Secretary of Health and Human Services to study the pension offset provisions and to report his recommendation for any permanent legislation that may be appropriate by May 15, 1983.

In addition, the Conferees agreed to specify the definition of non-covered government employment as government employment

which on the last day the spouse was employed, was not covered employment for purposes of title II of the Social Security Act.

DAN ROSTENKOWSKI,
J. J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD GEPHARDT,
JAMES SHANNON,
BILL ARCHER,
JIM MARTIN,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
WILLIAM L. ARMSTRONG,
RUSSELL B. LONG,
HARRY F. BYRD, Jr.,
Managers on the Part of the Senate.

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CONFERENCE REPORT ON H.R. 7093, REDUCING RATE OF CERTAIN TAXES PAID TO VIRGIN ISLANDS

Mr. ROSTENKOWSKI. Mr. Speaker, I call up the conference report on the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER. Pursuant to the order of the House of December 17, 1982, the conference report is considered as having been read.

(For conference report and statement, see prior proceedings of the House of today, Tuesday, December 21, 1982.)

The SPEAKER. The gentleman from Illinois (Mr. ROSTENKOWSKI) will be recognized for 30 minutes, and the gentleman from Texas (Mr. ARCHER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I submit for the approval of the House the report of the conferees on H.R. 7093. This bill makes changes in three areas: First, it makes it clear that only a 10-percent tax will be imposed on passive income from the Virgin Islands when the recipient is a U.S. individual or corporation; second, it provides for a short-term solution to the problems that have arisen in the course of reexamination of disability beneficiaries; and third, it delays for 7 months full implementation of the spouses' public pension offset provision which took effect December 1, 1982, by exempting from the offset those who can demonstrate dependence on their spouse for at least half of their support.

This bill was originally devoted only to the Virgin Islands tax measure. The House had accepted most of the original Senate amendments to this bill dealing with the social security disability program, the most important of which were the extension of payments to the ALJ hearing level for those appealing termination of their benefits, and slowdown of the rate of reviews of disability beneficiaries. In the conference, the House position prevailed with respect to the addition of two House amendments, including requirement of a face-to-face hearing at the reconsideration level, and with respect to rejection of a Senate amendment concerning review of evidence in the file. The cost of the disability provisions of the bill is estimated by CBO to be $75 million over the 1983-88 period.

The House conferees also managed to win a compromise from the Senate on the Government pension offset provision. The House had originally proposed a new offset provision that would have used only one-third of the Government pension in computing the offset against the social security spouses' pension. The Senate wished to delete this section altogether. The compromise that was finally struck is only temporary: it provides that the offset will not apply to those who become eligible for a Government pension between December 1, 1982—when the current law offset took effect—and July 1, 1983, and who can prove they are dependent on their spouses for at least one-half of their support. This provision is not a permanent solution, but it does aid those women most harshly affected by the current offset provision. The cost of this provision is estimated at $50 million over the five years.

In short, the House prevailed on the amendments that were of critical importance to Members of the House; namely, the extension of benefits for disability beneficiaries, and managed to win a compromise on the Government pension offset provision that will give 7 more months of exemption from the offset for the neediest women affected by it, giving Congress time to devise a permanent, equitable solution next year. I urge acceptance of this report.

□ 1900

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ARCHER asked and was given permission to revise and extend his remarks.)

Mr. ARCHER. Mr. Speaker, I support the conference report on this legislation.

The primary bill was relatively noncontroversial when it passed the House and remains so as it emerges from the conference committee. It has

to do with a reduction in certain taxes paid to the Virgin Islands, on income from the Virgin Islands, and has not, as far as I know, been protested by an interested parties. It has, according to the Treasury Department and others, no significant revenue impact.

The rest of the measure deals with changes in the disability insurance program and the so-called pension offset, which was enacted as section 334 of Public Law 95-216.

The disability insurance changes are aimed at adjusting to problems arising from continuing disability investigations (CDI's). In various parts of the United States, there have been reports that CDI's have resulted in beneficiaries being removed from the disability rolls improperly and/or without due process. The conference report would, among other things, respond to these reports by providing for payment of benefits to claimants in such cases until their claims have been reviewed by administrative law judges (ALJ's).

The conference report also would provide for a short extension of a grace period offered to those eligible for social security spouse's benefits who also are eligible for governmental retirement benefits based on their own work. The 1977 Social Security Amendments provided that spouse's benefits would be reduced, dollar for dollar, by the amounts of those other governmental pensions. A 5-year grace period was added to exclude from this offset both women and dependant husbands who had reason to plan for such benefits under prior law. That grace period ended November 30 of this year.

The conference report would provide for an extension of this grace period for 7 months, during which time exempted beneficiaries, both men and women, would have to show that they had been dependent upon the primary beneficiaries.

These are not perfect answers to perplexing problems. But they do represent responses which appear to be acceptable to a majority of the conferees and to a number of affected social security beneficaries. The conferees have been assured that the net additional cost to the social security system would be relatively slight.

Against this background, Mr. Speaker, I recommend that my colleagues approve the conference decision. But I would repeat some cautionary words I offered on this subject earlier this week, when H.R. 7093 was amended and sent to the other body. At that time, I pointd out that we are dealing with extremely complicated provisions of law in a very short period of time. When we attempt to respond to crisis, real or imagined, in the closing days of any session, we tend to make mistakes, usually unwittingly. Although I am not disposed to stand in the way of this legislation, I do deplore the process which has brought us to this point.

I also would like to reiterate my strong feeling that the disability insurance program, especially the hearings and appeals process, warrants further detailed review, and very likely, more far-reaching reform. The legislation we are acting upon today should, therefore, not be viewed as any kind of an obstacle to real reform, and it is with that understanding, Mr. Speaker, that I support the conference action on H.R. 7093.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. CONABLE) the ranking Republican on the Committee on Ways and Means.

(Mr. CONABLE asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, I support this conference report for one overriding reason. It addresses severe problems resulting from continuing disability investigations (CDI's) which were mandated under the Disability Insurance Amendments of 1980. That legislation required periodic review of all disability cases which held some hope of recovery. The aim was to make certain that only those who were entitled to such benefits were continuing to receive them. There was no congressional intent to penalize, or treat unfairly, anyone then on the rolls.

Unfortunately, after the congressional mandate had been implemented—and I should note that this occurred earlier than was ordered—there were many reports throughout the United States of persons being removed from disability rolls summarily and, in some instances, unjustly. In response to such reports, I asked the Committee on Ways and Means' Subcommittee on Social Security to investigate and recommend corrections in law where necessary.

The conference report represents, I believe, an adequate interim response to this request. Among other things, it woud provide that beneficiaries who appeal their removal from the rolls will continue to receive benefits until their cases have been reviewed by administrative law judges.

The conference report does not represent a definitive answer either to CDI problems or to structural problems of the hearings and appeals process. It does represent the best response obtainable now. It also carries with it the understanding, at least on this side of the aisle, that we will make every effort in this next Congress to seek more lasting and much needed reform of the entire system.

Mr. ARCHER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. PICKLE).

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Speaker, I ask for approval of this conference report on H.R. 7093.

This bill give much needed short-term relief, on a temporary basis until June 1984, for disabled beneficiaries who are appealing the decision to terminate their benefits. It provides for a face-to-face interview for claimants appealing the termination of their benefits at the reconsideration level. This is an important improvement over the present procedure that gives them no chance for a personal hearing in the review process until their ALJ hearing.

The bill also give the Secretary of HHS the authority to slow down the rate at which reviews of beneficiaries must be done, to make sure State agencies can handle the review workloads.

This bill is a temporary stopgap provison. I firmly believe, and I have been supported in this by most concerned, that the disability program must be looked at again next year in order to address the basic administrative problems the system faces. But for now, this bill gives relief where it is needed, and gives some basis for further reform in the near future.

The bill contains as well a very limited solution to the Government spouse's pension offset problem. The House approved what I think was a good, sound approach to making the offset equitable and fair for both men and women, by using one-third of their public pension in the offset against their social security spouse's benefit. The Senate did not feel they could agree to this, and proposed instead that the offset would not apply for those becoming eligible for public pensions within the next 7 months if they can prove they are dependent on their spouses for at least one-half of their support. The House finally agreed to the Senate's proposal, but I think all of us look at this provision as only a temporary solution to the pension offset problem. This area will have to be looked at again next year.

All in all, we have a good bill, one that gets the relief of benefits during appeal to those who need it now and cannot wait until next year for a solution. In the meantime, we can examine the disability program, and the pension offset provision, to devise permanent, long-lasting answers to the problems we have temporarily addressed in this bill.

I would like to acknowledge the persistent support of the many Members of the House who have urged action on both of these provisions and the Members of the other body who have worked with us to come to an acceptable compromise. It is good to know that an agreement can be reached in the social security area. All Members of the conference have agreed to this bill as have the many other Members interested in these issues. I urge adoption of this report.

SUMMARY OF H.R. 7093

H.R. 7093 passed the Senate by a vote of 70-4, December 3, 1982, and the House by unanimous consent December 16, 1982. The Conference agreement includes provisions which:

1. Clarify of the rate of certain taxes paid to the Virgin Islands on Virgin Island source income.

2. Continue payment of benefits through the ALJ decision (on cases terminated by October 1983, with no benefits payable past June 1984).

3. Give the Secretary authority to slow down the number of continuing disability cases sent to State agencies.

4. Require by January 1, 1984, a face to face evidentiary hearing at the reconsideration level for termination cases.

5. Order the Secretary to take necessary steps to assure public understanding of the importance Congress attaches to the face to face reconsiderations and of the importance of submitting all evidence at that level.

6. Require semi-annual reports to Congress.

7. Extend for seven months, until July 1983, the exemption in current law from the public pension offset provided the individual can prove dependency on his or her spouse.

EXAMPLES

Extension of benefits to ALJ decision.—

1. Individual's benefits were terminated in October 1982. Beginning January 1983, he could again receive benefits if he has a timely request in for an appeal and an ALJ has not ruled on the case.

2. Individual's benefits are terminated in August of 1983. He could continue to receive benefits through June of 1984 or until an ALJ rules on the case, if he appeals.

3. Individual's benefits are terminated October 1983. He could not receive any extension of benefits beyond the two months after the month of termination which is provided in present law.

Examples of public pension offset.—

1. Woman becomes eligible for $300 public pension from uncovered employment sometime between December 1982 and July 1983. Her husband receives a social security benefit of $500 (potential spouse benefit of $250). At the time he retired, died or became disabled, her husband provided more than half of her support. She will receive spouse benefit of $250 (or a widow's benefit of $500) in addition to her public pension of $300.

2. Same example, except at the time he retired, died or became disabled, her husband did not provide more than half of her support. She will receive no spouse benefit (the $250 is entirely offset by the $300 public pension). She could receive $200 in a widow's benefit ($500 widow's benefit minus $300 in public pension).

3. Man becomes eligible for $500 public pensions from uncovered employment sometime between December 1982 and July 1983. His wife receives social security benefit of $400. At the time she retired, died or became disabled she provided more than half of his support. He will receve public pension of $500 and spouse benefit of $200 (or a widower's benefit of $400).

4. Same example, except at the time she retired, died or became disabled his wife did not provide more than half of his support. He will receive no spouse benefit (the $200 spouse benefit is entirely offset by the $500 public pension). Also he would receive no widower's benefit (the $400 widower's benefit is offset by the $500 public pension).

Mr. WRIGHT. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Texas.

Mr. WRIGHT. I thank the gentleman for yielding.

Mr. Speaker, I think what he is discussing is one of the most important things the Congress could do. All the Members need to be aware of what our conferees have agreed to in connection with disability benefits.

It will be of some help to slow down this headlong dash by which the administration has seemed intent upon just arbitrarily determining that disabled people are no longer disabled, without any hearing, without any personal face-to-face confrontation, without any opportunity for those people to have an interview. I am told that some 200,000 of our disabled Americans have been arbitrarily made ineligible even though earlier and officially adjudged as disabled.

Mr. ARCHER. Mr. Speaker, will the gentleman yield?

Mr. WRIGHT. No. I am asking the gentleman from Texas (Mr. PICKLE) to yield for a question and I am propounding the question.

Now, is it true that what you are doing is making it more difficult for some overzealous administrator to go in without a hearing and arbitrarily advise some disabled person by mail that for some reason or some whim, that person is no longer considered disabled?

Mr. PICKLE. No, I cannot say that I would agree with the gentleman entirely. I would agree with him in his appraisal of our intent.

What the gentleman should realize is that we need a uniformity of standards at both the local and State levels, and at the administrative law judge level, so that we are judging the cases by the same rule book.

Now, the administration is attempting to establish those standards. That way you can eliminate many of the very harsh decisions that have been made because one group at the State level has been operating from the State operating procedures while the administrative law judges are operating on the basis of a different set of standards. We are trying to say, and the Social Security Administration has agreed, that we ought to have uniformity at all levels.

First, they are tying to establish that if we can agree to that and put it in force by regulation or rules, we will have cured many of our problems because we cannot explain some of the very harsh decisions that have been made.

But second, let me say to the gentleman, the Social Security Administration has had a very difficult problem. This Congress mandated a review once every 3 years of all the disability cases.

Mr. WRIGHT. What was the legislation in which it was mandated, if I may ask the gentleman to yield further?

Mr. PICKLE. This was passed in 1980, as part of the social security disability amendments. At that time the Congress mandated a review once every 3 years of everyone on the disability rolls.

Mr. WRIGHT. Mr. Speaker, if the gentleman will yield further, did it mandate that arbitrary decisions would be made among those who would be disabled and they would be rendered ineligible without hearings?

Mr. PICKLE. No. I agree with the gentleman totally that the facts ought to apply. I cannot explain some of these unimaginable decisions that were made by Social Security.

Mr. WRIGHT. Is it not true that a very substantial majority of those arbitrarily ruled out of their eligibility, once they were able to get into a court or an official administrative hearing, have reestablished their eligibility?

Mr. PICKLE. Yes. It is true, we must keep in mind that a person may be handicapped but he still can work, and that is what the average individual wants to do. All we want to do, and all the Congress wants to do, is say that those people who receive disability benefits are entitled to them. We do not want to take benefits away from anyone who is entitled to them, but we have to make certain they are entitled to them.

Mr. WRIGHT. I agree. I think what the gentleman's legislation achieves is worthy and useful. I am trying to help the gentleman make his case. I am not trying to give the gentleman any difficulties.

□ 1910

Let me ask the gentleman this question: In the future, in the case of an individual who has been officially adjudged to be permanently and totally disabled, if some person in the bureaucracy who has never seen this individual should decide that he does not believe that individual is any longer disabled, will that individual continue to draw disability benefits until the hearing has been held to which the individual is entitled?

Mr. PICKLE. Let me respond to the gentleman by saying what the procedure should be. Congress mandated a review of these cases and said that those people who are eligible and possibly could work should be reviewed. There was no intent to review those who are permanently disabled. Some people were called in who were permanently disabled. They should not have been called in in the first place, and I think that has been corrected. So, I do not think that is a problem any more.

Mr. WRIGHT. I thank the gentleman.

Ms. OAKAR. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentlewoman from Ohio.

Ms. OAKAR. Mr. Speaker, contained in the Virgin Island tax bill is a provision which can ultimately affect 5,000 female public pensioners, who are eligible for social security spouse bene-

fits. We all realize that conferees of the Ways and Means Committee and the Senate Finance Committee have spent many hours discussing the implications of the Government pension offset law currently in effect.

As all of you know, if the law is not amended, 5,000 women will lose their eligibility for social security spouse benefits this year, alone. By 1987, as many as 25,000 women will experience reductions in their benefit payments. The loss adds up to approximately $2,000 in retirement revenue per individual, as a result of a dollar-for-dollar reduction of social security by the amount of the local, State, or Federal pension. What Chairman ROSTENKOWSKI and Social Security Subcommittee Chairman PICKLE have presented today will change that for a select group of needy women.

By extending an exemption from a total offset for 7 months to both male and female public pensioners who pass dependency tests, we are enabling almost 20 percent of the eligibility class, those who would have lost social security benefits, to receive the monetary payments they are due.

The 20-percent figure is low. For those of us who have been following this issue closely this is a disappointment because nearly 4,000 women will not pass dependency requirements, but need the income provided through social security payments. If the Senate had receded to the House, accepting the original Pickle language, more women would be able to receive the benefits that they have anticipated receiving.

Yet, the measure is indicative of continued interest in this subject. As chair of the Select Committee on Aging's task force on social security and women, I realize that we need to work hard next Congress to reach a solid, fair compromise that will give these deserving women just benefits.

I commend Chairman PICKLE for his diligence and commitment to the cause of improving the financial conditions of thousands of poor, elderly women in this country. I am hopeful that we will resolve this issue in the next Congress and urge that my colleagues, here today, support the conference report before us.

Thank you, Mr. Speaker.

Mr. SHANNON. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Massachusetts.

Mr. SHANNON. Mr. Speaker, I thank the gentleman for yielding. Let me say at the outset that I agree with what has been said by all three of our colleagues from Texas who have spoken on this issue tonight. This is a problem that was recognized on both sides of the aisle, that needed to be dealt with, and I am glad that we were able to come together in a bipartisan way and deal with it through stop-gap legislation at this late hour.

Nobody believes that the problems of the disabled are solved by this legislation. We all know that we are going to have to revisit this process perhaps sometime next year, maybe in the context of a bigger social security bill. We all know that there are still problems in the appeals process that need to be addressed, but at least we have said to the disabled people of America that we are going to try to straighten out what part of the process that we can; we are going to try to extend benefits a little longer through the appeals process. We institute the face-to-face evidentiary hearing, which I think is a very good thing to do.

We deal with the offset provisions a little more, but most importantly, I think we have dealt with this issue together, acknowledged the problems together. Democrats and Republicans alike have come together and said that we are going to work on this problem. I think that is a very healthy thing to do.

I do want to say that I think that all of the people have an interest in this legislation, and all of the disabled people of America owe a great debt to Mr. PICKLE, chairman of the subcommittee, for his efforts on their behalf. I certainly look forward to working with him in the next Congress to make sure that we straighten out continuing problems.

Mr. PICKLE. The gentleman is very kind.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, I appreciate my colleague yielding. I will not take as long as I normally do. I want to compliment the chairman of the Subcommittee on Social Security for facing this problem we had in the disability portion of the act that needed improvement. The chairman of our committee has done an excellent job in trying to bring to the House and improvement in the law, and I know that all Members of the House cannot fully appreciate the time and effort that was spent not only by the chairman of the subcommittee, but by other members of the subcommittee, to make sure that this change in the law is put in place, and that it allows the Social Security Commission to try to deal with this problem of the disabled individual who needs more attention, and face to face.

So, I wish to compliment my colleague from bringing this to the floor and making sure that we do improve it, and not let it lapse.

Mr. PICKLE. If the gentleman will let me add to that statement, the gentleman from California, Mr. ROUSSELOT, has been one of the most diligent and helpful members of our Social Security Subcommittee that we have had this year. I regret seeing him leave this body. He has made a real contribution to our subcommittee, and I commend him for his work and dedication.

Mr. ROUSSELOT. I thank the gentleman.

Mr. NEAL. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from North Carolina.

(Mr. NEAL asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. NEAL. Mr. Speaker, I want to say, first of all, that I am delighted that this bill concerning social security disability has passed the House and the Senate, and that the conference report is now before us for final approval. If we accomplish nothing more in this lameduck session, with the final passage of this legislation we will have done the Nation a laudable service.

The legislation concerning disability involved in this conference report is almost identical to a bill which I introduced in January of this year. I was compelled to do so when I became aware, through the treatment being accorded many of my constituents, of the cruelest, most inhumane acts I have ever encountered on the part of our Government.

We will remember, Mr. Speaker, that in the Social Security Amendments of 1980, the Congress recommended that all social security disability cases be reviewed at least once every 3 years to determine whether the recipient remains disabled, under the law, and is entitled, therefore, to a continuation of the benefits. The purpose of this legislation was to weed out of the rolls all those recipients who, for whatever reason, were no longer entitled to receive them. It was clear that such abuses existed, and the Congress in a most responsible way sought to eliminate abuse and fraud from the system.

The Congress did not intend, however, that suffering and hardship be inflicted upon a single individual who was entitled to the benefits he or she was receiving. Rather, it intended an orderly, deliberate, humane process of review.

Enter the Reagan administration, which came into office in January 1981. It speeded up the review process; reduced the personnel needed for the review process, and began arbitrarily cutting people from the disability rolls.

Mr. Speaker, the results in my district were shameful. We were contacted by people desperately ill with cancer, with heart problems, people who had lost limbs, who had major back operations and other crippling conditions. Each of them said they had been cut off the disability rolls, were desperate, and had nowhere to turn. They feared losing their homes, if they still owned them. They feared they would not be able to feed their families, or educate their children. They were, on the whole and in num-

bers, the most desperate people I have encountered in all my years of office.

Most of these people, Mr. Speaker, had been terminated from disability benefits after only the most cursory of examinations. It reminded me of the jokes about draft examinations during World War II—if you had a pulse, they took you. In this case, a tap or two on the knee and the recipient might be told he or she would no longer receive disability benefits. In some cases, they were notified that the removal was retroactive, and they would have to reimburse the Government for benefits already received. The appeals process was open to them, but it was long and arduous. In the meantime, the disabled persons were left to shift for themselves.

So, Mr. Speaker, the bill I introduced in January said essentially that we would given these people the same consideration in reviewing their disability status that was given to putting them on the rolls in the first place. It is not now, and never has been, easy to get on the disability rolls. It requires a very thorough physical examination, a complicated work history, and so forth. We said in our bill that disability benefits would be extended until the review, if unfavorable to the recipient, had gone through an appeals process to make sure the recipient had not been terminated without just cause.

For all intents and purposes, the language of H.R. 7093 concerning disability and the accompanying conference report fulfills that intention. It continues social security disability benefits and medicare until, on appeal, an adverse determination has been made by an administrative law judge. My bill, H.R. 5325, would have extended this provision beyond the October 1983, cutoff date.

The conference report also guarantees face-to-face evidentiary hearings at the reconsideration level; increases the HHW Secretary's authority to reduce the number of CDI reviews, and directs the Secretary to assume public understanding of the reconsideration process. These clarifications of what the Congress intended, in the first place, will do much, Mr. Speaker, to prevent future suffering and anguish. It cannot, however, assauge the hurt that already has been inflicted upon tens of thousands of people, many of whom were later found to indeed be eligible for the benefits which were terminated. My experience has been that about 90 percent of the appeals my office has been involved in have been upheld at the administrative judge level.

Mr. Speaker, there has been a callousness—implicit and explicit—in the way these reviews have been handled. It begins with the fact that many people were deprived, without due cause, of benefits for which they had paid and to which they were entitled. Disability benefits are paid from the social security trust fund established for that purpose, and into which every American worker under social security pays. Most people believe, and have believed over the years since the program was founded, that if they become truly disabled and no longer employable, these benefits would be there to help sustain them. This has been the case, with modest amounts of abuse, until the Reagan administration got hold of the program. It seems quite evident now that they are handling this law in the same way they handle environmental laws, toxic waste laws, and other laws pertaining to the public health and safety; that is, in defiance of the intent of Congress. In the case of social security disability, the gun has been leveled at the people least able to defend themselves against the encroachment of policies which cater to the wealthiest and most powerful in our society.

I would also mention, in closing Mr. Speaker, that this bill will not entirely make up for the loss that many of these poor people have sustained. It would not make the restoration of their benefits retroactive to the date of termination, in cases terminated before enactment of the bill, but would restore them at that point.

Finally, Mr. Speaker, I commend this conference report to my colleagues and urge its approval. I also ask unanimous consent that a statement which I gave before the Subcommittee on Social Security, Ways and Means Committee, on March 17, 1982, concerning my bill be included in the RECORD at this point.

STATEMENT OF HON. STEPHEN L. NEAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to submit testimony before this subcommittee on a most tragic situation.

The situation involves the Social Security Administration (SSA) and its administration of the disability insurance program. Let me share some of the incidents which have occurred in my congressional district:

A middle aged man with a very severe back ailment and who for the past ten years has received social security disability payments, was terminated from the program without ever having a current physical examination.

A leg amputee, who is currently receiving treatment for pain in his limb, was informed by the Social Security Administration that his benefits were being terminated and that he was able to work. His body, however, has been unable to accept the artificial limb because of pain.

A young father of four with heart problems was told by a personal physician he would be risking a possible heart atttack if he engages in strenuous work. The Social Security Administration informed him that his benefits were being terminated on the grounds that he could work two to four hours a day at a parking garage. Yet, no such employment opportunities exist in the area.

A mental patient found her only source of income abruptly halted in August, 1981. It took the Social Security Administration over five months to make a decision on her appeal. It will be another three to four months before the case comes before an Administrative Law Judge.

A gentleman, upon arriving for a physical examination at a state agency assigned doctor's office, was told by the receptionist that his benefits were being terminated and the examination results would not matter in the decision. She was correct. After receiving a cursory examination, he received a termination notice a few weeks later.

These are not just isolated incidents. My office has received over 100 similar complaints from disability recipients questioning the manner in which their disability review was handled. I am sure many other horrifying stories have been brought to the subcommittee's attention. Reports of mass benefit terminations, administrative blunders and harassment are occurring throughout the country. I also understand the subcommittee has become aware of individuals commiting suicide after learning their disability benefits have been terminated.

Mr. Chairman, the source of this upheaval is not difficult to explain. It can be traced back to March, 1981, when the Reagan Administration more than doubled the cases for the state agencies to review under the Continuing Disability Review process. Under the Social Security Amendments of 1980, the Social Security Administration (SSA) was required to review all disability cases at least once every three years. This was in response to the lack of follow-up of a beneficiary's medical improvement and possible work activity. The Congress, recognizing the need for providing state agencies with enough leadtime to hire and train the additional staff, established January 1982 as the effective date for implementing the three-year review process.

In March of last year, as a result of an Administrative action, the number of cases referred to the state agencies ballooned from about 160,000 in 1980 to over 356,000 in 1981. As you can imagine, Mr. Chairman, the state agencies were not prepared to take on this caseload. The Administrator of my state's Disability Determination Service reported to me that the decision to escalate the CDI procedure has taxed "to the limit our staff and medical community." There is no doubt that the Administration's decision to accelerate the review process has resulted in many deserving people being deprived of benefits.

Of course, Mr. Chairman, a person can appeal a cessation decision, but the process can take up to twelve months to complete. In the meantime, benefits are terminated within a short time after the findings of the state agency are sent to the Social Security Administration. This poses a serious economic hardship for those who have been wrongfully terminated and stand a good chance of being reinstated.

I am sure that there are some people still on the disability rolls who no longer qualify for these benefits. The CDI three-day review is designed to remove these people from the program. But, according to SSA's own data, over 70 percent of those who have lost disability benefits are being reinstated, indicating a serious flaw in the review and termination program, which I hope this subcommittee will correct.

Seeing the need to correct this problem, on January 25, 1982, I introduced H.R. 5325, which could prevent disability benefits from being terminated prior to the exhaustion of the administrative appeals procedure. The only exception would be in cases in which current medical evidence substantiates the termination of benefits and is made available to the beneficiary. The proposal parallels the procedures already afforded SSI Disability recipients. It also provides an in-

centive for insuring that the same care and quality which went into the intitial screening for eligibility in the program is given to an individual whose case in under a CDI review.

Mr. Chairman, you are to be commended for conducting this investigation into the disability program. Thousands of people are being hurt by the CDI procedure and therefore it is important that we act now. I respectfully request that you and the members of the subcommittee give careful and thorough consideration to the provisions outlined in H.R. 5325 and develop a workable solution to this problem.

Of course, H.R. 5325 is not a cure-all. I hope the subcommittee can persuade the SSA to return fairness and compasssion to the CDI process. The inclusion of my provisions or similar language would, however, relieve a great deal of anxiety for those who are truly disabled.

Thank you again, Mr. Chairman, for allowing me to address this issue.

Mr. Speaker, I want to thank the chairman also, because in my experience over the last year I have encountered nothing that has seemed to me as cruel as the treatment that has been afforded to the people who come to us. We have talked to people who had incurable cancer, limbs destroyed, multiple back operations, heart attacks, people with young families, told they cannot work and cut off with the most cursory of examinations, and in many cases their only source of income. I have never seen anything crueler done on the part of our Government than this. It is even tougher than for those people who are unemployed and cannot find work. They are in good health, and so there is hope for them.

But, in many of the cases we have seen there is almost no hope. What the gentleman has done is extend the benefits of these people until they run through the full review process. In the case of the nationwide figures, about 70 percent of the people who have appealed and followed the process through to its conclusion, they have won. Is that not correct, about 70 percent?

Mr. PICKLE. A large number of cases have been reversed for various reasons. Also a very large number of people have probably been removed from the rolls because they could go to work. When we consider the number of cases that have been reversed on appeal, we must bear in mind that many of those reversals were based on the fact that different sets of rules were applied at the State agency and ALJ levels. Once we put uniform standards in place, the system should work as it was intended to. Let me also say to the gentleman and to the State people who run our State disability agencies that we have confidence in them. They have had to operate under different sets of standards, and the Social Security Administration will admit that many decisions that cannot be explained have happened within each district. There have been errors and mistakes, but I think SSA and the States have corrected a great many of them and have been more cautious about how the decisions are made. They have recommended the changes that we are making here, so each of us feels that this is the crucial time for beginning to put the right procedure in place.

We must change the disability adjudicative process. Does the gentleman know how many disability cases are stacked up now waiting for the administrative law judge hearing? Over 155,000 cases.

□ 1920

These cases cannot be handled in a timely manner, so we must change our procedures in order to give claimants a timely hearing. Next year that is one of the challenges we will face.

Mr. NEAL. And they are short of staff, as I understand it, and there are 150,000 people under current law, without this change, who are going to be without income from the social security disability program until they complete the review process.

Mr. PICKLE. If those cases are appealed, they will go to the administrative law judge, and this bill says——

Mr. NEAL. No, under this bill you have corrected that, but under the law as it is now interpreted, before your bill, they would be without income.

Mr. PICKLE. Yes. Their benefits are cut off within, say, 30 to 60 days after the decision under the present law, but they can appeal to the reconsideration level, and to the administrative law judge. Our bill provides that their benefits will continue until the ALJ level. So we are giving them relief, and that is the reason for this bill.

Mr. NEAL. Mr. Speaker, I commend the gentleman for that, and I thank him very much.

Mr. SKELTON. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Missouri.

Mr. SKELTON. Mr. Speaker, I want to commend the chairman of the subcommittee for handling this bill as he has done.

As the gentleman knows, we have had a very extensive problem, particularly in my area. The gentleman will recall that when I testified before the subcommittee, I testified about those who were cut off in cases where the doctor would say, "You are disabled," and the social security people would say, "No, you are not." Consequently, they were in a terrible dilemma.

After I testified, on that very same day, after I walked out the door, a gentleman followed me and introduced himself to me as an administrative law judge, and he said, "Congressman, you are right on the mark in what you say. I compliment you in addressing this very serious problem."

I might point out the fact that we have had this problem in which these people who are cut off had nothing on which to live. In my district we had a situation just in recent weeks where someone was found initially to be disabled. The social security people said, "You are able to work," and the doctor said, "No, you cannot walk." Before his appeal was held before the administrative law judge, he died of the very same complaint of which he was initially found to be disabled, although later the social security said he was not.

So, Mr. Speaker, I compliment the gentleman for addressing this problem. I realize this is only a stop gap, but I look forward to working with the gentleman for a complete resolution of this very serious problem.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Massachusetts.

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I want to commend the gentleman from Texas (Mr. PICKLE).

I was an original cosponsor of this bill, and I have worked with the gentleman on it. I just want to say to you that "you have been a gentleman all the way."

Mr. PICKLE. Mr. Speaker, the gentleman from Massachusetts has been most persistent in our efforts to develop this legislation. I thank the gentleman for his cooperation.

Mr. CONTE. Mr. Speaker, I will not be speaking to my colleagues long today; I merely want to rise and associate myself with the remarks of the gentleman from Illinois (Mr. ROSTENKOWSKI) and the gentleman from Texas (Mr. PICKLE), and thank them once again for bringing this bill to the floor of the House today. Last week, before the conference, I spoke in favor of the changes made in the disability program as a result of this legislation. Today, with the prospect of passage imminent, I want to again say that I strongly support this legislation.

As my colleagues know, it contains several important provisions. First, it provides the Secretary of the Department of Health and Human Services wide discretion to slow down the disability reviews process that has caused untold harm to thousands of Americans. Second, it provides benefit payments through a hearing by an administrative law judge for persons terminated before October 1 of next year. It also makes changes in the pension offset for spouses of Government employees, extending for 7 months the effective date of the offset.

Overall, this is good, balanced legislation, and no one should have trouble supporting it. All of us are aware of the problems that have come about because of the reviews process, and this bill goes a long way toward a short term solution to that problem. Next year, in a new Congress, we will be able to work toward a bipartisan solution for once and for all. I look forward to working with my friends on

the Ways and Means Committee at that time.

Thank you, Mr. Speaker.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Florida.

Mr. PEPPER. Mr. Speaker, the able gentleman from Texas (Mr. PICKLE) has been dealing with a very, very serious problem in the country. I am sure that most of the Members of the House have had complaints about the tragedy of how so many disabled people have been treated under the present law.

What I propose to do is to commend the able gentleman from Texas on what he has done. He has restored hope and perhaps life to many of these disabled people, and I just want to commend him for that and hope that he will continue his good efforts until this whole system is very much improved and there will be justice for the disabled people of the country.

Mr. PICKLE. Mr. Speaker, I thank the gentleman from Florida (Mr. PEPPER). That is a very kind thing to say.

Mr. OBERSTAR. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Minnesota.

Mr. OBERSTAR. Mr. Speaker, I want to commend the gentleman from Texas (Mr. PICKLE) on the tremendous work he has done both in correcting the disability inequities, as he has done in this legislation, and especially on the spouse offset. I know that this was not all the gentleman hoped to accomplish, but it was far more than what he could have expected to achieve at the outset of bringing this legislation to the floor. I am delighted at what the gentleman has done.

Mr. PICKLE. Mr. Speaker, the gentleman from Minnesota (Mr. OBERSTAR) made a definite contribution to this legislation. He made a suggestion that we initially passed in this House. We went to a different alternative because that was all we could get from the other body, but if the gentleman had not made his suggestion in the first instance, we might not have achieved this improvement at all.

So I commend the gentleman for that.

● Mr. CORRADA. Mr. Speaker, I commend the gentleman from Texas (Mr. PICKLE) for his diligence in working with the matter addressed in H.R. 7093. This is certainly a step in the right direction in providing some relief to disabled individuals under the Social Security Act whose disability payments are terminated at times arbitrarily. The changes in procedure provided in this bill, as agreed to by the conferees, are fair and needed and will allow many of the beneficiaries of disability payments to retain their benefits while their cases are appealed. I urge passage of the conference report.●

● Mr. JEFFORDS. Mr. Speaker, I would like to once again thank the gentleman from Texas for working so diligently on the issue of disability.

In the State of Vermont we have had a number of instances where people who wanted to work—but could not—were removed from the disability roles because the Social Security Administration decided that they could work. In many of these cases the result of being dropped from the disability roles was tragic, and contributed to the death of disability recipients in a few instances. I can see no justification for this, and commend my colleague for the apparent strong support we have for this measure.

In all likelihood we will have to address the disability issue again this coming spring. I hope that we respond to the greater challenge then as well as we will on this night.

When this measure came up a few days ago, I said my piece on why it should be supported. I will not discuss it in detail again tonight. I would, however, like to point out that the provisions in this bill look towards solving all of the major problems we have in the continued review of disability cases.

Again, I commend the gentleman from Texas, and all of the other Members who have worked on this measure.●

Mr. ROSTENKOWSKI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 259, not voting 174, as follows:

[Roll No. 487]

YEAS—259

Akaka	Boggs	Conte
Alexander	Bowen	Conyers
Anderson	Breaux	Coughlin
Anthony	Brinkley	Coyne, James
Applegate	Brodhead	Coyne, William
Archer	Brooks	Craig
Ashbrook	Brown (CA)	Crane, Philip
Aspin	Brown (CO)	Crockett
Atkinson	Byron	D'Amours
AuCoin	Campbell	Dannemeyer
Bailey (MO)	Carney	Daub
Bailey (PA)	Cheney	Davis
Barnes	Clausen	Deckard
Bedell	Clay	Dellums
Beilenson	Clinger	Derrick
Bennett	Coats	Derwinski
Bereuter	Coelho	Dicks
Bevill	Coleman	Dingell
Bliley	Conable	Dixon
Donnelly	Kildee	Rostenkowski
Dorgan	Kindness	Roth
Dornan	Kogovsek	Roukema
Dougherty	Kramer	Rousselot
Downey	LaFalce	Roybal
Duncan	Lagomarsino	Sabo
Dyson	Leach	Savage
Eckart	Leath	Schneider
Edgar	Leland	Schroeder
Edwards (OK)	Lent	Schulze
Emerson	Loeffler	Schumer
English	Long (MD)	Seiberling
Erdahl	Lowery (CA)	Sensenbrenner
Erlenborn	Lowry (WA)	Shannon
Evans (IA)	Lujan	Sharp
Fary	Lundine	Shaw
Fenwick	Madigan	Shumway
Fiedler	Markey	Shuster
Fields	Marks	Skeen
Findley	Martin (IL)	Skelton
Florio	Matsui	Smith (AL)
Foglietta	Mavroules	Smith (NE)
Foley	Mazzoli	Smith (NJ)
Ford (MI)	McCloskey	Snowe
Fountain	McCollum	Snyder
Fowler	McDonald	Solarz
Frenzel	McHugh	Solomon
Garcia	McKinney	Spence
Gaydos	Michel	St Germain
Gejdenson	Mikulski	Staton
Gephardt	Miller (CA)	Stenholm
Gibbons	Miller (OH)	Stokes
Gilman	Mineta	Stratton
Gingrich	Mitchell (MD)	Studds
Glickman	Moakley	Stump
Gonzalez	Molinari	Swift
Goodling	Montgomery	Tauke
Gramm	Moore	Tauzin
Green	Moorhead	Thomas
Guarini	Murtha	Trible
Gunderson	Myers	Udall
Hagedorn	Napier	Vander Jagt
Hall (IN)	Natcher	Vento
Hall, Ralph	Neal	Volkmer
Hamilton	Nowak	Walker
Hammerschmidt	O'Brien	Wampler
Hance	Oakar	Waxman
Hansen (ID)	Oberstar	Weber (MN)
Heckler	Obey	Weiss
Hefner	Parris	White
Hendon	Pashayan	Whitley
Hiler	Patman	Whittaker
Hollenbeck	Pease	Whitten
Holt	Pepper	Williams (MT)
Horton	Petri	Wilson
Howard	Pickle	Wirth
Hoyer	Porter	Wolf
Hubbard	Rangel	Wolpe
Huckaby	Ratchford	Wortley
Hughes	Regula	Wright
Hutto	Reuss	Wyden
Jacobs	Rinaldo	Wylie
Jeffords	Ritter	Yates
Jones (OK)	Roberts (KS)	Young (FL)
Kastenmeier	Robinson	Young (MO)
Kazen	Rodino	Zablocki
Kemp	Roe	
Kennelly	Roemer	

NOT VOTING—174

Addabbo	Chisholm	Fithian
Albosta	Collins (IL)	Flippo
Andrews	Collins (TX)	Ford (TN)
Annunzio	Corcoran	Forsythe
Badham	Courter	Frank
Bafalis	Crane, Daniel	Frost
Barnard	Daniel, Dan	Fuqua
Beard	Daniel, R. W	Ginn
Benedict	Daschle	Goldwater
Bethune	de la Garza	Gore
Biaggi	DeNardis	Gradison
Bingham	Dickinson	Gray
Blanchard	Dowdy	Gregg
Boland	Dreier	Grisham
Boiling	Dunn	Hall (OH)
Boner	Dwyer	Hall, Sam
Bonior	Dymally	Hansen (UT)
Bonker	Early	Harkin
Bouquard	Edwards (AL)	Hartnett
Broomfield	Edwards (CA)	Hatcher
Brown (OH)	Emery	Hawkins
Broyhill	Ertel	Heftel
Burgener	Evans (DE)	Hertel
Burton, John	Evans (GA)	Hightower
Burton, Phillip	Evans (IN)	Hillis
Butler	Fascell	Holland
Carman	Fazio	Hopkins
Chappell	Ferraro	Hunter
Chappie	Fish	Hyde

Ireland	Mica	Rudd
Jeffries	Minish	Russo
Jenkins	Mitchell (NY)	Santini
Johnston	Moffett	Sawyer
Jones (NC)	Mollohan	Scheuer
Jones (TN)	Morrison	Shamansky
Lantos	Mottl	Shelby
Latta	Murphy	Siljander
LeBoutillier	Nelligan	Simon
Lee	Nelson	Smith (IA)
Lehman	Nichols	Smith (OR)
Levitas	Ottinger	Smith (PA)
Lewis	Oxley	Stangeland
Livingston	Panetta	Stanton
Long (LA)	Patterson	Stark
Lott	Paul	Synar
Luken	Perkins	Taylor
Lungren	Peyser	Traxler
Marlenee	Price	Walgren
Marriott	Pritchard	Washington
Martin (NC)	Pursell	Watkins
Martin (NY)	Quillen	Weaver
Martinez	Rahall	Weber (OH)
Mattox	Railsback	Whitehurst
McClory	Rhodes	Williams (OH)
McCurdy	Roberts (SD)	Winn
McDade	Rogers	Yatron
McEwen	Rose	Young (AK)
McGrath	Rosenthal	Zeferetti

□ 1940

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

VIRGIN ISLANDS SOURCE INCOME—CONFERENCE REPORT

Mr. BAKER. Mr. President, it has been brought to my attention that there is a conference report which is cleared on both sides and has been acted on, I believe, in the House of Representatives. I would like to take that up now briefly, in advance of the time we begin debate on the conference report on the highway bill. If there is no objection to that, Mr. President, I would like to proceed in that manner.

Mr. ROBERT C. BYRD. Mr. President, there is no objection.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the conference report to accompany H.R. 7093.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I submit a report of the committee of conference on H.R. 7093 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate numbered 2, 3, and 4, to the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands or Virgin Islands source income, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of December 21, 1982.)

Mr. ARMSTRONG. Mr. President, I am delighted Congress today is passing this legislation providing emergency benefits for the disabled. For me, this ends a 4-month effort to enact corrective legislation to end abrupt and unfair termination of benefits to many of our disabled.

This is, indeed, the best Christmas present Congress could provide to those wrongfully terminated from disability rolls.

This legislation is simple. It authorizes the continuation of benefits during appeal for disabled recipients declared, upon initial review, to be ineligible. The legislation also authorizes the Secretary of the Department of Health and Human Services to slow down case reviews by States unable to handle their caseload of reviews.

This legislation is in response to a 1980 law signed by President Carter mandating the review of all social security disability cases by 1983. Of cases thus far reviewed nationally, about 46 percent have had benefits terminated. On appeal to administrative law judges, however, benefits have been restored in about 60 percent of the cases. While cases are appealed, benefits—the financial lifetime to many disabled—were terminated, meaning that many disabled lost all income for the 6 to 9 months their cases were appealed—only to have the benefits restored retroactively.

Much of the credit for passage of this legislation belongs to Mrs. May Reser, founder of the Colorado Disabled Americans Workers Security, for alerting me to this horrible catch 22 situation, and the need for corrective legislation. In August 30 disabled Coloradans accompanied Mrs. Reser and gave me conclusive evidence that benefits were being wrongfully terminated. In fact, one Coloradan had medical opinions from five doctors verifying his total and permanent disability. Yet benefits were terminated, and with only 60 days' notice.

This bill will stop wrongful termination of benefits.

In Colorado, 17,106 persons receive social security disability benefits. Since 1979, about 8,700 cases have reviewed with some 40 percent of those being declared ineligible. Many of these cases are now under appeal. Continuing benefits during appeal goes a long way toward halting unfair disruptions in the lives of our legitimately disabled.

I also support a provision included in the bill that was developed in consultation with Senator RUSSELL LONG and Representative JAKE PICKLE, House Social Security Subcommittee chairman. This provision delays for 6 months the implementation of a rule reducing social security benefits to spouses of social security retirees. In effect this provision assists low-income women who otherwise would have their social security benefits reduced, beginning this month, by the amount of Government pension they earn. This provision will give Congress time to address this social security pension offset issue next year as part of the overall effort to make social security solvent.

The final passage of this bill is the capstone of the effort to make 1982 the National Year of the Disabled. Congress earlier this year adopted a resolution proclaiming 1982 as a year in which Americans dedicate themselves to bring the disabled more into the mainstream of life.

Mr. President, like most bills that finally get enacted, there are a number of persons to whom proper credit should be accorded. I commend Senators COHEN, LEVIN, DOLE, and LONG, Representative JAKE PICKLE and congressional staffers Dr. Carolyn Weaver, Mike Stern, Joe Humphries, Susan Collins, Linda Gustitus, Janice Gregory, Erwin Hytner, Brian Weidmann, Howard Propst and Dick Wadhams for their contributions to this legislation.

Mr. President, I want to express my sense of accomplishment and approval at the passage of this legislation. I especially want to pay tribute to my colleague from Maine (Mr. COHEN) and my colleague from Michigan (Mr. LEVIN) for the tremendous sense of urgency which they brought to this task, which has resulted in the passage of this legislation. I make the observation again that this is about the finest Christmas present that a group of people who have been wrongfully thrown off the disability rolls could possibly receive.

Mr. MITCHELL. Mr. President, I would like to clarify the effective date of the bill and its application to existing law. Is it the Senator from Hawaii's understanding that the bill is intended to be prospective only, and that no inference is intended from the bill regarding the meaning of existing law?

Mr. MATSUNAGA. The Senator from Maine is correct. I understand that there are controversies now pending between taxpayers and the Government of the Virgin Islands concerning existing law. Among the matters at issue is whether under existing law the Virgin Islands can tax U.S. recipients

who are nonresident in the Virgin Islands on passive income from Virgin Island sources. No inference is intended from the bill about the status of existing law. As author and introducer of the companion Senate bill, I assure the Senator from Maine that the bill is intended to have no effect whatsoever on these pending tax controversies. As the effective date provision of the bill makes clear, the 10 percent rate is intended to apply prospectively only.

Mr. MITCHELL. I thank the gentleman.

Mr. DOLE. Mr. President, we are ready to consider the conference report on H.R. 7093, a bill concerning the rate of tax on Virgin Islands source income and the payment of benefits under social security disability insurance. The House approved this conference agreement earlier this evening, and I hope the Senate will now give final approval to this legislation and send it to the President for signature. Considerable effort has been put into arriving at this agreement, and I believe the result meets with the satisfaction of the interested parties.

DISABILITY BENEFITS

Mr. President, the bill before us deals with several issues regarding disability benefits that have been of concern to several Members of the Senate, including Senators COHEN, LEVIN, HEINZ, ARMSTRONG, and others. Under the conference agreement, both disability benefits and medicare coverage would continue to be paid after eligibility is determined to have ceased, in cases where that determination is appealed to an administrative law judge. Benefits would continue up to the month before the decision of the administrative law judge. If the termination decision is upheld, these payments would be recoverable as overpayments. This provision should insure that no one's rights to disability payments would be suspended prematurely pending appeal, which can cause hardship in many cases.

The conference agreement on H.R. 7093 also provides authority for the Secretary of the Department of Health and Human Services to alter the pace of State reviews of disability cases. Specifically, the number of cases sent to the States for review can be reduced below the rate specified in the 1980 amendments. Such a decision by the Secretary will be based on consideration of the extent of any backlogs, expected number of new applicants, and projected State agency staff levels. Further, the Secretary is required to report to the tax-writing committees of each House twice each year on the number of continuing eligibility reviews, termination decisions, reconsideration requests, and termination decisions overturned at the reconsideration or hearing level.

Mr. President, this bill also changes the rules governing evidentiary hearings in reconsiderations of disability benefit terminations. No later than January 1, 1984, the Secretary must provide opportunity for a face-to-face evidentiary hearing before reconsidering decisions to terminate benefits for disability beneficiaries. This requirement is in addition to existing requirements for hearings before an administrative law judge. This is a step in the right direction. It should improve the quality of the reconsideration decision and help reduce the number of people who must go on to request an appeal before an administrative law judge. With the heavy backlog of cases at the administrative law judge stage (about 150,000 cases), hearings can take 6 to 9 months or even longer.

PUBLIC PENSION OFFSET

Further, the conference agreement includes a provision which modifies the social security public pension offset that was enacted in 1977. Presently, social security dependents' benefits (wives, husbands, widows, and widowers) are to be reduced dollar-for-dollar on account of any public pension which the individual receives as a result of his or her own employment in Federal, State, or local government. This provision recently became fully operative—for dependents becoming eligible for a public pension and filing for social security benefits after November 1982.

The conference agreement modifies the offset provision in the following way: For men and women becoming eligible for a public pension in the next 6 months (prior to July 1983), no offset will be applied if the individual is dependent upon his or her spouse for one-half support. In my view, this is a fair solution, albeit temporary, to the problem of the imapct of the pension offset on low-income retirees. This provision will provide full protection to dependent spouses so that they may draw both their social security dependents' benefit and their public pension, should they become eligible for that pension in the next 6 months. Likewise, the expiration date on this provision will allow Congress to consider alternative permanent solutions to the pension offset in the context of a comprehensive social security financing bill next year.

TAX RATE ON VIRGIN ISLANDS SOURCE INCOME

Finally, Mr. President, as I indicated at the outset this bill does resolve the matter of the rate of tax applied to payments of passive investment income from Virgin Islands persons to U.S. persons. Under the agreement, the rate of tax will not exceed 10 percent, and such treatment would apply to dividend payments out of earnings and profits accumulated in taxable years beginning on or after date of enactment. The Virgin Islands Government could reduce the maximum rate in its discretion, and can impose and require withholding of a tax up to the maximum 10 percent rate on payments of passive income to U.S. persons.

Mr. President, the matters dealt with by H.R. 7093 have been the subject of considerable interest and hard work in this session, and I am glad that they have been satisfactorily resolved. I urge adoption of the conference report on H.R. 7093 so that we may speed it to the President for signature.

Mr. LEVIN. Mr. President, by the adoption of this conference report, we are not taking action to relieve the injustice which has been suffered by literally hundreds of thousands of disabled Americans. This Congress in its lameduck session is finally taking action which is worthy of our approach to disabled people.

A few months ago, Senator COHEN, chairman of the Governmental Affairs Subcommittee, and I, as the ranking minority member, held hearings on the question of the removal of disabled Americans from the social security disability rolls. We had eloquent testimony of needless suffering, of literally 200,000-plus people who are being removed from those rolls improperly and who would be reinstated to those rolls about a year later by actions of administrative law judges. But during that year there would be needless suffering, excruciating suffering by those people through the loss of those benefits and the loss of medicare benefits as well.

We discovered that we should take at least one action on a temporary basis, and that would be to continue those benefits through the appeals stage, because we found 600,000 persons in the disability program will be subject to review. Of that number, some 45 percent will be terminated and 50 percent of those terminated will appeal. It will take 9 to 12 and in some cases even 18 months for the appeal process to be completed. Without this legislation, severely disabled people who appeal would be without any benefits and any medical coverage. This is indeed a horrible prospect in light of the prospect that two-thirds of the people appealing will be reinstated. This legislation saves us from that injustice. Although there are still many problems within the review process itself, at least the beneficiaries subject to that review will continue to receive their disability benefits.

Those of us who have studied the disability program are committed to substantive major reform in the next Congress. I look forward to joining those efforts next year to grapple with some very difficult and controversial issues involving fundamental problems in the program. In the meantime, it is satisfying to know that we will not be continuing the tragedies we have experienced in the past.

I want to commend my friend from Maine for his leadership in this matter.

As the Senator from Colorado said, it is a well deserved Christmas gift. I want to commend, in addition to my

friend from Maine, Senator DOLE for his great help, Senator LONG, Senator ARMSTRONG, Senator SASSER, Senator METZENBAUM, Senator RIEGLE, Senator DOMENICI, Senator HEINZ, Senator DURENBERGER, Senator BOREN, and so many others whose help made it possible for us to finally to do justice to hundreds of thousands of people who have suffered needless injustice.

I also would like to thank Congressman PICKLE in the House whose willingness to modify his own approach in this matter made it possible for us to act in time, barely in time but in time.

I yield the floor and I thank the Chair.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, let me just take a few moments to express my thanks and commendation to the Senator from Michigan, who really performed a unique service on the Governmental Affairs Subcommittee in the oversight of Government management, and I particularly thank him for the statement that he has made this evening and the way which he has conducted himself throughout his term of office in the Senate.

I should note that it stands in rather stark contrast to some of the other statements that were made in the other body this evening whereupon one of the Members of the leadership of the opposite party took to the floor to denounce the current administration, the Reagan administration, for being cruel and heartless and throwing people out in the streets unnecessarily.

I simply point out that the Senator from Michigan has never conducted himself on the committee or, to my knowledge, in this body in any way but in the most bipartisan and certainly nonpartisan spirit.

Contrary to the assertions made in the other body, this was not a Reagan administration proposal. In fact, it originated with the Carter administration and was voted upon by a previous Congress.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Maine.

Mr. COHEN. The problem is not one of partisanship but one of lack of guideline of having conflicting standards, of having this review process rushed through with inadequate staff and case officers being prepared to handle the caseload. The problems are multitudinous in nature, and they are also not unique to any one administration.

I should like to say by virtue of the statement made by the Senator from Michigan, we will have to take a similar approach to resolving the social security dilemma as well, not in a spirit of partisanship of one party seeking to exploit the vulnerabilities of disadvantages of the other to the great detriment of the people of this country but, rather, in a true spirit of bipartisanship that effects the payment of social security benefits to millions of people throughout the country.

Mr. President, Congress can delay no longer in providing relief to the thousands of individuals whose disability benefits are being erroneously terminated only to be reinstated after a lengthy appeals process has run its course.

Last May, Senator LEVIN and I held a hearing in our Oversight of Government Management Subcommittee to investigate numerous reports from all over the country that truly disabled people are having their benefits terminated as a result of the new reviews.

What we found was most disturbing. Benefits are being discontinued in more than 40 percent of the cases reviewed—far above the 20 percent rate predicted by the General Accounting Office. In the State of Maine alone, benefits for more than 1,200 people have been ended since the reviews began, despite the fact that in a number of cases the claimants still appeal to be severely disabled and unable to work. And about two-thirds of the claimants who appear are eventually reinstated to the program after a hearing before an administrative law judge.

The situation is both absurd and cruel. It makes no sense to inflict pain, uncertainty, and financial hardship on disabled workers and then tell them, "sorry, we made a mistake." It makes no sense to overburden the State agencies and further clog the appeals process with cases where the individuals clearly remain disabled.

The tragedy is that, in waiting for reinstatement, these severely disabled persons and their families must go without benefits for months—or even a year or more—due to the tremendous backlog of appeals. One of my constituents, who was reinstated to the program last August, has been without his disability checks for 16 months. Lacking any income and too proud to accept welfare, this desperate man recently attempted to take his own life.

This is not an isolated example. Witnesses at our hearing recounted case after case in which truly disabled individuals lost their benefits and suffered financial hardship and emotional trauma because of an unjust system.

We identified several flaws in the continuing disability investigations:

First. The SSA does not provide the claimants with an adequate notice explaining the gravity of the review and the beneficiaries' responsibilities. Instead, a misleading notice is provided which simply informs the claimant that his case is "under review" to determine if he" continues to meet" the requirements.

Second. No face-to-face interview is held with the claimant until the hearing before an administrative law judge. This absence of personal contact gives the claims examiner an incomplete picture of the claimant's condition and reinforces the beneficiary's feeling of bureaucratic indifference.

Third. Decisionmakers use different and, at times, conflicting standards to determine disability. For example, there is confusion on the proper evaluation of a claimant's pain.

Fourth. in a number of cases, the medical files which the claims examiners rely on are incomplete and lack current medical evidence from the treating physician.

Fifth. No presumption of validity is accorded the initial decision which entitled the claimant to receive benefits. Instead, as the General Accounting Office has said, a system of "zero-based eligibility" is used, in which the claimant must prove all over again that he is entitled to benefits.

Sixth. In a number of cases, individuals whose medical conditions have actually deteriorated since they started receiving benefits many years ago are having their benefits ended.

In short, our hearing revealed a disturbing pattern of misinformation, incomplete medical examinations, inadequately documented reviews, bureaucratic indifference, erroneous decisions, financial and emotional hardships, and an overburdened system.

The Social Security Administration has taken some steps, such as improving the notice, to remedy these problems. But rectifying such fundamantal deficiencies will require comprehensive legislation, I applaud Senator DOLE for his willingness to thoroughly review the disability program next year. Since it will take time for Congress to consider reforms in the disability program, we must act now to provide short-term relief to disabled individuals whose benefits are being terminated and then reinstated.

Slowing down the number of cases reviewed would help both claimants and the State agencies which conduct the investigations. Currently, case files are literally overflowing out of boxes, and unreasonable burdens have been placed on many State agencies, particularly in those States where personnel freezes have prevented the hiring of needed staff. By directing the Secretary to proceed with the reviews at a pace which recognizes the necessity for careful evaluations and a more even workload, this legislation would improve the quality of the decisions and lessen the huge backlog of cases. It provides the Secretary with the flexibility that he needs to make adjustments in the State's workload after consulting with the State administrators.

In addition, by continuing benefits pending appeal, this legislation would eliminate the needless financial burden now imposed on disabled people who are mistakenly removed from the program, despite being unable to resume work. Currently, claimants who are successful in appealing their termination decisions receive back benefits, but only after

months of disruption and delay. Our proposal would prevent the interruption of benefits which these individuals eventually would receive anyway.

To control the cost of this proposal and to discourage frivolous appeals, the legislation would require individuals whose terminations are upheld by an administrative law judge to repay the benefits paid pending appeal unless repayment would cause a severe financial hardship.

Again, I emphasize that fundamental reforms in the SSA review procedures are absolutely essential, Senator LEVIN and I, along with several other Senators, have proposed comprehensive legislation to make the system more equitable and efficient. Congress would, however, be remiss in waiting for comprehensive legislation to solve these urgent problems. While we should continue to seek long-term reforms, including a medical improvement standard, we should act immediately to provide protection for the disabled Americans who are the victims of a faulty and unfair system.

Disability benefits are not welfare. A worker earns this insurance through the social security taxes that are deducted each week from his paycheck, and he must have worked a minimum amount of time in order to qualify for those payments. He must also be so disabled that he not only cannot perform the work that had been doing but cannot engage in any kind of substantial gainful activity which exists anywhere in the country.

Surely when we are dealing with the most disabled workers in our society, we should enact every safeguard to insure that the Government does not add another burden to the ones they already must bear.

I thank Senator DOLE for working with us in fashioning a solution to this problem, and I commend Senator LEVIN for his distinguished leadership and hard work on this issue.

Mr. LEVIN. Mr. President, I thank my friend from Maine for his very flattering remarks.

I agree with his comments about the importance of bipartisanship if we are going to solve the numbers of problems which face us in this country, including the social security problem. I look forward to a long continuing association with him on that subcommittee.

DISABILITY CHANGES—H.R. 7093

Mr. SASSER. Mr. President, the need for modification of the existing disability review process is unequivocal. The existing disability determination system is seriously flawed and in need of repair. The erroneous termination of benefits, which occurs with an unacceptable frequency, not only undermines the fundamental concepts of social justice and equity, but adversely impacts upon thousands of disabled Americans who rightfully enjoy a legitimate claim to such benefits by virtue of their contribution of payroll taxes in their working years. This situation is simply intolerable and must be changed.

Today, I stand before this Senate and urge my colleagues to join me in supporting this much-needed corrective legislation. To the more than 4½ million disabled beneficiaries in this Nation, this legislation is crucial. We owe it not only to them, but to ourselves to reinforce the basic notion of fairness which underscores our democratic process.

The problem of disability terminations has attracted considerable bipartisan attention for the better part of the past year. There have been no fewer than 13 pieces of legislation to deal with this problem introduced in the Senate alone during the current session. Indeed I offered a bill in June which subsantially incorporates several of the provisions which appear in the legislation we are considering today.

Over the past 6 months, I have worked with several of my colleagues, Senators COHEN, LEVIN, METZENBAUM, HEINZ, RIEGLE, in an attempt to fashion an effective compromise solution to the problem. The measure which stands before this Senate today adequately represents such a bipartisan compromise and should be adopted.

Very briefly, I would like to outline the current problem. In 1980, Congress passed disability amendments which were ostensibly designed to curb the dramatic increase in the social security disability program during the 1970's. A key provision of those amendments called for continuing disability reviews of those currently on the rolls in an attempt to weed out those currently on the rolls in an attempt to weed out those who were not eligible for disability benefits. I supported these changes then, and I continue to support them now. If people do not belong on the disability rolls, then they should be removed. This provision was never intended, however, to justify wholesale terminations of benefits.

By accelerating the implementation of these continuing disability investigations some 9 months ahead of time, the Reagan administration has done precisely that. The desperation and despair faced by many disabled beneficiaries, who in numerous cases lose their only source of income, has resulted in heart attacks and in a number of instances suicide. In my home State of Tennessee, it is estimated that as many as 2,500 beneficiaries have lost their benefits due to erroneous decisions on the part of the State determining agencies. Nationwide, it is estimated by the Social Security Administration that between 60 and 70 percent of all individuals who appeal these decisions are reinstated at the administrative law judge level. This rate of error is totally unacceptable.

This legislation makes the following changes: First, it would provide for the continuation of benefit payments until the administrative law judge level of appeal whereas currently benefits are not available through the appeals process; second, it would allow the Secretary of HHS to slow down the number of cases sent to the State agencies (current caseloads and backlogs are contributing to pressure to review cases and this is resulting in errorenous decisions); third, it would institute a face-to-face evidentiary hearing at the reconsideration level of appeal, currently face-to-face contact does not occur until the administrative law judge; fourth, it would provide for semi-annual reports to Congress on the status of the disability review process.

These changes would provide much-needed temporary improvements in the current system. They are reasonable and should be adopted. During the past week I have talked with Chairman PICKLE of the Social Security Subcommittee and he has indicated that this legislation is acceptable.

During recent conversations with my colleagues, there is one overriding concern which punctuates the need for this legislation, that is the urgency with which this legislation must be dispatched. As we all know, time is running short. Thus it is absolutely essential that we act on this matter now. It must also be realized that this legislation will merely act to provide temporary relief to those facing termination of their disability benefits. It will be necessary to address major structural problems in a comprehensive manner in the near future. But we must rectify current inadequacies now. The problem has gone on too long and improvements are long overdue.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 79

December 22, 1982

Late yesterday, the House passed the conference report on H.R. 7093, the disability bill, by a vote of 259-0 and the Senate agreed to the conference report by voice vote. This action clears the bill for the President. As described in previous Legislative Bulletins, the bill contains the following Social Security provisions:

- Permit, on a temporary basis, a DI beneficiary to elect to have benefits and Medicare coverage continued through the Administrative Law Judge (ALJ) hearing. The continued benefits would be treated as overpayments and subject to the waiver requirements of present law. This would be effective for benefits beginning January 1983 with respect to termination decisions made by State agencies between enactment and October 1983, but the last month for which payment could be continued would be June 1984. (Cases now pending a reconsideration or an ALJ decision would also be covered by this provision, although retroactive payments would not be authorized.)

- Require the Secretary to provide the opportunity for a face-to-face, evidentiary hearing during reconsideration of any decision that disability has ceased. The reconsideration could be made by HHS or by the State agency that made the finding that disability ceased. The provision would be effective with respect to reconsiderations requested on or after a date to be specified by the Secretary, but no later than January 1, 1984.

- Require the Secretary to take necessary steps to assure public understanding of the importance Congress attaches to the face-to-face reconsiderations discussed above, including advising beneficiaries of the procedures during the reconsideration, of their opportunity to introduce evidence and be represented by counsel at the reconsideration, and of the importance of submitting all evidence at the reconsideration.

- Permit the Secretary of HHS to reduce, on a State-by-State basis, the flow of cases sent to State agencies for periodic review of continuing eligibility, if appropriate, based on State workloads and staffing requirements, even if this means that the initial periodic review of the rolls cannot be completed within 3 years.

- Require the Secretary to make semiannual reports to the Senate Committee on Finance and the House Committee on Ways and Means on the results of continuing disability investigations, including the number of such investigations which result in termination of benefits, the number of terminations appealed to the reconsideration or hearing levels or both, and the number of reversals on those appeals.

- Modify the exception clause in the spouse's governmental pension offset and extend it, for a 7-month period, to those becoming eligible for a public pension based on noncovered employment between December 1, 1982 and July 1, 1983. Under the modification only those (both men and women) who meet the one-half support test (as it applied to men in January 1977) would be excepted from the offset.

The Secretary is to study the pension offset provisions and report his recommendations for any permanent legislation by May 15, 1983.

- The House adjourned sine die on December 21, 1982. The Senate is scheduled to adjourn sine die on December 23, thus ending the 97th Congress.

Public Law 97-455
97th Congress

An Act

To amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes.

Jan. 12, 1983
[H.R. 7093]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Internal Revenue Code of 1954 and Social Security Act, amendments.

SECTION 1. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

(a) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to possessions) is amended by inserting after section 934 the following new section:

"SEC. 934A. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME. 26 USC 934A.

"(a) GENERAL RULE.—For purposes of determining the tax liability incurred by citizens and resident alien individuals of the United States, and corporations organized in the United States, to the Virgin Islands pursuant to this title with respect to amounts received from sources within the Virgin Islands—

"(1) the taxes imposed by sections 871(a)(1) and 881 (as made applicable to the Virgin Islands) shall apply except that '10 percent' shall be substituted for '30 percent', and

"(2) subsection (a) of section 934 shall not apply to such taxes.

"(b) SUBSECTION (a) RATES NOT TO APPLY TO PRE-EFFECTIVE DATE EARNINGS.—

"(1) IN GENERAL.—Any change under subsection (a)(1), and any reduction under section 934 pursuant to subsection (a)(2), in a rate of tax imposed by section 871(a)(1) or 881 shall not apply to dividends paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction.

"(2) ORDERING RULE.—For purposes of paragraph (1), dividends shall be treated as first being paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction (to the extent thereof)."

(b) WITHHOLDING.—Subchapter A of chapter 3 of such Code (relating to withholding of tax on nonresident aliens and foreign corporations) is amended by adding at the end thereof the following new section:

"SEC. 1444. WITHHOLDING ON VIRGIN ISLANDS SOURCE INCOME. 26 USC 1444.

"For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 (as

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modified by section 934A) shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be."

26 USC 934. (c) TECHNICAL AMENDMENT.—Subsection (a) of section 934 of such Code is amended by inserting before the period at the end thereof "or in section 934A".

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart D of part III of subchapter N of chapter 1 of such Code is amended by inserting after the item relating to section 934 the following new item:

"Sec. 934A. Income tax rate on Virgin Islands source income."

(2) The table of sections for subchapter A of chapter 3 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1444. Withholding on Virgin Islands source income."

26 USC 934A note. (e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

(2) WITHHOLDING.—The amendment made by subsection (b) shall apply to payments made after the date of the enactment of this Act.

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

42 USC 423. Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Continued Payment of Disability Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

42 USC 421. "(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an

42 USC 1395. additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

Overpayments. "(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that he is

not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

"(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204. Waiver consideration. 42 USC 404.

"(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

"(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and 42 USC 421.

"(B) prior to October 1, 1983.".

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended— 42 USC 421.

(1) by inserting "(1)" after "(i)";

(2) by inserting ", subject to paragraph (2)" after "at least every 3 years"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.". Case number determination, waiver. Report to congressional committees.

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act. Effective date. 42 USC 421 note.

SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.

(a) IN GENERAL.—Section 205(b) of the Social Security Act is amended— 42 USC 405.

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

"(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).".

42 USC 405 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.

Ante, p. 2499.

42 USC 405 note.

SEC. 5. CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

SEC. 6. REPORT BY SECRETARY.

Ante, p. 2499.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of

continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.".

SEC. 7. OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS.

(a) ADDITIONAL EXEMPTION.—

(1) Section 334 of the Social Security Amendments of 1977 (Public Law 95-216) is amended by adding at the end thereof the following new subsection: 42 USC 402 note.

"(h) In addition, the amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual— 42 USC 402.

"(1) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act); and 42 USC 418.

"(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

"(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

"(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).".

(2) Section 334(f) of such Act is amended by striking out "The amendments" and inserting in lieu thereof "Subject to subsections (g) and (h), the amendments". 42 USC 402 note.

(b) REPORT BY SECRETARY.—The Secretary of Health and Human Services shall conduct a study of the provisions of title II of the Social Security Act which require an offset against spouses' and surviving spouses' benefits on account of public pensions, as added by section 334 of the Social Security Amendments of 1977 (taking into account the amendment made by subsection (a) of this section as well as the provisions of such section 334), and shall report to the Congress, no later than May 15, 1983, his recommendations for any permanent legislative changes in such provisions (or in the applicability of such provisions) which he may consider appropriate. Study. 42 USC 401. 91 Stat. 1544.

(c) TECHNICAL AMENDMENTS.—Subsections (b)(4)(A), (c)(2)(A), (e)(8)(A), (f)(2)(A) and (g)(4)(A) of section 202 of the Social Security Act 42 USC 402.

are each amended by inserting "for purposes of this title" after "as defined in section 210".

42 USC 402 note.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) of this section shall be effective with respect to monthly insurance benefits for months after November 1982.

Approved January 12, 1983.

LEGISLATIVE HISTORY—H.R. 7093:

HOUSE REPORTS: No. 97-833 (Comm. on Ways and Means) and No. 97-985 (Comm. of Conference).
SENATE REPORT No. 97-648 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 128 (1982):
Sept. 20, considered and passed House.
Dec. 3, considered and passed Senate, amended.
Dec. 14, House concurred in Senate amendment, in another with an amendment, and disagreed to certain amendments.
Dec. 21, Senate and House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 19, No. 2 (1983):
Jan. 12, Presidential statement.

○

Social Security Disability Insurance System

Statement on Signing H.R. 7093 Into Law. January 12, 1983

I am today signing H.R. 7093. This bill enhances the quality and fairness of the social security disability insurance system. It also helps us to maintain the integrity of the disability rolls while protecting the legitimate rights of both beneficiaries and contributors.

When this administration took office, reports by the General Accounting Office and others indicated that thousands of people who were not disabled were drawing social security disability benefits. Several billion dollars a year were being spent to support people who were not, in fact, disabled. The previous administration and the 96th Congress had agreed that the Department of Health and Human Services should correct this situation by implementing measures passed by the Congress in 1980. These measures provided for reviewing the status of those receiving social security disability benefits.

Over the past year and a half, the Department of Health and Human Services has improved the administrative processes for determining who should receive disability benefits. To help beneficiaries understand the review process, the Department now begins each continuing disability investigation with an interview in local offices.

With the signing of this bill today, I am pleased to add some useful statutory changes to the administrative initiatives that have already been taken. H.R. 7093 requires a face-to-face hearing as the first step in the appeals process. Such a hearing gives the individual a personal opportunity to present all of the evidence concerning his or her disability. This should make the process more fair for beneficiaries and provide an additional source of information for those responsible for administering the program. As an added safety measure and to avoid financial hardship for those whose benefits may be mistakenly terminated, this bill permits the continued payment of disability benefits during the appeals process.

H.R. 7093 represents a welcome step by the Congress towards improving the disability appeals process.

In addition, this bill reduces from 30 percent to 10 percent the rate of Virgin Islands tax imposed on certain payments of Virgin Islands source income to U.S. corporations, citizens, and resident aliens. The lowering of the tax rate will significantly encourage U.S. investment in the Virgin Islands and will give the Virgin Islands parity with Guam and the Northern Mariana Islands.

Note: As enacted, H.R. 7093 is Public Law 97-455, approved January 12.

EXCERPTS ONLY

98TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT No. 98-377

EXTENSION OF FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM

SEPTEMBER 22, 1983.—Committed to the Committee of the Whole House on the State of the Union and Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Way and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3929]

[Including cost estimate and comparison of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3929) to extend the Federal Supplemental Compensation Act of 1982, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. SUMMARY

IV. Explanation of Provisions

SECTION 204: EXTENSION OF PERIOD FOR WHICH THE PROVISIONS CONTINUING PAYMENT OF SOCIAL SECURITY DISABILITY BENEFITS DURING APPEAL ARE APPLICABLE

Public Law 97-455, passed by Congress in December 1982, included a provision to allow beneficiaries whose benefits had been ceased because of a medical review of their eligibility to elect to continue receiving benefits until an ALJ has rendered a decision on the case. If the case is denied, then the benefits, except for Medicare, are subject to recoupment (subject to the hardship waiver standards already in law). This provision, however, was

adopted on a temporary basis only—until further consideration could be given to the CDI issue in the cessations occurring before October 1, 1983. For cessations after that date the program will revert to prior law which provided benefits for the month of cessation and two additional months. Since January approximately 113,000 individuals have elected to continue benefit payments during appeal.

Section 204 of the bill provides for a temporary extension of this provision through November 15, 1983. Consideration of H.R. 3755, which contains a permanent extension of this provision, is expected later in this Congress.

V. Budget Effects of the Bill

1. COMMITTEE ESTIMATE

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives the following statement is made: the Committee agrees with the cost estimate prepared by the Congressional Budget Office based upon their most recent economic projections. This estimate, included below, indicates that unemployment compensation outlays from the extension of the Federal Supplemental Compensation (FSC) program will be $915 million for fiscal year 1984. Because of reduced food stamp and AFDC costs and increased revenues as a result of the FSC outlays, the net budget effect is $795 million. The loss of revenues from extension of the exclusion from FUTA of wages paid to certain alien farmworkers is $1 million per year. The outlays from continuation of disability payments through the ALJ's is $35 million in fiscal year 1984. Part of this will be recouped in fiscal year 1985. Thus the net budget effect is $831 million for fiscal year 1984.

2. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to clause 2(1)(3)(B) of rule XI of the Rules of the House, the Committee advises that the required information pertaining to new budget authority or new or increased tax expenditures, to the extent applicable to this bill, is contained in the Congressional Budget Office cost estimate included below.

3. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(1)(3)(C) of rule XI, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by the Congressional Budget Office is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 21, 1983.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act, the Congressional Budget Office has prepared the attached cost estimate for H.R. 3929, a bill to extend the Federal Supplemental Compensation Act of 1982, and for other purposes, as ordered reported by the House Committee on Ways and Means, September 20, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, SEPTEMBER 21, 1983

1. Bill number: H.R. 3929.

2. Bill title: A bill to extend the Federal Supplemental Compensation Act of 1982 and for other purposes.

3. Bill status: As ordered reported by the House Committee on Ways and Means, September 20, 1983.

4. Bill purpose: This bill would extend the Federal Supplemental Compensation (FSC) program for seven weeks. It would provide additional weeks of benefits to those individuals who have exhausted FSC payments as of October 1, 1983. It would extend the provision in current law excluding from federal unemployment taxes (FUTA) wages paid to certain alien farmworkers. In addition, it would extend the termination date for Disability Insurance benefits payments through the Administrative Law Judge (ALJ) level of appeal for 45 days.

5. Estimated cost to the Federal Government: This bill would result in additional future liabilities through an extension of existing entitlements that would require subsequent appropriation action to provide the necessary budget authority. The figures shown as "Required Budget Authority" represent an estimate of the additional budget authority needed to cover the estimated outlays that would result from enactment of H.R. 3929.

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988
Federal supplemental compensation extension:					
Unemployment compensation:					
Required budget authority	915				
Estimated outlays	915				
AFDC and food stamp offsets:					
Required budget authority	−60				
Estimated outlays	−60				
Revenue	60				
Extension of exclusion from FUTA of wages paid to certain alien farmworkers:					
Revenue and Budget Authority	−1	−1	(1)		

	1984	1985	1986	1987	1988
Estimated Outlays					
Continuation of Disability Payments through ALJ's:					
Disability Insurance:					
Estimated Budget Authority	−2	−2	−2	−2	−2
Estimated Outlays	25	−5	0	0	0
HI and SMI:					
Estimated Budget Authority	2	−1	−1	−1	0
Estimated Outlays	10	−1	0	−1	0
Total:					
Revenue	60				
Revenue and budget authority	−1	−1	[1]		
Required budget authority	855				
Estimated budget authority	0	−3	−3	−3	−2
Estimated outlays	890	−6	0	−1	0
Change to deficit	−831	−7	0	−1	0

[1] Less than $500,000.

The costs of this bill fall within budget functions 550, 600, and 650.

BASIS OF ESTIMATE

The following discussion addresses only those sections of the bill that would be expected to have a significant budgetary impact.

45-DAY EXTENSION OF PAYMENT OF BENEFITS THROUGH THE ADMINISTRATIVE LAW JUDGE (ALJ) LEVEL OF APPEAL

The provision in current law requiring that Disability Insurance benefits be paid through the ALJ level of appeal expires September 30, 1983. No payments can be made for those beneficiaries terminated from the disability rolls as a result of continuing disability investigations after that date. This provision would allow payments to be made for those terminated before November 15, 1983. Extending this provision is estimated to cost the Disability Insurance and Medicare programs a total of $35 million in 1984 and to save $5 million in 1985. This estimate assumes that an average of seven months of additional benefit payment is made to individuals who ultimately lose their appeal and that 15 percent of those who lose their appeal repay the benefits. Repayment of benefits is assumed to occur in 1985.

6. Estimated cost to State and local governments: The Congressional Budget Office has determined that the budgets of state and local governments would not be directly affected by the enactment of this bill.

7. Estimate comparison: The Department of Labor (DOL) has estimated that the FSC extension would cost $1,176 million, without taking into account offsets. The difference between DOL and CBO estimates is due to the fact that DOL assumes a higher civilan unemployment rate (9.7 percent) in the first quarter of fiscal year 1984 and a longer average duration of benefits.

8. Previous CBO estimate: None.

9. Estimate prepared by Hinda Chaikind, Richard Hendrix, and Kelly Lukins (226-2820).

10. Estimate approved by C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

SECTION 223 OF THE SOCIAL SECURITY ACT

DISABILITY INSURANCE BENEFIT PAYMENTS

Disability Insurance Benefits

SEC. 223. (a) * * *

* * * * * * *

Continued Payment of Disability Benefits During Appeal

(g) (1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection[1] for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

(A) on or after the date of the enactment of this subsection[2], or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

(B) prior to [October 1,] *November 16,* 1983.

* * * * * * *

EXTENSION OF FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 319 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 319

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 3929) to extend the Federal Supplemental Compensation Act of 1982, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and to the amendments made in order by this resolution, and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be considered as having been read for amendment under the five-minute rule. No amendment to the bill shall be in order except amendments recommended by the Committee on Ways and Means, and said amendments shall not be subject to amendment. It shall be in order to consider the amendment recommended by the Committee on Ways and Means printed in the Congressional Record of September 27, 1983, by Representative Rostenkowski of Illinois, and if offered by Representative Rostenkowski or his designee, and all points of order against said amendment for failure to comply with the provisions of clause 7, rule XVI are hereby waived. Said amendment shall not be subject to amendment but shall be debatable for not to exceed thirty minutes, to be equally divided and controlled by the proponent of the amendment, and a member opposed thereto. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be

considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Massachusetts (Mr. MOAKLEY) is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio (Mr. LATTA) and pending that, I yield myself such time as I may consume.

(Mr. MOAKLEY asked and was given permission to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio (Mr. LATTA). Pending that I yield myself such time as I may use and I ask unanimous consent to revise and extend my remarks.

Mr. Speaker, House Resolution 319 is a modified closed rule providing for the consideration of H.R. 3929, a bill to modify and extend the Federal supplemental compensation program for 7 weeks to November 16, 1983. As the Clerk has stated, the resolution provides 2 hours of general debate and specifies that the bill shall be considered as read for amendment. No amendments to the bill shall be in order except Ways and Means Committee amendments which are not amendable.

Mr. Speaker, the rule makes in order the committee amendment printed in the Congressional Record of September 27 by Representative ROSTENKOWSKI and provides 30 minutes of debate for the amendment to be equally divided between the proponent and a member opposed thereto.

To permit consideration of the amendment, the rule waives clause 7 of rule XVI—the germaneness rule. The amendment increases the cap on Federal title XX social services funds to $2.8 billion effective October 1, 1983—a $75 million increase above the current temporary cap. The States would be required to use $200 million of these additional funds to address unemployment related problems. The purpose of the amendment is to bring the funding levels for these very important and valuable social service programs more into agreement with the funding levels contained in the fiscal year 1984 budget resolution. The germaneness waiver is necessary because the bill as introduced did not contain such amendments to title XX and the programs authorized by title XX of the Social Security Act are not directly related to the Federal supplemental compensation program.

Upon conclusion of consideration of the bill, one motion to recommit would be in order.

Mr. Speaker, H.R. 3929 extends, with certain modifications, the Federal supplemental compensation program from October 1 to November 16, 1983. This program provides additional 7 weeks of unemployment benefits to jobless workers who have exhausted all of the State and Federal unemployment benefits.

The program modifications made by H.R. 3929 to the Federal compansation program include: Extending the maximum payment period from 14 to 16 weeks in high-unemployment States; allowing States to use a different trigger mechanism which is the unemployment rate—in order to determine the Federal supplemental compensation payment period; and allowing individuals who have exhausted or are receiving the Federal supplemental compensation benefits to receive 75 percent of their new Federal supplemental compensation entitlement, up to a maximum of 8 weeks.

Mr. Speaker, the legislation also conforms the Federal Unemployment Tax Act (FUTA) definition of taxable wages with the social security tax definition for the purposes of determining whether Federal supplemental compensation payments made to the estates or survivors of deceased individuals should be subject to the FUTA tax.

H.R. 3929 extends the current law exemption of wages paid to certain alien farmworkers from the unemployment tax until January 1, 1986. In addition, the legislation requires the Secretary to report to the Congress no later than April 1, 1984, on targeting Federal supplemental compensation benefits to sub-State areas and identifying structurally unemployed workers.

Finally, an amendment adopted by the Ways and Means Committee would extend for 46 days the provision of Public Law 97-455 which allows beneficiaries terminated from the rolls because of a review of their eligibility to continue receiving benefits until an Administrative Law Judge has rendered a decision on the case.

Mr. Speaker, the program will expire tomorrow, September 30 and it is unlikely that the House and Senate can reach agreement on this controversial and complex issue in time to prevent disruption in the program. This short-term extension would allow us to address the serious problems with the Federal compensation program without imposing a hardship on its current participants.

Mr. Speaker, House Resolution 319 provides for timely and expeditious consideration of H.R. 3929. I would urge my colleagues to adopt this rule so that the House may proceed to the consideration of this important legislation.

Mr. Speaker, I yield to the gentleman from Ohio for debate only.

Mr. Speaker, I move the previous question on the resolution.

□ 1020

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. LATTA. Mr. Speaker, this rule makes in order a somewhat controversial piece of legislation, even though it appears to be only a 45-day extension of the Federal supplemental compensation.

First, the 45-day length of the extension creates problems. Such a short extension will be disruptive to the orderly administration of the program.

The legislation does not merely extend the current Federal supplemental compensation program for 45 days but also establishes a new benefit structure.

This new structure could well be revised again at the end of 45 days. At that time a new bill could be loaded down with additional, unnecessary, and unrelated spending, plus new taxes.

A second problem with the 45-day extension is that it hides the true cost of the Federal supplemental compensation program. The reserve fund portion of the first concurrent budget resolution for fiscal year 1984, passed by this House, included $1.5 billion for a contemplated 6-month extension of this program, whereas the bill before us today will cost $1.2 billion for 45 days.

Now, I ask you, Mr. Speaker, what happened to this budget resolution that was passed and the $1.5 billion limitation that was anticipated for this program.

Mr. Speaker, according to the information provided at the time of the Rules Committee meeting by the Office of Management and Budget, the administration strongly opposes this bill. The OMB estimates that if H.R. 3929 were to become an 18-month extension of the Federal supplemental compensation program, it would cost $6 billion.

Finally, OMB concludes that if this bill were to reach the President's desk in its present form it would be recommended for disapproval.

Mr. Speaker, like most rules from the Ways and Means Committee, this one restricts amendments. In this case no amendments will be in order except committee amendments and one nongermane amendment to be offered by the chairman of the Ways and Means Committee.

Yes, Mr. Speaker, you guessed it. When you talk about nongermane amendments you talk about additional spending by this Congress.

According to testimony presented in the Rules Committee the purpose of this amendment is to increase the cap on Federal title XX social services funds to $2.8 billion, effective October 1, 1983.

This is a permanent increase in the title XX cap for fiscal years 1984 and 1985. The amendment is printed in the RECORD of September 27.

Mr. Speaker, we are going to hear a lot of rhetoric around this place in the next couple of days about all of the

deficit financing that has been going on in the last few years.

This type of legislation is typical of the type of legislation that has been getting us into the deficit position that we are in.

The rule provides a total of 2 hours of general debate plus 30 minutes of debate on the amendment by the gentleman from Illinois, Mr. ROSTENKOWSKI.

Mr. Speaker, I have no requests for time and I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. COLEMAN of Texas). Pursuant to House Resolution 319 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3929.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3929, to extend the Federal Supplemental Compensation Act of 1982, and for other purposes, with Mr. MOAKLEY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Illinois (Mr. ROSTENKOWSKI) will be recognized for 1 hour, and the gentleman from South Carolina (Mr. CAMPBELL) will be recognized for 1 hour.

The Chair recognizes the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Chairman, I yield myself such time as I may consume.

H.R. 3929 would extend and modify the Federal supplemental compensation program (FSC). The FSC program provides additional weeks of unemployment benefits to jobless workers who have exhausted all other State and Federal unemployment benefits. The program will expire on September 30, 1983.

With a nationwide unemployment rate of 9.5 percent, representing 10½ million jobless Americans, the need to extend the FSC program beyond September 30, is readily apparent. There is disagreement, however, over how the program should be structured. It will take the House and the Senate longer than the few days remaining before the program expires to reach agreement on the appropriate structure of a longer term extension.

For this reason, the bill provides a 7-week extension of the FSC program. This will prevent any disruption in the program and immediately provide additional weeks of FSC to over 1 million jobless workers who have exhausted their FSC entitlement. This short-term extension will also give the House and the Senate time to address the serious problems that exist in the program and reach agreement on the specific provisions of a longer extension.

Under the extension approved by the Ways and Means Committee, the FSC program would be modified as follows:

First, the maximum number of weeks of FSC payable in the highest unemployment States would be increased to 16;

Second, the number of weeks of FSC payable in a State would be determined by either the State's insured unemployment rate or its total unemployment rate; and

Third, individuals who have exhausted FSC by October 1, 1983, or who will exhaust soon after that date, would be eligible for 8 additional weeks of FSC.

In addition to the extension and modification of the FSC program, the bill contains two amendments to the Federal Unemployment Tax Act. The first would exclude from Federal unemployment taxes payments made to the estate or survivors of a deceased employee. The second amendment would extend the current exclusion from Federal unemployment taxes of wages paid to alien farmworkers.

The bill also extends, for 45 days, the authority to continue payments of social security disability benefits during the appeal to an administrative law judge of a decision to terminate such benefits. This authority expires on October 1, 1983. The Committee on Ways and Means will report a major disability reform bill within a few days. One of the provisions of that bill will make permanent this authority to continue payments through the appeal to an administrative law judge. In order to prevent any lapse of this authority while the Congress considers the larger disability bill, we extend the authority for 45 days.

The Committee on Ways and Means approved a committee amendment to H.R. 3929 that has been made in order under the rule. This amendment will permanently increase the cap on the amount of Federal title XX funds to $2.8 billion, effective October 1, 1983. In fiscal year 1984 and 1985 at least $100 million of the additional title XX funds provided under this amendment would have to be used by States to address unemployment related problems.

At this time, Mr. Chairman, I yield such time as he may consume to the gentleman from Tennessee (Mr. FORD), chairman of the Public Assistance and Unemployment Compensation Subcommittee, who will give us a more detailed explanation of the bill.

(Mr. FORD of Tennessee asked and was given permission to revise and extend his remarks.)

□ 1030

Mr. FORD of Tennessee. Mr. Chairman, I thank my distinguished chairman for yielding.

Mr. Chairman, the FSC program provides additional weeks of unemployment compensation to individuals who have exhausted all other State and Federal unemployment benefits. Under current law, the FSC program provides a maximum of 8, 10, 12, or 14 weeks of benefits, depending on a State's insured unemployment rate. Unless we act this week, the program will expire.

There is little disagreement that this program should be extended. While there has been a slow decline in the Nation's unemployment rate, the rate remains intolerably high. Economic projections indicate that unemployment levels will only gradually decline over the coming months.

As the chairman of the Ways and Means Committee indicted, there is disagreement over how the program should be structured. Serious issues exist concerning the method of determining how many weeks of benefits will be payable in a State. In addition, there are serious administrative problems due to individuals and States losing benefits as a result of changes in their insured unemployment rates. For this reason, we extend the program for only 7 weeks. Such an extension will prevent any disruption in the payment of benefits while giving us time to reach agreement on the basic structure of the program.

The bill does modify the FSC program in three significant ways:

First, the maximum number of weeks payable in a State would be increased to 16, so that the basic FSC program would provide 8, 10, 12, 14, or 16 weeks of benefits;

Second, the number of weeks of benefits payable in a State would be determined by either the State's insured unemployment rate or its total unemployment rate. This alternative trigger, using the total unemployment rate in a State, is necessary to assure that those States experiencing the highest rates of real unemployment become elegible for the higher number of FSC weeks. A State such as Michigan, for example, which has a current total unemployment rate of over 14 percent, has an insured unemployment rate of only 3.7 percent. A number of high unemployment States are experiencing a similar gap between their insured and total unemployment rates; and

Third, individuals who received FSC prior to October 1, 1983, and who have exhausted their benefits or will exhaust their benefits soon after that date, would be eligible for up to 8 additional weeks of FSC. This reachback provision is designed to provide additional help to the long-term unemployed whose prospects for reemployment remain bleak. Over 1 million job-

less workers would be eligible for these reachback weeks.

In addition to the extension and modification of the FSC program, the bill contains two amendments to the Federal Unemployment Tax Act (FUTA). The first would exclude from Federal unemployment taxes payments made to the estate or survivors of a deceased employee after the year in which the employee died. This amendment conforms the Federal unemployment tax treatment of such payments with their treatment under social security tax law. The second amendment would extend the current exclusion from Federal unemployment taxes of wages paid to alien farmworkers for 2 years, from January 1, 1984 to January 1, 1986. These farmworkers are admitted to the United States under the Immigration and Nationality Act for a specified period of time to harvest certain crops. They return to their native countries after the harvest season and do not qualify for unemployment compensation.

The bill also directs the Department of Labor to submit two reports to the Congress no later than April 1, 1984. The first would be on the feasibility of identifying structurally unemployed workers. The main purposes of this report are to determine if we can establish objective criteria to identify such workers and what special programs might be established to assist such workers. The second report will be on the feasibility of targeting FSC benefits on the basis of unemployment levels in sub-State areas. The issue of sub-State triggers is one that many members are concerned about. Currently, FSC and extended benefits are based on statewide insured unemployment rates. Many States have relatively low statewide insured rates as well as total unemployment rates. Certain areas of these States, however, have extremely high unemployment rates. The Department's report will discuss how such areas might be defined, the kind of unemployment measures available for such areas, and how long it might take and how much it would cost to develop adequate unemployment measures in such areas.

In addition to the unemployment measures in the bill, as the chairman mentioned, we extend the current authority to continue social security disability payments through the appeal to an administrative law judge of a decision to terminate such payments. This 45-day extension will prevent any disruption of this authority while we consider a larger disability reform bill which takes this authority permanent.

Mr. Chairman, this legislation is vitally important to jobless workers who are still struggling to make ends meet. They are anxious to return to work. They need this help in the meantime. I urge my colleagues to support this bill so that these needed benefits will continue to be paid.

The CHAIRMAN pro tempore (Mr. MONTGOMERY). The gentleman from South Carolina (Mr. CAMPBELL) will be recognized for 1 hour.

(Mr. CAMPBELL asked and was given permission to revise and extend his remarks.)

Mr. CAMPBELL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I support the extension of the FSC but that is not the question before us. The question is how and how much. I think that is what we have to address.

I believe that H.R. 3929 has serious flaws and should not pass in its current form. At the proper time I intend to offer a motion to recommit the bill with instructions designed to correct those flaws.

Before I describe the features of the instructions in my motion to recommit, let me first outline the flaws in H.R. 3929 which make it unacceptable. First, the 45-day extension of the Federal supplemental compensation program (FSC) is too short. The short extension will disrupt the orderly administration of the program by the States. The committee chairman has acknowledged that the 45-day extension will be used to develop still further changes in the structure of the FSC program. Thus, our State agencies will be forced to implement the revised FSC program contained in H.R. 3929 for 45 days and then be forced to implement a significantly different program after November 16.

H.R. 3929 perpetuates instability in the FSC program. The States cannot plan their social service programs for the long term when we extend the FSC program in small increments. Likewise, unemployed persons do not have the peace of mind that the FSC program will continue for a meaningful time.

Next, the cost of H.R. 3929 is excessive. The reserve fund of the first concurrent budget resolution for fiscal year 1984 included $1.5 billion for a contemplated 6-month extension of the FSC program. The Department of Labor estimates that H.R. 3929 will cost $1.2 billion for a 45-day extension. Over a full year it would cost about $4 billion and over 18 months it will cost at least $6 billion. Numerous extensions of a shorter duration program hide the true cost of the overall program. It is not an honest way to budget.

Some persons might envision our action in mid-November to extend further the FSC program as an attractive lure to induce some Members to vote for an unpopular tax package or omnibus reconciliation package. But any such extension will drive the FSC cost far above the mark in the budget resolution. It is ironic and contradictory to use an FSC extension which is likely to be $2.5 billion overbudget for the full year as the lure to pass a deficit-cutting tax package or reconciliation bill.

Next, H.R. 3929 moves in the wrong direction. The unemployment rate is falling and we should be moving gradually to disengage this temporary program. Instead, H.R. 3929 increases and reinforces the program. For example, when the current FSC program was last amended this spring the unemployment rate was 10.3 percent and the program provided a maximum of 14 weeks of benefits. In the intervening 6 months unemployment has fallen to 9.5 percent but the committee bill increases the maximum benefits to 16 weeks. The committee bill moves in the direction of establishing a permanent new layer of Federal unemployment benefits.

Finally, the administration has expressed its strong opposition to H.R. 3929. H.R. 3929 steers a deliberate collision course with the administration and invites a veto. The Department of Labor and the OMB will recommend strongly that the President veto H.R. 3929. I do not believe it is responsible for us to jeopardize an FSC extension in this manner. The committee bill puts short-term political gamesmanship above the interests of the unemployed.

This outline of the faults in H.R. 3929 is useful to understand why the FSC extension contained in my motion to recommit is superior. My motion to recommit would replace the 45-day extension in H.R. 3929 with an 18-month FSC extension modeled on the bill which passed the Senate Finance Committee on a strong bipartisan vote.

The recommittal motion provides an 18-month extension of the FSC program, or until March 31, 1985. This will insure a stable, far-reaching program of benefits for the long-term unemployed. It avoids all the instability and uncertainty inherent in the committee bill.

The benefit schedule in the recommittal motion ranges from 6 weeks to 12 weeks based on a sliding scale correlated to the unemployment rate in a State. The 12-week maximum falls half-way between the 14-week maximum in current law and the 10-week maximum in the administration's requested extension.

I appreciate the situation which exists in several States which have high total unemployment but whose insured unemployment rates recently have fallen unrealistically low. Under the conventional program such low insured unemployment rates would prevent those States from receiving the maximum weeks of benefits. My extension addresses this legitimate concern. The recent sharp drop in the insured unemployment rate in the high unemployment rate States would be offset by making them eligible for the maximum number of weeks based on their average unemployment rate over the last 78 weeks. States such as Michigan, Ohio, Illinois, Pennsylvania, Wisconsin, Kentucky, Arkansas, Rhode Island, Idaho, Oregon, Alabama, Washington, Alaska, and West

Virginia would be assured of receiving the maximum benefits. Other high unemployment States such as Louisiana would receive the maximum benefits under the basic criteria in the extension without reference to this special, saving provision.

The next remarkable feature is that the recommittal motion accomplishes all this without an excessive cost overrun. The cost of the extension in the recomittal motion in $3.8 billion for 18 months. This is $2.2 billion less than the committee's bill over an 18-month period. In fiscal year 1984 it would cost $2.5 billion.

I do not pretent that this cost saving does not come from slightly reduced benefits. While the maximum benefits in the recommittal motion are 4 weeks less than the maximum benefits in H.R. 3929, over two-thirds of the States would sacrifice only 2 weeks or less in benefits.

The administration has indicated that such an extension is acceptable. While my extension will cost about $500 million more than the administration's proposal, it has signaled its willingness to compromise. We should not reject an accommodation which provides continued FSC benefits, and long-term stability at an acceptable cost.

In summary, I believe the FSC extension in my recommittal motion corrects each of the flaws in the committee bill. It provides an extension of meaningful length. This assures long-term stability and continued benefits to the unemployed. It addresses the special situation of States with high unemployment rates but low insured rates by making them eligible for the maximum number of weeks. Finally, it accomplishes all this at an acceptable cost. I believe this demonstrates that the recommittal motion is preferable to the committee bill and merits our support.

□ 1040

Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana (Mr. MOORE), a member of the committee.

(Mr. MOORE asked and was given permission to revise and extend his remarks.)

Mr. MOORE. Mr. Chairman, I serve as a member of the Subcommittee on Unemployment Compensation and as a member of the full committee. I supported this bill in the subcommittee, in the full committee, and I rise to do so now.

There may be some problems with this bill. I certainly think it should have been extended for 16 weeks, as we did in the subcommittee, instead of 45 days. There may be other problems as the gentleman from South Carolina has outlined.

But I do not think the issue today is what might have been. The issue is what is before us and what we must do.

The unemployment compensation program is going to expire at the end of this month, a few days away, unless this House takes action today on this bill. I think that is the crucial consideration.

I think it is of utmost importance that the House do act and we do extend these benefits.

In a State like mine, Louisiana, we were, perhaps, the last State to enter the recession. We will probably be the last State to leave the recession. Our unemployment, up until a few weeks ago, was 12.4 percent, the fourth highest in the country.

If this program was to end now, we would find ourselves not being able to get the benefit of what is necessary to help our people withstand that recession.

Therefore, Mr. Chairman, I think this bill needs to be extended. We need to go ahead and assist the unemployed workers in this country to come out of the recession. And I think that this 45-day extension, with whatever problems it may have, is certainly better than the alternative.

So I strongly support this bill.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. MOORE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentleman for yielding.

I take it from what the gentleman has stated that as a member of the committee that you intend as a committee to act between now and the 45 days which is contemplate by the bill to shore up some of the problems which have been outlined. Is there a plan to do that or are we going to be facing another deadline 45 days from now in which we are going to be asked to take precipitant action again?

Mr. MOORE. I am not sure I can answer the gentleman's question. It probably ought to be asked to the subcommittee chairman or the full committee chairman. My answer would be that I assume by the fact that the subcommitee was willing to extend unempolyment compensation benefits for 16 weeks and this bill only does so for 45, that at some point prior to the ending of this first session of this Congress we will readdress that issue to extend those benefits for the difference. That has not been done in this bill, but that is ony my assumption.

□ 1050

Mr. GEKAS. But the gentleman agrees that future action will have to be taken if we pass this bill, which in real terms is only a short-term solution?

Mr. MOORE. This gentleman's opinion is that, yes, there ought to be an additional extension beyond those 45 days.

Mr. GEKAS. I thank the gentleman.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 3 minutes to the gentleman from Tennessee (Mr. FORD), the subcommittee chairman.

Mr. FORD of Tennessee. I thank the chairman.

Mr. Chairman, I would like to just point out to the gentleman who was in the well a moment ago that his State is one of two States that is still receiving extended benefits under the program, with the exception, I think, of Puerto Rico, and the other States have all triggered off.

There are some plans within the next 45 days for the subcommittee to move in this direction, to report out some legislation that will certainly respond to the problems that we are faced with as they relate to the Federal supplemental compensation program itself.

I would also like to point out that the gentleman from South Carolina (Mr. CAMPBELL), who is the ranking minority member on the committee, used the figures by the Labor Department. I would just like to point out for the record that the Congressional Budget Office, based upon their most recent economic projections, estimates the cost of the Federal supplemental program itself at the tune of $795 million. That $795 million will include both the extension of 7 weeks for the Federal supplemental program, as well as 7 weeks in the reach-back program as well.

Also, under the bill that is before us, the continuation of the disability payments through the ALJ's at the tune of $35 million, and the FUTA wages paid to alien farmworkers is only at the cost of $1 million, which gives us a total cost of $831 million for the bill that is before the Committee today.

Once again, Mr. Chairman, I would like to urge my colleagues to support the 45-day extension. We have already mentioned earlier that as of September 30, midnight tomorrow night, the FSC program will expire. In order for us to continue the program for those unemployed workers who are the recipients of unemployment of Federal supplemental compensation benefits, this bill is needed today. The Congress should act upon it and, hopefully, the Senate will respond today, as well. If we are going to have a conference we can go to conference tonight or tomorrow and work out all of the problems. But the Congressional Budget Office cost figures show that the total dollar amount is $831 million for the 45-day extension, which includes the reach-back, the 7 weeks for the Federal supplemental program, as well as the FUTA provision in it, along with the disability provision.

Mr. CAMPBELL. Mr. Chairman, I yield myself such time as I may consume.

The figures we have are from the Department of Labor. The report figures, which are carried in the committee report, report a different figure still from the one that the gentleman from Tennessee (Mr. FORD) had or that I had. They report $915 million.

So I think that we can look at all of those to see exactly what your end figure is.

Mr. FORD of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from Tennessee.

Mr. FORD of Tennessee. Mr. Chairman, I think the report will also show that the cost of the reduced food stamp and AFDC cost would also lower that $915 million to the $831 million that I talked about.

In the committee report it will show that after they take into consideration the AFDC cost and food stamps, the $831 million is the figure that the Congressional Budget Office is using.

Mr. CAMPBELL. I thank the gentleman. I think we have two different sets of figures with Labor and CBO. I hope the gentleman's figures are right.

Mr. FORD of Tennessee. I am only using the report that the gentleman made reference to.

Mr. CAMPBELL. I certainly understand that, and when you do apply the deductions that the gentleman mentioned, his figure does come out from the gross figure, and I certainly concede it, but their figures and Labor's are different, and I think we have pointed that out very well on both sides.

Mr. Chairman, I yield 4 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

(Mrs. JOHNSON asked and was given permission to revise and extend her remarks.)

Mrs. JOHNSON. Mr. Chairman, I rise in support of this bill to extend the Federal supplemental compensation program for the Nation's jobless. I am especially supportive of the study mandated by this bill which would explore the possibility of allocating benefits according to substate area unemployment data rather than statewide jobless statistics. I commend the subcommittee for including this study in the bill, and thank my colleagues on the unemployment insurance task force for supporting this study in testimony.

Mr. Chairman, the concept of using substate triggers to determine unemployment benefit eligibility is an important one to the people I represent. During February of last year, for example, no fewer than 10 towns in my district reported unemployment rates exceeding 12 percent with Thomaston, Conn., posting one of the highest at 18.2 percent and Torrington at 16.1 percent.

The statewide unemployment rate for February, however, Mr. Chairman, stood at 7.5 percent, meaning that Connecticut received a level of benefits inconsistent with the needs of many of her residents. The people living in the hard-hit communities I represent were forced to accept benefit levels below those that would have been provided had local unemployment statistics which reflect the reality of people's lives, been considered

Mr. Chairman, while the authors of this legislation thoughtfully included the Labor Department study on substate eligibility criteria, I believe that a more thorough analysis of this concept could be obtained by enlisting the services of the Commerce Department as well. The Commerce Department's Bureau of Economic Analysis has already done substantial work on the concept on economic areas—segments of the country where economic activity can be accurately monitored—and has developed statistical measures for approximately 200 such areas throughout the United States.

The concept of an economic area is an important one because within an economic area one can determine where individuals work, where they live, what industries are prevalent, and in general what level of economic activity is present. Economic areas can be used to define a labor market, and in this respect the Commerce Department could provide the Labor Department's Bureau of Labor Statistics guidance in developing an appropriate unemployment triggering mechanism.

Mr. Chairman, in addition to requiring the Commerce Department's participation in this study, I believe we must enlarge and better define the bill's existing provisions concerning the kind of study ordered. In my opinion the language in the bill which now states that the Secretary of Labor "shall submit a report to the Congress on the feasibility of using area triggers in unemployment compensation programs" gives broad discretion to the Labor Department and invites rejection. I believe the substate trigger concept is workable, and urge the Secretary of Labor to work with Commerce Department specialists to jointly develop and submit to the Congress a model system of area triggers to be used in unemployment compensation programs.

Mr. Chairman, the Members of this body deserve the opportunity to debate a potentially workable system to more responsibly allocate our scarce public assistance dollars so that they serve the most economically depressed areas of our Nation and the people who have suffered most severely from unemployment. I commend the distinguished minority leader for his work in developing legislation which uses metropolitan statistical areas as substate triggers and I urge the Commerce Department involvement in this mandated study and submission of a model system for our consideration.

Mr. FORD of Tennessee. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON. I yield to the gentleman from Tennessee.

Mr. FORD of Tennessee. Mr. Chairman, I want to assure the gentlewoman from Connecticut that the committee anticipates that the Department of Labor will utilize the information and expertise of the Department of Commerce in preparing the study on the substate triggers.

Mrs. JOHNSON. I thank the gentleman.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 2 minutes to the Delegate from Puerto Rico (Mr. CORRADA).

(Mr. CORRADA asked and was given permission to revise and extend his remarks.)

□ 1100

Mr. CORRADA. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in support of H.R. 3929, which would extend the provisions of the Federal Supplemental Compensation Act of 1982 for an additional period of 45 days.

This program is of critical importance to unemployed workers throughout the country whose search for employment continues longer than the period insured by basic and extended unemployment benefits. In an economy of 9.4 percent unemployment, competition for available job slots is high. For many individuals, there are simply no alternatives for work in their communities following the shutdown of a large industry or relocation of a major employer. Consequently, through no fault of their own, these individuals find themselves out of the work force for extended periods of time.

Under more favorable economic conditions, the average length of unemployment is shorter, and most workers are sufficiently covered by basic and extended benefits during transition periods between jobs. But these are not normal times. In August, almost 2.5 million people had been out of work for 27 weeks or more. Average duration of unemployment is 20 weeks—and these figures include only those who are still actively in the job market. If we were to include those who have become discouraged in their search for work—which after 6 months would be understandable—this figure would rise considerably.

I commend Chairman ROSTENKOWSKI and Chairman HAROLD FORD for making several vital changes to the formulas for determination of State entitlements. Previously, only the insured unemployment rate of each State was used in fixing FSC benefits for workers in that State. This meant that only those individuals actually receiving State unemployment benefits were counted, effectively ignoring countless long-term unemployed workers. For example, Puerto Rico, which has had unemployment rates over 20 percent every month since 1981, is currently eligible for only 11 of a possible 14 weeks of supplemental benefits, because many of our unemployed have exhausted their initial 30 weeks of benefits.

H.R. 3929 allows calculation of benefits to each State under FSC to be based on either IUR or the State's nonseasonally adjusted total unemployment rate (TUR). This is a fairer formula, which will more effectively target funds to those who need them, the long-term unemployed.

In addition, H.R. 3929 wisely requires the Department of Labor to report on the feasibility of using substate unemployment figures as a basis for distributing unemployment compensation funds. It is obvious that persons in Flint, Mich., are in dire need of extended assistance, while the average unemployment rate for Michigan many not reflect that need. If we are to truly help those individuals whose employment status is at risk, we must be able to easily identify and target those groups.

H.R. 3929, as reported, will provide a welcome 16 weeks of Federal supplemental compensation benefits to the more than 90,000 long-term unemployed workers in Puerto Rico who are about to exhaust available benefits.

It is my first hope that we might see an increase in GNP, and a strengthening of the labor market on the island and throughout the country. In the meantime, however, we must be careful not to penalize the worker who is caught in a dilemma far beyond his control.

Mr. Chairman, I wholeheartedly support H.R. 3929, and urge my colleagues to act favorably on the measure to fulfill the commitment of this Government to work for the well-being of each of its citizens.

Mr. CAMPBELL. Mr. Chairman, may I inquire as to how much time I have remaining on this side?

The CHAIRMAN pro tempore. The gentleman from South Carolina (Mr. CAMPBELL) has 41 minutes remaining, and the gentleman from Illinois (Mr. ROSTENKOWSKI) has 44 minutes remaining.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. PEASE).

(Mr. PEASE asked and was given permission to revise and extend his remarks.)

Mr. PEASE. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in support of H.R. 3929 and I hope very much the House will pass it overwhelmingly today. It is an important bill, extremely important for the thousands of workers in this country who are still, unfortunately, unemployed and who have not been able to enjoy the benefits of our modest economic recovery.

As my colleagues in the House know, normally when a worker becomes unemployed, he or she first collects 26 weeks of basic or regular State-paid unemployment benefits, and then in previous times, a worker who was unemployed beyond 26 weeks would be eligible for an additional 13 weeks of extended benefits paid half by the Federal Government and half by the States. Then only in times of extreme high unemployment has there been an additional program, the Federal supplemental compensation program, or FSC, such as we are considering today.

The FSC program is especially important now because the extended benefits program, the second-tier program, is essentially not operative in the United States today, essentially because of changes made in 1981 in the Reconciliation Act pushed through by President Reagan. Most States have triggered off of extended benefits and, indeed, only 2 States of of the 50 are now eligible for extended benefits.

That means that when an unemployed worker in 48 States exhausts his regular 26 weeks of unemployment benefits, he or she is out of luck except for the FSC program, which expires tomorrow. So I think it is especially important that we extend this program and that we follow the committee's recommendation to make workers eligible for up to 14 or 16 weeks of FSC, acting as a bridge, a temporary substitute, for extended benefits,

H.R. 3929 contains another provision which I think is extremely important and precedent-setting.

For the first time in this legislation we make it possible for a State, in considering whether it is eligible or not for FSC, to use either the insured unemployment rate or the total unemployment rate. Giving States that option will allow a number of States to collect some weeks of Federal supplemental compensation that they would not otherwise be able to collect.

I would like to take just a minute to inform the House of the severe disparity between the insured unemployment rate which is supposed to be the measure of unemployment in a State and the actual or total unemployment rate. Keep in mind that we have been using the IUR, the insured unemployment rate, which only counts as unemployed those people who are actually collecting State unemployment benefits. Since the change in the law in 1981, it does not even count those who are collecting extended benefits.

Just selecting a few States at random, comparing the IUR, which is the only measure that has been available in the past, and the TUR, the total unemployment rate, which will be available in the future, thanks to this bill, I think will show why it is important to make this change.

Louisiana in August had an IUR of 5.2 percent, but a TUR of 12.4 percent, over twice as great.

Maryland had a 3.1 IUR; a TUR of 6.3 percent, again twice as great.

Michigan had an IUR of 3.7 percent, but a TUR of 13.1 percent, over three times as great as the IUR.

With disparities like that, it is no wonder that States have been triggering off of extended benefits.

For that reason, it is very important, as I say, that we go to this dual option for States.

The CHAIRMAN pro tempore. The time of the gentleman from Ohio (Mr. PEASE) has expired.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 2 additional minutes to the gentleman from Ohio (Mr. PEASE).

Mr. PEASE. I thank the gentleman for yielding this additional time to me.

Mr. Chairman, another area which I think is important is that of reach-back benefits. There are many, many States, despite the recovery, where the unemployment rate is still distressingly high, and in those States, a lot of them in the Midwest and Northeast, we badly need to give some helping hand to those workers who have exhausted all of their unemployment benefits. This bill does that. I think it is an important feature of the bill.

We considered briefly in the subcommittee a bill introduced earlier this month by Senator BYRD and Senator HEINZ in the other body, and by the gentleman from California (Mr. STARK), and myself here in the House to, in effect, merge EB and FSC into one program. I think that approach has a lot to recommend it and it is my hope and expectation that the subcommittee will use the 45-day extension that we have to look at that proposal in more detail to see whether or not it makes sense and is worth implementing.

Mr. Chairman, the unemployed persons in my State and across the country are not freeloaders or deadbeats. They do not want handouts or Government benefit programs. They want jobs and the dignity and self-respect that employment gives a worker, but until the unemployed are able to return to jobs they have held faithfully for sometimes 15 or 20 years, we owe them the minimum life-supporting benefits of this bill and I very strongly urge its passage.

Mr. CAMPBELL. Mr. Chairman, I yield 5 minutes to the ranking minority member on the Committee on Ways and Means, the gentleman from New York (Mr. CONABLE).

(Mr. CONABLE asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. I thank the gentleman for yielding this time to me.

Mr. Chairman, I support H.R. 3929 because it is important that we extend the Federal supplemental compensation program, FSC as it is called, before it expires on October 1, 1983.

The 45-day extension contained in the committee bill will avoid an abrupt conclusion to a program which assists the long-term unemployed. Unemployment has been falling as the economic recovery takes hold, but it is a lagging indicator as we all know. There remain some long-term unemployed who would benefit from an FSC extension to tide them over until the employment level catches up with a more robust economy.

My position on this 45-day extension, as embodied in H.R. 3929, may differ from that of my colleagues on both sides of the aisle. For example, I think a preferable approach to the impending expiration of FSC would be a long-term extension structured to phase out gradually this supposedly

temporary program. Such an extension would give the long-term unemployed the peace of mind that the program would be continuing for an extended period. It also would provide a stable program for the States to administer. The administration made such a request, but it was not accepted.

The only politically viable alternative was the Public Assistance and Unemployment Compensation Subcommittee's 9-month extension, which obviously would have provided a relatively longer term than this bill offers. However, I had some misgivings about the cost and structure of the extension approved by the subcommittee. Over a full year, the subcommittee bill would cost some $1 billion more than the extension requested by the administration, for a comparable time. It would have increased and reinforced the FSC, instead of moving it toward a phase-out, which is a logical direction for a temporary program.

Therefore, I feel it probably is better to support a 45-day extension than a 9-month extension. Since it is highy unlikely that the FSC program actually will be allowed to end in 45 days, we might have an opportunity to entertain a more disciplined proposal, possibly in a more favorable environment, when we consider a further extension in early November.

The majority members may well have a different motivation for a 45-day extension. It could be a part of a tactical maneuver unrelated to the substance of the extension. The need to act in mid-November to extend an expiring FSC program could be used as the inducement for some Members to vote for an omnibus tax package which may be developed in the intervening 6 weeks. Members might recall that the FSC program began as an amendment to the 1982 Tax Equity and Fiscal Responsibility Act (TEFRA). Soon, thereafter, FSC benefits were expanded in an amendment to legislation increasing gasoline and highway excise taxes. Early this year, the FSC program was enhanced further in an addition to the social security financing legislation. Thus, recent history shows that action to expand and extend the FSC program can be an attractive lure to gain support for unpopular tax bill. This 45-day extension of the FSC thus could lead to history repeating itself in mid-November, when another tax bill comes along.

□ 1110

The tax bill, Mr. Chairman, will have to stand on its own feet, in my view, but I acknowledge the possibility that this will be a part of such a piece of legislation.

The strong likelihood that FSC will be further extended is underscored by examining the benefit structure in this bill. It provides 8 to 16 weeks of benefits based on a sliding scale correlated to the unemployment rate in a State. It is anomalous to speak of someone receiving 16 weeks of benefits in a 7-week program.

Other features of the bill include up to 8 weeks of additional benefits for persons who have exhausted their current FSC entitlement. There is also a 2-year extension of the Federal Unemployment Tax Act exclusion applicable to certain alien agricultural workers, commonly referred to as H-2 workers. The Department of Labor is directed to undertake a 6-month report on the feasibility of substate area triggers for the FSC program. Numerous Members have expressed support for substate area triggers and this report should give us a better basis for subsequent legislation which inevitably will follow within the 45-day period.

Mr. Chairman, H.R. 3929 may not be the best of bills, but it is preferable to allowing the FSC program to expire abruptly or to extending a temporary and imperfect program for a significantly longer period of time, which was the real alternative the committee faced at the time this measure was approved.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota (Mr. OBERSTAR).

(Mr. OBERSTAR asked and was given permission to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Chairman, I thank the gentleman for yielding me this time.

I say to my colleague, the gentleman from New York (Mr. CONABLE), that I do not know about hidden agendas and other goals or objectives of the committee in reporting out this 45-day extension of the FSC benefits, but I do know about thousands of people in northern Minnesota and elsewhere around the country who have exhausted their unemployment benefits and who desperately need some financial help. We must put aside other agendas and focus on the real need for this legislation which is vitally important for the people of northern Minnesota whom I represent, where we have in some towns 80 percent unemployment, through no fault of the unemployed, where people have exhausted their unemployment benefits and where, very likely, a good many of the jobless are not going to find work opportunities in the future unless we have a massive recovery in the total economy, a restructuring of the steel industry, and a whole new outlook on the auto industry where one-fifth of our steel used to go.

I have testified at virtually every House hearing on unemployment compensation in the past 2½ years. I do want to compliment the Members on both sides, specifically the gentleman from South Carolina (Mr. CAMPBELL), who has attended those hearings and given a lot of his time and attention to them, and the chairman of the subcommittee, the gentleman from Tennessee (Mr. FORD), who has worked diligently to shape responsible legislation.

The gentleman from Ohio (Mr. PEASE) and the gentleman from Pennsylvania (Mr. CLINGER), who, as cochairs of a task force of the Northeast-Midwest Coalition, presented very thorough testimony to the Unemployment Compensation Subcommittee recommending a number of changes in the FSC program which are incorporated in the present legislation.

H.R. 3929 includes:

First, use of the total unemployment rate (TUR) as an alternative means of determining the number of weeks of benefits paid in a particular State. The insured unemployment rate is totally inadequate during periods of prolonged recession because it, in effect, loses the long-term unemployment in its measure of unemployment. The longer the recession, the lower the IUR;

Second, a reach-back provision to assist those workers who have run out of benefits in recent weeks. In Minnesota, over one-half of FSC recipients exhausted their FSC benefits in one week in August, a phenomenon common throughout the United States; and

Third, a provision requiring the Secretary of Labor to submit reports to Congress in six months on the feasibility of targeting FSC benefits to substate areas, and the feasibility of identifying structually unemployed workers for extended benefits.

I am pleased that the Ways and Means Committee has set in motion the process by which we can institute substate triggers in recognition of the tremendous differences in unemployment which can exist in economically diverse States.

I want to express my appreciation to my colleague from Minnesota (Mr. FRENZEL) for his support for the substate trigger concept. He recognizes that the statewide trigger does not allow workers in northeastern Minnesota, where unemployment is the worst in the State, to qualify either for EB or for a higher level of FSC benefits.

This year, and last year, I introduced legislation a major provision of which would permit the use of substate triggers. I introduced this legislation after a review of unemployment figures within my home State of Minnesota. Throughout the past 2 years, unemployment in Minnesota has been below the national average; in my district, it has averaged two to three times the State average, and has consistently been close to twice the national average. Unfortunately, the substate trigger will not be available for the allocation of the FSC benefits to be authorized in H.R. 3929. Workers in my district where unemployment remains high will receive the number of weeks determined by the overall State rate.

Nevertheless, the provision requiring the report from the Department of Labor is a sound one, which will enable us next year to act to make the

EB and FSC programs more responsive to the Nation's unemployed.

The unemployed of my district and throughout the United States desperately need congressional action on this legislation. It would be the height of insensitivity and irresponsibility if we fail to pass this legislation before the expiration of the FSC program tomorrow at midnight.

I have listened to the expressions of concern over the budgetary consequences of this legislation. I share the concern of my colleagues, but I must ask about the economic conseqences for individuals and for distressed communities of the failure to enact this legislation. Furthermore, in this discussion of the budgetary impact of this legislation, I hear little mention of the adoption 2 weeks ago of the record $187.5 billion defense authorization which will do far more to the deficit than the bill now before the House.

The unemployed of Minnesota and the Nation desperately need this legislation. I urge an overwhelming vote in favor of the FSC extension.

Mr. ROSTENKOWSKI. Mr. Chairman. I yield 2 minutes to the gentleman from Michigan (Mr. LEVIN).

(Mr. LEVIN of Michigan asked and was given permission to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Chairman, I rise today in strong support of H.R. 3929. a bill to extend the Federal supplemental compensation (FSC) program to November 16, 1983. I believe this bill is vital for the unemployed in Michigan and throughout the Nation.

It is becoming increasingly clear that high levels of unemployment will be with us for the foreseeable future. The administration's own forecast projects a national unemployment rate that will not fall below 9 percent until the last quarter of next year. Last month the number of jobless in Michigan actually rose by 47,000 to 616,000 while the unemployment rate jumped from 13.1 percent to 14.3 percent. Around the country, 10.7 million Americans. 9.5 percent of the labor force, are looking for work without success.

For well over a year now, we have been watching as the Department of Labor each month rolls out another set of astonishing unemployment figures. I am afraid that some have become inured to the tremendous waste and human suffering implicit in a number like 9.5 percent. Let me remind my colleagues that despite some slight improvement. this figure is still one half percentage point above the highest level reached during any recession since the Great Depression of the 1930's.

The Federal supplemental compensation program has been critical in providing support for the unemployed since its inception in 1982. The length and depth of the current recession have made looking for work the hardest job around. The 26 weeks of regular State benefits simply do not provide sufficient time for a successful job search for thousands of individuals in the present economic environment. For this reason I urge my colleagues to join me in supporting this legislation.

In addition to providing additional weeks of benefits, H.R. 3929 recognizes one of the appalling truths of the current recession: only 36 percent of the unemployed are receiving unemployment compensation. Compare this to the last deep recession in 1975 when 76 percent of the jobless were receiving benefits. The bill before us today provides for up to 8 weeks of "reach back" payments to those who have exhausted all of their benefits. In Michigan alone, I have been informed, 80.000 to 100,000 individuals may be eligible for these benefits. These are the long-term jobless who are facing economic extinction without our assistance.

H.R. 3929 makes two important modifications in the present FSC program. The first is the inclusion of an alternative "trigger" based on the total unemployment rate (TUR), the familiar measure of unemployment, for determining the number of weeks of benefits payable in each State. Under present law we have had the absurd situation in which many of the States with the highest unemployment levels qualified for only the minimum number of weeks of benefits. I believe that the new TUR trigger will provide a rational benefit structure in which those States with the highest unemployment levels will be eligible for the maximum number of benefit weeks as Congress intended.

The second important modification is the stricture on the loss of weeks. An individual will receive the number weeks he or she qualifies for initially, even if the number of benefit weeks available in a State falls. Also. a State can only have its benefit weeks reduced once every 3 months. Having spoken with numerous bewildered constituents and beleagured administrators, I can personally attest to the confusion and administrative burden of the present system which reduced benefits sometimes as often as twice in a single month.

It is my understanding that the other body will shortly consider similar legislation which does not contain a reach back provision, a TUR trigger, or a limitation on the loss of individual benefit weeks. I would like to strongly urge the House Conferees to insist on these provisions. I believe that each of these points addresses a real and important need.

Finally, I would like to note that while H.R. 3929 will provide important assistance to the unemployed, it does not address the problem in the extended benefit (EB) program, which is designed to provide the first tier of Federal support for the jobless. This program, which unlike the temporary FSC program is permanently authorized, is practically defunct. Only two States are currently eligible for the 13 weeks of compensation EB is intended to pay in high unemployment States. This is true despite the fact that 15 States currently have unemployment levels of 10 percent or higher.

The reason so many States with high unemployment are ineligible for extended benefits is the same reason the FSC program was not providing a rational benefit structure under the current formula. The insured unemployment rate (IUR) that is used to trigger on benefits is no longer a good measure of labor market conditions. The Ways and Means Committee recognized the failings of the IUR in the legislation before us today. I hope that the committee will also take up the question of the extended benefit program and make the appropriate modifications in the near future. I believe the Members of this body should be allowed to address the full scope of the Federal unemployment compensation programs when the House again takes up this issue in 45 days.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. COYNE).

(Mr. COYNE asked and was given permission to revise and extend his remarks.)

Mr. COYNE. Mr. Chairman, I rise in support of H.R. 3929, a bill to extend for 45 days the Federal Supplemental Compensation Act of 1982.

In my State of Pennsylvania, unemployment, at 11.5 percent, is higher than it was a year ago. In the four-county Pittsburgh area, 13.3 percent of the workforce is jobless.

These statistics indicate that unemployment is not a problem which will go away simply by wishing it so. It is a problem of such proportion and severity as to require a major overhaul of our unemployment compensation system.

Extending the Federal Supplemental Compensation Act for 45 days, as the bill before us provides, is an important first step in the process. The bill would provide a reachback provision of 8 weeks for individuals whose compensation has expired, with the maximum number of Federal supplemental compensation weeks ranging from 8 to 16.

Under a formula which takes into account the State's insured unemployment rate, as in the current program, or the seasonally adjusted total unemployment, which is not new a factor, Pennsylvania would be eligible for 14 weeks of Federal supplemental compensation benefits. In addition, the bill requires a study by the Department of Labor on the feasibility of substate, or area, triggers rather than State or national triggers.

Let us consider what the bill does not do. For those members of this House with constituents who must

rely on the extended benefits program, this bill offers no resolution to a situation in which 48 of the 50 States do not now qualify for extended benefits.

The reason many States do not qualify is due to changes made to the law in the 1981 budget reconciliation bill, popularly known as "Gramm-Latta." Before 1981, the mandatory trigger for extended benefits was a statewide insured unemployment rate of 4 percent. Gramm-Latta raised this requirement to 5 percent. The optional State trigger, which is now used by all but 13 States, was raised to 6 percent. In addition, States must meet a surge requirement, which measures current unemployment against that of the past 2 years.

As result of these changes, major industrial States, which suffer from staggering unemployment, no longer qualify for extended benefits. I would like to include in the RECORD a chart which lists the insured unemployment rate for selected industrial States as well as the date the State went off the extended benefits program. Each of these States failed to meet the 6-percent trigger.

	13-week insured unemployment rate (as of Aug. 6, 1983)	Extended benefit program ending date
California	4.47	July 2, 1983
Illinois	4.61	June 25, 1983
Indiana	3.70	Apr. 30, 1983
Maryland	3.22	July 31, 1983
Michigan	3.93	June 11, 1983
Pennsylvania	5.63	Aug. 6, 1983
Ohio	3.73	May 14, 1983

Source: Department of Labor, Division of Actuarial Services

Unemployment is not easily adjusted by season in a State such as Pennsylvania. Those without work in industries such as steel are often jobless 6 months or longer. Yet Pennsylvania, a State with high unemployment, does not qualify for extended benefits. The pattern is repeated nationwide.

Thousands of workers have been unemployed for such a duration they have exhausted all benefits. Thirty thousand Pennsylvanians lost all benefits in June, 47,000 in July. Where are they to turn, jobless and without the minimal means of support compensation provides?

As we fashion a more comprehensive unemployment bill in the coming weeks, a bill which should address this and several other pressing questions, I hope the House considers revisions to the law contained in two bills I introduced earlier this month.

My first bill, H.R. 3886, would extend Federal supplemental compensation benefits through March 31, 1984. In addition, it contains a 13-week reachback provision to cover those workers whose benefits have expired.

A second bill, H.R. 3887, would provide a federally funded, 26-week extended benefit program for workers who have exhausted their regular State benefits. In determining whether a State is eligible for extended benefits, the Secretary of Labor is directed to count as unemployed those who now receive extended benefits. This very logical direction, to count those who receive unemployment benefits as among the unemployed, would repeal changes in the law made in the 1981 budget reconciliation bill.

These bills propose a reasonable legislative response to an increasingly desperate situation. We cannot allow the burden of recovery in the recession to be borne mainly by the jobless. The Federal role in providing unemployment assistance should be changed to make the system truly national, simple and fair.

I am pleased that 25 of my colleagues have joined me in sponsoring this legislation. I look forward to working with members of the Ways and Means Committee and others in the coming weeks as we craft a comprehensive unemployment compensation bill which necessarily corrects the mistakes of the past in order to address the problems of the present.

At this point, I would like to include in the RECORD a short summary of the two bills:

SUMMARY OF COYNE UNEMPLOYMENT LEGISLATION

H.R. 3887

(1) Counts workers who are on the extended benefit program in the trigger calculation.

(2) Lowers the State option trigger from 6 percent to 5 percent and lowers the mandatory trigger from 5 percent to 4 percent.

(3) Drops the Federal requirements that workers have 20 weeks of unemployment in their base in order to qualify for the EB program. Instead eligibility would be the same as State's requirements.

(4) Workers would be eligibile for a training opportunity without forfeiting their eligibility to receive extended benefits.

(5) Eliminates the 120 percent "surge mechanism".

(6) Reinstates the national trigger.

(7) Requires a study by the Department of Labor to determine the feasibility of substate triggers, to be completed within 2 years.

(8) Establishes a 26 week federally funded extended benefit program for workers who have exhausted their State benefits, effective April 1984.

H.R. 3886

(1) Reauthorizes the Federal supplemental compensation program from October 1, 1983, to March 31, 1984, 14, 12, 10 or 8 weeks.

(2) Thirteen week reachback provision for individuals whose benefits have expired.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 2 minutes to the gentleman from West Virginia (Mr. MOLLOHAN).

(Mr. MOLLOHAN asked and was given permission to revise and extend his remarks.)

Mr. MOLLOHAN. Mr. Chairman, I rise today in support of H.R. 3939, the Federal supplemental compensation program extension.

My support for this bill is strong, but it is not, frankly, without qualifications. The bill provides much-needed relief to our Nation's long-term unemployed, but it by no means fully addresses their problem.

To understand this, we have to understand that two distinct and fundamentally different unemployment problems exist in this country today. There is, first, the problem of traditional unemployment which fluctuates as a normal part of changes in the Nation's economy. The regular unemployment compensation and extended benefits programs were developed in response. They were to act as stabilizers of fluctuating unemployment: Their accounts would accumulate money in times of high economic productivity, and the accounts would pay benefits in times of normal, temporary economic downturns. The expectation was that the unemployment rate would fluctuate up and down in the short term but remain more or less constant over the long term.

This recession, however, added a new dimension to the problem. Not only did the unemployment rate increase in its usual cyclical fashion, a new class of unemployed—the so-called structurally unemployed—caused it to remain high. As a Representative from West Virginia, I can attest to this. Unemployment in my State remains over 17 percent, largely because the economy in West Virginia has traditionally rested on those basic "smokestack" industries—coal, steel, glass, and chemicals—that are hard hit in any recession but have been especially hard hit by this recession. I know men and women who have worked 20 or 30 years in the coal mines or the steel mills who have been out or work for over 2 years now.

Mr. Chairman, these people need unemployment compensation but they do not want unemployment compensation. They want jobs, they want to be able to work, they want to contribute their skills to their communities and their country. The real solution to their needs lies not in extending unemployment compensation but in recognizing the Federal Government's responsibility to help them put skills to work. We need job-training programs, we need a good education system, we need sane fiscal and monetary policies that do not disrupt our economy.

I urge my colleagues to vote for the bill before us today, while I would also urge them to remember this is just the first step needed.

□ 1120

Mr. ROSTENKOWSKI. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. CAMPBELL. Mr. Chairman, I yield 2 minutes to the gentleman from Vermont (Mr. JEFFORDS).

Mr. JEFFORDS. Mr. Chairman, I thank the gentleman for yielding.

If I can have the attention of the subcommittee chairman, as we know, the chairman is aware that Vermont has found itself in an unusual situa-

tion. They recently received notice from the Department of the Treasury that the State allegedly owes some $100,000 in interest on advances made to the State and subsequently repaid in full prior to the end of this fiscal year. This notice was received roughly a week ago. These advances were made in the first two quarters of the calendar year 1983. These advances were made and repaid in reliance upon the statutory provisions of the Omnibus Reconciliation Act of 1981.

Section 2407 of this law states in the pertinent part that no interest shall be required to be paid with respect to any advance made during any calendar year if such advance is repaid in full before the close of September 30, the calendar year in which the advance is made.

The next section is the one which the Solicitor General is relying upon. It says basically that if you have a subsequent advance then interest is due. The obvious meaning is that you cannot have a balance at the end of the year. Vermont made the mistake of trying to save the Treasury money by repaying when they had the money and then taking another advance and repaying it, so they made apparently more than one advance. All of this occured within the first two quarters. Vermont repaid them all in the same fiscal year.

There certainly was no intent to penalize a State for trying to save the U.S. Government money.

Now, I believe the other body is going to take care of this by an amendment. I would hope that the subcommittee chairman would feel disposed to accept that Senate language which would clarify this problem, which obviously was not the intention of the original drafters of this legislation.

I wonder if the gentleman from Tennessee (Mr. FORD) would comment on that? I yield to the gentleman.

Mr. FORD of Tennessee. Mr. Chairman, I want to thank the gentleman for yielding. I want to let my colleague know that I am aware of the problem that the gentleman is faced with in the State of Vermont.

I do not believe that it was our intent to impose an interest penalty when a State repays its loans by the September 30, date or within that given year.

The CHAIRMAN pro tempore. The time of the gentleman from Vermont has expired.

Mr. CAMPBELL. Mr. Chairman, I yield 2 additional minutes to the gentleman from Vermont.

Mr. JEFFORDS. I yield to the gentleman from Tennessee.

Mr. FORD of Tennessee. I thank the gentleman again for yielding.

I would hope that the Department of Labor and the Department of the Treasury can resolve their different interpretations of the law.

Labor supports the State's position that no interest is due. If we do not resolve the issue, I will assure my colleague, the gentleman from Vermont, that I will work with him and the full committee chairman, the gentleman from Illinois (Mr. ROSTENKOWSKI) to resolve the issue.

Mr. JEFFORDS. Mr. Chairman, I appreciate the comments of the gentleman very much.

Mr. CAMPBELL. Mr. Chairmam I yield 10 minutes to the gentleman from Minnesota (Mr. FRENZEL).

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Chairman, I rise in oppositon to H.R. 3929, a bill which extends, perhaps reasonably, and expands, probably irresponsibly, the Federal supplemental compensation (FSC) program for 7 weeks beyond the current expiration date of September 30. The extension is an obviously temporary 45-day stop gap.

The current FSC program was created as part of the Tax Equity and Fiscal Responsibility Act of 1982. It was enacted at a time when unemployment was reaching its peak levels, and authorized 6 to 10 weeks of additional unemployment compensation benefits. These new benefits, unlike the regular unemployment compensation program and the extended benefits (EB) program, where, and are, entirely federally funded.

The FSC program was expanded in our highway tax bill in December 1982, to provide a total of between 8 to 16 weeks of benefits to eligible individuals. In March of this year, the FSC program was extended once again for 6 months. However, in recognition of the large costs of the program and of the fact that unemployment was declining, the total number of weeks an individual could receive was reduced to between 8 and 14 weeks.

The administration recognized that, although the economy is showing steady improvement and the unemployment rate continues to decline, unemployment will continue to be relatively high over the next 187 months. The administration therefore proposed an additional 18-month extension of the FSC program. However, due to the budgetary limits, and due to the fact that unemployment continues to decline, the number of weeks provided for in the proposal ranged from 6 to 10 weeks of additional benefits. Even with the reduced number of weeks of benefits, which would potentially provide an unemployed individual with a total of 49 weeks of unemployment compensation benefits, the extended program would have cost $2.2 billion for fiscal year 1984, $.7 billion above the amount provided for in the fiscal year 1984 budget contingency fund.

H.R. 3929 ignores the fact that unemployment is falling. It also ignores any of the limits of fiscal responsibility set forth in the fiscal year 1984 budget. At a time when the economy is improving, H.R. 3929 lays the groundwork for the most expensive, least restrictive unemployment compensation program ever created.

Under H.R. 3929, an individual who has already received 65 weeks of unemployment compensation will be eligible for up to 8 weeks more, for a total of 73 weeks of benefits. Some claimants may have only worked 20 weeks to qualify. Current unemployment compensation recipients will be entitled to a total 55 weeks of unemployment. The committee is being more generous now with the taxpayers' money, at a time of record deficits and declining unemployment, that it was when the FSC program was originally enacted, and unemployment was climbing.

H.R. 3929 purports to be a temporary, 7-week extension of the FSC program, which will cost only $1 billion, or a little less, according to the subcommittee chairman.

This limited extension is consistent with congressional traditions. It is unnecessarily expensive, and shatters our already outrageous budget-spending limits.

What will happen is that in 6 weeks we will be right back where we are now, extending the FSC program for another yet to be determined period of time. Except then there will be one major difference. We will not be extending the current, reasonable FSC program. We will instead be extending the FSC program which provides an excessive number of weeks of benefits, using a dificient index for determining which States receive what number of weeks. Worst of all, we will be putting into place a program whose full fiscal year cost is $4.2 billion. That is more than $2.5 billion over the highest figure in our budget resolution.

The comments on substate triggers already expressed today are accurate. Some of us have been demanding regional triggers for years. The idea is to put the money where the problems are. The problems do not always follow State lines. My own State of Minnesota is a good example. Just because my area has relatively good employment, unemployment people in the district of my friend, Mr. OBERSTAR should not be triggered off the program.

The Campbell motion to recommit, a device made necessary by the customary gag rule which prohibits amendments, would extend the current program. When unemployment is falling, it would seem unwise to expand unemployment benefits. The maintenance of present benefits would seem to be openhanded enough in such times.

But if the Campbell motion fails, the entire bill should be scrapped and replaced with a responsible, realistic, FSC program. I urge the defeat of H.R. 3929.

□ 1130

Mr. CAMPBELL. Mr. Chairman. I yield 1 minute to the gentleman from Nebraska (Mr. DAUB).

Mr. DAUB. I want to ask a question of the distinguished ranking member of the subcommittee.

The distinguished ranking member of the full committee, Mr. CONABLE, was explicit, as were you in your opening remarks on the bill. I would just like to repeat again, if I heard correctly, your suspicion that this may be an engine for a tax bill of some kind that may come to this body in November.

Mr. CAMPBELL. I think that both the ranking member of the full committee and myself and others are keenly aware that an FSC extension in the past has been part of an engine to pull a tax bill. It did it on TEFRA, it did it on the gasoline tax. And a 45-day extension puts us right at the proper time to do that. I think it is a distinct possibility.

Mr. DAUB. Just before adjournment for the Christmas holidays?

Mr. CAMPBELL. Something like that.

Mr. Chairman, I yield 5 minutes to the gentleman from Illinois (Mr. MICHEL), the distinguished minority leader.

(Mr. MICHEL asked and was given permission to revise and extend his remarks.)

Mr. MICHEL. I thank the gentleman for yielding me this time.

Mr. Chairman, in the heart of Illinois, throughout my district there are thousands of unemployed men and women who have been out of work for a long time. They want work, but they cannot find it.

The unemployment rate in some parts of my district is around 17 percent. The fastest growing sector of unemployed, according to the most recent figures I have seen, is among the long-term unemployed.

In the Peoria-Tazewell area, the insured unemployement rate decreased by 11 percent over the last year. That is not good news. It is bad news because most of that decrease was due to people who had run out of benefits altogether.

That is the problem in west central Illinois and a number of other pockets of high unemployment all across the industrial belt.

Even though recovery is moving at a brisk pace nationally, there are those areas of the Nation like mine that will be slow to recover, that will lag behind. And there are thousands of unemployed in those areas whose future is still very much in doubt.

There is a legitimate, urgent need to extend Federal supplemental compensation and include in that extension special relief for the long-term unemployed whose future remains in doubt.

The goal of the legislation before us is good.

The manner in which the legislation seeks to achieve the goal, however, leaves something to be desired. It does not combine the need to help the long-term unemployed with the equally critical need to control spending and avoid exacerbating the deficit.

The unemployed do need help, but they do not want the kind of so-called help that will hurt them in the long run.

Under the bill before us, increased benefits are payable regardless of whether the unemployment rate in an area is 2 or 20 percent. Whole States are also eligible for extra benefits under the formula section, based on the State unemployment rate, even though many areas within the State may actually have low rates of unemployment.

The total cost of this bill, on an annualized basis, is expected to run in the neighborhood of $4.5 billion over a billion dollars more than the current FSC program.

With the level of deficit facing us, we simply cannot afford expenditure increases of this magnitude. The broad-brush approach may be acceptible during better times, but at this time it simply requires too much funding to accomplish the intended objective.

We have to begin thinking of how we can rifle shot unemployment funds on the most severly impacted areas.

Last week I introduced a bill which provides for a targeting of FSC benefits on substate areas with the highest unemployment rates. Unemployed individuals in high unemployment areas would in fact receive a longer duration of FSC benefits than what is provided in the committee bill.

Under my bill, a total of 26 weeks of FSC benefits would be available for the unemployed residing in metropolitan statistical areas or counties with unemployment rates of 15 percent or greater. Such individuals would thus be eligible for a minimum of 52 weeks of unemployment benefits, compared to the committee bill minimum of between 34 and 42 weeks, and a maximum of 65 weeks if they have received extended benefits.

In areas with unemployment rates of between 13 and 15 percent, lesser increases in benefits would be provided. For all other areas, the current program would apply.

By targeting benefits in this manner, we would provide extra assistance where the needs are the greatest, and at the same time avoid the higher costs associated with the across-the-board approach of the committee bill.

The Labor Department estimates that, on an annual basis, this targeted approach would cost only about $100 million more than the current program, or $1 billion less than the committee bill.

I had considered offering this proposal here today, but will not do so because I believe the committee should have a chance to consider it. I do note that the bill requires a 6-month study of the issue by the Labor Department. While that might be appropriate, I would hope that we can move faster in implementing this targeted approach.

The proposal has been developed so that it can be implemented immediately. It uses counties or metropolitan statistical areas as the substate areas. The Bureau of Labor Statistics currently collects and publishes monthly unemployment data for both counties and MSA's.

Second, by simply folding the targeted approach into the current FSC program, we enable the program to be carried out through the existing administrative machinery and under basically the same rules and regulations.

I intend to vote for the committee bill today, not because I agree with its approach, but because we do need to extend the FSC program and because we need to assist those in high unemployment areas.

I would hope, however, that when this legislation goes to conference, the conferees will come back with no more than a 45-day extension, so that we can consider and move ahead with cost effective changes in the next go around.

I believe the time has come to adopt the targeted substate approach, and I would hope the committee will move in this direction during the interim 45-day period.

● Mr. RAHALL. Mr. Chairman, I rise in support of H.R. 3929, the Federal supplemental compensation extension.

The FSC program was established in August 1982 as part of the Tax Equity and Fiscal Responsibility Act and was extended for an additional 6 months by the Social Security Act of 1983. The current program expires on September 30, 1983.

It is of the utmost importance that the Congress expeditiously act to extend the FSC. The bill before us today would extend the program for 7 weeks, from September 30, 1983, to November 16, 1983.

In West Virginia, the State with the highest level of unemployment in the Union, approximately 20,700 unemployed workers have completely exhausted their regular State Unemployment compensation which is 28 weeks and their extended benefits which is 13 weeks in the State. There are currently 7,700 unemployed workers receiving FSC. Covered employment in West Virginia is 563,081 workers.

Under H.R. 3929, unemployed workers who begin to collect FSC benefits after October 1 will be able to obtain benefits for 14 weeks in States with an insured unemployment rate of 6 to 7.9 percent or a total unemployment rate of 10 to 11.9 percent. At this time in West Virginia, the IUR is 6.1 percent and the TUR is 9.2 percent.

Those workers who are receiving or have exhausted benefits under the existing FSC program—approximately 28,400 in West Virginia—would be eligible under H.R. 3929 for additional benefits of up to 8 weeks.

Mr. Chairman, I urge favorable and speedy adoption of this most important measure.●

● Mr. CLINGER. Mr. Chairman, I rise in support of H.R. 3929 which seeks to extend unemployment benefits to America's jobless through the Federal supplemental compensation (FSC) program. The time is upon us to act to aid those Americans who still suffer the financial hardships of long-term unemployment The FSC program is scheduled to expire at the end of this week, so it is essential that Congress take swift and effective action. The department of Labor estimates that on the final day this program is scheduled to operate, 800,000 unemployed persons will be receiving benefits under its provisions. It is unconscionable for us to refuse continued assistance to thousands of other long-term unemployed persons and their families. I therefore urge my colleagues to support this sorely needed legislation.

In the last few weeks leading up to introduction of this legislation, I have had the pleasure of working with many of my colleagues on both sides of the aisle as cochair of the Northeast/Midwest Coalition's Task Force on Unemployment Insurance. I want to commend my cochair, the gentleman from Ohio, DONALD PEASE, and the other members of the task force for the time and efforts they have devoted to helping move this extension along toward passage.

H.R. 3929 contains a number of provisions which the task force feels are indispensable to responsibly carrying on the work of the Federal supplemental compensation program. The "reach back" provision in this legislation would provide some additional weeks of assistance to those who already have exhausted FSC benefits. In States such as Pennsylvania—where the long-term unemployment rate was recently calculated at 40 percent—this reach back is essential to soften the effects of a recovery which is only just beginning to be felt. Because of the concentration of basic industries such as steel and related industries in Pennsylvania and across the Northeast and Midwest, there are still many workers who remain jobless.

Although there are those of my colleagues who criticize this legislation on the grounds that it will prove too costly to the taxpayers, I just want to point out that H.R. 3929 extends the program for only 45 days in anticipation of a comprehensive unemployment compensation program to be taken up by Congress. This is in essence a bridge to help those persons caught in the cracks between the recent recession and a delayed economic recovery in my region of the country.

Another provision of H.R. 3929 which is worthy of positive action by this body is section 203 which directs the Secretary of Labor to study the feasibility of using area triggers for unemployment programs. This topic has been extensively debated today and is one designed to target unemployment compensation to areas smaller than whole States which are particularly hard hit by unemployment. Although the concept is one of high merit, I believe it would be premature to enact substate triggers at this time, without the study on feasibility provided for in this legislation. I would hope that those of my colleagues who, like myself, support the idea of substate triggers see the need for a detailed analysis of the ways to best achieve the ends envisioned. I fear enacting substate triggers without a detailed study could lead to inequitable distribution of taxpayer dollars, and thus irresponsible legislation.

This issue is one on which emotions run high. On the bottom line, however, we are dealing here with the next meal, the next pair of shoes, and the next winter coat for great numbers of able bodied Americans who have a desire to work but are prevented from doing so, in most cases due to circumstances entirely beyond their control. This legislation is not perfect, but it is needed. We are responsible for aiding those who have yet to benefit from an economic recovery which is just beginning to gather steam in many regions of this country. I urge my colleagues not to let this chance pass by and therefore to vote in favor of extension of the Federal supplemental compensation program.●

● Mr. CONTE. Mr. Chairman, I rise in support of H.R. 3929, a bill to extend the Federal Supplemental Compensation Act of 1982.

The FSC program was enacted as a part of last year's tax bill, and pays additional weeks of unemployment benefits to individuals who have exhausted their State benefits and any extended benefits they may have been eligible for. The program expired at the end of March, but was extended through a provision of the Social Security Act amendments. As the Ways and Means Committee members have told us, FSC benefits are paid based on a State's insured unemployment rate.

I am aware to the differences between the House committee's bill and the other body's legislation—which is identical to the motion to recommit that will be made by the ranking minority member of the subcommittee, Mr. CAMPBELL. Yet I am going to have to support this committee bill.

First, under the committee bill, more weeks of benefits will be paid depending on the insured unemployment rate than under the proposed motion to recommit. The committee bill also uses the total unemployment rate in the formula, which is getting to be a more accurate representation of those individuals out of work across a State.

Under the committee bill, there is also a reachback provision for those who have exhausted FSC benefits or have some type of entitlement remaining. The motion to recommit contains no such language. despite the fact that the long-term unemployment rate is higher than it has been in many years. What about those poor people who have been out of work for over a year—how do they get by?

The committee bill also has a benefit-reduction guarantee which is not matched, as I understand it, in the other proposals, and, the committee bill requires a study of the use of "substate triggers" for areas of States with high unemployment rates. That report would be due in 6 months.

I do have problems with the fact that this is only a 45-day extension. But I think all of us agree that major reforms are needed in the entire unemployment compensation area, and these 45 days will give the Ways and Means Committee time to study those changes. What would probably be better is a 45-day extension of the current program—at least that would make the work of the State employment agencies a little easier. But this bill is a good alternative.

Finally, Mr. Chairman, this legislation extends the provision of current law which provides social security disability benefit payments through to a hearing by a law judge. That is the most important provision of the disability amendments we enacted last year, and I hope to see it extended.●

● Mr. HANCE. Mr. Chairman, the committee amendment to the bill extending the FSC program includes increased funding for title XX. The Subcommittee on Public Assistance and Unemployment Compensation and the full committee both feel that this increase is needed because of increased demand for social services and employment training that are directly or indirectly caused by the impact of unemployment on individuals and families. $100 million of the increased title XX funding in the amendment is targeted for a 2-year period to high unemployment areas within the various States.

The committee examined the problem of high unemployment in substate regions and considered legislation to address this problem. Often, high unemployment pockets are hidden in statewide statistics because of the general healthy economic condition of the State as a whole.

The committee, however, was unable to address this problem through the FSC program because of the lack of uniform unemployment data by substate areas and because of the administrative problems with this approach. The increased title XX funding in this amendment is targeted to high unemployment areas within a State and is intended to at least partially make up for the inability to target the UI program in this manner. These targeted title XX funds would have to be used to address problems directly or indirectly related at increased unemployment.

Mr. Chairman, in June of this year the subcommittee held hearings in McAllen, Tex., to examine the effects

of the 1982 peso devaluation on the communities in south Texas that border Mexico. In April 1983, the total unemployment rate in the McAllen, Tex., SMSA was 19 percent and 27.4 percent in the Laredo, Tex., SMSA. These extremely high unemployment rates in south Texas, however, are masked by the nationally reported statewide figures of total unemployment for Texas of 8.1 percent in April and an insured unemployment rate of 3.1 percent.

During the hearing, the subcommittee learned of dramatic increases in applications for AFDC benefits, food stamps, and social services in this area of south Texas. Most alarming was information presented at the hearing concerning the increase in child abuse cases reported in Laredo, Tex. During 1982, 1,119 cases of child abuse were reported for the entire year. For the first 2 months of 1983, 745 cases had already been reported. This situation is compounded by the fact that Laredo has been forced to reduce the number of child welfare caseworkers because of budgetary constraints. This amendment would help address the initial problems of this region.

Another example of statewide unemployment figures not giving a true indication of the severe impact of unemployment in areas and counties within a State was presented at the September 13, 1983 hearing held by the Subcommittee on Public Assistance and Unemployment Compensation. During the period between July 1982 and June 1983, Virginia's unemployment rate ranged between 6 percent and 8 percent. The State's insured unemployment rate remained below 3 percent. The healthy statewide figures are largely the result of the heavy military presence in Virginia's Tidewater area and the large Federal civilian employment in northern Virginia.

In the coal producing counties in southwest Virginia, however, unemployment ranges between 18 and 25 percent. In Buchanan County, unemployment has been as high as 36 percent.

According to a survey of the States' use of increased title XX funds under the emergency jobs bill, Virginia has been spending about a third of the additional title XX funds it received for social services for the unemployed and particularly to meet emergency needs. The increase in the permanent title XX funds provided for in this bill will enable the State of Virginia and other States to continue to target a portion of their total title XX allocation to the areas of their States with high unemployment and for those services particularly related to the needs of the unemployed.

Mr. Chairman, I urge adoption of this amendment.●

● Mr. ALBOSTA. Mr. Chairman, I rise in strong support for this measure to extend the Federal supplemental compensation program. I am especially supportive of this bill because of the important and desperately needed changes it makes in the computation of the eligibility of these benefits. The unemployed in my own State of Michigan, where we continue to have a high unemployment rate of 14.1 percent, do not qualify for extended benefits and only qualify for a minimum amount of Federal supplemental compensation due to the presently used eligibility formula. Clearly, this formula does not accurately reflect a true unemployment picture. H.R. 3929 would allow eligibility to also be based on a State's total unemployment rate and grant the necessary relief to those suffering from high and long-term unemployment.

While supportive of this measure, I want to point out the irony of Congress periodic gatherings to extend this program. Due to the administration's opposition to a strong jobs programs, we are not able to provide our unemployed with that which they most want: Jobs; instead, we continue to pay benefits. Certainly it makes more sense to reduce our unemployment rate with jobs, rather than having to change eligibility formulas to reflect the continually high rate. Although our unemployed will hopefully continue to receive these benefits, at least for another 45 days when we will have to gather again to consider an extension, they are faced with the prospect of yet another bleak winter with no jobs in sight to help them and no constructive assistance from their Federal Government except the platitude that economic recovery supposedly is here. People in Michigan have been faced with double-digit unemployment for almost 4 years now—have not they suffered long enough without substantive jobs action from this administration?●

● Ms. KAPTUR. Mr. Chairman, I strongly support the adoption of H.R. 3929, which revises and extends the Federal supplemental compensation program. This program provides a necessary helping hand to the millions of Americans who not only remain unemployed but who have exhausted all their unemployment benefits. As of August 1983, roughly 2.4 million Americans had been unemployed for 27 weeks or more; less than 40 percent of these individuals were receiving FSC benefits. By the end of this month, some 200,000 persons will have exhausted all their benefits in my State alone, while 8,500 persons will have exhausted their benefits in my district.

These grim statistics illustrate that the recent economic upturn has not helped many, many Americans. I suggest to those who advise us to sit back and wait for this upturn to come to the aid of the unemployed that they do not understand the continued desperation and hardship that so many of these individuals must endure. Let me quote from just one of my constituents:

I know there are no jobs out there to be had because I'm out every week looking for one. In one week, I went to 13 different places seeking employment and only 2 of the 13 would even take an application. If any of the people in Government power, including the President, think things are so good in the job market that unemployment benefits should be cut back, I would personally like to invite any of them to spend a day with me looking for a job. If they have any human feelings at all, by the end of the day they would be just as depressed, discouraged and disheartened as I am when I give up at the end of the day and go home.

I may sound bitter or angry and I guess I am, but mostly I'm just plain scared. How am I going to provide for my wife and two children when the benefits run out? Where are we going to sleep when the landlord throws us out for being behind in our rent? Are we going to freeze this winter if we have a place to live and can't afford utilities?

We should not eliminate this individual's FSC benefits. The current need for assistance remains pressing.

In the future, FSC assistance will also be badly needed. Even if this present upturn continues, and there are valid reasons—the huge budget and trade deficits foremost among them—why it may not, the resulting increase in jobs will not be sufficient. The latest CBO projections estimate that the number of unemployed will be 10 million at the end of this year and 9.4 million at the end of the next. Furthermore, given the structural adjustment occurring in our economy, the number of long-term unemployed will also stay at high levels. My district, which is heavily dependent on the auto and glass industries, is only one example of the many areas where a substantial portion of the long-term unemployed lack the appropriate skills for today's job market. They require this crucial income support until they can make the necessary adjustment.

I would like to emphasize my support for two aspects of the legislation before us. First, the reachback provision is an absolutely essential part of this legislation. Those individuals who have exhausted their benefits prior to September 30 should be eligible for additional benefits. It is these individuals who, having been unemployed for great lengths of time, often face the most painful personal situations. The March FSC extension included a reachback; we should continue to apply that principle in this legislation.

Second, the alternative total unemployment rate trigger mechanism provided for by H.R. 3929 would result in a fairer, more rational FSC program. The current trigger does not consider persons who are receiving supplemental benefits or who have exhausted all enemployment benefits. The exclusion of the longest of the long-term unemployed from this formula has a perverse effect. The length of FSC benefits in any State is not always correlated to the amount and duration of unemployment.

As examples of how inaccurately the current formula—called the IUR—now

reflects a State's unemployment picture, Michigan has the second highest unemployment rate, but its IUR is the 19th highest. Ohio has the 6th highest unemployment rate, but its IUR is 23d highest. Finally, Tennessee has the 9th highest unemployment rate, but its IUR is 29th highest. As a result, the unemployed in States like Ohio are significantly shortchanged when it comes to the weeks of FSC benefits received.

An optional total unemployment rate trigger (TUR) would not decrease the weeks of FSC benefits any State would receive. Instead, in States where the IUR does not reflect the true unemployment picture, a TUR trigger would offer a more equitable alternative. This trigger not only better reflects the unemployment situation in a State, its use would result in an unemployment insurance program more comprehensible to all. We should be able to explain to beneficiaries why their FSC benefits may have dropped or are low. This, however, is not very easy to do under the current unemployment insurance system.

I think it is also important to address the costs of the program. First, the bill does not provide for an excessively generous unemployment insurance program. FSC benefits would still, on average, equal 40 percent of a recipient's past wages. Second, deficit arguments should not defeat programs targeted to helping the desperate long-term unemployed. The unemployed have had to suffer long and terribly for our economic upturn. We have the responsibility to provide them with a decent level of income support until they can obtain unemployment.

Finally, I would like to endorse future efforts to undertake comprehensive reform of the three-part unemployment insurance system. The existing three-part unemployment insurance system is cumbersome, confusing, and not well targeted. The continued use of short-run extensions of the FSC program is not the best solution. While I support the bill before us today, I strongly believe that the next time we debate unemployment insurance that we should be discussing a comprehensive reform proposal.

Mr. Chairman, I urge the passage of H.R. 3929.●

● Mr. BOUCHER. Mr. Chairman, I rise in strong support of H.R. 3929, legislation to extend the Federal supplemental compensation program which provides up to 8 weeks of additional unemployment benefits to jobless people in Virginia who have exhausted their previous unemployment insurance benefits. In July of this year, the latest month for which data is available, 890 people in my district exhausted their basic unemployment benefits and began receiving FSC benefits. In that same month, 627 people exhausted their FSC benefits and were still without work. During June of this year, 1,305 of my constituents exhausted their basic benefits and 1,895 exhausted their FSC benefits. H.R. 3929 will provide some much needed relief.

I am particularly pleased that the Ways and Means Committee has included in the bill a provision directing the Secretary of Labor to report to the Congress on a mechanism for activating on a substate basis the Federal-State extended benefit program, which provides up to 13 weeks in extended unemployment benefits. The extended benefit program, which is separate from both the basic benefit program and the Federal supplemental compensation program, is now activated only by a measure of statewide unemployment. Since only a statewide trigger is used to activate the program, pockets of high unemployment, such as my district, in otherwise low unemployment States are not eligible for the extended benefits available in other States with high overall unemployment.

I was pleased to testify earlier this month before the Ways and Means Committee in support of the Unemployment Compensation Fairness Act, legislation I have introduced to provide for the payment of extended benefits on a substate basis, and I look forward to the Labor Department's study of this proposal.

There is a clear need for additional weeks of FSC benefits for individuals who have exhausted their basic unemployment benefits and have still not found work. There is also a need to allow those who have exhausted their FSC benefit without finding employment to reach back into the FSC program for additional benefits. I commend the Ways and Means Committee for their work on this matter, and I look forward to working with Chairman ROSTENKOWSKI, Chairman FORD, and the other members of the committee to implement a substate mechanism for the payment of extended benefits under the EB program.

I urge my colleagues to support H.R. 3929, and I include my testimony before the Ways and Means Committee in support of the Unemployment Compensation Fairness Act (H.R. 2169) at this point in the RECORD.

STATEMENT OF CONGRESSMAN RICK BOUCHER BEFORE THE COMMITTEE ON WAYS AND MEANS, SEPTEMBER 13, 1983

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today in support of H.R. 2169, legislation I have introduced to amend the Federal-State Extended Unemployment Compensation Act to provide for the payment of extended unemployment benefits in substate areas and to replace the Insured Unemployment Rate (IUR) with the regular unemployment rate for the purpose of triggering extended benefits.

My legislation is designed to remove the inequities of the current extended benefits program which arise from the use of a statewide trigger to activate the EB program. Because the payment of extended benefits is activated only by a measure of statewide unemployment (the IUR) extended benefits are not available in regions of very high unemployment located within states that have low overall rates of unemployment.

My own state of Virginia provides an excellent example of how the current program fails to serve those most in need of extended benefits. The heavy military presence in Virginia's Tidewater area and the large federal civilian presence in Northern Virginia has served to stabilize Virginia's economy even during periods of high national unemployment. The table below indicates how Virginia's statewide unemployment rate has compared to the national rate of unemployment:

Month	Virginia	United States
July 1982	7.8	9.8
August 1982	7.6	9.9
September 1982	7.4	10.2
October 1982	7.6	10.5
November 1982	7.8	10.7
December 1982	8.1	10.8
January 1983	9.0	10.4
February 1983	8.6	10.4
March 1983	7.7	10.3
April 1983	6.6	10.2
May 1983	6.0	10.1
June 1983	5.5	10.0

During the period between July, 1982 and June, 1983 when the recession was deepest, Virginia's unemployment rate ranged between 6% and 8%, and the state's Insured Unemployment Rate remained below 3%. Despite the state's relatively low unemployment rate throughout the twelve-month period, regions within the state experienced unemployment at more than triple the national rate and more than quadruple the state's rate. In the coal-producing counties of Southwest Virginia, unemployment currently ranges between 18% and 25%, and in one county, unemployment has been as high as 36%.

Notwithstanding these devastatingly high levels of unemployment, no extended benefits have been available to assist jobless people in my district due to Virginia's relatively low level of unemployment. Although the situation is particularly acute in Virginia, virtually every state that did not activate its extended benefit program during the depths of the recession had regions of unemployment far above the state's average unemployment rate. Reliance only on a statewide measure of unemployment for the extended benefits trigger denied the long-term unemployed in those regions the benefits they needed to provide for their families while they searched for new employment.

The unfairness of the current law is striking. At one point earlier this year, Buchanan County, Virginia had an unemployment rate of 32.8%, and at the same time, Detroit, Michigan had an unemployment rate of 20.4%. Because Virginia's IUR was below the extend benefits trigger, unemployed coal miners in Buchanan County did not receive the extended benefits payable to the unemployed auto workers in Detroit.

At the same time earlier this year, the unemployment rate in Duluth, Minnesota was 20.9% while the unemployment rate in Pittsburgh, Pennsylvania was 11.6%. But because Minnesota's IUR was below the statewide trigger level used to activate the extended benefits program, iron-ore miners in Duluth were not eligible to receive the extended benefits available to the unemployed steel workers in Pittsburgh.

By using a statewide measure of unemployment, pockets of high unemployment are, in effect, balanced out by regions of low unemployment. No matter how deep and sustained the recession in a given region of a state, extended benefits are not available unless the state's overall unemployment

rate rises high enough to activate the extended benefits program.

Under the provisions of H.R. 2169, the payment of extended benefits would still be activated on a statewide basis if a state's overall unemployment rate is 9% or above for at least three consecutive months. If the statewide program is not activated, however, extended benefits may be payable on a substate basis if the unemployment rate in any given "economic area" exceeds 9% for three consecutive months. The economic areas to be used for this purpose have been devised by the Bureau of Economic Analysis of the Department of Commerce and reflect common economic interests within states.

There are 189 economic areas in the nation, but, for the purposes of the extended benefit program, some realignments to the areas will be necessary For example, although the boundaries of economic areas follow existing county and city lines, they often cross state lines. H.R. 2169 provides for those areas which are comprised of jurisdictions from more than one state to be divided into separate areas and considered as independent areas within their respective states. Use of the economic area system will allow for the payment of extended benefits in substate areas and will alleviate the inequity caused by the use of only a statewide trigger for the extended benefits program.

The principal problem in implementing a substate mechanism for the payment of extended benefits is data collection. H.R. 2169 solves this problem. Use of the economic areas as contemplated by H.R. 2169 would require that the Department of Labor obtain from state employment commissions or by other means unemployment rates for each county and city in the country. This data would then be analyzed to determine unemployment rates for each of the economic areas in the country. Once the data collection procedures are established, I am confident that the system could operate smoothly and that benefits would be targeted to those most in need.

While there are early indications that the national economy may be improving, the coal industry, the auto industry, the steel industry and other sectors of the economy remain severely depressed. Because of the prospects for another resurgence in interest rates, it is clear that unemployment will remain a severe problem in many parts of the country. To help assure equitable unemployment compensation for jobless persons living in pockets of high unemployment, I strongly urge the Committee to act favorably on H.R. 2169, the Unemployment Compensation Fairness Act.●

● Mr. PICKLE. Mr. Chairman, section 204 of H.R. 3929 will extend for 45 days the period during which social security disability recipients may continue their benefit payments while appealing a decision to terminate those benefits.

Public Law 97-455, passed by Congress in December 1982, included a provision to allow beneficiaries whose benefits had been ceased because of a medical review of their eligibility to elect to continue receiving benefits until an ALJ has rendered a decision on the case. If the case is denied, then the benefits, except for medicare, are subject to recoupment, subject to the hardship waiver standards already in law. This provision, however, was adopted on a temporary basis only—until further consideration could be given to the CDI issue in the cessations occurring before October 1, 1983. For cessations after that date, the program will revert to prior law, which provided benefits for the month of cessation and 2 additional months. Since January, approximately 113,000 individuals have elected to continue benefit payments during appeal.

Section 204 of the bill provides for a temporary extension of this provision through November 15, 1983.

The full Ways and Means Committee on Tuesday of this week also approved H.R. 3755, legislation which will make these extended benefits permanent and which will address major policy and procedural aspects of these disability reviews. We hope this bill will be before the House within a few weeks.

Mr. Chairman, when we enacted Public Law 97-455 last December we made it clear it was a temporary measure to provide relief for those whose disability benefits are terminated under a medical review of their eligibility. The measure was passed in order to give us time to develop more comprehensive legislation.

We thought at that time that October 1 would be sufficient time to complete action on a larger bill, but we are regrettably running a little bit short. I say regrettably because we need to have a full statement in this area in the very near future in order to insure a smooth and equitable operation of the disability program.

H.R. 3755 has been approved in committee, however, and we believe that a 45-day period will be entirely sufficient to allow Congress to complete action in this area.●

● Mr. KOLTER. Mr. Chairman, I strongly support H.R. 3929, the extension of the Federal supplemental compensation program.

Mr. Chairman, this legislation addresses a very real and clear emergency in my district. There are thousands of people throughout my six-county area who are completely out of unemployment benefits. These are the long-term unemployed who have not been part of our modest economic recovery. In fact, the entire Fourth Congressional District has had no part in an economic recovery.

The human costs associated with long-term unemployment have been pointed out time and time again on the House floor: mortgage foreclosure, divorce, spouse and child abuse, alcoholism, and even suicide. We have a responsibility in this Congress to help alleviate these terrible human costs of long-term unemployment. This extension of the Federal supplemental compensation program is a step in the right direction.

In taking this step, let us not forget that these people do not want unemployment compensation but they need unemployment compensation. What they obviously want is a job. Yet when this House passed a reasonable, responsible, and modest $3.5 billion jobs bill that would help the long-term unemployed, the Republican-controlled Senate refused to act on it and President Reagan emphatically stated he would veto it. They refuse to give the long-term unemployed any real hope for the future. Even the administration's most optimistic projections foresee unemployment remaining above 8 percent through late 1984. But even given this disastrous level of unemployment, the Reagan administration will not support job-creating legislation.

This fact makes it even more important that we pass this Federal supplemental compensation bill in the House and work out the differences with the Senate as soon as possible. These individuals who will be eligible for the additional weeks provided in this bill have earned them. And they desperately need them.

Let us not abandon our responsibility to provide the benefits our unemployed constituents need and to provide them with some hope for the future, even though that hope will be temporary. In the meantime, I urge my colleagues to join me in continuing to call for legislation that will give our unemployed what they really want: jobs.●

● Mr. STOKES. Mr. Chairman, Members of the House, the Federal Supplemental Compensation Act extension is a bill whose passage would demonstrate our intentions to the American people. Extending the Federal supplemental compensation program for 7 weeks, from September 30 to November 16, would show the Nation that we intend to recognize the true state of the economy so that we can take action to improve it.

There is no point in pretending that this extension is not necessary. It is. The August unemployment rate held tenaciously to 9.5 percent. For black Americans the unemployment rate was more than doubly tenacious at 21 percent. Are these statistics that suggest an extension of compensation is not needed?

Mr. Chairman, the Federal supplemental compensation program was initially a temporary program enacted in response to the recession. Its purpose is to provide unemployment benefits to workers who have exhausted all other unemployment compensation. Had the Federal Government responded to the recession in an effective manner, this extension would not be necessary. But the fact of the matter is that the Reagan administration has not done its job. As a result, millions of our citizens cannot regain theirs. In this light, it seems only appropriate to extend the program to those who are helplessly paying the price of a failure in national policy.

This legislation is a realistic response to an unhappy unemployment horizon. The bill requires the Labor Department to report to Congress by April 1, 1984, on the feasibility of establishing triggers to target Federal supplemental compensation benefits

to local areas of high unemployment within a State. It also requires a report on the feasibility of identifying structurally unemployed workers. My constituents, who live in a State that ranks ninth nationally in its unemployment rate, can relate to these features of the bill. In short, passage of H.R. 3929 would show the people who elected us that at least one branch of their Government acknowledges the truth about our economic and unemployment problems and is willing to take systematic and effective action to alleviate these problems.

Mr. Chairman, the President of the United States insists that "the economy is beginning to sparkle." Do you think he is talking about the same economy that we are? One-sixth of the American labor force is now either unemployed, discouraged, or underemployed. The average unemployed worker has been out a job for just short of 20 weeks and there are 2.4 million people who have been unemployed for more than 6 months. Can we fail to pass this legislation and leave our citizens to the judgment of a man who sees a sparkle where the rest of us see soup kitchens?

In 1975, 76 percent of the unemployed received unemployment benefits. In 1976, 67 percent of the unemployed received benefits. Today, with the optimistic, open-hearted Mr. Reagan in charge of our country, 36 percent of the unemployed are receiving unemployment compensation. More than anything else that I can say, these figures speak to the need for an extension of the Federal supplemental compensation program.

Mr. Chairman, my colleagues, I urge you to vote in favor of H.R. 3929 to restore the confidence of the American people in our ability to recognize this situation for what it is. The unemployment situation is severe. It needs immediate alleviation. Ultimately, it needs correction. In the meantime, it needs our compassion.●

● Mr. HAYES. Mr. Chairman, I would like to join my colleagues in support of H.R. 3929. While this legislation provides much-needed relief and will allow many of America's nearly 11 million unemployed people to continue to meet a portion of their financial responsibilities, it is a Band-Aid measure that falls far short of the goal that we must seek to reach. Unemployment at this time is worse than at the worst point of any other recession since the 1930's. We must do more to address the root causes of unemployment and to offer serious prospects of hope for the future of those who are now in this predicament.

In communities like the First Congressional District of Illinois, where one out of every three people lives below the poverty level, where 60,000 are out of work, and where nearly 60 percent of all youth are unable to find jobs, this legislation will allow the unemployed to breathe a fleeting sigh of relief before tightening their belts and worrying about their future, especially during the coming winter. This measure, which I hope we will pass today, will in no way eliminate the life-threatening plagues of economic and emotional uncertainty and instability caused by prolonged joblessness.

While I support this legislation, I am well aware of its severe limitation, and I call on the Congress to provide more sensitive and realistic programs to address the needs of our unemployed workers. We have this responsibility and we must address it with urgency.●

● Mr. RIDGE. Mr. Chairman, I rise today to ask why the leadership of the majority party is proposing to extend a vital unemployment benefits program for only 45 days. Last week, I heard that the Committee on Ways and Means was ready to extend the Federal supplemental compensation program for 9 months. However, it was then reported that the chairman of that committee had the bill changed to a 45-day extension. Why is it that after many of my esteemed colleagues in the House, who are Members of the majority party, spent over 3 hours on the floor decrying the plight of the unemployed during a special order this summer, that we are now playing games with the very program that the long-term unemployed need most? Where are the voices that so recently lambasted the President for "his lack of concern about the unemployed"? Why are they now silent and not protesting this travesty?

To say the least, there is something very hypocritical about criticizing the President for a lack of compassion for the unemployed worker and then changing a 9-month extension of FSC to 45 days. Yet I have not heard any great uproar about this display of politics as usual. Where are all those Members who so recently protested high unemployment and a lack of responsive and responsible action on the part of the Federal Government?

The unemployed need and count on the assistance provided them through FSC benefits. Now we are telling them that they are going to have to wait an even longer time before they know whether there will be any benefits to collect after mid-November. These people have spent the last month worried about benefits being paid after September 30, and now this body is telling them the uncertainty will continue for another 45 days. Where is the compassion in this act?

If this body is truly concerned about the unemployed and if it wants to show compassion, then the 45-day extension of the FSC program should at least be restored to the 9 months that the Ways and Means Committee originally authorized, or even better an extension approaching the 18 months suggested by the Reagan administration. It is not fair to our unemployed to put them through mental suffering every few months by forcing them to wonder whether or not Congress will reauthorize the FSC program. We need to be more concerned about the effect our actions have on the unemployed and pay attention to what our policies are doing to the people of this country and not just make speeches on the floor of the House about what a terrible problem this country has with unemployment.

Unemployment is a major problem and we must take steps to correct this problem. While taking these needed actions, we must assist the many people who are unemployed while they look for new jobs. For some of them this will take longer than the assistance provided by the regular benefit unemployment compensation program. Without relief being provided by the extended benefit program—as most States are no longer eligible for it—the unemployed need the aid provided by FSC more than ever. The House of Representatives must be responsive to this need. Mr. Chairman, a 45-day extension of the FSC program is being anything but responsive.

I call on my colleagues, with whom I earlier joined, to speak out about the problem of high unemployment, to join with me now in calling on the leadership of the majority party to provide meaningful and lasting relief for the many people who now count on the FSC program for their only source of income. As we approach the end of fiscal year 1983, we should not play games with this vitally needed program. And we most certainly should not put the unemployed people of this country through unnecessary suffering so that the majority party leadership can use a longer term extension of the FSC program as a vehicle to raise taxes in the coming weeks.●

The CHAIRMAN. Pursuant to House Resolution 319, the bill is considered as having been read for amendment under the 5-minute rule.

No amendments are in order except amendments recommended by the Committee on Ways and Means, which shall not be subject to amendment. It shall be in order to consider the amendment recommended by the Committee on Ways and Means printed in the CONGRESSIONAL RECORD of September 27, 1983, by Representative ROSTENKOWSKI, and if offered by Representative ROSTENKOWSKI, or his designee, which shall not be subject to amendment, but shall be debatable for not to exceed 30 minutes equally divided and controlled by the proponent of the amendment and the ranking minority member of the Committee on Ways and Means.

The text of the bill, H.R. 3929, is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXTENSION OF FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM

SEC. 101. EXTENSION OF FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM.

(a) GENERAL RULE.—Paragraph (2) of section 602(f) of the Federal Supplemental Compensation Act of 1982 is amended to read as follows:

"(2) No Federal supplemental compensation shall be payable to any individual under an agreement entered into under this subtitle for any week beginning after November 15, 1983."

(b) TECHNICAL AMENDMENT.—Paragraph (2) of section 605 of such Act is amended by striking out "October 1, 1983 (except as otherwise provided in section 602(f)(2))" and inserting in lieu thereof "November 15, 1983".

SEC. 102. INCREASE IN NUMBER OF WEEKS FOR WHICH BENEFITS ARE PAYABLE.

(a) GENERAL RULE.—Subsection (e) of section 602 of the Federal Supplemental Compensation Act of 1982 is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2)(A) In the case of any account from which Federal supplemental compensation is first payable to an individual for a week beginning after September 30, 1983, the amount established in such account shall be equal to the lesser of—

"(i) 65 per centum of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation, or

"(ii) the applicable limit determined under the following table times his average weekly benefit amount for his benefit year:

"In the case of a:	The applicable limit is:
16-week period	16
14-week period	14
12-week period	12
10-week period	10
8-week period	8

"(B) In the case of any account from which Federal supplemental compensation was payable to an individual for a week beginning before October 1, 1983, the amount established in such account shall be equal to the lesser of the subparagraph (A) entitlement or the sum of—

"(i) the subparagraph (A) entitlement reduced (but not below zero) by the aggregate amount of Federal supplemental compensation paid to such individual from such account for weeks beginning before October 1, 1983, plus

"(ii) such individual's additional entitlement.

"(C) For purposes of subparagraph (B) and this subparagraph—

"(i) The term 'subparagraph (A) entitlement' means the amount which would have been established in the account if subparagraph (A) had applied to such account.

"(ii) The term 'additional entitlement' means the lesser of—

"(I) ¾ of the subparagraph (A) entitlement, or

"(II) 8 times the individual's average weekly benefit amount for the benefit year.

"(D) Except as provided in subparagraph (B)(i), for purposes of determining the amount of Federal supplemental compensation payable for weeks beginning after September 30, 1983, from an account described in subparagraph (B), no reduction in such account shall be made by reason of any Federal supplemental compensation paid to the individual for weeks beginning before October 1, 1983.

"(E)(i) Except as provided in clause (ii), in determining the amount established in any Federal supplemental compensation account, the applicable limit used for purposes of subparagraph (A)(ii) shall be the applicable limit in effect in the State for the later of—

"(I) the first week for which compensation is payable from such account, or

"(II) the first week beginning after September 30, 1983.

"(ii) If the applicable limit in effect in any State for any period is higher than the applicable limit used by reason of clause (i), such higher limit shall be used for purposes of determining the amount of Federal supplemental compensation payable to the individual from the account for the week for which such higher limit takes effect and all weeks thereafter (unless another higher limit takes effect under this clause).

"(3)(A) For purposes of this subsection, the terms '16-week period', '14-week period', '12-week period', '10-week period', and '8-week period', mean, with respect to any State, the period which—

"(i) begins with the third week after the first week for which the applicable trigger is on, and

"(ii) ends with the second week after the first week for which the applicable trigger is off.

"(B)(i) In the case of a 16-week period, 14-week period, 12-week period, 10-week period, or 8-week period, as the case may be, the applicable trigger is on for any week if—

"(I) the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable insured unemployment range, or

"(II) the rate of total unemployment in the State for the most recent 3 calendar months for which data are available before the beginning of such week falls in the applicable total unemployment range.

"(ii) In the case of a 16-week period, 14-week period, 12-week period, 10-week period, or 8-week period, as the case may be, the applicable trigger is off for any week if both subclauses (I) and (II) of clause (i) are not satisfied.

"(iii) In the case of any 14-week period, 12-week period, 10-week period, or 8-week period, as the case may be, notwithstanding clauses (i) and (ii), the applicable trigger shall be off for any week if the applicable trigger for a period with a higher week designation is on for such week.

"(C) For purposes of this paragraph—

In the case of a:	The applicable insured unemployment range is:	The applicable total unemployment range is:
16-week period	A rate equal to or exceeding 8 percent.	A rate equal to or exceeding 12 percent.
14-week period	A rate equal to or exceeding 6 percent but less than 8 percent.	A rate equal to or exceeding 10 percent but less than 12 percent.
12-week period	A rate equal to or exceeding 5 percent but less than 6 percent.	A rate equal to or exceeding 9 percent but less than 10 percent.
10-week period	A rate equal to or exceeding 4 percent but less than 5 percent.	A rate equal to or exceeding 8 percent but less than 9 percent.
8-week period	A rate less than 4 percent.	A rate less than 8 percent.

"(D)(i) No 16-week period, 14-week period, 12-week period, 10-week period, or 8-week period, as the case may be, shall last for a period of less than 12 weeks unless the State enters a period with a higher applicable limit.

"(ii) The applicable limit in any State shall not be reduced by more than 2 during any 12-week period beginning with the week for which such a reduction would otherwise take effect.

"(E) For purposes of this subsection—

"(i) The rate of insured unemployment for any period shall be determined in the same manner as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970.

"(ii) The amount of an individual's average weekly benefit amount shall be determined in the same manner as determined for purposes of section 202(b)(1)(C) of such Act."

SEC. 103. EFFECTIVE DATES.

(a) GENERAL RULE.—The amendments made by this title shall apply to weeks beginning after September 30, 1983.

(b) TRANSITIONAL RULE.—In the case of any eligible individual who exhausted his rights to Federal supplemental compensation (by reason of the payment of all of the amount in his Federal supplemental compensation account) before the first week beginning after September 30, 1983, such individual's eligibility for additional weeks of compensation by reason of the amendments made by this title shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before the beginning of the first week beginning after September 30, 1983 (and the period after such exhaustion and before the beginning of such first week shall not be counted for purposes of determining the expiration of the two years following the end of his benefit year for purposes of section 602(b) of the Federal Supplemental Compensation Act of 1982).

(c) MODIFICATION OF AGREEMENTS.—The Secretary of Labor shall, at the earliest practicable date, after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act in accordance with the amendments made by this title. Notwithstanding any other provision of law, if any State fails or refuses within the three-week period beginning on the date the Secretary of Labor proposes such modification to such State, to enter into such modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the close of such three-week period.

TITLE II—OTHER PROVISIONS

SEC. 201. PAYMENT TO SURVIVORS OF DECEASED EMPLOYEES.

(a) GENERAL RULE.—Subsection (b) of section 3306 of the Internal Revenue Code of 1954 (defining wages) is amended by striking out "or" at the end of paragraph (13), by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; or", and by inserting after paragraph (14) the following new paragraph:

"(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to remuneration paid after the date of the enactment of this Act.

SEC. 202. TREATMENT OF CERTAIN AGRICULTURAL LABOR.

Subparagraph (B) of section 3306(c)(1) of the Internal Revenue Code of 1954 (relating to agricultural labor) is amended by striking out "January 1, 1984" and inserting in lieu thereof "January 1, 1986".

SEC. 203. REPORT BY SECRETARY OF LABOR.

Not later than April 1, 1984, the Secretary of Labor shall submit a report to the Congress on—

(1) the feasibility of using area triggers in unemployment compensation programs, and

(2) the feasibility of determining whether individuals filing claims for unemployment compensation are structurally unemployed.

SEC. 204. EXTENSION OF PERIOD FOR WHICH THE PROVISIONS CONTINUING PAYMENT OF SOCIAL SECURITY DISABILITY BENEFITS DURING APPEAL ARE APPLICABLE.

Section 223(g)(3)(B) of the Social Security Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "November 16, 1983".

□ 1140

Mr. ROSTENKOWSKI. Mr. Chairman, I designate the gentelman from Tennessee (Mr. FORD) to offer an amendment.

AMENDMENT OFFERED BY MR. FORD OF TENNESSEE

Mr. FORD of Tennessee. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FORD of Tennessee: At the end of the bill, add the following new section:

SEC. 205. INCREASE IN TITLE XX SOCIAL SERVICES FUNDS.

Section 2003 of the Social Security Act is amended—

(1) by adding "and" after the semicolon at the end of paragraph (2) of subsection (c);

(2) by striking out paragraphs (3), (4), and (5) of subsection (c) and inserting in lieu thereof the following:

"(3) $2,800,000,000 for the fiscal year 1984 or any succeeding fiscal year."; and

(3) by adding at the end thereof the following new subsection:

"(e) In order for any State to receive an allotment for the fiscal year 1984 or 1985 in excess of the allotment to which it would be entitled if the amount specified in subsection (c) for that fiscal year were reduced by $200,000,000, the Governor of such State shall submit to the Secretary and make available to the public (prior to January 1, 1984, in the case of the fiscal year 1984, and no less than 3 months prior to October 1, 1984, in the case of the fiscal year 1985) a report certifying that at least one-half of any additional funds received from the State's allotment for the fiscal year involved (over and above the funds to which the State would be entitle if the amount specified in subsection (c) for such year were reduced by $200,000,000)—

"(1) will be used for social services directly related to the impact of unemployment on individuals and families in the State, and

"(2) will be allocated among the various areas and localities in the State in amounts which bear a direct relationship to the respective levels of unemployment in those areas and localities.

Such report shall set forth the manner in which such additional funds will be used within the State for social services needs related to unemployment, and shall include a description of and justification for the criteria to be used in making the allocations referred to in paragraph (2) of the preceding sentence.".

Mr. FORD of Tennessee (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Tennessee?

Mr. FRENZEL. Mr. Chairman, reserving the right to object, I would ask, is the subcommittee chairman going to describe the amendment?

Mr. FORD of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Tennessee.

Mr. FORD of Tennessee. The gentleman is correct; yes.

Mr. FRENZEL. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The CHAIRMAN pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. FORD) will be recognized for 15 minutes and the gentleman from South Carolina (Mr. CAMPBELL) will be recognized for 15 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. FORD).

Mr. FORD of Tennessee. Mr. Chairman, this is the title XX amendment that is before the House.

For this fiscal year, which ends tomorrow, $225 million in additional title XX social service funds has been available to States. These funds were added by the jobs bill which this Congress acted on earlier this year. They must be used for State programs that address problems directly related to unemployment. This includes job training, job placement activities, day care for working single parents and other unemployment related programs.

A survey of the States shows that they have made good use of these temporary funds and that they have been indispensable in the efforts of States and counties to deal with the serious problems caused by the high levels of unemployment we have experienced.

The title XX social service amendment that is before the House would make these funds permanently available to the States.

For fiscal year 1985 the amendment would increase title XX funds from $2.675 billion to $2.8 billion. The cap on Federal title XX funds will then remain at $2.8 billion on a permanent basis.

For fiscal years 1985 and 1986 States must use at least $100 million of the additional title XX funds for job and unemployment related programs. They must target these funds to areas within each State with the highest levels of unemployment.

This targeting will provide badly needed assistance to the pockets of extremely high unemployment that exist in almost all States, even those with relatively low unemployment. States will use these funds for job placement, job training, and other employment related services in these high unemployment counties and other areas within the States.

States can also use these funds to increase child abuse and other child welfare programs that increase dramatically whenever unemployment increases.

The additional title XX social service funds contained in this amendment, which are partially targeted to high unemployment substate areas and must be used for unemployment related programs, are an essential part of the unemployment compensation bill that is before the House today.

It will also allow States and counties to address issues and help unemployed workers that will not be helped by additional weeks of unemployment benefits which are in this bill which we have before us today.

I urge my colleagues to support the amendment that is before the House and I urge my colleagues to support this amendment because it will increase the title XX appropriations for keeping it at a permanent level.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore. The gentleman from Tennessee (Mr. FORD) has consumed 4 minutes.

The Chair now recognizes the gentleman from South Carolina (Mr. CAMPBELL).

Mr. CAMPBELL. Mr. Chairman, I yield such time as he may consume to the ranking minority member, the gentleman from New York (Mr. CONABLE).

(Mr. CONABLE asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Chairman, I oppose this committee amendment. It is a proposal which in serious consideration has to be deemed primarily political. Certainly it is casual in a fiscal sense.

I would like to review the history of title XX somewhat for the Members so that we can recall what that is all about.

Title XX has to do with social services. Social services generally, unlike cash welfare, which is usually on a matching grant basis of 50-50, are at the level of 75-25 Federal funds.

Starting in the early 1970's we discovered that many States, notably California and New York, were converting their cash welfare into social services in order to take advantage of 75-percent money instead of 50-percent money they had if they gave cash welfare instead.

One of the difficulties was that we did not have clear definition of social services. Social services could be defined in a wide range of definitions to include a great many things, and it was assumed that when we put a cap on the use of social services in title XX that we would define what social services were acceptable and what were not at some point in the future, then remove the cap.

The problem was that there was such a wide range of practice that we

have never been able really to define social services in any limiting way. The result is that for years we have left a cap on the total amount of social services. Without the cap, social services would be a pure entitlement.

Then this is the classic entitlement with a cap and it has been used for some time. The cap was reduced in the Gramm-Latta reconciliation proposals and now we are seeing it expanded, somewhat casually, in a bill unrelated to social services, although some effort is made to tie those social services that are somehow related to unemployment to the FSC extension bill on the theory that those can be specifically defined also.

They have not been. In fact, you can make a pretty good case for a higher title XX cap than we already have, but to do it in this way, through a committee amendment, without more careful thought, is I think fiscally irresponsible.

My impression is that the money in title XX will be divided as the rest of the title XX money is but that it will be very difficult to police the targeting, so-called, of this 3-year $600 million misuse of special social services money as an extension of title XX to those social services which are specifically job related.

I would much prefer to see a much more careful handling of the cap on title XX than we are doing in this manner. It seems to me there may be other social services that have a greater claim on expansion than the ones which are included in this particular measure. Maybe it will go for day care, maybe something else.

I would prefer, therefore, to see the House vote down the committee amendment and to instead have that kind of careful review of title XX that will insure that we have the appropriate balance between cash welfare and social services as far as our Federal contributions are concerned.

□ 1150

The CHAIRMAN pro tempore. The gentleman has consumed 5 minutes.

Mr. CAMPBELL. Mr. Chairman. I yield myself 2 minutes.

(Mr. CAMPBELL asked and was given permission to revise and extend his remarks.)

Mr. CAMPBELL. There are several things that concern me. One, not only are we adding in a couple of hundred million dollars more when we profess to being concerned with budget deficits. Later on, according to published reports in national magazines, there will be an organized effort to take to this floor, by Members of the other party, in order to lambaste the Reagan administration for deficits; yet we keep getting this spending which increases deficits. After all. the President cannot spend what we do not appropriate. This is of great concern to me. We are misleading the people.

I am also very concerned that title XX allows States discretion. They have discretion in how they handle a program. The title XX program is operated with a designated State agency and a designated State agency operates and sets up a program which generally is then implemented through other State agencies or substate agencies on the basis of an overall program or goal. I do not know about other States but to target, in my State, this money would be an extremely difficult matter because the mechanism is not there.

Why is it not there? Because the substate reporting figures are not there in a lot of States in the country.

Now, we need to get into substate reporting as both the gentleman from Minnesota and others have said, on FSC and other items.

We have not done it. We are going to throw out some money to the States when they do not even have, in many instances, substate reporting that is in place, that will allow them to target, and we are going to tell them that we are doing something when in fact we may be throwing money away again.

Therefore, I oppose the program.

Mr. Chairman, I yield back the balance of the 2 minutes which I had yielded to myself.

I yield 5 minutes to the gentleman from Minnesota (Mr. FRENZEL).

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. I thank the gentleman for yielding.

Mr. Chairman, this amendment proposed to add $200 million to the social services spending in title XX. That spending has already been described as child welfare services, day care services, and so forth.

Mr. CONABLE. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from New York.

Mr. CONABLE. Mr. Chairman, I am told the amendment calls for $225 million, not $200 million, as we originally thought.

It is $200 million? I thank the staff for that clarification because it was spoken of as $225 million by the subcommittee chairman originally, and I thought the amendment had been changed.

I thank the gentleman.

Mr. FRENZEL. The $200 million would be expended in so-called social services functions.

Most Members are aware that the largest single service within the title XX realm of services is day care.

Now day care is a service that is more normally associated with employment than with unemployment. In fact, other than anecdotal evidence, I am not sure that any of the services offered under title XX are normally and naturally more associated with high unemployment.

A few moments ago on this floor I stood very strongly in favor of a substate regional trigger for unemployment compensation benefits. This amendment has been described as trying to put that principle into effect.

In my judgment it does so in a very clumsy manner, which nearly always occurs when a subcommittee or committee takes no time to discuss the matter. nor to figure out what it is doing.

What the committee did was simply throw in $200 million for luck or perhaps to accommodate a sector or a Member someplace.

We did not have any hearings on this. We do not know how the States are prepared to assign this money to high unemployment areas. We do not know if they have the ability or the information to do so.

What we do know, however, is that this is $200 million of unbudgeted money, which is proposed and going to be supported by the group that is complaining that the President is responsible for all of our deficits.

Here we have a bill that, in unemployment compensation, is almost $2.5 billion over deficit, and now we are adding some more to make it more than $2.5 billion; $2.7 billion over the budget.

Mr. FORD of Tennessee. Mr. Chairman, would the gentleman yield?

Mr. FRENZEL. I would yield to the gentleman from New York if he seeks recognition first, and then I will yield to my friend from Tennessee.

Mr. CONABLE. Mr. Chairman, will the gentleman yield to me?

Mr. FRENZEL. I yield to the gentleman from New York.

Mr. CONABLE. I thank the gentleman for yielding.

I think further clarification is necessary about the exact amount of this amendment.

Mr. FRENZEL. I thank the gentleman for the latest news bulletin on the amendment.

Mr. CONABLE. I now have before me the comparison of Federal title XX spending levels. prior law, present law and proposed law.

I do not think it is necessary to look at the prior law. But for fiscal year 1984, the present law would put $2.5 billion in title XX, and $2.6 billion for fiscal year 1985, and $2.7 billion for fiscal year 1986.

What this amendment would do is fix the ceiling at $2.8 billion for fiscal year 1984 or $300 million more than the current level. Then for 1985, they would leave it at $2.8 billion which would then be $200 million more than the current law provides as the level for the fiscal year 1985 and would leave it at $2.8 billion thereafter, which means in fiscal year 1986 and thereafter it would raise the cap by $100 million.

So it is not a flat rate, but a declining rate relative to present law; and for this year $300 million above any previously suggested budget figure.

Mr. FRENZEL. I thank the gentleman. I must say I am shocked to think that the amendment is 50 percent

higher than I thought it was. And what I thought it was was outrageous to begin with.

I will yield to my friend from Tennessee in just a moment, if I may complete.

These social services have been administered by the States without restriction, other than the services that fall within that general category.

Now we are instructing them as to how to do it. I think one of the secrets of the success of social services programs is that the States have been able to do their thing and to treat the problems they thought were important in their own areas.

The amendment is premature. It beats the budget and generally is bad policy.

Now I yield to my friend, the gentleman from Tennessee.

Mr. FORD of Tennessee. I thank the gentleman for yielding, but I would like to get my own time.

I believe the time of the gentleman has expired.

The CHAIRMAN pro tempore. The time of the gentleman from Minnesota (Mr. FRENZEL) has expired.

Mr. CAMPBELL. Mr. Chairman, I would be glad to yield additional time to the gentleman from Minnesota (Mr. FRENZEL) so that he may yield to the gentleman from Tennessee (Mr. FORD).

Mr. FORD of Tennessee. I would be happy to use my own time now.

Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I would like to try to respond to my colleagues who serve on the Committee on Ways and Means, and Mr. FRENZEL who serves on the subcommittee which marked up this bill.

Mr. FRENZEL talked about the cost factors involved and I would like to say to my colleagues that the budget resolution, itself, carried the dollar amount we are speaking about today for the increase in the title XX social services.

We also, on the subcommittee level, heard witnesses who testified before the committee.

We reported this legislation out of the subcommittee to the full committee.

The full committee acted on this legislation and sent this legislation to the House floor.

We had hearings on this matter, Mr. FRENZEL. To go back to prior law, I must state that the 1983-84 recommendations in this amendment certainly would be less than what prior law would have been in 1980.

We go back and look at 1983, we see present law at $2.67 billion. We are only asking for an increase in fiscal 1984 of $125 million, making it permanent for $2.8 billion.

Under prior law in fiscal year 1984 it would have been $3.391 billion.

□ 1200

Mr. Chairman, that fiscal year 1985 would have been $3.391 billion and under present law it would be $2.6 billion and under the amendment which is offered by the committee here, it would bring it to the level of $2.8 billion.

We are talking about $125 million over present law for fiscal 1984. We are talking about $200 million in fiscal year 1985 and $100 million in fiscal year 1986.

I urge my colleagues to adopt the amendment that is before the House today. And even after the adoption of this amendment we will still be below the 1980 fiscal year under the title XX social services.

I urge my colleagues to adopt the amendment.

Mr. CAMPBELL. Mr. Chairman, I yield back the balance of my time.

Mr. FORD of Tennessee. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. MONTGOMERY). The question is on the amendment offered by the gentleman from Tennessee (Mr. FORD).

The amendment was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BENNETT) having assumed the chair, Mr. MONTGOMERY, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3929) to extend the Federal Supplemental Compensation Act of 1982, and for other purposes, pursuant to House Resolution 319, he reported the bill back to the House with and amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR CAMPBELL

Mr. CAMPBELL. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CAMPBELL. In its present form, I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CAMPBELL moves to recommit the bill H.R. 3929 to the Committee on Ways and Means with instructions to report back forthwith the following amendments:

Strike title I and insert in lieu thereof the following:

Title I—EXTENSION OF THE FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM

SEC. 102. (a) Section 602(f)(2) of the Federal Supplemental Compensation Act of 1982 is amended to read as follows:

"(2) No Federal supplemental compensation shall be payable to any individual under an agreement entered into under this subtitle for any week beginning after March 31, 1985."

(b) Section 605(2) of such Act is amended by striking out "October 1, 1983 (except as otherwise provided in section 602(f)(2))" and inserting in lieu thereof "April 1, 1985"

NUMBER OF WEEKS OF BENEFITS

SEC. 103. (a) Section 602(e) of the Federal Supplemental Compensation Act of 1982 is amended by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2)(A) Except as otherwise provided in this paragraph, the amount established in such account shall be equal to the lesser of—

"(i) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation, or

"(ii) the applicable limit determined under the following table times his average weekly benefit amount for his benefit year:

In the case of weeks during a:	The applicable limit is:
5-percent period	12
4-percent period	10
3-percent period	8
Low-unemployment period	6

"(B) If the applicable limit in effect for a State for the week beginning September 25, 1983, was 14 (as determined under the provisions of subparagraph (A) as in effect prior to the amendments made by the Federal Supplemental Compensation Amendments of 1983), the applicable limit for such State shall remain at 14 for any consecutive week thereafter for which such limit would have remained at 14 under such prior provision. Paragraph (3)(D) shall not apply in the case of an applicable limit determined under this subparagraph.

"(C) The total amount established in any account of an individual who received Federal supplemental compensation for any week beginning prior to October 1, 1983, shall not be less than the amount of compensation to which such individual would have been entitled under the provisions of this subtitle as in effect prior to the amendments made by the Federal Supplemental Compensation Amendments of 1983, including the termination date and reduced compensation amount contained in subsection (f)(2) as then in effect.

"(3)(A) For purposes of this subsection, the terms '5-percent period', '4-percent period', '3-percent period', and 'low-unemployment period' means, with respect to any State, the period which—

"(i) begins with the 3d week after the 1st week in which the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls in the applicable range, and

"(ii) ends with the 3d week after the 1st week in which the rate of insured unemployment for the period consisting of such week and the immediately preceding 12 weeks does not fall within the applicable range.

"(B) For purposes of subparagraph (A), the applicable range is as follows:

"In the case of a:	The applicable range is:
5-percent period	A rate equal to or exceeding 5 percent.
4-percent period	A rate equal to or exceeding 4 percent, but less than 5 percent.
3-percent period	A rate equal to or exceeding 3 percent, but less than 4 percent.
Low-unemployment period.	A rate less than 3 percent.

"(C) A State shall qualify for a 5-percent period without regard to paragraph (2) and subparagraphs (A), (B), and (D) of this paragraph, for weeks beginning in a calendar quarter if the rate of insured unemployment in the State equals or exceeds 5.5 percent for the period consisting of all weeks which begin—

"(i) on or after January 1, 1982, and

"(ii) in or before the second preceding calendar quarter.

"(D) No 5-percent period, 4-percent period, 3-percent period, or low-unemployment period, as the case may be, which is in effect for the week beginning on October 2, 1983, or any week thereafter, shall last for a period of less than 13 weeks (but subject to the termination provision under subsection (f)(2)).

"(E) for purposes of this subsection—

"(i) the rate of insured unemployment for any period shall be determined in the same manner as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970; and

"(ii) the amount of an individual's average weekly benefit amount shall be determined in the same manner as determined for purposes of section 202(b)(1)(C) of such Act.".

(b) Section 602(d) of such Act is amended by striking out "or (D)(ii)".

EFFECTIVE DATE OF FSC PROVISIONS

SEC. 104. (a) the amendments made by sections 2 and 3 shall apply to weeks beginning after September 30, 1983.

(b) The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act in accordance with the amendments made by sections 2 and 3. Notwithstanding any other provision of law, if any State fails or refuses, within the 3—week period beginning on the date the Secretary of Labor proposed such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the first day of such 3—week period.

Mr. CAMPBELL (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

Mr. CAMPBELL. Mr. Speaker, the motion to recommit carries an FSC extension for 18 months. This motion to recommit recognizes that a 45-day extension would create disruption in the State services. States would have to modify what they already have, and then 45 days later be faced with another modification if we do not pass the motion to recommit or otherwise modify this legislation.

How can we realistically tell people out there that there may not be a disruption of their checks in the process? I think that we are fooling ourselves. This motion to recommit recognizes that there are special problems in many States and we have taken into consideration those special problems. Under my motion to recommit the States with the high unemployment rates would receive the maximum benefits, regardless of what their insured unemployment rates were. So there is no reduction when there is a total unemployment rate that is high and an insured unemployment rate that is low.

I believe that there is another overriding factor and that is the cost. I realize that there will be those from the other side of the aisle going to the floor in the next few days with an organized effort to place blame for deficits in this country. They are going to talk about the Reagan deficits. It is a great strategy, but how in the world do you get deficits if it is not by spending. And when we come in here with a bill that is going to cost, according to the Department of Labor, some $6 billion over the next 18 months, then I think that those who would take the floor and complain about deficts are certainly speaking with forked tongue.

I would also say that we must be very, very concerned with the fact that we are opening Pandora's box with a 45-day extension. A 45-day extension does provide the vehicle for a tax bill. Do not fool yourself. It is an engine to help pull it. It pulled the TEFRA bill, it pulled the gasoline tax, and it can be utilized here.

I do not think it is fair to play with the people who are unemployed so we can get another bill through, a tax bill that many of us may be concerned with or opposed to.

And I should point out that the difference in the cost between this bill and my motion to recommit is the difference of about $2.2 billion over the 18-month period. That is a substantial amount of money. And that is what we are really voting on. Do we want to go out and extend and spend another $2 billion or more that we do not have, add on to the deficit, and continue down the road, while we give voice to concern over deficits and interest rates.

Mr. Speaker, I yield back the balance of my time.

(Mr. FORD of Tennessee asked and was given permission to revise and extend his remarks.)

Mr. FORD of Tennessee. Mr. Speaker, I rise in opposition to the motion to recommit offered by the gentleman from South Carolina (Mr. CAMPBELL).

Mr. Speaker, the program expires tomorrow at midnight. Any delay in the passage of this bill would delay the benefits to those who have exhausted their benefits, as well as those who are now recipients of the Federal supplemental program and those who have exhausted their State benefits.

There are complex issues that need to be resolved over the structure of this program. We do not have the time to resolve these issues before the program expires. This bill gives us time to address these issues. We do not and should not rush to resolve the matter today.

I urge my colleagues here in the House to oppose this motion offered by the gentleman from South Carolina (Mr. CAMPBELL) and defeat it. And let us bring up the bill that is before the full House today and pass it at final passage.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of passage of the bill.

The vote was taken by electronic device, and there were—yeas 141, nays 278, not voting 14, as follows:

[Roll No. 363]

YEAS—141

Archer	Gekas	Martin (NY)
Badham	Gingrich	McCain
Barnard	Goodling	McCandless
Bartlett	Gradison	McCollum
Bateman	Gramm	McGrath
Bereuter	Gregg	McKinney
Bethune	Gunderson	Miller (OH)
Bilirakis	Hammerschmidt	Molinari
Bliley	Hansen (ID)	Montgomery
Breaux	Hansen (UT)	Moorhead
Brown (CO)	Hartnett	Morrison (WA)
Broyhill	Hatcher	Myers
Burton (IN)	Hiler	Nelson
Campbell	Holt	Nielson
Carney	Hopkins	Olin
Chandler	Hunter	Oxley
Chappie	Hyde	Packard
Cheney	Ireland	Parris
Coats	Jenkins	Pashayan
Coleman (MO)	Kasich	Paul
Conable	Kemp	Petri
Coughlin	Kindness	Porter
Craig	Kramer	Quillen
Crane, Daniel	Lagomarsino	Ray
Crane, Philip	Latta	Roberts
Dannemeyer	Lent	Robinson
Daub	Levitas	Roemer
DeWine	Lewis (CA)	Rogers
Dickinson	Lewis (FL)	Roth
Dreier	Livingston	Roukema
Edwards (AL)	Loeffler	Rowland
Edwards (OK)	Lott	Schaefer
Erlenborn	Lowery (CA)	Schulze
Fiedler	Lujan	Sensenbrenner
Fields	Mack	Shaw
Forsythe	Marlenee	Shumway
Franklin	Marriott	Shuster
Frenzel	Martin (NC)	Siljander

Skeen	Sundquist	Weber
Smith, Denny	Tauzin	Whitehurst
Smith, Robert	Taylor	Whittaker
Snyder	Thomas (CA)	Winn
Solomon	Thomas (GA)	Wolf
Spence	Vander Jagt	Wortley
Stangeland	Vandergriff	Wylie
Stenholm	Vucanovich	Young (FL)
Stump	Walker	Zschau

NAYS—278

Ackerman	Foglietta	Moody
Addabbo	Foley	Moore
Akaka	Ford (MI)	Morrison (CT)
Albosta	Ford (TN)	Mrazek
Anderson	Fowler	Murphy
Andrews (NC)	Frank	Murtha
Andrews (TX)	Frost	Natcher
Annunzio	Fuqua	Neal
Anthony	Garcia	Nichols
Applegate	Gaydos	Nowak
Aspin	Gejdenson	O'Brien
AuCoin	Gephardt	Oakar
Barnes	Gibbons	Oberstar
Bates	Gilman	Obey
Bedell	Gonzalez	Ortiz
Beilenson	Gore	Ottinger
Bennett	Gray	Owens
Berman	Green	Panetta
Bevill	Guarini	Patman
Biaggi	Hall (OH)	Patterson
Boehlert	Hall, Ralph	Pease
Boggs	Hall, Sam	Penny
Boland	Hamilton	Pepper
Boner	Harkin	Perkins
Bonior	Harrison	Price
Bonker	Hawkins	Pursell
Borski	Hayes	Rahall
Bosco	Hefner	Rangel
Boucher	Hertel	Ratchford
Boxer	Hightower	Regula
Britt	Horton	Reid
Brooks	Howard	Richardson
Broomfield	Hoyer	Ridge
Brown (CA)	Hubbard	Rinaldo
Bryant	Huckaby	Ritter
Burton (CA)	Hughes	Rodino
Byron	Hutto	Roe
Carper	Jacobs	Rose
Carr	Jones (NC)	Rostenkowski
Chappell	Jones (OK)	Roybal
Clarke	Kaptur	Russo
Clay	Kastenmeier	Sabo
Clinger	Kazen	Savage
Coelho	Kennelly	Sawyer
Coleman (TX)	Kildee	Scheuer
Collins	Kogovsek	Schneider
Conte	Kolter	Schroeder
Conyers	Kostmayer	Schumer
Cooper	LaFalce	Seiberling
Corcoran	Lantos	Shannon
Courter	Leach	Sharp
Coyne	Leath	Shelby
Crockett	Lehman (CA)	Sikorski
D'Amours	Lehman (FL)	Simon
Daniel	Leland	Sisisky
Daschle	Levin	Skelton
Davis	Levine	Slattery
de la Garza	Lipinski	Smith (FL)
Dellums	Lloyd	Smith (IA)
Derrick	Long (LA)	Smith (NJ)
Dicks	Long (MD)	Snowe
Dingell	Lowry (WA)	Solarz
Dixon	Luken	Spratt
Donnelly	Lundine	St Germain
Dorgan	MacKay	Staggers
Dowdy	Madigan	Stark
Downey	Markey	Stokes
Duncan	Martin (IL)	Stratton
Durbin	Martinez	Studds
Dwyer	Matsui	Swift
Dymally	Mavroules	Synar
Dyson	Mazzoli	Tallon
Early	McCloskey	Tauke
Eckart	McCurdy	Torres
Edgar	McDade	Torricelli
Edwards (CA)	McEwen	Towns
Emerson	McHugh	Traxler
English	McKernan	Udall
Erdreich	McNulty	Valentine
Evans (IA)	Mica	Vento
Evans (IL)	Michel	Volkmer
Fascell	Mikulski	Walgren
Fazio	Miller (CA)	Watkins
Feighan	Mineta	Waxman
Ferraro	Minish	Weaver
Fish	Mitchell	Weiss
Flippo	Moakley	Wheat
Florio	Mollohan	Whitley
Whitten	Wise	Yatron
Williams (MT)	Wolpe	Young (AK)
Williams (OH)	Wright	Young (MO)
Wilson	Wyden	Zablocki
Wirth	Yates	

NOT VOTING—14

Alexander	Hillis	Pickle
Glickman	Jeffords	Pritchard
Hall (IN)	Johnson	Rudd
Hance	Jones (TN)	Smith (NE)
Heftel	Lungren	

□ 1220

Messrs. TAUKE, SAWYER, LEHMAN of California, and MOORE changed their votes from "yea" to "nay."

Mr. GRAMM and Mr. NELSON of Florida changed their votes from "nay" to "yea."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROSTENKOWSKI. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. The Chair will remind the Members that this will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 327, nays 92, not voting 14, as follows:

[Roll No. 364]

YEAS—327

Ackerman	Coelho	Fish
Addabbo	Coleman (MO)	Flippo
Akaka	Coleman (TX)	Florio
Albosta	Collins	Foglietta
Alexander	Conable	Foley
Anderson	Conte	Ford (MI)
Andrews (NC)	Conyers	Ford (TN)
Andrews (TX)	Cooper	Fowler
Annunzio	Corcoran	Frank
Anthony	Coughlin	Frost
Applegate	Courter	Fuqua
Aspin	Coyne	Garcia
AuCoin	Craig	Gaydos
Barnes	Crockett	Gejdenson
Bates	D'Amours	Gekas
Bedell	Daschle	Gephardt
Beilenson	Davis	Gibbons
Bennett	de la Garza	Gilman
Berman	Dellums	Gonzalez
Bevill	Derrick	Goodling
Biaggi	DeWine	Gore
Boehlert	Dicks	Gradison
Boggs	Dingell	Gray
Boland	Dixon	Green
Boner	Donnelly	Guarini
Bonior	Dorgan	Gunderson
Bonker	Dowdy	Hall (OH)
Borski	Downey	Hall, Ralph
Bosco	Duncan	Hall, Sam
Boucher	Durbin	Hamilton
Boxer	Dwyer	Hammerschmidt
Breaux	Dymally	Harkin
Britt	Dyson	Harrison
Brooks	Early	Hatcher
Broomfield	Eckart	Hawkins
Brown (CA)	Edgar	Hayes
Bryant	Edwards (AL)	Hefner
Burton (CA)	Edwards (CA)	Hertel
Burton (IN)	Emerson	Hightower
Byron	English	Hiler
Carper	Erdreich	Hopkins
Carr	Evans (IA)	Horton
Chandler	Evans (IL)	Howard
Chappell	Fascell	Hoyer
Clarke	Fazio	Hubbard
Clay	Feighan	Huckaby
Clinger	Ferraro	Hughes
Coats	Fiedler	Hutto
Jacobs	Mitchell	Sensenbrenner
Jenkins	Moakley	Shannon
Johnson	Mollohan	Sharp
Jones (NC)	Moody	Shelby
Jones (OK)	Moore	Sikorski
Kaptur	Morrison (CT)	Siljander
Kasich	Morrison (WA)	Simon
Kastenmeier	Mrazek	Sisisky
Kazen	Murphy	Skelton
Kemp	Murtha	Slattery
Kennelly	Myers	Smith (FL)
Kildee	Natcher	Smith (IA)
Kindness	Neal	Smith (NJ)
Kogovsek	Nichols	Smith, Robert
Kolter	Nowak	Snowe
Kostmayer	O'Brien	Snyder
LaFalce	Oakar	Solarz
Lantos	Oberstar	Spratt
Lehman (CA)	Obey	St Germain
Lehman (FL)	Ortiz	Staggers
Leland	Ottinger	Stark
Lent	Owens	Stokes
Levin	Oxley	Stratton
Levine	Panetta	Studds
Levitas	Pashayan	Swift
Lewis (FL)	Patman	Synar
Lipinski	Patterson	Tallon
Livingston	Pease	Tauke
Lloyd	Penny	Tauzin
Long (LA)	Pepper	Thomas (GA
Long (MD)	Perkins	Torres
Lowry (WA)	Petri	Torricelli
Luken	Porter	Towns
Lundine	Price	Traxler
MacKay	Pursell	Udall
Madigan	Rahall	Valentine
Markey	Rangel	Vander Jagt
Marlenee	Ratchford	Vento
Marriott	Regula	Volkmer
Martin (IL)	Reid	Walgren
Martin (NY)	Richardson	Watkins
Martinez	Ridge	Waxman
Matsui	Rinaldo	Weaver
Mavroules	Ritter	Weiss
Mazzoli	Rodino	Wheat
McCloskey	Roe	Whitley
McCurdy	Rogers	Whitten
McDade	Rose	Williams (MT)
McEwen	Rostenkowski	Williams (OH)
McGrath	Roukema	Wilson
McHugh	Rowland	Wirth
McKernan	Roybal	Wise
McKinney	Russo	Wolf
McNulty	Sabo	Wolpe
Mica	Savage	Wright
Michel	Sawyer	Wyden
Mikulski	Scheuer	Yates
Miller (CA)	Schneider	Yatron
Miller (OH)	Schroeder	Young (AK)
Mineta	Schumer	Young (MO)
Minish	Seiberling	Zablocki

NAYS—92

Archer	Hansen (UT)	Roberts
Badham	Hartnett	Robinson
Barnard	Holt	Roemer
Bartlett	Hunter	Roth
Bateman	Hyde	Schaefer
Bereuter	Ireland	Schulze
Bilirakis	Kramer	Shaw
Bliley	Lagomarsino	Shumway
Brown (CO)	Latta	Shuster
Broyhill	Leath	Skeen
Campbell	Lewis (CA)	Smith (NE)
Carney	Loeffler	Smith, Denny
Chappie	Lott	Spence
Cheney	Lowery (CA)	Stangeland
Crane, Daniel	Lujan	Stenholm
Crane, Philip	Mack	Stump
Daniel	Martin (NC)	Sundquist
Dannemeyer	McCain	Taylor
Daub	McCandless	Thomas (CA)
Dickinson	McCollum	Vandergriff
Dreier	Molinari	Vucanovich
Edwards (OK)	Montgomery	Walker
Erlenborn	Moorhead	Weber
Fields	Nelson	Whitehurst
Forsythe	Nielson	Whittaker
Franklin	Olin	Winn
Frenzel	Packard	Wortley
Gingrich	Parris	Wylie
Gramm	Paul	Young (FL)
Gregg	Quillen	Zschau
Hansen (ID)	Ray	

NOT VOTING—14

Bethune	Hillis	Pickle
Glickman	Jeffords	Pritchard
Hall (IN)	Jones (TN)	Rudd
Hance	Leach	Solomon
Heftel	Lungren	

• □ 1230

The Clerk announced the following pairs:

On this vote:

Mr. Jones of Tennessee for, with Mr. Lungren against.

Mr. Hance for, with Mr. Rudd against.

Mr. BURTON of Indiana changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FEDERAL SUPPLEMENTAL COMPENSATION AMENDMENTS OF 1983

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now turn to consideration of Calendar Order No. 404, S. 1887.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1887) to extend the Federal supplemental compensation program for 18 months, and for other purposes.

The Senate proceeded to consider the bill.

Mr. BAKER. Mr. President, may I say that the managers are here and prepared to proceed. This is one of those measures that must be done before midnight tomorrow night. That means not just the Senate, but through the conference and adoption by both Houses and the Secretary of the Treasury. I think, therefore, it is important that we try to finish this bill tonight. I do not intend to ask the Senate to stay very late, but if we can finish this bill by 6 p.m., we ought to do that, and I think we can. Tomorrow, then, can be given over to the conference and acting on the conference report.

May I say to all Senators who may be listening in their offices, especially to my friends who are managers on both sides, that we earnestly urge them to try to finish this bill evening.

Once again, I have obtained the clearance of the minority leader in respect to this request. I think he concurs and I recommend that others concur in the action.

Mr. DOLE. Mr. President, I rise to urge my colleagues to support S. 1887, the Federal Supplemental Compensation Amendments of 1983. This bill was reported by the Finance Committee on Thursday, September 22. Quick action is essential to continue the payment of Federal supplemental compensation benefits beyond the current expiration date of September 30.

The bill contains other timely provisions which received strong support in the committee. First, the bill provides for a 1-year extension of an important foster care voluntary placement funding provision which would otherwise end on September 30. Additionally, this bill contains an increase in the entitlement level for the Title XX: Social Services Block Grant. This increase of $200 million is effective for fiscal year 1984 and brings the funding level for the social services block grant to $2.7 billion.

The Federal supplemental compensation (FSC) program provides emergency benefits to Americans experiencing prolonged periods of unemployment. Unless Congress acts without delay, the program will expire. Benefits currently being paid under the program will not cease totally on October 1 as there is a phaseout feature

which permits present recipients to receive up to one-half of the remaining weeks of benefits to which they are entitled. However, this phaseout does nothing for individuals becoming newly entitled to FSC benefits. Only an extension, passed by both Houses and signed by the President, can assure that these important payments will continue.

On September 13, the Reagan administration announced its strong support for an 18-month extension of the FSC program. On September 15, the Secretary of Labor, Ray Donovan, appeared before the full Finance Committee to describe the administration plan and to assure the committee of the President's support for an FSC extension, within certain responsible fiscal limits. Since September 15, I have met with the Secretary and with the Director of the Office of Management and Budget, Dave Stockman, to discuss the FSC program and its extension. The staff of the Finance Committee, minority and majority, worked with staff of the Secretary and the Director to develop the proposal eventually approved by the Finance Committee. I am convinced that this proposal is sound, both on policy and fiscal grounds.

BACKGROUND

The FSC program was part of last year's Tax Equity and Fiscal Responsibility Act. Unemployed individuals began receiving benefits under the program on September 12, 1982. The Surface Transportation Assistance Act, last December, increased the maximum number of weeks available in the States and increased individual entitlements. Finally, the Social Security Amendment of 1983 reauthorized the FSC program for 6 months, through September 30. Additional weeks of benefits were again provided for the program's so-called exhaustees.

FEDERAL SUPPLEMENTAL COMPENSATION AMENDMENTS OF 1983

S. 1887, the Finance Committee bill, would extend the FSC program for 18 months. No additional benefits are provided to those who have exhausted earlier entitlements, recognizing that providing unemployment benefits of up to 65 weeks in as many as 21 States, represents the outer limits of what we can expect on unemployment program to provide. The Department of Labor estimates the program's cost to be $3.7 billion. The Congressional Budget Office cost estimate is $2.595 billion. The Labor Department also estimates that benefits would be paid to approximately 3.8 million individuals during the period of October 1, 1983 to March 31, 1985.

The Finance Committee bill recognizes the fiscal restraints we face. The administration has proposed a generous, responsible extension. The Finance Committee program while exceeding the administration level of $3.16 billion, is still within the acceptable range. The American taxpayers have already made a significant contribution to the Nation's unemployed. The FSC program will have paid benefits of at least $5.6 billion to approximately 5 million individuals.

The Finance Committee bill takes account of the special problems facing States which have experienced prolonged periods of unemployment. Rather than introducing a never before used and statistically unsound measure (total unemployment rate) as the House bill has done, the Finance Committee bill permits an alternative calculation based on the insured unemployment rate—a real measure of the number of individuals eligible for benefits. If the insured unemployment rate for a State equals or exceeds 6 percent when averaged over the period since January 1982, that State will qualify for the maximum duration of benefits (12 weeks). This provision recognizes the seriousness of long-term unemployment in the States which were first to enter the recession and have been slower to experience recovery.

The Finance Committee bill provides a rational restructuring of the FSC program. An extension of 18 months introduces a greater degree of certainty for both the claimants and for the administrators of the program. Many of you have heard from the employment security agencies in your States regarding the complexity of the current program. S. 1887 would set benefit duration levels for a 13-week period. In the 18-month program, then, the duration levels would be redetermined only five times. This would eliminate the current situation in which a number of States have had to redetermine individual entitlements as many as 10 times.

Mr. President, at this point, I set forth for in the RECORD a brief summary of the FSC extension.

FEDERAL SUPPLEMENTAL COMPENSATION (FSC) EXTENSION

DURATION OF EXTENSION

18 months, from October 1, 1983 to March 31, 1985.

CURRENT FOUR-TIERED PROGRAM TO BE REPLACED WITH THE FOLLOWING PROGRAM

12 weeks of benefits in States with an IUR greater than or equal to 5 percent.

12 weeks of benefits in States with an IUR greater than or equal to 5 percent.

10 weeks of benefits in States with an IUR greater than or equal to 4 percent, but less than 5 percent.

8 weeks of benefits in States with an IUR greater than or equal to 3 percent but less than 4 percent.

6 weeks in all other States.

OTHER MODIFICATIONS INCLUDE

No additional benefits (reachback) for those who have exhausted or are currently drawing FSC benefits.

No phaseout of benefits at the end of the 18-month period; all FSC benefits would cease on March 31, 1985.

No restrictions on the extent to which benefit durations could be reduced or increased in a State as a result of changes in the IUR. However, a State's duration could not change more often than once every 3 months.

The maximum weeks of benefits (12 weeks) would be payable regardless of current IUR if the State is likely to have an unusually high number of exhaustees because of prolonged high unemployment. States would qualify for this provision for any calendar quarter if the average IUR equals or exceeds 6 percent for the period from January 1982 through the end of the most recent quarter for which IUR data are available.

Any State meeting the criteria in current law for eligibility for 14 weeks of benefits as of the end of the current program, will remain at that level so long as the State continues to meet that criteria.

REASONS FOR EXTENDING FSC

Given the cost of the FSC program to date, and the potential cost of the extension, it makes sense to examine whether or not a need continues to exist for an emergency program of unemployment benefits.

When the Federal supplemental compensation (FSC) program was enacted a year ago to address high levels of unemployment, the national unemployment rate was 9.9 percent and rising. The unemployment rate peaked in December 1982 at 10.8 percent.

Since December, there has been substantial economic growth, a lowering of inflation and significant reductions in unemployment. Real gross national product rose at an annual rate of 5.9 percent in the first half of 1983, while industrial production rose at an annual rate of 17.5 percent. At the same time, the unemployment rate has fallen from its peak of 10.8 percent to 9.5 percent in August, reflecting an employment growth of 2.5 million jobs. Moreover, these gains were achieved with very little inflation; the Consumer Price Index rose only 2.4 percent in the 12 months ending in July 1983.

We are all optimistic that the economic recovery will continue on its present course and that we will continue to achieve significant economic growth, low inflation, and declining unemployment. At the same time, there is no doubt that the current high level of unemployment represents one of our most serious problems. Despite the impressive economic gains in the last 9 months, more than 10 million Americans continue to be unemployed for more than 6 months.

It is also clear that continued economic expansion is not likely to reduce unemployment as quickly as we would like. The experience of past recessions indicates that high levels of unemployment are likely to persist for much of the early stages of the recovery. Moreover, since it is our intention to come out of the recession with a steady recovery that can be sustained over the long run, it is unlikely that unemployment will plummet in the near future.

I believe we all agree that the burden of unemployment must not fall entirely on those unable to find work. At the same time, we must balance our concern for assisting unemployed workers against the need to maintain policies that will foster and sustain the economic recovery. A per-

At the end of the bill add the following new section:

CLARIFICATION WITH RESPECT TO REPAYMENT OF LOANS

SEC. (a) Section 1202 (b)(2) of the Social Security Act is amended—

(1) in the matter preceding subparagraph (A), by striking out "advance" and inserting in lieu thereof "advances";

(2) in subparagraph (A), by striking out "advance is" and inserting in lieu thereof "advances are";

(3) in subparagraph (A), by striking out "advance was" and inserting in lieu thereof "advances were"; and

(4) in subparagraph (B), by striking out "advance" the second place it appears and inserting in lieu thereof "advances".

(b) The amendments made by this section shall apply to advances made on or after April 1, 1982.

Mr. DOLE. Mr. President, the purpose of this amendment is to correct a technical problem with the language of section 1202 of the Social Security Act. Section 1202 provides the authority for the unemployment insurance trust fund to grant cash flow loans to State UI funds and to allow such loans to be paid back to the trust fund before the end of the fiscal year without an interest charge. This was the intent of the Congress.

A technical problem has arisen in the choice of the word "advance" in the singular form because the Department of Treasury interprets this to mean only one advance can be given in a year's time. Thus, a State that might get an advance in January, pay it back in February, and then get another in March and pay that back before September 30 would be charged interest on both.

This is not the intent of the committee or the Congress when we adopted section 1202.

The technical amendment will change the word "advance" to the plural form "advances" where necessary in section 1202 to conform the section to congressional intent.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. DOLE. Yes.

Mr. HEINZ. Mr. President, I ask unanimous consent that I be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, this change may sound modest, just adding a little "s" to a word, but it will mean quite a different thing to some States.

Mr. DOLE. I am pleased that the Senator from Vermont has called this to our attention. I understand he has discussed it with the Senator from Louisiana.

Mr. LONG. Mr. President, the Senator is correct. I have no objection.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2251) was agreed to.

Mr. DOLE. Mr. President, so our colleagues may be informed, as far as this Senator is aware there are still the following possible amendments: An amenment by Senator PERCY, an amendment by Senator BYRD on reach-back, an amendment by Senator SPECTER—I think that is an amendment on a matter we do not have jurisdiction over in our committee. I would hope we would not get into that one.

Senator LEVIN has an amendment and Senator QUAYLE has a possible amendment. Then Senators COHEN and LEVIN have an amendment on disability. I think we are prepared now to move to that amendment.

Mr. FORD. Mr. President, will there be a vote on that amendment?

Mr. DOLE. There is a possibility.

AMENDMENT NO. 2227

(Purpose: To extend for 6 days the provision allowing payment of disability benefits during appeal)

Mr. COHEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. COHEN), for himself, Mr. LEVIN, Mr. HEINZ, Mr. RIEGLE, Mr. DURENBERGER, Mr. METZENBAUM, Mr. BOSCHWITZ, Mr. PRYOR, Mr. HOLLINGS, Mr. BOREN, Mr. KENNEDY, Mr. QUAYLE, Mr. COCHRAN, Mr. MELCHER, Mr. MATSUNAGA, Mr. RANDOLPH, Mr. TSONGAS, Mr. GLENN, Mr. EAGLETON, Mr. INOUYE, Mr. ANDREWS, Mr. FORD, Mr. CRANSTON, Mr. PELL, Mr. BURDICK, Mr. DODD, Mr. SASSER, Mr. HEFLIN, Mr. PRESSLER, Mr. LEAHY, Mr. SARBANES, Mr. KASTEN, Mr. BUMPERS, Mr. BINGAMAN, Mr. HATFIELD, Mrs. HAWKINS, Mr. WARNER and Mr. CHAFEE proposes an amendment numbered 2227.

Mr. COHEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new section:

EXTENSION OF PROVISION ALLOWING PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 9. Section 223(g)(3)(B) of the Social Security Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "December 1, 1983".

Mr. COHEN. Mr. President, this amendment is quite simple. It would extend for a period of 60 days, until December 1, a temporary law that allows social security disability recipients to continue to receive their benefits while their appeal is pending and a decision determining their eligibility will be continued during that period of time.

In addition to Senator LEVIN are the following cosponsors: Mr. HEINZ, Mr. RIEGLE, Mr. DURENBERGER, Mr. METZENBAUM, Mr. BOSCHWITZ, Mr. PRYOR, Mr. HOLLINGS, Mr. BOREN, Mr. KENNEDY, Mr. QUAYLE, Mr. COCHRAN, Mr. MELCHER, Mr. MATSUNAGA, Mr. RANDOLPH, Mr. TSONGAS, Mr. GLENN, Mr. EAGLETON, Mr. INOUYE, Mr. ANDREWS, Mr. FORD, Mr. CRANSTON, Mr. PELL, Mr. BURDICK, Mr. DODD, Mr. SASSER, Mr. HEFLIN, Mr. PRESSLER, Mr. LEAHY, Mr. SARBANES, Mr. KASTEN, Mr. BUMPERS, Mr. BINGAMAN, Mr. HATFIELD, and Mrs. HAWKINS.

Mr. President, what we are trying to do is to rectify a problem in our social security disability law which has been pending for some time. Senator LEVIN and I held hearings a year ago last May as a result of those hearings we discovered that a lot of innocent people were being harmed by a policy that was forcing them to go off the disability rolls without an adequate face-to-face determination of the nature of their disability, without any showing of medical improvement on the part of the Government, without uniform standards, without a definition of pain in the law, and putting them at considerable pain and expense for a period ranging anywher from 6 months to 18 months, only to have a great majority of those decisions reversed on appeal and then reinstated after they had to undergo tremendous mental and physical pain and anguish.

The PRESIDING OFFICER. The Senate is not in order. The Senator has a right to be heard. The Chair will ask those conducting conversations to retire to the cloakroom.

Mr. COHEN. Mr. President, I ask unanimous consent that I may add Senators THURMOND and D'AMATO as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COHEN. Originally, we proposed a comprehensive revision of the law that would have established a medical improvement test or a medical technology improvement test that would have been borne by the Social Security Administration, to insist upon a definition of pain being in the law, to insist that we have uniform standards, that we have a face-to-face interview at the initial stage and the determination for review process, that we make permanent the benefit continuation requirement, and that we make the Social Security Administration follow the Circuit Court of Appeals decisions.

Senator DOLE and others raised the question of whether or not we needed more time to review the implications of such a comprehensive approach to our disability laws.

I agreed with that.

We agreed to pass a temporary measure continuing benefits during that appeal stage so that innocent people would not be denied their benefits.

Senator DOLE wrote to me on August 2 of this year as follows:

Because of the many matters being dealt with by the Finance Committee in July, it was not possible to schedule a hearing and begin the legislative process at that time. I am now in the process of scheduling hearings for September and disability legislation is a priority. I hope to schedule such a hearing early after the recess. That will give us the opportunity to study the House Social Security Subcommittee bill, which should

be completed by then, and also give us time to complete action by October 1.

Mr. President, October 1 is almost here, and action has not been completed. I understand there have been delays. I know Senator DOLE is one who is truly concerned about the problems the handicapped and disabled in our society are confronted with. What I recommend is that we extend this period, this temporary legislation that we agreed to last spring, another 60 days. I point out that the House of Representatives has already acted this morning. They have extended it only 45 days because they believe the time has come to revise our social security disability laws consistent with the elements I mentioned before.

Mr. President, I hope there will be no great controversy that we continue the policy which has been put into effect on a temporary basis, but not make it so extensive that it becomes part of a permanent deferral of the problem. It seems to me where the House has already acted to extend it for 45 days, we can act to extend it 60 days. It means we have to go to conference, but we ought to insist upon a high priority being placed upon revision of this law.

It seems to me a year and a half of the current crisis and chaos that exists in our system—at least nine States have put holds on all review cases right now. One State has put a total review on any of the mental disability cases. We have a system where the Governors now are complaining about the chaotic system we have in the Federal establishments. I think 60 days is a reasonable timeframe to extend this. I hope it has the support of my colleagues.

Mr. LEVIN. Mr. President, the distinguished Senator from Maine and I and 35 other Senators are offering this amendment for two reasons—to ease the hardship on our disabled workers while they are reviewed by the Social Security Administration (SSA) for their continued eligibility in the title II social security disability program, and to create an action-enforcing mechanism for Congress to pass comprehensive reform legislation this year, before we adjourn the 1st session of the 98th Congress.

Last year we passed and enacted into law a short-term provision, requiring the payment of benefits through appeal to an administrative law judge (ALJ), as a stop gap measure while we worked on comprehensive legislation to reform the disability program. At that time there was a commitment to get the comprehensive bill passed before the October 1, expiration date for the benefits payment provision. Well we have not been able to do that. The bill in the House, introduced by Congressman PICKLE, chairman of the Social Security Subcommittee, has just been reported by the House Ways and Means Committee. S. 476, the bill introduced by Senator COHEN and myself in the Senate, with 29 cosponsors, is presently under consideration in the Senate Finance Committee. In either case, these bills will not be passed by both Houses and presented to the President for signature before the October 1 deadline, this Saturday. We need another extension, but, we do not need a long one.

Congress must address the critical substantive issues contained in these comprehensive reform bills this year, before we adjourn, for several important reasons.

First, the protection of judicial review legislatively mandated for persons terminated from the disability program is in jeopardy. Numerous courts have held that SSA must show medical improvement before an individual beneficiary can be terminated from the program. The bills in both the House and the Senate would legislatively impose such a requirement. Yet, SSA has adopted a policy of nonacquiescence to these court decisions, which means that SSA will follow such decision only in the case in which it was decided, and will not use it as precedent for subsequent cases or claimants. This policy of nonacquiescence has been challenged successfully at the district court level in the 9th circuit and SSA has been ordered to reevaluate persons in the 9th circuit terminated without a showing of medical improvement. That case is on appeal. However, with SSA being forced to apply the standard of medical improvement in the 9th circuit, but through its policy of nonacquiescence refusing to apply that standard to persons in other circuits, we have a Federal program which will be run on an unequal basis. It is not fair to other disabled beneficiaries in the other circuits who, despite perhaps similar court decisions in circuits with no such court decisions will still have to litigate to get a medical improvement standard applied to their review decision.

Congress must promptly decide this issue. It is a substantive question for the disability program—not one of legislative interpretation, and we should address it immediately to eliminate the doubt and confusion that has resulted from these numerous court cases.

Second, several States presently defying the SSA directives on the implementation of the continuing disability reviews and applying their own standards to determine eligibility and to correct egregious problems. The situation is so bad that States are simply assuming control of the program. Some States are following the decisions of the courts on medical improvement. Others have imposed their own moratoriums until this program gets straightened out. This means that an individual's treatment again may depend upon the State in which he or she lives. That is not fair. It violates our notion of due process. This is a national program and should be administered the same way in all States. I ask unanimous consent that the article that appeared in the September 11, New York Times describing the actions that some States have taken be printed in the RECORD at this point.

We should not let this problem fester longer than absolutely necessary.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NEW YORK AND OTHER STATES FLOUT U.S. RULES FOR DISABILITY BENEFITS

(By Robert Pear)

WASHINGTON, Sept. 11.—New York and other states, eager to help people retain Social Security disability benefits, have begun to flout Federal rules for the program, and so far the Reagan Administration has taken no action to penalize them.

States administer the program on a local level, but they are supposed to follow policies and eligibility criteria set by the Federal Government.

In a variety of legal and political actions over three months, the Governors of New York, North Carolina, Massachusetts, Arkansas, Kansas, West Virginia and other states have challenged the Reagan Administration's restrictive interpretation of the law. In some places state officials have cooperated with beneficiaries suing the Federal Government.

Last week Gov. James B. Hunt Jr. of North Carolina ordered a moratorium on the removal of people from the rolls, except in cases of fraud.

374,000 DROPPED FROM ROLLS

Nationwide, 374,000 people have been removed from the rolls since March 1981, Federal officials said. The program costs $18 billion a year and provides monthly cash benefits to 3.9 million people. A 1980 law requires the Social Security Administration to re-examine beneficiaries once every three years unless they are permanently disabled.

Social Security officials insist that a "crackdown" was needed to remove ineligible people from the rolls. But the officials now acknowledge that the process should have been more "humane" and that errors were made.

Two major reasons that Federal officials have not penalized the states are that doing so would be politically awkward for the Administration in light of its pledge to be more humane and that it would be difficult to suddenly disrupt the "partnership" that has existed between Federal and state agencies over the years in administering the program.

The action taken by Governor Hunt resembles a moratorium announced in July by Cesar A. Perales, the New York State Commissioner of Social Services, who asserted that the Federal Government was not meeting its "legal and moral obligations" to the disabled. Peter P. DiSturco, the Regional Commissioner of Social Security, then sent a letter to Mr. Perales saying New York was "not in compliance" with the Federal law. But he did not indicate what action, if any, the Federal Government might take.

New York State has also joined New York City in a lawsuit challenging Federal standards used to determine whether people with mental disabilities are eligible for benefits. The state and the city filed a second lawsuit last month charging the Federal Government had improperly denied disability benefits to thousands of people with severe heart disease.

Gov. Michael S. Dukakis of Massachusetts said his state was joining in another lawsuit

against the Reagan Administration, was reopening cases in which disability benefits had been cut off and was insisting on proof of medical improvement before removing anyone else from the rolls. The Reagan Administration contends that, under the law, it can cut off benefits without having to show that a person's medical condition has improved.

The National Governors Association last month called for major changes in this and other Federal policies governing the disability program. Social Security officials said they were studying the state actions but had not imposed any penalties.

In June, Margaret M. Heckler, the Secretary of Health and Human Services, announced changes designed to end what she said were the "hardships and heartbreaks" that had occurred in the program. But state officials, considering those steps inadequate, have gone further.

Representative Edward R. Roybal, Democrat of California, chairman of the House Select Committee on Aging, who has held several hearings on the program, said the state actions sent a clear message to the Federal Government that "the current policy is wrong and will no longer be supported by the nation's governors."

ORDER IN WEST VIRGINIA

States have a financial incentive to keep people on the rolls because the Federal Government pays all the costs of Social Security disability benefits. People who lose those benefits often turn up on state or local welfare rolls.

State officials also have political reasons for asserting more control over the program. Gov. Bill Clinton of Arkansas has said that state officials receive many complaints about the program but have "virtually no real power" to affect decisions on individual cases.

He said that when state employees tried to keep people on the rolls they were often overruled by Social Security officials. This, he said, was "counter to the Administration's own philosophy," which generally calls for Federal officials to respect the judgment of state officials running social welfare programs.

In West Virginia, Gov. John D. Rockefeller 4th ordered the state rehabilitation agency to follow "Federal court decisions most favorable to beneficiaries." He said this "would generally require a showing of medical improvement" before a person could be removed from the rolls.

Several Federal courts have ruled that the Federal Government must show such improvement, but Mrs. Heckler has announced she "does not acquiesce" in the decisions and has directed lower-level officials to disregard them. The legality of such a policy is now before the courts.

In July, Governor Clinton directed Arkansas officials to comply with Federal court decisions holding that severe pain by itslf could be a disabling condition. Mr. Clinton said Federal officials had "ignored" the decisions. The United States Court of Appeals for the Eighth Circuit, which includes Arkansas, said that "for some unexplained reason" the Secretary of Health and Human Services "insists upon ignoring this court's statements with respect to the proper evaluation of pain."

Social Security officials said they would obey a court decision in the case of a specific individual but did not have to apply the court's interpretation of the law to other similar cases.

In Kansas, Gov. John Carlin said the disability program had "exceeded the bounds of acceptability" in denying benefits to the truly disabled. The state has decided to reexamine cases in which benefits were cut off in the last year and has said it will no longer follow unreasonably strict Federal guidelines.

The Governors of New Jersey and Connecticut have not announced any major challenge to the Federal rules. But a New Jesey state agency, the Department of the Public Advocate, is working with Legal Services of New Jersey, the fedcrally financed program for the poor, in a lawsuit to assist people who face possible loss of benefits. They are trying to force the Federal Government to give greater weight to evidence of pain and to the medical opinion expressed by a claimant's regular physician.

In Washington, the House Ways and Means Committee is considering a bill that would alleviate many of the problems cited by the nation's governors. The bill would require the Government to comply with appellate court rulings and would make it more difficult to cut off benefits.

Social Security officials expressed concern about the bill, saying it could increase Federal spending by several billion dollars. The sponsor of the bill, Representative J. J. Pickle, Democrat of Texas, is also concerned about program costs, but he said the Administration had been too "hasty and harsh" in its efforts to prune the disability rolls.

Mr. LEVIN. Mr. President, third, last year, when we passed the provision requiring the continuation of the payment of benefits through the ALJ, we also passed a requirement that SSA implement a face to face evidentiary hearing at the reconsideration level by January 1, 1984. Both the Pickle bill and our bill, S. 476, reverses that legislative mandate and replaces it with a personal interview at the initial determination level by State officials. SSA has been and continues to gear up for the earlier requirement. Given the momentum in Congress to change that earlier requirement, it will waste a significant amount of staff time and money to let that process continue when we know that there is great likelihood that it might be changed.

Fourth, although the payment of benefits eases the pain of the ordeal of these continuing disability reviews and covers individuals until the hearing by ALJ's we have found that under the current system the ALJ may no longer be a guarantee of an impartial hearing. Our Subcommittee on Oversight of Government Management recently issued a report finding that SSA is exerting pressure on ALJ's to reduce their allowance rates. In fact, the allowance rate of ALJ's has declined dramatically in the past 2 years, from 67.2 percent to 51.9 percent. The strict standards imposed by SSA on the State offices is being imposed by SSA on its ALJ's and as a result the decisions of the ALJ's are changing. Comprehensive legislation addresses the legitimacy of these standards and would make them subject to public notice and comment.

Last, Mr. President, the horror stories have not gone away. The human impact of these continuing disability reviews is as serious as ever. I refer my colleagues to a recent article in a Michigan paper, the Detroit Free Press, dated September 8, 1983. I quote from that article and ask unanimous consent that the entire article be printed in the RECORD at this point. The article states in part:

Many who were left in this financial limbo, such as Joe Taylor, a former worker at General Motor's AC Division in Flint, who retired on disability after injuring his back twice on the job, feel real desperation.

A review by the state Department of Social Services last year concluded that Taylor was fit to do some type of semiskilled work, although after two spinal laminectomies he cannot sit or stand for more that 10 minutes at a time without intense pain or lie in bed more than two or three hours a night. A CAT scan and four myelograms have given doctors evidcnce that Taylor will never improve.

The 56-year-old Davison man appealed for a state review and was denied again. He had a hearing before an administrative law judge in Flint and was again denied, although the Social Security Administration's own doctor testified that Taylor was disabled and the disability appeared permanent.

Taylor's case is now before the SSA's Appeals Council In Washington. If he loses again, his only recourse will be to take his case to federal court.

"I have my house up for sale because I can't afford to pay for it any more," Taylor said, "I can't drive. I can't even help my wife mow the lawn. I'm down to the last $3,000 in savings and I just don't know where to turn."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DISABLED—BUT CAST OFF PENSION ROLLS

(By Jean Heller)

The Madison Heights soldier came home from Vietnam in 1967 after a bullet penetrated his brain. Over the years, he developed seizures, neurotic and paranoid behavior, hearing and memory loss and severely diminished vision. A board-certified Detroit neurologist diagnosed him as totally disabled.

But in January 1982, just a month after the veteran had been hospitalized for treatment of his problems, the Social Security Administration notified him that they would cut off his benefits. After a review of Social Security benefits ordered by Congess, authorities deemed the veteran fit to return to work.

A young Union Lake woman, Mary Rubenacker, now 20 years old, began trying in May 1981 to collect disability benefits under her father's Social Security. She has a severely limited capacity to learn and has to lean against walls to walk. She also has poor vision and very limited dexterity.

A vocational counselor who worked with her for four years diagnosed her co-ordination as that of a kindergartner, and said she would need an advocate or guardian for the rest of her life.

Twice she was denied disabiltiy benefits on the grounds she could do some work. Finally in July, an administrative law judge reversed the decision and wrote in his opinion, "It is extraordinary that the claimant could have been denied benefits . . . It is ludicrous to imagine her attempting to function in the workplace."

Richard Kage of Reed City, Mich., had been a diabetic since age 12, suffered a stroke and hemorrhages that left him blind in his left eye and virtually sightless in his

right. A Social Security medical examination concluded that some minor tunnel vision in his right eye "gives him some reprieve from being a total cripple."

On that basis, Kage's benefits were ended in July 1981, and pending an appeal that would take months, Kage found a job as a caretaker in a cemetery.

In November 1981, days before Kage was scheduled for a second medical examination he suffered a heart attack and died.

These cases, and hundreds of thousands of others across the country, are the result of a massive sweep of the Social Security disability pension rolls begun by the Carter administration and accelerated by the Reagan administration.

The huge increase in pension reviews began after Congress passed the Disability Insurance Amendments of 1980 requiring that recipients have their physical conditions and benefits reviewed every three years, with the process beginning in 1982. Budget Director David Stockman accelerated that process, ordering the reviews to begin in 1981. Some recipients were later exempted from the reviews.

The review process is an attempt to clear at least 700,000 people—ostensibly those who have regained, or never lost, the ability to work—from the more than 4.3 million Americans on the pension rolls at any one time.

So far, 22,217, or 44 percent, of the 50,498 Social Security recipients in Michigan undergoing reviews have had their benefits terminated. Another 28,281 Michigan recipients were authorized to continue receiving benefits after their reviews.

The reviews are posing major problems for both Michigan residents and the state budget.

The State Inter-Agency Task Force on Disability issued a report earlier this summer which estimated that about 2.5 percent of Michigan's population, or more than 230,000 people, receive Social Security disability pensions, totaling just over $1 billion a year.

The report projected that about 40 percent of Michigan's disabled would lose their benefits by 1984 and that 30 percent of those terminated would wind up dependent on state welfare programs or in state institutions.

"Should these estimates prove to be accurate, Michigan will eventually be called upon to replace $123 million in benefit payments which should rightfully be paid from federal monies," the report concluded.

Even critics of the disability reviews concede there were, and still are, people receiving disability pensions who shouldn't be. But those critics also contend that the magnitude and intent of the review result in woefully inadequate counseling services and arbitrary, callous decisions that deny benefits to many who deserve them.

Several members of Congress, including Democratic Sens. Don Riegle and Carl Levin of Michigan, have called the disability reviews an exercise in bureaucratic cruelty that heaps hardship on those already heavily burdened.

But Social Security Administration officials insist they have no choice; that both the review process and the nature of what qualifies as a disability are mandated by law.

In an interview, Paul Simmons, deputy director of the Social Security Administration, said: "The Social Security Act provides that a claimant's impairments must be so severe that he is not only unable to do his previous work, but cannot—taking into considerable his age, education and work experience—engage in any other kind of substantial gainful work which exists in the national economy.

"So long as this work exists in the national economy, it does not matter whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for the work. This is statutory language, not the SSA's interpretation."

Gerald Benjamin, a Detroit lawyer whose case load is made up almost entirely of the disabled who have been cast off the federal pension rolls, sees the entire review process as "a major, major scandal in the United States."

"The yardstick used to define what constitutes a disability is so narrow," he said, "that a person doesn't qualify unless he's in an accident involving a 1967 Ford pickup truck on the southeast corner of Eight Mile Road at high noon on Tuesday accompanied by both parents celebrating their golden wedding anniversary.

"And the work they claim the people can do is pure fiction. The SSA vocational statistics go back to 1968. They claim there are hundreds of thousands of jobs out there fitting widgets together, and maybe there were in 1968. But now all those jobs are in Korea and Taiwan and Japan, but nobody at Social Security knows that."

Alarmed by the potential fiscal burden, the National Governors Association earlier this month unanimously passed a resolution calling on Congress to pass remedial legislation to correct the abuses in how the disability program is administered.

The association is concerned about estimates, such as one by William Copeland, a Washington consultant on disability insurance, that by next year, the cost to the states of covering terminated disability benefits will be $1.6 billion nationwide, with large annual increases thereafter.

Although the congressional uproar and public outcry has since prompted the Department of Health and Human Services to exempt about one million beneficiaries from reviews, state agencies that act as the SSA's case agents were swamped by the enormous new workload.

The results have been staggering.

Early in the program, inundated state examiners made so many misjudgments about who qualified for benefits that, on appeal, more than 75 percent of the decisions to deny benefits were overturned. That reversal rate has dropped in the past year, but still is well above 50 percent.

Meanwhile, in the months, even years, it takes to complete appeals, thousands of claimants have lost their homes, their families, even their lives.

Many who were left in this financial limbo, such as Joe Taylor, a former worker at General Motors' AC Division in Flint, who retired on disability after injuring his back twice on the job, feel real desperation.

A review by the state Department of Social Services last year concluded that Taylor was fit to do some type of semiskilled work, although after two spinal laminectomies he cannot sit or stand for more than 10 minutes at a time without intense pain or lie in bed more than two or three hours a night. A CAT scan and four myelograms have given doctors evidence that Taylor will never improve.

The 56-year-old Davison man appealed for a state review and was denied again. He had a hearing before an administrative law judge in Flint and was again denied, although the Social Security Administration's own doctor testified that Taylor was disabled and the disability appeared permanent.

Taylor's case is now before the SSA's Appeals Council in Washington. If he loses again, his only recourse will be to take his case to federal court.

"I have my house up for sale because I can't afford to pay for it any more," Taylor said. "I can't drive. I can't even help my wife mow the lawn. I'm down to the last $3,000 in savings and I just don't know where to turn."

Taylor's problem is similar to those of other disability claimants with back injuries, according to Detroit attorney Benjamin.

"A lot of people who have cervical or lumbar laminectomies aren't better afterwards," he said. "But the law assumes surgery cures all back problems. It's very difficult for a person to prove he's not better. His level of pain can't be measured."

According to Benjamin and several other attorneys who specialize in disability cases, the medical criteria for evaluating claimants often are based on accepted practice and diagnosis of the 1950s and 1960s and actually require that case reviewers disregard more modern, accurate techniques.

"A person applying for disability with a respiratory problem only meets the Social Security criteria as last rites are being administered," Benjamin said. "The pulmonary function criteria require a degree of impairment that not only precludes work, it precludes survival.

"The criteria in cardiology give more weight to a stress test than to a heart catheterization which is a far better diagnostic tool. But the catheterization procedure didn't exist when the Social Security regulations were written, so it simply isn't recognized. Some heart patients are so sick it could constitute medical malpractice to put them on a treadmill. But SSA says you've got to do it."

Another inequity comes at the third level of the review process, during the hearing before an administrative law judge. A person's Zip Code can determine whether he or she is disabled; some declared eligible for a pension in Detroit would be denied in Oakland County.

There are five offices in Michigan hearing the reviews, and the rate at which judges in those offices reverse benefit denials varies considerably.

In fiscal year 1982, Detroit judges heard 3,254 cases of denied benefits and reversed 56.3 percent of them. Judges in the Southfield office heard 3,554 cases and reversed 40.6 percent.

Flint judges heard 1,531 cases and reversed 53.8 percent. Lansing heard 2,757 cases and reversed 70 percent. And, in Grand Rapids, judges heard 927 cases and reversed 59 percent.

Around the state, rates of reversal vary from barely over 20 percent to nearly 90 percent.

An anomaly in the review procedure is that during the five stages of review and appeal, the criteria for determining disability broaden, so an individual denied at the initial agency level may find a judge later in the appeals process who will be broader in interpreting what constitutes a disability and will grant benefits.

But under current law, three years after the initial state agency review, a claimant must be reviewed again by the same state agency that denied benefits originally, and under the same criteria by which he or she failed to qualify in the first place. Any intervening decision by an administrative law judge or federal judge to grant benefits may carry no weight at all.

Nor does a decision by an administrative law judge or a federal court to grant bene-

fits in one case create a precedent for other cases, no matter how similar.

"Social Security is the only area of law where legal precedent isn't recognized," said Benjamin.

As a result, the appeals process is clogged with people whose cases might otherwise have been disposed of quickly. In areas of heavy disability claims, like Michigan, judges have had to hire magistrates to help with their case loads and magistrates have had to hire assistants.

As a result, "Social Security disability has become a major growth industry," Benjamin said.

The unending progression of review and appeal has created such a huge new bureaucracy that consultant Copeland believes there will be no $11 billion savings to the federal government, as the program projected, and there could actually be a net loss of as much as $400 million, when costs for appeals and other procedures are included.

There also is some evidence that the sweep of the disability rolls wasn't even necessary from a fiscal standpoint.

According to Lowell Arye of the House Select Committee on Aging, the disabilty trust fund was the only one of the three Social Security trust funds (the others are old age pension and Medicare) that has been solvent, and it was expected to remain so well into the 21st Century.

In 1981, the Social Security trustees projected that in 1985, the disability fund would be running at a $14.9 billion annual surplus.

Mr. LEVIN. The horror stories are still out there. The program remains a national disgrace.

Mr. President, in all good conscience, we must not extend the serious problems of which we are all aware in this program beyond the term of this session. We have the momentum now to get comprehensive legislation passed. This 60-day extension commits us to do just that—to take action to substantively and permanently revise the procedures currently used in the disability program.

I know the chairman of the Finance Committee shares my concern over this program. He has expressed his support for comprehensive reform legislation in the recent past, and I know these bills could not be in more capable hands.

I thank Senator COHEN for his continuing good leadership on this issue and I thank the cosponsors of this amendment for their support. I urge its adoption.

As the Chair and others will remember, we have a temporary program in effect now, a program which allows for payments to be made during appeal. This is a temporary program pending a comprehensive reform of our system. That reform is desperately necessary. We cannot continue to hold off that reform, given the circumstances in our States, where we have some States simply flouting the Social Security Administration, ignoring national standards and going their own way. We have a system where we have courts that are ruling that the Social Security Administration—Mr. President, we have a situation in this country that really borders on lawlessness. Right now, in the social security disability arena, we have some courts which have ordered the SSS to apply the law in a certain way. The SSS is refusing to do that in cases other than the case at hand. In other words, we have some people getting one style of justice and other people getting a different type of justice depending on what State they are in or what circuit they are in.

We have a situation now which is so bad in the social security disability arena that we have, believe it or not, States that are actually flouting the national standards of the Social Security Administration, saying they are going their own way, they are applying their own standards, they are going to ignore the Social Security Administration standards because they are so irrelevant and, in some cases, so unjust.

We are all working on a comprehensive reform. the Senator from Kansas is committed to it. The Senator from Louisiana is committed to it. The only question is how long can we cope with the present system? Is it fair to all of our people to put over comprehensive reform until next year? Or should we prod ourselves, should we give ourselves an action-enforcing mechanism and say to ourselves, let us do this in 60 days?

We are a country of laws. We want people all to be bound by the same law, by the same rule. We now have a situation in this country where people in one circuit are getting one kind of relief, in another circuit, they are getting another kind of relief. In one State, they are getting relief; in another State, they are not. It is all because Congress has not yet acted. It is that simple. I think our hearts are all in the right place, by the way. I do not think we have any doubt, I think that we all agree we must reform this system. We cannot tolerate this patchwork, crazy-quilt system we have in disability. The only question is what is tolerable?

Is it tolerable to say wait until next year, which is what all of us say after our favorite baseball teams lose their respective races? Is it tolerable in the social security disability arena to say wait until next year? Or has the time come when we must say let us do it this session?

My good friend, the chairman of the Committee on Finance, hoped we could do it by October 1. I know he has tried, I give him credit for that effort. I know my friend from Louisiana has said we must reform the system and he has tried.

I would say 60 days is plenty long. The House decided 45 days is plenty long. Let us not take ourselves off the hook until some undetermined time next year while we have people who are truly disabled who are on the hook in all of our States.

● Mr. RIEGLE. Mr. President, I am pleased to join with Senators LEVIN, COHEN, and others in offering an amendment to extend for 60 days the soon to expire law that provides for the continuation of benefits for social security disability beneficiaries who are appealing a decision to terminate their benefits.

As we all know, the continuing disability investigations in the social security disability insurance (SSDI) program have been a matter of extreme controversy ever since the Reagan administration started reviewing SSDI beneficiaries several months prior to time mandated by Congress. The concern has always centered around whether the large number of individuals who are being terminated from the disability rolls are actually not eligible for benefits under law. Since these reviews started in 1981, over 90,000 disabled individuals have had their SSDI benefits reinstated by an administrative law judge (ALJ). In essence, these ALJ's have found that over 90,000 incorrect decisions where made by the State disability examiners in reevaluating continuing eligibility of SSDI beneficiaries. This is a serious problem and one that clearly needs congressional attention. I am pleased that the House has recognized this problem and has crafted a comprehensive legislative proposal designed to correct the wrongful termination of SSDI beneficiaries from the disability rolls.

Mr. President, the proposal, which we are offering today, to provide for a 60-day extension of benefits through the appeals process is needed until both Houses of Congress can act on comprehensive legislation. I strongly urge all of my colleagues to join us in supporting this amendment.●

● Mr. DURENBERGER. Mr. President, unless we act now to extend social security disability benefits, thousands of beneficiaries and their families will be confronted with financial chaos and personal tragedy. The amendment we are considering is imperative if we are to reduce the suffering that many beneficiaries have been forced to endure because of the loss of benefits. This amendment would extend social security disability benefits for an additional 60 days, through the administrative law judge appeals level. This measure is entirely consistent with action taken previously by this Congress.

I believe the 60-day extension only sets the stage for comprehensive reform. It is my sincere hope that the Senate Finance Committee will act quickly to mark up disability reform legislation and we will not be required to repeat these stop-gap measures.

The need for change within the disability review process cannot be underestimated. A number of us have been working for months and months to resolve this very troubling situation. While more comprehensive changes are needed in the appeals process, this amendment will temporarily protect innocent disability recipients.

The disability reveiw process, mandated by Congress in 1980, has become

a major concern for 80,000 Minnesotans who are severely disabled. There is nothing intrinsically wrong with reviews every 3 years. We cannot, and should not, continue payments ot persons who are no longer disabled. While our original intent should remain unchanged, we must change the process by which we carry out this intent.

We must take great care to insure that those who are truly qualified are not terminated from the disability rolls. By continuing payments through the administrative law judge level, we can alleviate the financial affliction that many have suffered.

I urge my colleagues, however, to work for comprehensive disability reform and long-term answers to these serious problems. I am hopeful that the Senate will successfully enact this amendment, as an interim measure, and benefits will be extended for 60 days.●

Mr. DOLE. Mr. President, I have just been visiting with the distinguished majority leader. He would like to stay not much beyond quarter to 7. There ought to be some way to resolve this problem. This amendment contains a 60-day extension. I would prefer a 6-month extension. Senator SASSER has a 90-day bill. The House bill has 45 days. Others might prefer a longer time. I do not see why we need a rollcall on whether or not to extend this important provision by 60 days, 120 days, or 180. If we could agree on a 90-day extension, I believe that would be reasonable. We need time to develop a consensus approach to more comprehensive disability legislation.

If we are going to do justice to the disability insurance program and the amendments enacted in 1980, then we are going to have to have some extensive hearings on the House-passed bill. Representative PICKLE has been working on a bill for months. It has just been approved by the Ways and Means Committee, but has not yet gone to the floor. Mr. PICKLE held extensive hearings, heard many witnesses, and did a lot of work. Let us face it, though, the Ways and Means Committee approved a very expensive bill.

It seems to me that changes are possible without destroying what I think is a good effort to review and monitor the disability rolls. I want to be part of the solution, not part of the problem. I hope we might reach some agreement on the extension.

Mr. COHEN. Mr. President, if the Senator will yield, I would have no objection to modifying the amendment to reflect a 90-day period, if that would meet with the agreement of the chairman.

Mr. LEVIN. Mr. President, I also thank the chairman and we have not yet heard from our friend from Louisiana. Assuming that is agreeable with them, I certainly concur with so modifying the amendment. I am confident our cosponsors also would concur in it. At least I believe they would.

The PRESIDING OFFICER. The amendment now pending is so modified.

The amendment, as modified, is as follows:

At the end of the bill add the following new section:

EXTENSION OF PROVISION ALLOWING PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 9. Section 223(g)(3)(B) of the Social Security Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "January 1, 1983".

Mr. HEINZ. Mr. President, I am pleased to support this amendment, which would extend for 60 days the temporary provision we passed late last year, allowing disabled social security beneficiaries the option of having their benefits continued pending their appeal before an administrative law judge.

The merits of the provision itself have been well documented. In fact, over the course of the continuing disability reviews that began in the spring of 1981, roughly two-thirds of those disability beneficiaries who appeal their terminations before the administrative law judges have been reinstated. But the reinstatement became effective only after a long period of time—frequently from 9 months to 1 year after the erroneous termination. Indeed the merits of this provision have been so well established that S. 476, which I have cosponsored, would make it a permanent provision.

I am, however, advocating only a short-term extension at this point because I believe it is time that we in the Congress squarely face our responsibility to correct the obvious problems that have resulted from the heavy-handed administration of the disability legislation we passed in 1980.

We have witnessed these problems for more than 2 years. Last year we passed a short-term bill, because we said that the Senate's schedule did not permit consideration of a long-term, comprehensive reform bill. We agreed in the floor debate that comprehensive legislation would be passed by the Congress by the expiration of the temporary provision on October 1, 1983. Today, however, we are here again, on the eve of that target date, telling the American people that Congress does not have the time to pass comprehensive legislation before October 1—so we have to extend this provision to give Congress time to act.

Well, I say to my colleagues—Let us make the time to deal with this issue. Let us stop slipping past deadiines. Let us stop resorting to temporary band-aids and face the real issue.

The preferred course of action, in my judgment, is to pass this short-term extension so that no social security beneficiaries suffer in the interim. But then let us sit down immediately after we pass this amendment and start marking up a comprehensive disability bill in October. And, before Thanksgiving, let the Senate vote on a comprehensive measure. There are really only two comprehensive legislative proposals being considered by the Congress: S. 476 by Senators COHEN and LEVIN, and H.R. 3755, the Pickle bill. Let us get to work on these reforms and bring a bill to the Senate floor, this year, before more damage is done to those most vulnerable members of our society.

It is time we face the issue and put it to rest, once and for all.

Let me simply review the key issues in this debate.

Why is it important not to delay comprehensive disability reform?

The first answer is that large numbers of beneficiaries are going through a process that results in the termination of their benefits, only to be reversed by an administrative law judge. Even with continuation of benefits pending appeal, disabled Americans are being put through the mill, needlessly and unjustifiably, at great expense to the taxpayers and to the trust funds. For example, even with continuation of benefits pending appeal, because SSA has not adopted a medical improvement standard, some 22,000 disabled workers will be terminated in fiscal year 1984, who would not be terminated at all if S. 476 or the Pickle bill, H.R. 3755, were enacted. Moreover, even though they can continue their benefits pending appeal, there are documented cases where individuals have committed suicide as a result of the stress. For example, last August in Eugene, Oreg., a social security beneficiary who suffered from a mental disability put a 22-calibre automatic pistol to his head and killed himself. This man, because he was not psychotic, was not protected by Mr. HECKLER's two-third moratorium on mental disabilities; and even though he could have his benefits continued pending appeal, the stress was just too much for him. All beneficiaries who are terminated live through a terrifying period awaiting their appeal; and the continuation of benefits is a help, but it is really not the answer. The answer is to stop terminating people who end up being put back on by the same Social Security Administration that kicked them off.

Second, because Congess has failed to act, there are now six circuit courts of appeal that have ruled that SSA has to show medical improvement or a clear error in the original award before terminating benefits. But the administration refuses to abide by these court decisions. And beneficiaries rightly ask why they continue being put through the process and terminated illegally.

Third and fourth, because of Congress failure to pass comprehensive legislation, there is no longer a single, Federal disability program; there is chaos. State imposed moratoriums are in effect in New York, Alabama, North Carolina, and Virginia.

The Western States in the ninth circuit are under a moratorium as a

result of an important court decision, Lopez v. Heckler. And Secretary Heckler has imposed a partial, nationwide moratorium on reviews of people with mental disabilities who comprise 11 percent of disabled workers. As a result of a court decision in Minnesota, beneficiaries in five Midwestern States, who had mental disabilities, are having their cases re-reviewed. The States of Kansas, Arkansas, and West Virginia have begun re-reviewing people terminated during the last 2 years.

Mr. President, there is something wrong when you have a program as strictly defined as social security disability, and nearly half of the people who met that definition are told that they can go back to work. There is something wrong when about two-thirds of those who appeal their decisions are put back on by the administrative law judges. There is something wrong when the GAO pulls a sample of termination cases and finds that two-thirds of those terminated were put back on the rolls by the same Social Security Administration that took them off.

And because Congress has failed to face up to what is wrong in a thorough, comprehensive way, there is chaos in the administration of this program, and people are being treated very unfairly, very unevenly. And the American public has cause to wonder why Congress cannot find the time to deal with the problem, except by default.

Mr. President, I support the amendment. I commend Senator COHEN for offering it. I hoped we could reach this accommodation.

● Mr. DOMENICI. Mr. President, I rise in support of the amendment offered by the distinguished Senator from Maine and the other cosponsors. As my colleagues know, one of the most important changes passed by the Congress in the lame duck session of 1982 allowed individuals who were terminated from the social security disability program to continue to receive benefits through the administrative law judge level of appeal. I supported that bill, H.R. 7093. It was clear that Congress and the President had to alleviate the trauma suffered by many of the disabled when they temporarily lost their benefits pending appeal.

But this change was only temporary. The benefit extension expires at the end of this month for newly terminated cases. The amendment offered by the Senator from Maine extends the deadline for 3 months, so that Congress may continue to work toward comprehensive reform in the social security disability program.

In addition to giving Congress sufficient time to work on longer range measures, the amendment accomplishes two major goals. First, it alleviates any confusion that may exist in the minds of social security disability recipients about what benefits are provided under the law. Many recipients who now receive benefits while they appeal mistakenly believe that their October check will be their last. In fact, they will continue to receive benefits until their appeal is decided by an administrative law judge. This amendment entitles beneficiaries removed from the rolls from October 1, 1983, through January 1, 1984, to continue to receive benefits while they appeal their losss of disability benefits.

Second, it continues a benefit that many of the disabled who are later reinstated to the program could not live without. I doubt that many healthy Americans would be able to survive financially if their sole source of income vanished for periods of 4, 6, or even 8 months. Yet that is what happened before Congress passed H.R. 7093, and that is what will happen if we do not pass this amendment.

Let us be clear that this amendment, by itself, does not solve all of the problems in the social security disability program. Despite congressional efforts last year on H.R. 7093, and the changes made by the administration this summer, there are still gaps in the protection that social security provides to some of our most vulnerable citizens, the disabled.

In the 3-month grace period that this amendment provides, we must redouble our efforts to close this gap. At the same time, we must be mindful of the delicate financial balance in the social security trust funds. Any solution to these problems must not threaten the long-range solvency of the social security program.

● Mr. PRYOR. Mr. President, as a result of the implementation of the Social Security Disability Amendments of 1980, which required triannual reviews of nonpermanently disabled beneficiaries, reviews which the administration began in March 1981, over 400,000 individuals have been removed from the disability rolls. Far too many of these terminated individuals have been found to be truly deserving of benefits after appeal for anyone to consider such wrongful termiantions as isolated incidents in an otherwise smooth running system. And for all of those who have been wrongfully removed from the rolls, there are many more friends, relatives, and dependents who have been affected by the physical, emotional, and financial hardship of benefit terminations.

Last year the problem of wrongful terminations reached crisis proportions, and every Member of Congress was literally deluged with constitutent cases. Some of these individuals were so discouraged and hopeless at the termination of benefits—which provided their only means of support—that they committed suicide. In response to overwhelming concern, many Members urged that the Congress turn its full attention to consideration of comprehensive disability reform. Unfortunately, we were unable in the closing days of last year to address the issue fully. Instead, we were successful in enacting legislation which provided for benefits through the ALJ level, to provide to individuals who appealed their cases.

This extension of benefits was allowed through October 1 of this year, in hopes that comprehensive action would take place during the first 9 months of this year. It is obvious, and most unfortunate, that the Congress has not yet been able to achieve that goal, although we do expect a comprehensive bill to be acted upon by the House of Representatives in the very near future.

During Finance Committee discussion of the Federal supplemental compensation program there was discussion of extending these benefits for a time period, although no final extension date was agreed upon.

I would like to urge my colleagues to support a brief extension of these benefits. I believe that it is imperative that we extend these benefits and thereby provide the bare minimum of insurance against wrongful terminations to the hundreds of thousands of individuals currently on the disability rolls. However, I would like to stress that the time is now long past due for the Congress and the administration to turn their attention to comprehensive reform. I am hopeful that today we will approve an extension, with an understanding that we will see more comprehensive action before the close of 1983.

At this point, I would like to put the Senate on notice that if there is not progress soon toward comprehensive reform, I may at some time in the future offer an amendment on an appropriate bill which would address the problems in the disability program. This reform is too important to postpone. I would hope that it is a priority on everyone's agenda. It is certainly a priority on my agenda and I will work toward early Senate action.

● Mr. KENNEDY. Mr. President, today I join my colleagues in the Senate as cosponsor of this important amendment to extend for 60 days the temporary legislation which assures disabled individuals under the SSDI program of their benefits while they are appealing a Social Security Administration decision to terminate these benefits. Failure to extend disability benefits pending final determination would cause needless and unfair suffering for over 90,000 beneficiaries whose termination is inherently found to be erroneous by administrative law judges. Mr. President, it is simple justice that no disabled person should be cut off from his meager benefits and left without means of support until a final determination is made of his eligibility for those benefits.

The temporary law we wish to extend was enacted in the closing days of the 97th Congress in order to protect over 340,000 disabled people

across the Nation who have been denied their social security disability benefits because of abusive and unfair procedures implemented by the Reagan administration. Today, we are called on to extend this critical provision because Congress has failed to fully address the grave situation which exists in the social security disability program, particularly the continuing disability insurance review process.

The administration's continuing disability reviews under SSDI have resulted in the needless suffering of hundreds of thousands of disabled citizens.

Since 1981, the Social Security Administration has been using insensitive and stricter guidelines to determine disability than legislated by Congress in 1980. The 1980 amendments required the SSA to institute a disability review process. But no one anticipated that this would result in the kind of abuses that the administration has fostered through its use of severely restrictive review guidelines, its speed-up of these reviews, and the encouragement of reviewers to terminate so capriciously that over 70 percent of all denials have been reversed by the administrative law judges.

In my home State of Massachusetts, disabled citizens testified to these injustices before a special Commission on Social Security Disability. One woman testified that her benefits were terminated despite 12 recent operations on her stomach, hand, neck, and back. Another young man born with cerebral palsy testified that he was examined by a contracted physician who totally ignored this medical history. Another person who had an artificial leg and an abscessed lung lost his benefits while he was in the hospital.

People who are mentally impaired—the most vulnerable group of all, have suffered the most. In some States, up to 50 percent of the mentally ill have had their benefits terminated—many left without the means to obtain shelter and food and forced to return to hospitals and institutions. Even Health and Human Services Secretary Margaret Heckler referred to this review system as "an awkward, bureaucratic, insensitive, paper-oriented process".

We have a commitment to all Americans who are disabled and we must alleviate the needless suffering of those individuals who have been unfairly denied benefits or who have suffered needless mental anguish as a result of fear of loss of benefits.

I urge my colleagues to adopt this amendment and to support swift and equitable action on comprehensive legislation to reform this system.

I commend my fellow cosponsors for their bipartisan efforts to deal with this critical problem, and I urge the distinguished chairman of the Finance Committee, Senator DOLE, to address comprehensive legislation in this regard before December.

Mr. SASSER. Mr. President, I would like to take this opportunity to voice my support for the amendment offered by the Senators from Maine and Michigan, Mr. COHEN and Mr. LEVIN.

The amendment addresses an issue which is vitally important to any discussion of the social security disability insurance program and is the centerpiece around which all reforms, either permanent of temporary must revolve. I am referring to the provision in the disability program passed by this Congress last year, and signed by the President in January, which allows for the continuation of benefit payments through the administrative law judge level of appeal.

The gross inequities and injustices resulting from the hasty acceleration of continuing disability investigations (CDI's) in March 1981 has been well documented and requires no further elaboration here. Suffice it to say that the overwhelming and broad support afforded the temporary disability legislation passed by Congress last year is clear testimony of the crucial need for changes in the DI program.

But the nature of that legislation was strictly temporary. For those of us who have been intimately concerned with this issue over the past 2 years, and I would like to especially compliment Senators COHEN and LEVIN for their outstanding efforts in this area. There is a clear and resounding realization that permanent reforms in the disability program are desperately needed. When H.R. 7093 passed Congress in the waning hours of the lame-duck session last December, it was generally acknowledged by those of us who had worked hard to secure its passage that comprehensive disability reforms would be forthcoming this year.

I am sorry to report that the progress of this comprehensive legislation has been disappointingly slow. In fact, H.R. 7093 contained a stipulation that continuation of benefits through the ALJ level of appeal would expire on October 1, 1983. Since it is highly doubtful that comprehensive legislation will make its way through Congress by Saturday, it is necessary to seek an extension of this important provision.

The extension would effectively accomplish the following objectives: First, it would alleviate any unnecessary confusion in the minds of disability recipients as to the extent of protection afforded them under disability law; and second, it would further serve to strengthen and clarify Congress intention to make this provision a permanent part of the disability process.

It should be noted here that the House has moved a comprehensive disability bill (H.R. 3755) through the Ways and Means Committee and is scheduled to take it up on the floor within the next few weeks. Consequently, they have included in their version of the Federal supplemental compensation bill a 45-day extension of benefits through the appeals process.

It is quite evident, then, that the House expects a quick and speedy resolution to the problems in the administration of the disability program. Why should the Senate expect anything less?

Now, Mr. President, I really do not think that we should get tangled up in an extensive debate over the length of time of such an extension. However, I do believe that it is within the scope of our responsibility to report out a comprehensive disability bill before the end of this year. It was for this reason that I offered S. 1843 some 2 weeks ago which called for a simple 3-month extension. A 3-month extension would give us time to look at the issue and report out a comprehensive bill before the end of the year. I personally have grave reservations about extending the provision by 6 months because it significantly relieves the pressure to act this year. Too often we delay till tomorrow what could be accomplished today. Thus, I would hope that we could settle on an extension of less than half a year, and whether it be 60 or 90 days, the concept of providing the extension itself is truly the important consideration.

I would also hope that whatever extension we agree on would not be necessary and that the Finance Committee would act quickly to resolve the problems facing the disability system. H.R. 3755 is a good starting point and I would hope that the Senate would have an opportunity to express itself on this legislation before we adjourn sine die for this year.

Mr. HELMS. I say to the Senator from Kansas (Mr. DOLE) that I have been extremely concerned over the plight of disabled Americans and I want to make sure I understand exactly what this amendment will do for these good people.

Mr. DOLE. This amendment will extend the time period in which a disabled individual can opt to receive benefits pending an appeal from a disability cutoff.

Mr. HELMS. Well, how long will this extention last?

Mr. DOLE. The extention is proposed to last 90 days.

Mr. HELMS. As I am sure the Senator is aware, I have introduced legislation which would go to the heart of the social security disability review problem. I am dedicated to seeing something is done to correct the problems with arbitrary cutoffs of disability payments to so many deserving Americans as soon as possible.

Mr. DOLE. I completely agree with the Senator. I too, am working toward that goal and am pleased that the Senator has taken the lead to introduce legislation of this nature.

Mr. HELMS. I assume the Senator also knows that Representative PICKLE's bill regarding this matter was marked up in the House Ways and

Means Committee this week. The Pickle bill contains the same provisions as my legislation however, the Pickle bill increases the cost to the social security system, which my bill does not do. Because of this fact I feel strongly that my legislation, Senate Bill No. 1888 should be considerd as a viable way to rectify the problems now existing with disability reviews.

Mr. DOLE. The Senator's bill, I believe, is now in the Senate Finance Committee where we will be giving it full consideration. However this amendment is needed to allow us time to carefully look at measures to solve the problems disability recipients are now facing.

Mr. HELMS. I am glad to know the Senator is also concerned about these individuals. I do not want a single deserving disabled American to be cut off from benefits unjustifiably. If this amendment temporarily insures that these individuals have their benefits continued until they are given due process of law through a hearing, I am in favor of it. I am also glad to hear that a permanent solution will be addressed by your committee in the near future. I thank the Senator.

Mr. DOLE. Is that 90 days satisfactory to the Senator from Tennessee?

Mr. SASSER. It certainly is satisfactory to this Senator.

The PRESIDING OFFICER. Is there further debate? If not, the question is on the amendment offered by the Senator from Maine, as modified.

The amendment (No. 2227) as modified, was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, as I said, I think we could lay down the other Levin amendment. Maybe that is about all we can do with this evening.

Mr. BAKER. Mr. President, will the Senator yield to me?

Mr. DOLE. Yes.

Mr. BAKER. I thank the Senator for making that suggestion. I do think that is all we ought to do tonight. It is clear we cannot finish, and there are commitments that I know Senators must keep. I would hope we could be off this in the next few minutes.

Mr. President, based on the representation made by the manager on this side, and I gather with the concurrence of the manager on the other side, I wish to announce there will be no more record votes tonight.

Mr. BYRD. Mr. President, before the Senators leave, I should like to ask Mr. DOLE and/or Mr. LONG if there would be any objection to my asking unanimous consent that upon the disposition of the amendment by Mr. LEVIN, I be recognized to call up an amendment to the bill?

My amendment, for the information of the managers, would simply extend additional benefits for up to 8 weeks to all who have exhausted their benefits.

Mr. DOLE. Reachback?

Mr BYRD. Yes; and if the Senator will have no objection, I would like to ask unanimous consent that my amendment be considered following the amendment by Mr. LEVIN on tomorrow.

Mr. DOLE. Does the Senator from Louisiana have any objection to this?

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. DOLE. Mr. President, while the majority and minority leaders are on the floor, and the ranking member, we have, as I understand it, only about three or four additional amendments. I think the amendment by the Senator from West Virginia will require a rollcall, and I assume the one by the Senator from Michigan will require a rollcall. We are trying to negotiate with the two Senators from Illinois, and Senator SPECTER has an amendment, as I have indicated, but we do not have jurisdiction of that area, so we are hopeful that will not be offered.

So I think we might be able to conclude tomorrow morning in a couple of hours, go to conference and get back hopefully tomorrow afternoon so that we might not be here on Saturday.

Mr. BYRD. If the Senator will yield, I would not need over 10 or 15 minutes as far as I am concerned on mine, and if he will yield that I might ask unanimous consent that the amendment be entered and printed overnight, I would so make that request.

(The text of the amendment is printed later under routine morning business.)

Mr. GOLDWATER. Will the Senator yield? He mentioned early tomorrow afternoon. Does the Senator have any guess right now?

Mr. BAKER. If the Senator will yield further, I think that if we could finish this bill—I misspoke myself a minute ago; I thought we passed the House CR. We did not, and there will be a conference on that. We will have to act on that tomorrow.

I would hope we could be out tomorrow by 2 or 3 o'clock. Would the Senator from Kansas agree?

Mr. DOLE. If we could finish the bill pending by noon, go to conference, say, by 1, we would probably end the conference by 3 o'clock. But if we could work it out, there might not be any reason for a rollcall vote. That depends on one Member.

Mr. BAKER. I thank the Senator.

AMENDMENT NO. 2252

(Purpose: To provide an optional alternative trigger for extended benefits)

Mr. BAKER. Mr. President, has the Levin amendment been laid down?

The PRESIDING OFFICER. It has not.

Mr. BAKER. Would the Senator from Michigan be inclined to offer his amendment at this time?

Mr. LEVIN. I would be happy to.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. I thank my friend, the majority leader.

I send an amendment to the desk on behalf of myself, Senators SPECTER and RIEGLE, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Michigan (Mr. LEVIN), for himself, Mr. RIEGLE, and Mr. SPECTER, proposes and amendment numbered 2252.

Mr. LEVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new section:

OPTIONAL TRIGGER FOR EXTENDED BENEFITS

SEC. ——. Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new subsection:

"OPTIONAL STATE EXTENDED BENEFIT PERIODS

"(f)(1) Any State may provide that an extended benefit period may be in effect in such State in accordance with the provisions of this subsection, for weeks which are not otherwise in an extended benefit period as determined under the preceding provisions of this section.

"(2) For purposes of this subsection there shall be a State 'on' indicator for weeks beginning in a calendar quarter if the rate of insured unemployment in the State equals or exceeds the applicable percentage (determined under paragraph (3)) for the period consisting of all weeks which begin on or after January 1, 1982, and in or before the second preceding calendar quarter. For purposes of this subsection there shall be a State 'off' indicator for weeks beginning in a calendar quarter for which there is no 'on' indicator.

"(3) For purposes of paragraph (2), the applicable percentage shall be—

"(A) 6 percent, in which case there shall be a 10-week benefit period in effect for eligible individuals in such State;

"(B) 5 percent, but less than 6 percent, in which case there shall be an 8-week benefit period in effect for eligible individuals in such State; or

"(C) 4 percent, but less than 5 percent, in which case there shall be a 6-week benefit period in effect for eligible individuals in such State.

"(4) Notwithstanding any other provision of this Act, the amount established in the account of an eligible individual who has a period of eligibility solely by reason of this subsection shall be equal to—

"(A) 10/13 of the amount which would otherwise be established in such account under section 202(b) in the case of an individual in a 10-week benefit period;

"(B) 8/13 of the amount which would otherwise be so established in the case of an individual in an 8-week benefit period; and

"(C) 6/13 of the amount which would otherwise be so established in the case of an individual in a 6-week benefit period.

"(5) Any State which chooses to allow extended benefit periods in accordance with this subsection shall provide that any individual eligible for extended compensation solely by reason of this subsection may de-

cline eligibility for such compensation, and for purposes of the State's plan under part A of title IV of the Social Security Act such compensation shall not be considered to be available to such individual. Any choice to decline eligibility for such compensation shall terminate any rights to such compensation.

"(6) The provisions of this subsection shall apply only to calendar quarters beginning on or after October 1, 1983, and ending on or before March 31, 1985.".

Mr. LEVIN. Mr. President, this amendment would, at a State's option, make a State eligible for 10 weeks of extended benefits, if that State's average insured unemployment rate from January 1982 is 6 percent or above.

That is exactly the same measure that the committee used to make sure that some States would indeed qualify for the highest tier of Federal supplemental benefits.

Further, the amendment would prove 8 weeks of extended benefits if the State's average insured unemployment rate over that period is between 5 and 6 weeks, and 6 weeks of benefits if the average IUR is between 4 and 5 percent.

Based on current data, 34 States would benefit from this amendment immediately at their option.

I ask unanimous consent to have printed in the RECORD a list of those States.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

States that would benefit as of September 1983

States 6 percent or above: 10 States plus Puerto Rico (10 weeks):	
Alaska	6.62
Idaho	7.20
Kentucky	6.12
Michigan	7.19
Mississippi	6.09
Pennsylvania	6.95
Wasington	6.71
Puerto Rico	8.84
West Virginia	8.12
Wisconsin	6.09
Oregon	7.19
States 5 percent but less than 6 percent: 10 States (8 weeks):	
Alabama	5.53
Arkansas	5.77
California	5.28
Illinois	5.78
Louisiana	5.05
Montana	5.42
Ohio	5.92
Rhode Island	5.89
South Carolina	5.29
Vermont	5.23
States 4 percent but less than 5 percent: 14 States plus Virgin Islands (6 weeks):	
Indiana	4.93
Iowa	4.70
Maine	4.96
Maryland	4.34
Minnesota	4.18
Missouri	4.40
Nevada	4.74
New Jersey	4.70
North Carolina	4.52
Tennessee	4.95
Utah	4.85
Virgin Islands	4.81
Wyoming	4.43

Mr. LEVIN. Mr. President. I yield the floor and would be happy to pick up in the morning.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent there now be a period for the transaction of routine morning business to extend not past 6:55 p.m. in which Senators may speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL SUPPLEMENTAL COMPENSATION AMENDMENTS OF 1983

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the pending business, S. 1887, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1887) to extend the Federal supplemental compensation program for 18 months, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The pending question is on amendment No. 2252 of the Senator from Michigan (Mr. LEVIN).

Mr. DOLE. Mr. President, it is my understanding there might be a change in the order of amendments. We will not object to that if that is a fact. Senator BYRD may want to proceed before Senator LEVIN.

I would indicate that there are not really that many amendments pending, but we still have to go to conference today on this very important bill. This Senator was supposed to be in Philadelphia tonight for a meeting of the nonpartisan national waterlines with Senator DECONCINI and Senator DURENBERGER. The point I guess I would make is if, in fact, we get bogged down here and nothing happens for a couple of hours, we are going to be looking at probably being here tomorrow to wrap up the conference report. Maybe that will not require a vote.

But we have at least started at the staff level some contact with the House side to see what the major differences will be between the 45-day extension passed by the House and what I hope to be an 18-month extension passed by the Senate.

So I would urge, since we have two amendments agreed upon to be brought up in the order of either LEVIN and BYRD or BYRD and LEVIN, that after that we move to the remainder of the amendments. There are only a couple of those. We could finish within the next couple of hours if everybody would come to the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the order of yesterday pertaining to amendments to be offered by Mr. LEVIN and myself be reversed, and that I be permitted to call up my amendment at this time, and Mr. LEVIN to follow after the disposition of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2253

(Purpose: To provide for up to 8 weeks of additional benefits for individuals who have exhausted their benefits)

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD) proposes an amendment numbered 2253.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out sections 3 and 4 of the bill and insert in lieu thereof the following:

NUMBER OF WEEKS OF BENEFITS

SEC. 3. (a) Section 602(e) of the Federal Supplemental Compensation Act of 1982 is amended by striking out paragraphs (2), (3), and (4), by redesignating paragraph (5) as paragraph (4), and by inserting after paragraph (1) the following:

"(2)(A) Except as otherwise provided in this paragraph, the amount established in any account shall be equal to the lesser of—

"(i) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation, or

"(ii) the applicable limit determined under the following table times his average weekly benefit amount for his benefit year:

In the case of weeks during a:	The applicable limit is:
5-percent period	12
4-percent period	10
3-percent period	8
Low-unemployment period	6

"(B) If the applicable limit in effect for a State for the week beginning September 25, 1983, was 14 (as determined under the provisions of subparagraph (A) as in effect prior to the amendments made by the Federal Supplemental Compensation Amendments of 1983), the applicable limit for such State shall remain at 14 for any consecutive week thereafter for which such limit would have remained at 14 under such prior provision. Paragraph (3)(D) shall not apply in the case of an applicable limit determined under this subparagraph.

"(C) The total amount established in any account of an individual who received Federal supplemental compensation for any week beginning prior to October 1, 1983, but who has not exhausted his rights to such compensation (by reason of the payment of all of the amount in such account) prior to October 1, 1983, shall not be less than the amount of compensation to which such individual would have been entitled under the provisions of this subtitle as in effect prior to the amendments made by the Federal Supplemental Compensation Amendments of 1983, including the termination date and reduced compensation amount contained in subsection (f)(2) as then in effect.

"(D) In the case of the account of an individual to whom Federal supplemental compensation was payable for any week beginning prior to October 1, 1983, and who exhausted his rights to such compensation (by reason of the payment of all of the amount in such account) after March 31, 1983, and before October 1, 1983, the amount established in such account for compensation payable for weeks beginning on or after October 1, 1983, shall be equal to the lesser of the subparagraph (A) entitlement or such individual's additional entitlement.

"(E) For purposes of subparagraph (D) and this subparagraph—

"(i) the term 'subparagraph (A) entitlement' means the amount which would have been established in the account if subparagraph (A) had applied to such account; and

"(ii) the term 'additional entitlement' means the lesser of—

"(I) 75 percent of the subparagraph (A) entitlement, or

"(II) 8 times the individual's average weekly benefit amount for the benefit year.

"(3)(A) For purposes of this subsection, the terms '5-percent period', '4-percent period', '3-percent period', and 'low-unemployment period' mean, with respect to any State, the period which—

"(i) begins with the 3d week after the 1st week in which the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls in the applicable range, and

"(ii) ends with the 3d week after the 1st week in which the rate of insured unemployment for the period consisting of such week and the immediately preceding 12 weeks does not fall within the applicable range.

"(B) For purposes of subparagraph (A), the applicable range is as follows:

"In the case of a:	The applicable range is:
5-percent period	A rate equal to or exceeding 5 percent.
4-percent period	A rate equal to or exceeding 4 percent, but less than 5 percent.
3-percent period	A rate equal to or exceeding 3 percent, but less than 4 percent.
Low unemployment period.	A rate equal to or exceeding 3 percent.

"(C) A State shall qualify for a 5-percent period without regard to paragraph (2) and subparagraph (A),(B), and (D) of this paragraph, for weeks beginning in a calendar quarter if the rate of insured unemployment in the State equals or exceeds 6 percent for the period consisting of all weeks which begin—

"(i) on or after January 1, 1982, and

"(ii) in or before the second preceding calendar quarter.

"(D) No 5-percent period, 4-percent period, 3-percent period, or low-unemployment period, as the case may be, which is in effect for the week beginning on October 2, 1983, or any week thereafter, shall last for a period of less than 13 weeks (but subject to the termination provision under subsection (f)(2)).

"(E) For purposes of this subsection—

"(i) the rate of insured unemployment for any period shall be determined in the same manner as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970; and

"(ii) the amount of an individual's average weekly benefit amount shall be determined in the same manner as determined for purposes of section 202(b)(1)(C) of such Act.".

(b) Section 602(d)(3) of such Act is amended by striking out "or (D)(ij)".

EFFECTIVE DATE OF FSC PROVISIONS

SEC. 4. (a) The amendments made by sections 2 and 3 shall apply to weeks beginning after September 30, 1983.

(b) In the case of any eligible individual—

(1) to whom any Federal supplemental compensation was payable for any week beginning before October 1, 1983, and

(2) who exhausted his rights to such compensation (by reason of the payment of all the amount of his Federal supplemental compensation account) before the first week beginning after September 30, 1983.

such individual's eligibility for additional weeks of compensation by reason of the amendments made by this Act shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before October 1, 1983 (and the period after such exhaustion and before October 1, 1983, shall not be counted for purposes of determining the expiration of the two years following the end of his benefit year for purposes of section 602(b) of the Federal Supplemental Compensation Act of 1982).

(c) The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act in accordance with the amendments made by sections 2 and 3. Notwithstanding any other provision of law, if any State fails or refuses, within the 3-week period beginning on the date the Secretary of Labor proposed such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the first day of such 3-week period.

WE MUST HELP THOSE UNEMPLOYED THE LONGEST

Mr. BYRD. Mr. President, it is all too easy for us to forget the tragedy that confronts those who have worked all their adult lives, lose their jobs, cannot find new jobs, and finally exhaust all available unemployment insurance benefits. At that point, these persons—who are accustomed to being responsbile, taxpaying citizens who meet their financial obligations—are faced with the prospect of utter destitution.

In this recession, that has been happening with growing frequency. Not only has the unemployment rate soared up to levels not seen since the Great Depression, but virtually all the statistics concerning the length of unemployment have reached record levels, including the average duration of unemployment and the number of persons unemployed for over 1 year. The results are clear—and devastating. Home foreclosures have skyrocketed. Welfare and food stamp rolls have grown dramatically, and the free cheese and soup kitchen lines have stretched out the door and around the corner, as proud people who have never before needed or accepted charity find they have no choice.

And yet, as we have debated the extension of the Federal supplemental compensation program—the "last gasp," final tier of unemployment benefits—at no point have we contemplated providing any aid for those who have been unemployed longer than 57 weeks, a period only a little longer than a year. I truly regret that the Senate has not accepted any proposal to provide additional benefits for those who already have exhausted all benefits for which they are eligible, including supplemental compensation.

Mr. President, yesterday I complimented the manager of the bill, who is dedicated to trying to come up with the kind of a system and the reform of the system which will be more fair and which will allow more States to participate on the basis of need. Obviously, he cannot do that in 24 hours. It will take some time.

What we are about to do on this bill is to set in place a program that provides fewer weeks of benefits in a number of States than does the program that expires at midnight tonight, and which does nothing for those who previously have exhausted all benefits but still cannot find a job.

I find that totally unacceptable, Mr. President. I am a realist—and so I recognize that we must depend on the House in conference to insist on providing a more nearly adequate level of benefits in this bill, out of a sense of responsibility to the unemployed and their families which neither the administration nor the majority in this Chamber seems able to muster. But I am not prepared to leave the longest of the long-term unemployed high and dry—with the Senate of the United States having ignored them completely.

Consequently, I have offered an amendment to address this problem. My amendment is short and quite simple. For any person who has exhausted all available unemployment benefits, including supplemental compensation benefits since April 1, but remains unemployed and continues to meet all applicable requirements for the supplemental compensation program, my amendment provides that he or she will be able to receive three-fourths of the number of weeks of benefits new FSC beneficiaries will receive in that State, up to a maximum of 8 weeks. This is the same number of weeks of "reachback" benefits contained in the House version of the bill.

I know beyond any doubt that this will not be a complete solution for the problems of many of the long-term unemployed. But I also know that, for them, any assistance is desperately needed and will be of great help. In many cases, this additional assistance could keep families afloat economically until they can find a job as the economy slowly begins to warm up.

Surely we should take this minimal step as a matter of decency and compassion—and an acknowledgement that most of these unfortunate people were the victims of national and international economic forces far beyond their control. But that is far from the only reason. I hope my colleagues who are inclinded to look at such amendments through green eyeshades will keep in mind the following: This amendment will reduce the movement of the long-term unemployed onto the welfare and food stamp caseloads and therefore its net cost to the Federal and State governments will be less than its gross cost. More important but along the same line: we are talking about workers with long-term attachment to the work force—stable mem-

bers of our society who have responsibly paid taxes and who have formed the backbones of our communities. If we shrug our shoulders and walk away, instead of helping to tide them over until they can find work and get back on their financial feet, many of these people and their families will break the last thread in the safety net. They will lose their life savings, their homes, and everything they have worked for—an economic and emotional blow from which they may never recover. This is the true-life story of how dependency is born-and we all should recognize that taxpayers at all levels of government pay ceaselessly to support those who have fallen into that state. I should think we would do everything within our power to keep the number of persons in that condition from growing larger.

My amendment has a modest cost, Mr. President. The Congressional Budget Office projects it will cost approximately $285 million after adjusting for expected savings in food stamps and AFDC. I believe that the importance of what this amendment can do for the long-term unemployed more than justifies this expenditure.

Mr. President, I urge Senators on both sides of the aisle to support this amendment.

I ask unanimous consent that a table be printed in the RECORD showing the number of weeks of benefits—I am not sure that such a chart can be printed in the RECORD, but I shall try to supplement my remarks in ways that will demonstrate the number of weeks of benefits exhaustees will receive in each State under my amendment.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

	Exhaustees will receive	
	Finance Committee bill	Byrd amendment
State:		
Alabama	0	7.5
Alaska	0	8.0
Arizona	0	6.0
Arkansas	0	6.0
California	0	7.5
Colorado	0	4.5
Connecticut	0	4.5
Delaware	0	4.5
Florida	0	4.5
Georgia	0	4.5
Hawaii	0	6.0
Idaho	0	8.0
Illinois	0	7.5
Indiana	0	4.5
Iowa	0	4.5
Kansas	0	4.5
Kentucky	0	8.0
Louisiana	0	8.0
Maine	0	6.0
Maryland	0	6.0
Massachusetts	0	4.5
Michigan	0	8.0
Minnesota	0	4.5
Mississippi	0	8.0
Missouri	0	4.5
Montana	0	7.5
Nebraska	0	4.5
Nevada	0	6.0
New Hampshire	0	4.5
New Jersey	0	6.0
New Mexico	0	6.0
New York	0	6.0
North Carolina	0	4.5
North Dakota	0	4.5
Ohio	0	6.0
Oklahoma	0	4.5
Oregon	0	8.0
Pennsylvania	0	8.0
Rhode Island	0	7.5
South Carolina	0	4.5
South Dakota	0	4.5
Tennessee	0	4.5
Texas	0	4.5
Utah	0	6.0
Vermont	0	6.0
Virginia	0	4.5
Washington	0	8.0
West Virginia	0	8.0
Wisconsin	0	8.0
Wyoming	0	6.0

Mr. BYRD. Mr. President, I ask unanimous consent at this time that the following Senators be added as cosponsors of my amendment: Senators DIXON, LEVIN, BINGAMAN, RIEGLE, MOYNIHAN, and RANDOLPH.

I also ask unanimous consent that any other Senators who wish to do so may do so by going up to the desk and so indicating.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I thank the distinguished minority leader for his discussion. Again, it is very difficult. Obviously, he has made some good points and I guess if we did not have a lot of other problems, this would certainly be a place to invest more money. Again, I think at the end of his statement, the minority leader indicated that we are going to conference. The bill passed by the House—a 45-day extension, I might say—costs about $1.2 billion. The 18-month extension we are looking at is about $3.7 billion. In the past year, I think we have expended for unemployment benefits about $5.6 billion. So I want the record to show that the Congress, with the support of the administration, has been very generous in this area.

Certainly, there are hardships in every State. I know many Senators who are running around trying to put together some formula to give their State 2 more weeks or 4 more weeks or open up the extended benefit program. That is not very difficult to do. It is not very difficult to stand up and say, I want to take care of something that has only a nominal cost, a couple of hundred million dollars—for the Labor Department, this will be about $400 million.

The labor cost is not the most important thing, though it is a factor, obviously. It seems to this Senator we need to resolve this issue. We need to have a comprehensive review of unemployment compensation. That has been triggered on the Senate side by the introduction of the bill by the distinguished minority leader (Mr. BYRD) and by the distinguished senior Senator from Pennsylvania (Mr. HEINZ). We have already had one brief hearing—at least we have had the highlights pointed up at a hearing by Senator BYRD 2 weeks ago. That does not address the concerns of those who are unemployed or whose benefits have expired. But again, I think there has to be some restraint. This is a total federally funded program. The States are not involved. The States do not pay anything under this program.

It would seem to me that when we are debating the FSC program or the reach-back amendment, I would hope that, notwithstanding the motivation and good intentions of those who have a different view, my colleagues would oppose the amendment.

The amendment would provide additional FSC benefits—commonly known as reach-back—to individuals who first began receiving FSC benefits on or after April 1, 1983. We have different cost estimates than those of the Senator from West Virginia. The Congressional Budget Office estimates the cost at some $305 million, using the optimistic August assumptions. The Department of Labor has estimated that each week of reach-back costs between $60 and $100 million per week. This would obviously increase the cost of the Finance Committee bill and jeopardize the administration's support for the bill. The Byrd amendment, according to the Labor Department, will add $421 million to the committee bill.

Whether it is $300, $400, $420 million, it is a lot of money.

The FSC extension reported by the Finance Committee provides basic levels of benefits, tiered to the insured unemployment rates in each State, which are rational and affordable. Earlier FSC extensions did provide reach-back benefits, but that was at a time when unemployment was high and rising. Unemployment is certainly not low at this time, but it is clearly falling.

Remember that when the FSC program was first enacted in September 1982, the total unemployment rate, TUR, was 9.9 percent and going up to its December 1983 peak of 10.8 percent. Now the TUR is 9.5 percent and going down. In fact, the CBO August assumptions project a rate of 8.9 percent by year's end.

Also, State insured unemployment rates (IUR) are low. As we discussed yesterday, the IUR is a count of those who may be eligible for FSC. Currently, 24 States have IUR's at 3 percent or below and only 2 States are above 5 percent. Rates are now as low as 1 percent in Virginia. With rates this low, it is difficult to justify additional benefits.

Even total unemployment rates are low in many States. For instance, 13 States have a TUR below 7.5 percent and 36 States are less than 10 percent. New Hampshire and North Dakota show a June TUR of 4.7 percent with Maryland at 6.5 percent and Massachusetts at 7.5 percent.

So, Mr. President, I just suggest that for a lot of reasons, we are emerging from the recession. This Senator happened to turn on CSPAN last night and were able to watch Democrats and Republicans on the House side castigating each other for big deficits and which party spent more money than the other party, the inflation rates, the tax rates, and where the deficit was going. I say very candidly, the Republicans were on the defensive. They are being charged with increasing the deficit.

Again, I suggest that every time we add on another $200 or $300 million, maybe in some cases, they are justified, but we certainly are not lowering the deficit. I hope that not just on those general grounds but on the grounds that we have a good, solid package, we have made an effort to really take a hard look at States like West Virginia, Michigan, and others, where they have long-term high unemployment, hard-core unemployment.

Perhaps we did not do as well as some would want, but it just seems to me that our best thing to do is pass this bill and go to conference. There will be some adjustments made. Perhaps we can accommodate some of the States that have serious problems. But to start doing it on the floor one at a time or two at a time or six at a time, in my view, would not be fair to the other States.

I might suggest that my State gets the lowest 6 weeks. I could figure out some reason to make that 8 or 10 or 12.

We have tried to be objective in the formula. We believe that we have addressed the problem fairly, and I would hope that we might defeat this amendment and then move on to the amendment of the distinguished Senator from Michigan.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The monority leader is recognized.

Mr. BYRD. Mr. President, the manager of the bill Mr. DOLE, as usual is very considerate. He knows how to criticize without appearing to be critical, and he is one whom I greatly admire in that respect. I do not know anyone who has a keener wit, who can even poke fun at himself at times, as can Mr. DOLE. I have a great fondness for him.

But, Mr. President, we are talking here today about spending some money. If this amendment is not adopted, it would not make any bigger dent in the deficit than dropping a grain of sand in the Potomac.

I am talking about people who have exhausted all benefits under all programs—State basic programs, extended benefits program, supplemental compensation. They have exhausted all benefits. There are thousands of them in West Virginia. West Virginia is not alone in having this problem. West Virginia just happens to have the highest unemployment rate in the state of the Union at this point. We are talking about food and the basic necessities of life. These people have exhausted all benefits. They cannot pay their rent, they cannot make payments on their homes, the cannot make payments on their cars. Where are they going to eat? What are they going to eat? Are they going to have to get food stamps? Are they going to have to go on welfare? What is going to happen to them? Their children need clothes, their children need food.

Mr. President, this is simply an amendment that is born of great necessity. It is a humane amendment. As I said, the net cost, according to the CBO, will be $285 million. True, using the same economic assumptions, CBO estimates the gross cost of the amendment to be $305 million, from which CBO subtracts $20 million in AFDC and food stamp savings attributable to the amendment, which would yield the $285 million net cost.

Mr. President, we contribute to organizations that make available loans to the Soviet Union and loans to other Communist countries—loans at very low interest rates. We make grain available to the Soviets when our own people are going to be paying higher prices this fall for grain. Of course, it will partially result from the drought, but the Soviets are going to get theirs. We are also asked for money by the administration to support a program in the Caribbean. I think it is time that we consider the helpless people in our own States who have helped to build this country, who have helped to mine the coal, make the steel, and do the other important things that are conducive to a normally viable economy and a strong Nation with a high standard of living.

I hope that we would not look at this purely on a dollar basis. Admittedly, it will cost in the area of $300 million, but charity begins at home, when we have people who have exhausted every dime of unemployment compensation. They have exhausted every dime. In some cases it has caused broken homes. So in order to alleviate those hardships for a while longer until, hopefully, we can work out an overall program that will be more fair, that will operate more on the basis of need and utilize a better formula than the one we have been using. I hope Senators will vote for this amendment.

Those States that are not so seriously affected today may be before long. But it does not make any difference what States in this context are so vitally affected. The point is that there are human beings in Gary, W. Va., where the unemployment rate is 90 percent—90 percent unemployment—and they have long ago exhausted their benefits. People are selling their belongings in yard sales in order to pick up a little money that will temporarily hold them from falling through the safety net entirely. I do not think that that argument can be answered by quoting dollar figures and talking about deficits. This money when compared with the deficit of this year could hardly be picked up on a microscope. I hope that Senators will vote for the amendment.

Mr. President, I am ready for a vote if the Senator from Kansas is ready.

Mr. DOLE. Do you want the yeas and nays?

Mr. BYRD. I would like to have the yeas and nays.

The PRESIDING OFFICER (Mr. QUAYLE). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The question is on agreeing to the amendment of the Senator from West Virginia. The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New Hampshire (Mr. HUMPHREY) and the Senator from Oklahoma (Mr. NICKLES) are necessarily absent.

Mr. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Arizona (Mr. DECONCINI), the Senator from Connecticut (Mr. DODD), the Senator from Ohio (Mr. GLENN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 37, nays 54, as follows:

[Rollcall Vote No. 276 Leg.]

YEAS—37

Baucus	Ford	Metzenbaum
Bentsen	Hart	Mitchell
Biden	Heflin	Moynihan
Bingaman	Heinz	Pell
Boren	Huddleston	Pryor
Bradley	Inouye	Randolph
Bumpers	Kennedy	Riegle
Burdick	Lautenberg	Sarbanes
Byrd	Leahy	Sasser
Chiles	Levin	Specter
Cohen	Mathias	Stennis
Dixon	Matsunaga	
Eagleton	Melcher	

NAYS—54

Abdnor	Gorton	Percy
Andrews	Grassley	Pressler
Armstrong	Hatch	Proxmire
Baker	Hatfield	Quayle
Boschwitz	Hawkins	Roth
Chafee	Hecht	Rudman
Cochran	Helms	Simpson
D'Amato	Jepsen	Stafford
Danforth	Kassebaum	Stevens
Denton	Kasten	Symms
Dole	Laxalt	Thurmond
Domenici	Long	Tower
Durenberger	Lugar	Trible
East	Mattingly	Wallop
Evans	McClure	Warner
Exon	Murkowski	Weicker
Garn	Nunn	Wilson
Goldwater	Packwood	Zorinsky

NOT VOTING—9

Cranston	Glenn	Johnston
DeConcini	Hollings	Nickles
Dodd	Humphrey	Tsongas

So Mr. BYRD's amendment (No. 2253) was rejected.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2257

(Purpose: To provide an alternative method of qualifying for the maximum number of weeks of compensation)

Mr. PERCY. Mr. President, I ask unanimous consent that the Levin amendment be temporarily set aside so that I might offer an amendment for immediate consideration.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. PERCY. Mr. President, I send and amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY), for himself and Mr. DIXON, proposes an amendment numbered 2257.

Mr. PERCY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 602(e)(3)(C) of the Federal Supplemental Compensation Act of 1982 (as amended by section 3 of the bill), strike out "exceeds 6 percent" and insert in lieu thereof "exceeds 5.5 percent,".

Mr. PERCY. Mr. President, I send this amendment to the desk on behalf of myself and Senator DIXON. I am offering this amendment to S. 1887, the extension of Federal supplemental unemployment compensation bill, which would keep benefits from being cut in States that have suffered high unemployment the longest. It would provide that unemployed workers in States where insured unemployment rates (IUR) for the past 18 months exceeds 5.5 percent would receive 12 weeks of benefits. In 1 year, the IUR requirement would drop to 5 percent.

I believe that we have turned the corner on high unemployment and are heading for a sustained recovery. However, this does not mean that we can turn our backs on those who are still out of work, and on those areas hardest hit by severe unemployment. In Illinois, for example, total unemployment stands at 11.5 percent, and remains even higher in some cities. For example:

Joliet 23 percent;
Rockford 18.7 percent;
Peoria 18.2 percent
Danville 17.4 percent;
Moline 17.1 percent;
Decatur 16.5 percent; and
Kankakee 16.1 percent.

Mr. President, we must recognize that it will take longer for these cities, where just a few months ago unemployment topped 25 percent, to get back on their feet again. While it is difficult for many Americans to find work, in these areas it can be next to impossible considering that one out of every four to five persons is searching for employment. In spite of these conditions, S. 1887 would cut Illinois' benefits by no less than 4 weeks—more than almost any other State in the Union. I simply cannot stand idle while the rug is being pulled out from under the thousands of unemployed people of my State. I will not turn my back on them.

I fully understand the need to reduce Federal spending to cut the deficit, and have opposed unreasonably expensive unemployment compensation programs. My amendment will add approximately $67 million to the cost of the FSC program as proposed in S. 1887. I feel that this is a small price to pay for the substantial relief it will bring to States that have suffered high unemployment over the past 1½ years.

Mr. President, Illinois has the sixth highest unemployment rate in the Nation, yet it is possibly having more benefits cut than 47 other States. There is simply no way I can go back to my State this weekend and explain this inequity, this unfairness to those who are out of work in Illinois.

I am not asking that we increase Illinois' benefits; I am not suggesting that we provide for those who have already exhausted benefits—there are over 100,000 of these exhaustees in Illinois—realistically, with this program expiring tonight, we will not be able to address their plight today in the Senate; I'm not proposing that we do away with the insured unemployment rate even though it is grossly unfair to States such as Illinois.

All I am asking is that the unemployed of Illinois be treated with the compassion and fairness they deserve. Illinois has 11.7 percent unemployment now. It has gone up in the last month. There are some States that deserve and desperately need more than they are getting in this bill.

I would be honored indeed and pleased to hear from the distinguished manager of the bill, the chairman of the Finance Committee, Senator DOLE, who is thoroughly familiar with this situation. We have discussed it at considerable length.

I am happy to yield to the distinguished Senator from Pennsylvania, Senator HEINZ.

Mr. HEINZ. Mr. President, if the Senator will yield for a comment, I hope we can find a way to accommodate the Senator from the State of Illinois. I am well aware of the problems faced by the State of Illinois.

I commend the Senator for his amendment and his approach. I have examined his amendment and also his earlier dear colleague letter rather carefully. I join him in any effort to work with Senator DOLE, the chairman of our committee, to accommodate the really special problems in the State of Illinois.

Mr. PERCY. I thank my distinguished colleague very much indeed.

Mr. RANDOLPH. Will the Senator from Illinois yield to me for a comment if he has the floor?

Mr. PERCY. I do have the floor, and I am happy to yield for that purpose.

Mr. RANDOLPH. Mr. President, the conditions of unemployment in Illinois are well known to all of us. Throughout the country, we looked at unemployment figures State by State and we understand and feel compassion for those workers that are not gainfully employed at this time.

I feel that, when I hear certain figures of high unemployment, they are very graphic and they cause concern to me and every Member of this body.

I wish to speak not only of West Virginia, except to say that we have the highest unemployment rate in the Nation—not Illinois or any other State—at the present time. Of course, we are a State of basic industries, we realize that—coal, steel, glass, and chemicals. But we are very, very severely hit by unemployment at the present time. Our people are suffering.

Unemployment in the State of West Virginia stands at 17.4 percent today. We have communities that have 30- and 35-percent unemployment, and we have communities with 90-percent unemployment. We have communities that have percentage of 25 and 30 and more of the men and the women who need jobs that are unable to secure them, partially because of the closing of plants and mines and the reduction of work opportunities and also by the basic industries which I have mentioned being severely curtailed in production, including aluminum, at this time.

I would like to ask a question of the Senator from Illinois. I commend him and his colleague for presenting this amendment.

Is this an across-the-board amendment for all the States? I did not hear the amendment read. Or is it an amendment that seeks to help, understandably, the situation in Illinois?

Mr. PERCY. It seeks to help those States which are in the same position of Illinois, which have unemployment levels which have been the longest sustained. Of course, the assistance offered in the present bill for Illinois is very limited, compared to West Virginia, for instance, which has a 14-week extension, the longest of any other States. I am fully in sympathy with the deep plight of West Virginia, its State economy, and its people. I am aware of the deep concerns my colleague from West Virginia, the senior Senator, the minority leader, and the Governor and first lady of West Virginia have for the people of West Virginia. But the particular amendment. I am offering now takes care of States such as Ohio, Illinois, Rhode Island, and Alabama, which are not taken care of as well as West Virginia is in the present bill.

Mr. RANDOLPH. I thank my colleague.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield?

Mr. PERCY. I am happy to yield.

Mr. BRADLEY. I am seeking the floor in my own right.

Mr. PERCY. I would like comments on the pending amendment. Otherwise, I would first appreciate whatever thoughts the distinguished chairman of the committee has on the pending amendment so I will be better advised as to the outcome.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Jersey.

Mr. BRADLEY. How much more time does the Senator wish?

Mr. PERCY. One or two minutes.

Mr. DOLE. Will the Senator yield to me?

Mr. BRADLEY. I yield to the Senator from Kansas.

Mr. DOLE. Let me say the Senator from Illinois has stated the case, saying that there are a number of States, Alabama, Illinois, Rhode Island, and maybe others.

We understand that there are States with pockets of unemployment which are suffering great distress. This has also been called to my attention by the two Senators from Indiana. Other Senators are coming in with the same problem, from States having pockets of unemployment. The House bill does mandate a study of the feasibility of some State triggers. I support such an effort, as I know the Senator from Illinois does. The two Senators from Minnesota also are vitally interested in this subject, as well as other Senators.

We know there are differences between the House and Senate bills. I cannot stand on the floor and promise we will take care of this State or that State because every State has a problem. In my State of Kansas we have high unemployment in Wichita. The airline industry is practically on its knees.

I would say to the Senator from Illinois and others, we are aware of the special concerns that a few States have and we are going to try to address those in conference. If we can find a way to do it without disrupting parameters of the overall cost of the program, it will be done.

Mr. PERCY. I very much appreciate the assurance of the distinguished Senator from Kansas. He is well aware of our problem. He knows the solution we are seeking now is not a costly solution and is targeted strictly at those which are the most hard pressed and have been hard pressed the longest. The figures I have given speak for themselves. I have every confidence that something can be worked out to take care of our situation.

With that, Mr. President, I ask unanimous consent to withdraw the amendment at this time.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. Is there objection to the Senator from Illinois withdrawing his amendment?

Mr. METZENBAUM. Reserving the right to object and I certainly will not object, I wanted to note the comment of the Senator from Kansas. I know that he attempts to be very fair in the handling of this matter. I would point out to him the extreme sense of urgency that exists in my own State of Ohio. Under this bill, there will be an inequity and the supplemental benefits would be cut from 10 weeks to 8 weeks. I would urge upon the chairman in as strong as possible terms that the milk of human kindness might run forth in Ohio in regard to this subject. I am grateful to him for his consideration.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Illinois is withdrawn.

The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, I am pleased to report that there has been some improvement in the economy over the past few months. Unemployment has dropped from 10.8 percent to 9.5 percent. But unemployment still remains a very critical problem. There are 10.7 million Americans who are still out of work. And if you take those who have become too discouraged to be presently seeking a job you can add a million or two more who still are out of work.

Last year, 22 percent—more than 1 in 5 workers—were unemployed at some time during the year. A recent public opinion poll indicated that between 40 and 50 percent of the families in this country either had one member of their family or a friend who was out of work.

Mr. President, last month almost 25 percent of the unemployed, 2.5 million workers, had been out of work for 27 weeks or longer. Four years ago only 500,000 workers were out of work longer than 27 weeks. In other words, five times as many workers are out of work today for longer than 27 weeks than 4 years ago.

So it is clear that we cannot turn our backs on the plight of unemployed workers.

Yesterday, the Senate rejected an amendment to increase the number of weeks of unemployment benefits to be provided to workers who lost their jobs due to the current recession. The unemployed in New Jersey would have received 5 extra weeks of unemployment benefits. Unfortunately, less than 40 Senators voted in favor of the increase.

Today there are several other proposals before us to provide additional aid to jobless workers. We should not leave here until we have provided some extra help for these deserving Americans.

Until now the debate on the Senate floor has centered on important but technical matters, such as the insured unemployment rate, extended benefit triggers, and so forth. We need to cut through the technical jargon and get to the heart of the matter.

The fact is that unemployment benefits are much scarcer than they were in past major recessions. At the height of the recession in 1975, over two-thirds of the jobless were receiving unemployment aid. Today, considerably less than half are being helped.

This is due to two conditions: First, because of the prolonged downturn—really a 4-year recession—many people have exhausted all benefits to which they were entitled. Second, the tighter rules for unemployment have reduced the number of people receiving benefits.

Currently, Mr. President, in New Jersey, the maximum number of weeks of benefits stands at 34. In 1971, when the unemployment rate nationally was just 6 percent, unemployed New Jersey workers were eligible for 52 weeks of benefits.

We clearly need to do more for the unemployed.

That is why I will support both current efforts underway to increase the number of weeks of benefits. First, the reach-back proposal to provide extra weeks of benefits to persons who have already exhausted their benefits, as proposed by Senator BYRD. And second, the Levin amendment to provide extended benefits in the 34 hard-hit States, including New Jersey.

The President, in addition to unemployment benefits, we need to provide proper health care coverage for unemployed workers. The Congressional Budget Office estimates that over 10 million persons lack health insurance coverage because of job loss. In New Jersey, this amounts to over 300,000 persons, nearly 5 percent of the State population.

In the recently concluded August recess, when I was in New Jersey, moving around the State at town meetings and meeting groups all over the State, I came in contact with any number of New Jerseyans who were in this predicament—who had exhausted their unemployment benefits, who were unable to get health care because they had, and who had very serious family illnesses and, therefore, faced bankruptcy. Mr. President, I think this is unacceptable.

To help remedy this problem, on July 25, over 2 months ago, the Senate Committee on Finance reported out a $1.7 billion measure to provide health care coverage for the unemployed. The House has already passed a similar measure, but the Finance Committee bill languishes on the Senate docket, apparently because some do not want to see this program enacted.

Mr. President, it is time to act. We need to provide additional aid for the unemployed through unemployment benefits and we need to insure that those Americans who have been un-

lucky enough to lose their jobs and their health care benefits do not face the option of bankruptcy and do not face the possibility of being unable to care for their sick family members.

So, Mr. President, I urge my colleagues to join with us in our efforts to aid the unemployed, both through increasing unemployment benefit levels and providing health care benefits for the unemployed.

Mr. CHAFEE. Mr. President, I wish to join with the distinguished senior Senator from Illinois in his plea to the distinguished chairman of the Finance Committee, the floor manager of the bill, to give the problem raised by the Senator from Illinois the utmost attention in conference, as has been promised by the manager of the bill, the distinguished Senator from Kansas.

I join in the concerns that have been expressed. As was noted by the Senator from Illinois, my State is one of those affected.

Second, Mr. President, I support the 18-month extension of the FSC program. There are few experiences more discouraging than to be unable to find a job. The unemployment problem has not yet been solved, and we must provide continued relief to those who are out of work. The temporary provision of additional benefits, however, is not the answer to the unemployment problem and should not be considered as a solution. The solution lies in a better economic environment and in training and retraining.

Mr. President, I would also like to mention that section 8 of S. 1887 increases the fiscal year 1984 authorization for title XX, the social services block grant, from $2.5 billion to $2.7 billion. The first concurrent budget resolution allowed for a $500 million increase in the program.

Senator BRADLEY and I offered this amendment during the Finance Committee's consideration of the unemployment compensation extension. Senators DURENBERGER, HEINZ, MATSUNAGA, and MOYNIHAN cosponsored the $200 million increase.

This measure would provide additional authorization for those who are concerned with the social services block grant, namely children, providing day care centers for those who are low-income working families and to women with work or training programs.

The 1981 budget cut in title XX decreased its funding by 21 percent. One result of the cut has been well-documented by the Children's Defense Fund. According to CDF, fewer children are receiving title XX child care. Those hurt most by these cuts have been those low-income working families and women in work or training programs.

States have made, through necessity, the difficult choice between providing title XX assistance either to children from severly troubled families, or to children from low-income working families. Unemployment and budget cuts have added to the pressures already felt by low-income families. The result has been an increase in reported child abuse, neglect, and requests for foster care placements.

The importance of title XX cannot be overstated. Title XX provides vital funds for a range of services for children and their families, disabled persons, and the elderly. The committee amendment will certainly help to meet the original goals of the program—helping people attain or maintain economic self-sufficiency.

Mr. DOLE. Mr. President.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. I can assure the Senator from Rhode Island that I appreciate his comments. We shall look at that problem carefully in conference as I have indicated to the Senator from Ohio (Mr. METZENBAUM), both Senators from Illinois, and others have raised questions about similar pockets of unemployment in their States. We are going to try to address those with the next bill we have in the conference.

Mr. President, as I understand, Senator LEVIN is prepared to offer his amendment. Following that, I think there is a colloquy with Senator SPECTER on health care for the unemployed, which was just addressed by the Senator from New Jersey. Then I think Senator SPECTER has another amendment which he is in the process of clearing with Senator KENNEDY, Senator LONG, and Senator HATCH. There may be another amendment by Senator QUAYLE. I hope we can have consideration of these amendments and go to passage. I do not know if there is any request for a rollcall on passage, but if there is, I hope we can get to that.

The PRESIDING OFFICER (Mr. CHAFEE). Who seeks recognition? The Senator from Michigan.

AMENDMENT NO. 2252

Mr. LEVIN. Mr. President, the pending amendment was introduced last night. I ask unanimous consent that the Senator from New Jersey (Mr. BRADLEY) be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, in a nutshell, this amendment keeps the extended benefit program alive. Without this amendment, our extended benefit program is going to die. Only two States presently benefit by it, the States of Louisiana and West Virginia. Even though there are other States that are in as desperate need, we do not qualify for the extended benefit program because of the way the benefit program is triggered and the manner in which it is now figured. States such as Michigan and Pennsylvania, Kentucky, Washington, Wisconsin—States with very, very high unemployment, long-term unemployment—do not qualify for the extended benefit program. This amendment would, at a State's option, make a State eligible for 10 weeks of extended benefits if that State's average insured unemployment rate since January of 1982 is 6 percent or above—in other words, long-term unemployment, still using the insured unemployment rate.

This would be exactly the same measure that the committee used in its bill to make sure that some States in need qualify for the highest tier of supplemental benefits.

Further, the amendment would provide 8 weeks of extended benefits if the State's average insured rate over that period is between 5 and 6 percent, and 6 weeks of benefits if the average insured rate is between 4 and 5 percent. Based on current data, this would affect 32 States.

Last night, we submitted for the RECORD a list of States which would benefit by the survival of the extended benefit program.

This is a targeted amendment. It is not subject to the criticism that was leveled against the last amemdment, that it applied in every State. This looks at the States with the longest term unemployment.

I see my friend from Rhode Island is in the Chamber, presiding. Rhode Island has had long-term unemployment of almost 6 percent since the beginning of last year. Yet, it is not eligible for the extended benefit program the way it is now triggered.

This amendment, as I indicated last night, is a bipartisan amendment. Senator SPECTER is it principal cosponsor. It is an amemdment which I hope will receive the consideration of this body, because if nothing else, we should be loath to see the demise of the extended benefit program—when we still have, in this country, national unemployment of 9.5 percent.

The bill before us today would extend the Federal supplemental compensation system in a somewhat modified form. I support that extension, although I believe that the States which are still among the hardest hit in terms of unemployment should receive more weeks of benefits than the committee's bill provides.

The unemployed in this country deserve more than just the continuation of the Federal supplemental compensation program, known sometimes as FSC. They also deserve to have the extended benefit program continue in a realistic way, some way to keep the extended benefit program alive when we have 9½ percent unemployment nationally.

That program is supposed to provide 13 weeks of unemployment benefits to individuals in the high unemployment States.

For those States, the FSC program was originally designed to be an additional layer of benefits on top of the extended benefits program.

What we have seen with the exception of two States, Louisiana and West Virginia, is the effective atrophy, the

elimination, the irrelevance of the extended benefits program because of the way its triggering mechanism has been modified.

The way this program is worked out, the FSC program for almost every high unemployment State is now a replacement for the extended benefits and not in addition to, the way it was originally intended.

As I have indicated, only two States now qualify for extended benefits. My home State of Michigan with 14.3 percent unemployment, Illinois with 11.7 percent unemployment, Pennsylvania with 11.5 percent, Ohio with 11.1 percent, just to mention some of the most outrageous examples, do not qualify for extended benefits.

This situation does not only fly in the face of commonsense, it flies in the face of the clear intent of the extended benefits program when it was originally enacted and in the face of the intent behind recent changes to that program.

On August 7, 1970, when Senator LONG was the floor manager of the legislation which established the extended benefit program, he stated, "The Committee bill, like the House bill, would establish a new permanent program to pay extended benefits during periods of high unemployment to workers who exhaust their basic entitlement." Certainly that test is applicable now. Further, in a statement by the Office of Management and Budget in April of 1981, in which it described its proposed changes to the extended benefit program, it was stated, "The proposed shift to State triggers at modestly higher threshold levels will redirect benefits to areas where they are needed."

Who, I ask, would say that States which have unemployment in the range of 11 percent or above are not States experiencing "periods of high unemployment" or are not "areas where they—extented benefits—are needed?" I do not think that anybody in this Chamber would try to say that today. And if no one can deny that States like Michigan, Pennsylvania, Ohio, and Illinois are areas of high unemployment, then the only other possible reason why they are not eligible for extended benefits is that the measure which determines eligibility is no longer a valid indicator of a State's economic distress. Furthermore, if the measure is no longer valid as evidenced by the absurd results it produces, then it is incumbent upon the Congress to modify or offer an alternative to that measure.

I am all too familiar with the absurd results which require us to make a change. In my own State of Michigan, the unemployment rate in May was 14.9 percent and Michigan was eligible for 53 weeks of unemployment benefits. By August, unemployment had dropped only by half a percentage point, but the maximum number of weeks of eligibility for unemployment benefits had precipitiously dropped to 36 weeks. In other words, there was a 17-week drop in the number of weeks of unemployment compensation available in response to only a very modest decline in Michigan's unemployment rate. This dropoff in the number of weeks of benefits resulted from Michigan's triggering off in June from the 13-week extended benefit program and from the loss of 4 weeks of Federal supplemental compensation. The decline in benefits was mandated by a decline in Michigan's insured unemployment rate.

Of course, that differs from the actual rate, the total unemployment rate, which focuses on the people who are unemployed and looking for work, and that is the most commonly reported unemployment statistic and the one which makes the most sense, since people who have exhausted their benefits but are still unemployed are not even counted for the insured employment rate. So, clearly, any program which relies solely on the IUR as a measure of the need for unemployment benefits beyond the basic 26 weeks of State benefits, is relying on an indicator which does not adequately measure economic distress. But the problem, as has already been discussed today, is that the TUR outside of the 10 most populous States may also be of dubious reliability on a month-to-month basis.

However, we are not elected by the people to throw our hands up in the face of difficulty or at a time of need. They expect us to deal with the anomaly that most States are eligible for only slightly more than half the weeks of unemployment benefits in 1983 than they were in 1975 even though the nationwide unemployment rate then was significantly lower than it is today.

I know that the Finance Committee under the leadership of its distinguished chairman has recognized this problem and has indicated its willingness to try an innovative approach to deal with it on a limited basis. The bill before us today includes a safeguard to make sure that States which have been paying out unemployment benefits at a high rate for a prolonged period of time qualify for the maximum number of weeks of FSC benefits. The presumption is that these States have the greatest need for additional weeks of benefits because they are the most likely to have a relatively high percentage of unemployed who have exhausted all 26 weeks of State benefits. I appreciate the committee's application of this measure to the FSC program and its positive impact on the State of Michigan.

I want the chairman to know personally that I do appreciate his efforts to make the FSC program more relevant to areas of long-term unemployment. While I believe we should keep the extended benefit program alive in more than just two States, while I believe we should have as many weeks of unemployment benefits now as we did in the middle seventies, and while we may disagree on that issue, I still am, indeed, grateful and appreciative to the chairman for the kind of effort he, Senator LONG and others have made in the Finance Committee to make the FSC program relevant to areas of long-term unemployment who have that long-term IUR. I hope that in the conference the chairman would see fit to continue to apply that same sensitivity on the long-term IUR to whatever level of FSC benefits are finally arrived at.

It seems to me that if that long-term uninsured measure is good enough for the FSC program, we ought to use it as well as an atlernative measure on the extended benefits program.

Both programs have the goals of providing unemployment benefits to people who have exhausted their State benefits. Our amendment would simply apply the concept embodied in the Finance Committee bill to the extended benefit program. The Levin-Specter amendment would not repeal any of the current provisions of the extended benefit program. Therefore, any State which would receive 13 weeks of benefits under the law's current criteria would still be eligible for those benefits. Our amendment would provide an alternate means for a State to qualify for extended benefits.

At the same time it would recognize that there are degrees of distress and of need for additional weeks of benefits. In that sense it is like the committee's FSC bill which provides for four basic tiers of benefits, depending on a State's IUR.

Our amendment will revitalize the extended benefit program. It does it in a targeted manner. It utilizes a measure of need that even the committee recognizes is an innovative approach worthwhile pursuing.

Specifically, this amendment would, at a State's option, make a State eligible for 10 weeks of extended benefits if that State's average IUR from January of 1982 is 6 percent or above. This would be exactly the same measure that the committee used to make sure that some States in need qualified for the highest tier of FSC. Further, the amendment would provide 8 weeks of extended benefits if the State's average IUR over that period is between 5 percent and 6 percent; and 6 weeks of benefits if the average IUR is between 4 percent and 5 percent. Based on current data, this could affect 32 States, and I ask unanimous consent that a list of those States be included in the RECORD following my statement.

This amendment would, thus revitalize the extended benefit program in a targeted manner utilizing a measure of need that even the committee recognizes as an innovative approach worthwhile pursuing on a temporary basis.

I do not believe that either the original authors of the extended benefit program or those who succeeded in making modifications in 1981 intended

that it be a nullity when national unemployment was 9.5 percent and is exceeding 11 percent in many of our States. That is what the extended benefit program has become. It has become a nullity for all of us, except those who happen to live in Louisiana or West Virginia. It has become a nullity for us in States that have unemployment as high as Louisiana has. The extended benefit program has become a nullity for us even though we have actual unemployment in some of our States in the area of 14 percent—14.3 percent unemployment in Michigan; yet we have triggered off the 13-week extended benefit program.

I hope all of us can support this bipartisan amendment. It costs $1.6 billion. That is a significant amount of money. The principal we are talking about is a significant principal.

The issue really is this: Is it worth $1.6 billion to preserve the extended benefit program? That is the issue. If we want the extended benefit program to die, if we are willing to see it die, then we will do nothing. If we want to keep that 13-week period alive, a period that has always been available in times of high unemployment, then we must make this investment in this $1.6 billion.

Mr. President, I thank my friend from Pennsylvania, who has been active in the cosponsorship of this amendment. I express my appreciation to him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I support the amendment by the distinguished Senator from Michigan (Mr. LEVIN), and I congratulate him on his leadership with respect to this amendment. He has been a leader in the field of unemployment benefits generally.

In supporting the amendment, I do so fully mindful of the fact that unemployment compensation benefits are very expensive and that we live in a time of an escalating Federal deficit which is very troublesome for the promotion of the country's economic recovery.

Nevertheless, it is my judgment that this amendment is necessary. I say this based upon the findings I have made on extensive travels throughout the State of Pennsylvania, where the unemployment currently is 10.8 percent; and in some counties in Pennsylvania, such as Cameron County, the unemployment rate is 29 percent. Among the 620,000 Pennsylvanians who are unemployed, it is really a national emergency and a national disaster.

During the August recess, I had occasion to visit unemployment offices in Pittsburgh, Wilkes-Barre, and Scranton. I stood in a line in Pittsburgh during the week of August 8—I believe it was Wednesday, August 10—and saw the people coming to apply for unemployment benefits and face the disappointment of finding that their benefits had expired.

Oddly enough, on the triggering factor, on August 6, Pennsylvania fell one-twentieth of 1 percentage point below the average to qualify for the extended benefits program. Because of that triggering off, some 25,000 Pennsylvanians and their families lost unemployment compensation benefits.

So it is my judgment that it is our responsibility to move in this field, and that is why I joined the distinguished Senator from Michigan in cosponsoring this amendment and in urging that, notwithstanding the costs involved and the problems of deficit, this is a basic necessity and one which should be adopted by this body, by Congress, and signed by the President.

I yield the floor.

Mr. DOLE. Mr. President, I rise in opposition to the amendment offered by the Senator from Michigan. As I understand his amendment, it would provide an optional trigger for the extended benefits (EB) program. The Senator is to be commended for his persistence and for his creativity in this area. This is a battle which has been fought several times in this Chamber, and I know that it will occur again. However, I do believe that this is the wrong time for an amendment of this kind.

We are presently debating an important bill which must be acted on by midnight tonight. It is a bill which provides necessary benefits for about 700,000 long-term unemployed workers at the present time and for many more in the next 18 months. In fact, the Department of Labor estimates that approximately 3.8 million people will receive FSC benefits by the end of March 1985.

Aside from the continuation of FSC benefits, S. 1887 contains other time-sensitive provisions. First, S. 1887 extends for 1 year a provision of the foster care program which permits Federal matching of funds used to support children placed in foster care without the benefit of a judicial determination. This is an important provision which insures protection for children who must be removed from their homes as a result of child neglect and validated reports of child abuse.

Second, the bill contains an amendment which increases the entitlement level for the title XX, social services block grant, by $200 million. This increase is effective for fiscal year 1984. I know that my colleagues are aware that title XX has considerable support in every State and community.

I remind my colleagues that just yesterday, this body approved an amendment to extend an important disability provision which would otherwise expire tonight. This extension is important to thousands of social security disability beneficiaries.

Aside from time problems, I am opposed to the Senator's amendment on the basis of substance. It is my view that changes to the extended benefits program are neither necessary nor desirable. Such changes are costly both to the Federal taxpayers and to State taxpayers since the benefits are financed equally by the Federal Government and the State governments.

My colleague from Michigan is very well aware of the serious financial problems many of the State unemployment trust funds are experiencing. Twenty-five States and three territories have borrowed a total of over $13 billion from the Federal Government to continue paying benefits; 16 of those 28 have defaulted on their loans, triggering escalating increases in the UC tax for employers in those States.

Interest is now charged on Federal loans and this has forced a number of States to increase the State payroll taxes and to tighten and otherwise limit UC benefits.

I also point out the fact that Michigan has tried to face up to some of these programs at the State level. Michigan is an excellent example of a State which was forced to enact massive changes in its UC program to avoid continued bankruptcy. I know the author of the amendment would argue that his proposal would not require a State to opt for the alternative trigger, but I think he must be aware that the Governors and legislatures in many States would feel irresistible pressure to select the alternative. This could only add to the financial woes I have already mentioned.

I might say, as an aside, that this is a program that is paid for on a 50-50 basis. It has been whispered—I do not think Governors will tell you openly—that they are not so anxious to have the program. They do not know where they are going to get their 50 of the 50-50.

It seems to me that we have a vehicle that has been introduced on the Senate side, the Byrd-Heinz proposal, to have a comprehensive change in unemployment compensation. Maybe that is the answer; maybe it is not; maybe there is another answer. Maybe we will end up doing what we do now, after extensive hearings.

I must oppose the amendment, and I hope it will be defeated, for the reasons I have given.

The Finance Committee has not been unresponsive on the issue of the EB program. On August 1 of this year, a hearing was held by Senator ARMSTRONG's Social Security and Income Maintenance Subcommittee, on the subject of the EB program. I do not believe a convincing case was made in support of EB changes.

Finally, I remind the Senator that the Department of Labor projects Michigan triggering on the EB program in the second quarter of fiscal year 1984. At that time, the additional 13 weeks of benefits will become available—not only in Michigan, but in 9 additional States as well. Until that time, the FSC program benefits will be

available—financed 100 percent by the Federal Government.

Senator LEVIN's amendment has a potential cost of $1.65 billion in fiscal year 1984. We just cannot afford it—nor can the States. We have the FSC program in place to provide benefits for the long-term unemployed. This amendment is not needed.

I urge my colleagues to oppose this amendment and let us move on to final passage on this important measure.

Mr. President, I have listened carefully to the statement of the Senator from Michigan and, as usual, it is thoughtful and reasoned.

He made the point that this is a costly amendment—$1.65 billion, more or less—but there is also a matter of great principle involved.

We hope we have made the right decisions in the Senate Finance Committee. There is no doubt in my mind that if we go to conference, certain adjustments will be made. The House bill is substantially different. It is a 45-day extension. There is the TUR. There are a number of things not contained in the Senate version.

I oppose the amendment because I am certain that if it were adopted and we added that much cost to the total program for the total package, it would probably be vetoed. But that does not indicate that I disagree with either Senator SPECTER or Senator LEVIN in raising the issue. Their States have problems that we do not experience in other States. As pointed out by the Senator from Michigan, we have attempted to address some of those concerns from time to time, whether interest or loans, in trying to figure out some way to address the concerns of the hard core, long-term unemployed in some States, such as Pennsylvania, Michigan, Ohio, Illinois, and a number of others.

S. 1887 contains some very time-sensitive provisions. It extends for 1 year the provision of the foster care program.

I am also advised that in the second quarter, a number of States will trigger on EB—Alaska, Idaho, Michigan, Mississippi, Oregon, Pennsylvania, Puerto Rico, Washington, West Virginia, and Wisconsin. They are coming back on in January of this coming year.

I hope this amendment is defeated, for the reasons I have outlined.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I want to associate myself with the remarks that have just been made by the Senator from Kansas.

The news that came out this morning, that unemployment claims have started going up once again, indicates clearly that we are a long way from being out of the woods with regard to the desperate unemployment situation that still plagues many sections of our great country.

It seems to me that the sponsors of this amendment should look at the fact that, as the chairman of the Finance Committee, the Senator from Kansas, has just pointed out, there is plenty of leeway to work out something in conference with the House of Representatives that would not be too expensive.

Therefore, it seems to me that if this resolution is put to a vote I think that there is a high degree of likelihood, based on the other votes that we have had on this measure, that it would be defeated. Going to conference with a defeat by the Senate likely would not strengthen the hand of the Senate conferees on coming to some kind of an agreement.

I, therefore, suggest that in this case discretion might be the better part of valor, and if we do want to do something for these people that are being hurt very badly because of the deep recession and high unemployment a defeated rollcall vote on this issue might not be in the best interests of the very worthy and very thoughtful proponents of the amendment.

Mr. LONG. Mr. President, I can appreciate what the Senator from Michigan is attempting to do in his amendment. He would like to make Michigan and additional States eligible for extended unemployment benefits.

There are only two States, Louisiana and West Virginia, whose insured unemployment rates are currently high enough for them to qualify for 13 weeks of extended unemployment benefits funded from State and Federal payroll taxs on employers. In most States, the new Federal supplemental compensation benefits have, to a large extent, taken over the function that extended benefits have served in the past, and the new benefits are 100 percent federally funded.

The pending amendment would allow States that have had sustained high insured unemployment since January 1982 to qualify for extended benefits, with the duration depending on the degree of unemployment.

Mr. President, I regret that I cannot support the amendment of the Senator from Michigan. The Labor Department estimates that it would cost $1.65 billion over the next 12 months.

However, I do want to compliment the Senator from Michigan (Mr. LEVIN) on his efforts on behalf of unemployed workers in Michigan. The committee bill contains a provision which allows a longer duration of Federal supplemental benefits in States like Michigan with sustained high insured unemployment rates. This provision is directly due to the efforts of the Senator from Michigan. He first educated us and then persuaded us that States in Michigan's situation had a good case for specific treatment.

Mr. LEVIN. Mr. President, I wish to thank the distinguished Senator from Louisiana (Mr. LONG) for his gracious comments and for the leadership he has so ably demonstrated.

Mr. LEVIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays were ordered.

The question is on agreeing to the amendment of the Senator from Michigan. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Hampshire (Mr. HUMPHREY), and the Senator from Oklahoma (Mr. NICKLES) are necessarily absent.

Mr. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Arizona (Mr. DECONCINI), the Senator from Connecticut (Mr. DODD), the Senator from Ohio (Mr. GLENN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

The PRESIDING OFFICER (Mr. JEPSEN). Is there any other Senator in the Chamber desiring to vote?

The result was announced—yeas 26, nays 64, as follows:

[Rollcall Vote No. 277 Leg.]

YEAS—26

Biden	Huddleston	Moynihan
Bradley	Inouye	Pell
Bumpers	Kennedy	Randolph
Byrd	Lautenberg	Riegle
Dixon	Leahy	Sarbanes
Eagleton	Levin	Sasser
Ford	Matsunaga	Specter
Hart	Melcher	Weicker
Heflin	Metzenbaum	

NAYS—64

Abdnor	Garn	Packwood
Andrews	Goldwater	Percy
Armstrong	Gorton	Pressler
Baucus	Grassley	Proxmire
Bentsen	Hatch	Pryor
Bingaman	Hatfield	Quayle
Boren	Hawkins	Roth
Boschwitz	Hecht	Rudman
Burdick	Heinz	Simpson
Chafee	Helms	Stafford
Chiles	Jepsen	Stennis
Cochran	Kassebaum	Stevens
Cohen	Kasten	Symms
D'Amato	Laxalt	Thurmond
Danforth	Long	Tower
Denton	Lugar	Trible
Dole	Mathias	Wallop
Domenici	Mattingly	Warner
Durenberger	McClure	Wilson
East	Mitchell	Zorinsky
Evans	Murkowski	
Exon	Nunn	

NOT VOTING—10

Baker	Glenn	Nickles
Cranston	Hollings	Tsongas
DeConcini	Humphrey	
Dodd	Johnston	

So Mr. LEVIN's amendment (No. 2252) was rejected.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. LONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, as I understand, the Senator from Pennsylvania has an amendment that I have just discussed with Senator HATCH and Senator KENNEDY. They have no objection to the amendment. I have no objection to the amendment. I do not think Senator LONG has objection.

The amendment deals with the railroad retirement, money that has been appropriated but not spent. Then there will be a colloquy with the Senator from Pennsylvania.

I hope there are no other amendments after that. Senator QUAYLE has one that he may offer, though I hope he does not.

Mr. MELCHER. Mr. President, I had intended to offer an amendment to this bill, but will not do so under the pressure of circumstances which demand speedy action. However, I am deeply concerned that these stop gap measures, such as extension of emergency supplemental compensation, do not reach the heart of the problem for many Americans.

There are in this country many small communities which are victims of the economic recession, whose most solid citizens have been devastated by termination of their lifelong employment in mining or mine-related industries. Our tax policies have encouraged their employers to terminate production in the United States in favor of developing facilities abroad, or importing foreign raw material to the further imbalance of trade.

Aside from the negative economic impact of this practice, and aside from the obvious danger in the event of an international emergency which I fear will find the United States dangerously short of strategic metals, there is a human factor involved which we ignore repeatedly in our discussions of unemployment, compensation, job training, jobs bills and such worthwhile but inadequate proposals, at least as far as those I speak of today are affected.

There are untold numbers of workers who spent their entire adult lives working for the same company in the same small one-industry town—where as much as 25 percent of all workers were employed by the same employer.

The company, for whatever reason, closes down operations.

Those workers with enough years to accrue a partial pension take retirement benefits. Fair enough. But those with not enough retirement benefits are out. They draw unemployment until all benefits are exhausted. The younger ones may be picked up on a job training program such as the Joint Partnership Training Act provides. Fair enough, again.

But what about those too young to retire, too young for social security, too old to be deemed successful in JPTA programs. And their employment benefits stopped before the magic date of June 1, 1982(?), so they do not qualify for the provisions of the Emergency Supplemental Compensation Act, including the extension we are considering today.

Mr. President, these people are the third or fourth generation of their families to work in the mine or smelter. They have mortgage payments to meet on nearly paid-for homes. They have families to feed clothe and educate. They have no income. And they have no job prospects at this time locally or anywhere else. Their are no buyers for their homes. Their neighbors are in the same boat. Outsiders are certainly not attracted to the communities which are hardly the garden spots of America. Generations of extraction of ore or processing thereof without regard to modern environmental safeguards have left unsightly scars on the landscape. And what do we offer them? Our sympathy and that is about all. Sympathy does not pay the mortgage, the doctor bill, or put food on the table. Sympathy does not provide a job.

Mr. President, my amendment, which I am not proposing at this time, would have provided additional unemployment benefits to workers whose benefits have expired before June 30, 1982 (and thus, not covered by S. 1887), who were employed for at least the last 5 years in a factory, mine or mining-related industry in a community where 10 percent or more of the working population were employed by a single employer in 1979. If you believe this describes the situation in Butte and Anaconda, Mont., you are right. But it also describes similar situations in many other States. Unfortunately, I have not been able to find out how many situations of this type exist, or how many families are in these dire straits. Thus, even a ball park figure on the amount of money involved is impossible to determine.

So, Mr. President, instead of proposing an amendment at this time, I have asked the Committee on Finance, in cooperation with the Committee on Labor and Human Resources, be aware of this problem for long-time workers in one-industry towns who are ineligible for any additional unemployment compensation and determine how Congress could deal with this problem in an orderly and constructive way.

Mr. President, I have no delusions that we can easily find an answer to the problem.

What we must face up to is the obvious need to provide jobs for people and at the same time repair the infrastructure of our country—our bridges, our highways, clean up of hazardous waste sites, stream pollution, and water and sewer needs.

If we demand, as we should, that our allies of Japan and NATO carry their fair share of the cost of defending themselves, we could well afford to invest, as we must, our own resources in restoring the infrastructure of the United States. I still hope we awake to that fact. In the meantime, we cannot tolerate the present circumstances in which we say to the Americans I speak for here: "Abandon hope—your country doesn't care."

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 2259

(Purpose: To extend the supplemental railroad unemployment benefits for one year)

Mr. SPECTER. Mr. President, I send an amendment to the desk and ask for its immediate consideration. I offer the amendment on behalf of Senator HEINZ, Senator DIXON, Senator SASSER, and myself.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. SPECTER) for himself, Mr. HEINZ, Mr. DIXON, and Mr. SASSER, proposes an amendment numbered 2259.

Mr. SPECTER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new section:

EXTENSION OF SUPPLEMENTAL RAILROAD UNEMPLOYMENT COMPENSATION

SEC. 9. (a) Section 17 of the Railroad Unemployment Insurance Act is amended—

(1) in subsection (a)(2), by inserting ", or the benefit year beginning July 1, 1983" after "July, 1983";

(2) in subsection (e), by striking out "June 30, 1983" and inserting in lieu thereof "June 30, 1984"; and

(3) by amending subsection (f) to read as follows:

"(f)(1) For purposes of this section the term 'period of eligibility' means, with respect to any employee for the benefit year beginning July 1, 1982, the period beginning with the later of—

"(A) the first day of unemployment following the day on which he exhausted his rights to unemployment benefits (as determined under subsection (b)) in such benefit year; or

"(B) March 10, 1983,

and consisting of five consecutive registration periods 22 (without regard to benefit year); except that for purposes of this paragraph, any registration period beginning after June 30, 1983, and before the date of the enactment of the Federal Supplemental Compensation Amendments of 1983, shall not be taken into account for purposes of payment of benefits, or in determining the consecutiveness of registration periods.

"(2) For purposes of this section the term 'period of eligibility' means, with respect to any employee for the benefit year beginning July 1, 1983, the period beginning with the later of—

"(A) the first day of unemployment following the day on which he exhausted his rights to unemployment benefits (as determined under subsection (b)) in such benefit year; or

"(B) the date of the enactment of the Federal Supplemental Compensation Amendments of 1983,

and consisting of five consecutive registration periods; except that no such period of eligibility shall include any registration period beginning after June 30, 1984.".

(b) The amendments made by this section shall apply with respect to days of unemployment during any registration period be-

ginning on or after the date of the enactment of this Act.

(c) Amounts appropriated under section 102(b) of Public Law 98-8 shall remain available without regard to fiscal year limitation for purposes of carrying out the amendments made by this section.

Mr. SPECTER. Mr. President, this amendment will reinstate the program of supplemental benefits for railroad workers, which was authorized in the emergency jobs bill and expired on June 30, 1983. Those unemployed workers who exhausted all available benefits on June 30, or who were receiving supplemental benefits on that date, will now receive a full 10 weeks under this amendment made available by that provision.

This amendment is the same as S. 1717, which I had previously introduced on August 1, 1983, along with Senators SASSER and DIXON, entitled "The Unemployment Railroad Workers Supplemental Benefits Extension Act of 1983."

The Railroad Retirement Board estimates that the extension would provide assistance to some 50,000 individuals and cost $60 million to $65 million, with administrative costs running in the neighborhood of $800,000.

In the jobs bill, the Congress appropriated $125 million for the initial program of supplemental benefits, and some $83 million, as I understand it, remains in the special unemployment insurance trust fund at the Department of Labor.

An additional $80,000 remains from the original outlay of $750,000 for administration.

I have conferred with the distinguished chairman of the Committee on Health and Human Services (Mr. HATCH), who has agreed with the provisions of this amendment, and I have conferred with the distinguished Senator from Kansas, the chairman of the Finance Committee, who has thought well of this amendment and will speak for himself in just a moment.

An estimated 5,600 railroad workers, Mr. President, who live in Pennsylvania, would benefit from this provision, as well as some 5,000 in Illinois, 4,600 in Ohio, and 2,000 in Kentucky. Every State has railroad workers who qualify.

The Congress has repeatedly extended the program of Federal supplemental compensation for workers in the general economy, and railroaders ought to be in a comparable position. That is the reason for the offering of this amendment.

Mr. President, I ask unanimous consent that Senator FORD be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. DIXON. Mr. President, last March, we were able to give railroad workers with less than 10 years of service an additional 10 weeks of unemployment compensation. As you recall, with the abolition of the national trigger, we inadvertently eliminated the mechanism by which these workers qualified for extended benefits.

That program expired on June 30, 1983, however, and many people were unable to collect the full 10 weeks.

There is ample money available from the March appropriation to cover this amendment, which is estimated to cost between $60 and $65 million.

Five thousand railroad workers in Illinois will benefit from this extension, which I introduced with Senators SPECTER and SASSER last month, as S. 1717.

The amendment will provide for 10 weeks of Federal supplemental compensation for railroad workers who have less than 10 years of service, and who lost their jobs after June 30, 1983. In addition, it would allow those who were eligible for the program prior to June 30, but who did not collect their full 10 weeks, to have that opportunity.●

RAIL WORKER AMENDMENT

Mr. PRYOR. Mr. President, I am pleased to be a cosponsor of the amendment offered by the distinguished Senator from Pennsylvania, Mr. SPECTER, which provides relief in the form of supplemental unemployment benefits for those rail workers with less than 10 years of railroad service.

Earlier this year, Congress passed similar legislation as part of the emergency jobs bill. However, this particular legislation expired on June 30 leaving thousands of rail workers with less than 10 years of service in the lurch.

Mr. President, I am sure everyone here is very familiar with the problems our Nation's rail workers have experienced in the last few years. It has only been a little over a month since Congress passed legislation enabling the railroad retirement system to remain solvent and thereby avoid cuts in benefits for railroad retirees. These cuts became necessary in large part because of the severely reduced number of rail jobs and the subsequent loss of employee contributions which fund the railroad retirement system.

It has been estimated that between 30,000 to 50,000 rail workers with less than 10 years of service are no longer employed and are in need of financial assistance. This legislation extends benefits for those workers who have already received their initial 26 weeks of benefits an additional 10 weeks.

There are approximately 700 rail workers in my State that will qualify for these extended benefits and I know that they are very anxious to go back to work. It is my hope that my colleagues will provide them temporary financial assistance until those jobs are re established or new employment may be found.

Mr. SPECTER. Mr. President, I thank the Chair and I yield the floor.

Mr. DOLE. Mr. President, the Senator from Pennsylvania has accurately described the amendment. I will say I discussed this with both Senator LONG and Senator KENNEDY, the ranking member of the Labor Committee. They have no objection.

Very quickly, as pointed out by Senator SPECTER, the emergency jobs bill in June of this year contained a provision appropriating $125 million to finance unemployment benefits for unemployed railroad workers. As I understand the situation, this amount has not been fully expended by the Railroad Retirement Board which administers the railroad unemployment insurance program.

Although as the Senator from Pennsylvania pointed out, we do not have jurisdiction in the committee on this matter, we have cleared it with the Labor Committee and they have no objection. It would be a good place to insert the amendment.

I am not certain what the attitude of the House will be because it will be going to the Ways and Means Committee where they may not have jurisdiction either.

Having cleared it with the principals, we have no objection to accepting the amendment. I think I can speak for the distinguished Senator from Louisiana, Senator LONG, in this regard.

The PRESIDING OFFICER. Is there further discussion?

Mr. PRYOR. Mr. President, I ask unanimous consent that I may be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 2259) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2260

Mr. SPECTER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. SPECTER) proposes an amendment numbered 2260.

Mr. SPECTER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following:

TITLE --HEALTH CARE FOR UNEMPLOYED WORKERS GRANTS TO STATES

SEC. . (a) Title XX of the Social Security Act is amended by adding at the end thereof the following new section:

"HEALTH CARE FOR UNEMPLOYED WORKERS

"SEC. 2008. (a)(1) Notwithstanding section 2005(a)(4) and any other provisions of this

title, any State (as defined in paragraph (4)) may establish a program under this section for providing health care coverage for unemployed workers, subject to the provisions of this section.

"(2) The State may choose those groups of individuals (and their immediate families) who shall be covered under the program, the duration of such coverage, and the duration of the program, as the State determines to be appropriate, except that—

"(A) no coverage may be provided to any individual (or his immediate family) unless such individual (i) is receiving regular, extended, or Federal supplemental compensation, railroad unemployment compensation, or any other Federal unemployment compensation, or (ii) is unemployed and has exhausted his rights to such compensation (other than for cause) by reason of payment of all such compensation for which he is eligible, within the prior 6 months, or (iii) was eligible for such compensation within the prior 30 days but lost such eligibility on account of employment;

"(B) no coverage may be provided for the first 6 weeks during which an individual is eligible for compensation (referred to in subparagraph (A)) in a benefit year (as determined under the applicable unemployment compensation law);

"(C) no coverage may be provided to any individual unless such individual was enrolled in a group health plan of the employer by whom he was employed at the time he last became eligible for compensation described in subparagraph (A) (and in making a determination with respect to prior enrollment, and with respect to coverage described in subparagraphs (F) and (G), the State may use the broadest possible determination of proof);

"(D) no coverage may be provided with respect to any services provided prior to October 1, 1983, or services provided for an individual prior to the time such individual is determined to be eligible under such program, or inpatient services provided in a continuous period which began prior to such date or such eligibility;

"(E) no coverage may be provided for any individual who is otherwise eligible for medical assistance under the State plan under title XIX or who is eligible for benefits under title XVIII;

"(F) no coverage may be provided for any individual who is covered under a group health plan for which a contribution toward the cost of the plan is being made by an employer, former employer, union, or any entity other than the individual, or who could have been so covered if an election had been made and premiums had been paid on a timely basis;

"(G) no coverage may be provided for any individual who is covered under a group health plan of such individual's spouse for which a contribution toward the cost of the plan is being made by an employer, former employer, union, or any entity other than such spouse, or who could have been so covered if an election after the date of the enactment of this section had been made and premiums had been paid on a timely basis; and

"(H) no coverage may be provided for any individual whose family income exceeds an amount equal to 100 percent of the median family income in such State for a family of the same size as such individual's family (and in making a determination with respect to an individual's family income, the State shall determine the declaration or proof of income to be required, the type of income to be included, and the time period over which the income is to be measured).

"(3)(A) The Secretary may waive the requirements of paragraph (2)(H) to the extent that special circumstances permit presumptions about the family income of applicants which make it unnecessary to apply the means test described in such paragraph on a case-by-case basis.

"(B) the provisions of paragraph (2)(H) shall not preclude a State from imposing a means test that is more restrictive than the test described in such paragraph.

"(4) Notwithstanding section 1101(a)(1), for purposes of this section the term 'State' means the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands.

"(b)(1)(A) Services under the program established under this section may include only—

"(i) inpatient hospital services;

"(ii) emergency outpatient hospital services;

"(iii) routine and emergency physician services (including those provided in health clinics but not including those provided in nursing care or intermediate care facilities);

"(iv) prenatal, delivery, and post partum care;

"(v) laboratory and diagnostic X-ray services;

"(vi) X-ray, radium, and radioactive isotope therapy;

"(vii) services of a nurse midwife, described in section 1905(a)(17); and

"(viii) home health services in cases where the State determines that the coverage of such services is cost effective.

"(B) The State must include under the program some ambulatory and some institutional services.

"(C) No drugs or biologicals shall be included within the covered services described in subparagraph (A) unless provided as part of inpatient hospital services.

"(2) The State shall determine the amount, duration, and scope of the covered-services described in paragraph (1) which shall be included under the program, but in no event shall the amount, duration, or scope of such services under the program under this section exceed the amount, duration, or scope of such services included under the State plan for medical assistance for individuals described in section 1902(a)(10)(A).

"(3) Services may be provided through various arrangements made with providers by the State, but no such arrangement may provide services which are more generous than those provided under the State plan for medical assistance for individuals described in section 1902(a)(10)(A).

"(4) No cash payments may be made under the program to individuals participating in the program.

"(c)(1) The State may provide for a weekly contribution for any individual participating in the program under this section, without regard to whether such individual is receiving compensation (referred to in subsection (a)(2)(A)), but no such contribution may exceed an amount equal to 8 percent of the amount of compensation (referred to in subsection (a)(2)(A)) for which such individual is eligible for such week or for the last week for which he was eligible for such compensation. Such contributions may vary for individual coverage and family coverage and by provider arrangement.

"(2)(A) The State may require that deductibles and coinsurance amounts be imposed for users of services under the program. If the State chooses to require such deductibles and coinsurance amounts, they shall be at least the same amounts imposed under the State plan for medical assistance for individuals described in section 1902(a)(10(A), subject to the limitations in this paragraph.

"(B) The estimated average monthly amount of such deductibles and coinsurance amounts for outpatient services may not exceed an amount equal to 5 percent of the average monthly benefit amount in such State for unemployment compensation referred to in subsection (a)(2)(A).

"(C) The amount of such deductibles and coinsurance amounts for inpatient services may not exceed the maximum amount of deductibles and coinsurance amounts which could be imposed by the State under its State plan for medical assistance for individuals described in section 1905(a)(10(A) consistent with the provisions of title XIX, subject to the limitations in subparagraphs (D) and (E) of this paragraph.

"(D) No deductibles or coinsurance amounts may be imposed for prenatal, delivery, or post partum care.

"(E) No deductibles or coinsurance amounts may be imposed until after public hearings which provide adequate notice and opportunity for public participation have been held by the State with respect to such imposition.

"(F) Subject to the limitations specified in this paragraph, such deductibles and coinsurance amounts may vary with respect to different groupings of eligible individuals, and various coverage periods.

"(3) Any contribution amount imposed by the State must be used by the State to pay the State share of the cost of the program under this section, or to provide additional services or periods of coverage to individuals eligible for coverage under such program.

"(d)(1) Payment by the State for services provided to individuals eligible for the program under this seciton shall be made through the same administrative mechanisms through which payments are generally made under the State plan for medical assistance under title XIX; however, the State may provide for arrangements with carriers or providers which provide for cost effective financing and delivery systems, and may selectively make arrangements with a specific group or provide for capitation reimbursement, but no such arrangement may provide for services which are more generous than those provided under the State plan for medical assistance for individuals described in section 1902(a)(10)(A). Services provided through a prepaid capitation arrangement need not be provided through an organization meeting the requirements of section 1903(m).

"(2) Any limitations under the State plan for medical assistance on the amount that provider of services may charge the recipient of such services shall also apply to the program under this section, except that contributions, deductibles, and coinsurance may be charged in accordance with subsection (c).

"(e)(1) Determinations of qualification for coverage under the program under this section shall be made by the State agency administering the State's unemployment compensation law approved under section 3304 of the Internal Revenue Code of 1954. The State may administer the services program under this section directly through the State agency administering the State plan for medical assistance under title XIX of this Act, or through arrangements with others.

"(2) Upon becoming eligible for compensation (referred to in subsection (a)(2)(A)), an individual shall be informed of the eligibility criteria for coverage under the program established under this section and the benefits provided, and shall have four weeks in which to voluntarily enroll in such program. Such individual shall also be informed of the possibility that such individual may be eligible to enroll in a health plan of his spouse. If the individual declines the opportunity to enroll, or later voluntarily termi-

nates his enrollment, he may not again enroll in such program unless he subsequently becomes eligible for compensation (referred to in subsection (a)(2)(A)) for a new benefit year (as determined under the applicable unemployment compensation law).

"(3) In the case of any State which chooses to require the payment of a contributor, the State may deduct the amount of the contribution from the amount of such compensation paid to an individual enrolled in such program.

"(4) Any State which chooses to cover under its program individuals residing in such State who are or were receiving railroad unemployment compensation, may enter into an agreement with the Railroad Retirement Board under which—

"(A) the Railroad Retirement Board shall notify those unemployed railroad workers who may be eligible under the program of the availability of the program in accordance with paragraph (2);

"(B) the Board shall furnish the State agency making eligibility determinations with such information as the State agency may require in order to make eligibility determinations with respect to such unemployed railroad workers or shall, to the extent feasible, perform such determinations for the State agency;

"(C) the Board shall deduct contribution amounts from any railroad unemployment compensation payable to such unemployed railroad workers in the same amounts as if such workers were receiving unemployment compensation under the State unemployment compensation law, and transfer such amounts to the State; and

"(D) the State shall reimburse the Board for administrative costs incurred under such agreement, and such amounts shall be paid into the railroad unemployment insurance administration fund.

"(5) The Railroad Retirement Board is authorized to carry out those functions required of it under any agreement entered into under paragraph (4).

"(f)(1) Notwithstanding sections 2002 and 2003, payments to States having programs established under this section shall be made in accordance with the provisions of this subsection, but subject to subsection (g). Payments under this subsection are in addition to any amounts to which a State is entitled under section 2002, and payments made under section 2002 may not be used for purposes of this section. An amount, not to exceed the State's allotment determined under paragraph (2), equal to the Federal percentage (as determined under paragraph (6)) of the amount expended by such State for its program established under this section (excluding administrative costs) shall be paid to the State in the same manner as payments are made under section 1903(d).

"(2) The Secretary shall allot $750,000,000 to carry out this section for each of the fiscal years beginning on October 1, 1983, and October 1, 1984, among the States as follows:

"(A) One-half of such amount shall be allotted among the States on the basis of the relative number of insured unemployed individuals who reside in each State as compared to the total number of insured unemployed individuals in all the States.

"(B) One-half of such amount shall be allotted among the States on the basis of the relative number of individuals who have been unemployed for 26 weeks or more and who reside in each State as compared to the total number of such individuals in all the States.

"(3) Allotments shall be made on the basis of the most recent 12-month period, preceding the month in which the Secretary makes such allotments, for which adequate data is available.

"(4) Funds shall be allotted at the beginning of each fiscal year referred to in paragraph (2), but payment shall be made as described in paragraph (1). Amounts allotted for the fiscal year beginning October 1, 1984, may be paid to States for expenses incurred in providing services under the program for individuals who are enrolled in the program on September 30, 1985, until their eligibility for such program terminates, or March 31, 1986, whichever is earlier.

"(5) Any funds allotted for a fiscal year to a State which did not establish a program under this section shall be reallotted to those States having a program, at the end of such fiscal year. Such funds may be expended in the same manner as described in paragraph (4).

"(6)(A) For purposes of this section, the Federal percentage is 100 percent with respect to services provided prior to April 1, 1984, and, with respect to services provided on or after April 1, 1984, is—

"(i) 95 percent with respect to services provided in any State during a week for which State's rate of insured unemployment (as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970) for the period consisting of such week and the preceding 51 weeks is equal to or exceeds 5 percent;

"(ii) 80 percent with respect to services provided in any State during a week for which the State's rate of insured unemployment for the period consisting of such week and the preceding 51 weeks is equal to or exceeds 4 percent but is less than 5 percent;

"(iii) 65 percent with respect to services provided in any State during a week for which the State's rate of insured unemployment for the period consisting of such week and the preceding 51 weeks is equal to or exceeds 3 percent but is less than 4 percent; and

"(iv) 50 percent with respect to services provided in any State during a week for which the State's insured unemployment rate for the period consisting of such week and the preceding 51 weeks is less than 3 percent.

"(B) The Federal percentage otherwise applicable under subparagraph (A) for any week beginning on or after April 1, 1984, shall be increased by 15 percentage points (but not to a percentage greater than 95 percent) with respect to services provided in any State during a week for which the State's rate of insured unemployment for the period consisting of such week and the preceding 51 weeks is equal to or exceeds 120 percent of the average of such rates for such State for the corresponding 52-week period ending in each of the preceding 2 calendar years.

"(C) Any State which qualifies for a particular matching percentage under clause (i), (ii), (iii), or (iv) of subparagraph (A), or under subparagraph (B), shall continue at such percentage for a period of not less than 6 months, unless it subsequently qualifies for a higher percentage under such provisions, beginning with the first week in which such State so qualifies, and may subsequently requalify for a particular higher matching percentage upon reaching the required rate of insured unemployment after the end of such 6-month period. No such period may extend beyond March 31, 1986. Notwithstanding the first sentence of this subparagraph, the matching percentage for each State with respect to services provided after Septemer 30, 1985, and before April 1, 1986, shall be the matching percentage in effect for such States with respect to services provided on September 30, 1985.

"(7) The Secretary shall make payments for administrative costs incurred in carrying out the program established under this section, in a total amount not to exceed $150,000,000 for each of the fiscal years beginning on October 1, 1983, and October 1, 1984. $70,000,000 of such reimbursement for each fiscal year shall be made to the State agencies administering the services program under this section in accordance with the allotment formula in paragraph (2), and $80,000,000 of such reimbursement for each fiscal year shall be made to the Department of Labor for payment to the State agencies (of those States having a program under this section) administering the State's unemployment compensation law in accordance with the distribution formula used for purposes of title III of this Act. Payments under this paragraph may be made with respect to program costs incurred after March 31, 1986.

"(g)(1) Only a State having a rate of insured unemployment (as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970) for a period consisting of any week and the 51 preceding weeks, of 2 percent or more, may enroll new individuals in the program under this section during such week. If a State qualifies to enroll new individuals under the preceding sentence, such qualification shall continue for a period of not less than 6 months beginning with the first week in which such State so qualifies, and any State may subsequently requalify upon reaching the required rate of insured unemployment after the end of such 6-month period, but no such period may extend beyond March 31, 1986.

"(2) During a period in which a State may not enroll new individuals in its program by reason of paragraph (1), payment under this section may be made with respect to individuals previously enrolled in such program until their eligibility expires, or, if sooner, March 31, 1986.

"(h) Any State establishing a program under this section shall submit a report to the Secretary on August 1, 1984, on the program's implementation and impact. A final report shall be submitted in May 1986 by any State which carries out its program for any period after March 31, 1984, upon expiration of its program. The form and content of the reports required under this subsection shall be determined by the Secretary.

"(i) The State shall provide that the payment for any services received by an individual under the program shall be secondary to, and shall be reduced by the amount of, any other payment which is or could be made with respect to such services under any other health plan or public program, or from a third party, including any workmen's compensation law or plan, any automobile or liability insurance policy or plan (including a self-insured plan), and any no fault insurance. The State shall require each individual enrolled in the program to assign all rights to such payments as he may have to the State as a condition of enrolling in the program.

"(j)(1) No payment may be made under this section to any State unless such State provides, subject to paragraph (2), that any group health plan for employees of such State, provided by such State or to which such State makes a contribution, provides for open enrollment in accordance with section 4912(b) of the Internal Revenue Code of 1954.

"(2)(A) Except as provided in subparagraph (B), the requirements of paragraph (1) shall apply to enrollment periods for employees whose spouses are involuntarily laid

off or separated more than 60 days after the date of the enactment of this section.

"(B) In the case of a group health plan which was subject to a collective bargaining agreement in effect on the date of the enactment of this section, the date on which such agreement expires (determined without regard to any extensions agreed to after such date of enactment) shall, if later, be substituted for the date (60 days after such date of enactment) referred to in paragraph (1).".

(b) Section 3304(a) of the Internal Revenue Code of 1954 is amended by redesignating paragraph (18) as paragraph (19), by striking out "and" at the end of paragraph (17), and by inserting after paragraph (17) the following:

"(18) if the State establishes a program under section 2008 of the Social Security Act, the State agency administering the State unemployment compensation law shall carry out the functions required of it under such section; and".

(c) Section 3304(a)(4)(C) of the Internal Revenue Code of 1954 and section 303(a)(5) of the Social Security Act are each amended by inserting "or health care" after "health insurance", and by inserting "or a contribution amount under section 2008 of the Social Security Act" after "program approved by the Secretary of Labor".

OPEN ENROLLMENT REQUIRED FOR EMPLOYEES HAVING UNEMPLOYED SPOUSE

SEC. . (a) Chapter 41 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER B—HEALTH PLANS OF LARGE EMPLOYERS WHICH DO NOT MEET OPEN ENROLLMENT REQUIREMENTS FOR SPOUSES OF THE UNEMPLOYED

"Sec. 4912. Tax on health plans of large employers which do not meet open enrollment requirements for spouses of the unemployed.

"SEC. 4912. TAX ON HEALTH PLANS OF LARGE EMPLOYERS WHICH DO NOT MEET OPEN ENROLLMENT REQUIREMENTS FOR SPOUSES OF THE UNEMPLOYED.

"(a) TAX IMPOSED.—In the case of a large employer, there is hereby imposed for each taxable year a tax equal to—

"(1) $500, multiplied by

"(2) the aggregate number of failures to meet the requirements of subsection (b) during such taxable year under any group health plans offered by such employer.

"(b) OPEN ENROLLMENT PERIOD.—

"(1) IN GENERAL.—A group health plan meets the requirements of this subsection only if it provides a qualified open enrollment period for each married employee—

"(A) who is (or at a previous time was) eligible to enroll or is enrolled under the plan, and

"(B) whose spouse loses eligibility for coverage under a group health plan due to the involuntary layoff or involuntary separation (other than for cause or mandatory retirement) from the spouse's employment.

"(2) TERMS AND CONDITIONS SAME AS FOR ENROLLMENTS FOR NEW EMPLOYEES.—

"(A) IN GENERAL.—The terms and conditions of an enrollment during a qualified open enrollment period shall be the same as the terms and conditions which would be offered by the group health plan to the married employee described in paragraph (1) if such employee began employment for the employer on the first day of such period.

"(B) EMPLOYEES ALREADY COVERED MAY NOT INCREASE LEVEL OF BENEFITS.—In the case of an employee who is covered under group health plan before the qualified enrollment period, subparagraph (A) shall not require a group health plan to allow such individual to elect a higher level of benefits than that provided by such coverage.

"(C) COMMENCEMENT OF COVERAGE.—Any enrollment during a qualified open enrollment period need not take effect before the date on which the loss of coverage described in paragraph (1)(B) takes effect.

"(c) DEFINITIONS; NONTAXABLE ENTITIES.—For purposes of this section—

"(1) QUALIFIED OPEN ENROLLMENT PERIOD.—For purposes of this paragraph, the term 'qualified open enrollment period' means the 30-day period beginning on the day on which an appropriate State agency notifies the spouse of a married employee described in subsection (b)(1) that such spouse has become eligible for receipt of unemployment compensation under any Federal or State law by reason of the separation or layoff described in subsection (b)(1)(B).

"(2) LARGE EMPLOYER.—The term 'large employer' means an employer who, on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed for some portion of the day 10 or more individuals.

"(3) EMPLOYER.—The term 'employer' does not include the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision therof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States.

"(4) Group health plan.—The term 'group health plan' has the meaning given such term by section 162(i)(2).

"(5) Nontaxable entities.—In the case of a large employer who is not subject to tax under this title, the calendar year shall be treated as such employer's taxable year.

"(d) Cross References.—

"(1) For provision denying deduction for tax imposed by this section, see section 275(a)(6).

"(2) For provisions making deficiency procedures applicable to tax imposed by this section, see section 6211 et seq.".

(b)(1) Chapter 41 of such Code is amended by striking out the chapter heading and inserting in lieu thereof the following:

"CHAPTER 41—PUBLIC CHARITIES; CERTAIN HEALTH PLANS OF LARGE EMPLOYERS

"Subchapter A. Public charities.

"Subchapter B. Health plans of large employers which do not meet open enrollment requirements for spouses of the unemployed.

"Subchapter A—Public Charities".

(2) The table of chapters for subtitle D of such Code is amended by striking out the item relating to chapter 41 and inserting in lieu thereof the following:

"Chapter 41. Public charities; certain health plans of large employers.".

(3) Subparagraph (B) of section 6104(c)(1) of such Code is amended by striking out "or chapter 41 or 42" and inserting in lieu thereof ", subchapter A of chapter 41, or chapter 42".

(c)(1) Except as provided in paragraph (2), the amendments made by this section shall apply to enrollment periods for employees whose spouses are involuntarily laid off or separated more than 60 days after the date of the enactment of this Act, in taxable years ending after such date.

(2) In the case of a group health plan which was subject to a collective-bargaining agreement in effect on the date of the enactment of this Act, the date on which such agreement expires (determined without regard to any extensions agreed to after the date of enactment of this joint resolution) shall, if later, be substituted for the date provided by paragraph (1).

STUDY OF PRIVATE SECTOR HEALTH CARE COVERAGE FOR UNEMPLOYED WORKERS

SEC. The Secretary of Health and Human Services is directed to conduct a study of changes which might be made in employer-provided health care coverage which would provide adequate continuing health care coverage and conversion privileges for employers who are involuntarily terminated from employment. Such study shall include estimates of the costs which would be incurred by employers in providing continuing health care coverage of various durations, and at various contribution levels by the former employee (including a zero contribution level). The Secretary shall report the results of the study to Congress not later than January 1, 1985, and shall include any recommendations for legislation which would provide for such continuing coverage.

TITLE —INCOME AVERAGING

SEC. Percentage by Which Income Must Exceed Base Income Increased from 120 to 140

(a) INCREASE MUST EXCEED 140 PERCENT OF AVERAGE BASE PERIOD INCOME.—Sections 1301 and 1302(a) of the Internal Revenue Code of 1954 (relating to income averaging) are each amended by striking out "120 percent" and inserting in lieu thereof "140 percent".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1983.

Mr. SPECTER. Mr. President, this amendment would provide for health insurance coverage for the unemployed and is being offered at this time to generate a colloquy with the distinguished chairman of the Finance Committee. I intend to withdraw the amendment after my presentation and that colloquy.

Mr. President, by way of a brief explanation, health insurance for the unemployed is a measure which has attracted considerable attention from the distinguished chairman of the Finance Committee (Mr. DOLE); from my colleague from Pennsylvania (Mr. HEINZ); from the chairman of the Health Subcommittee of Finance (Mr. DURENBERGER); by the chairman of Labor and Human Resources (Mr. HATCH); by the chairman of the Employment and Productivity Subcommittee of the Labor and Human Resources Committee (Mr. QUAYLE), as well as many other Senators and Members of the House of Representatives.

This matter first came to my personal attention during an open house which Senator HEINZ and I attended in Midland, Pa., on March 5 of this year. The residents of that community, which had been decimated when the sole employer of the community, Crucible Steel closed, made the point that health insurance for the unemployed was the most pressing item on the agenda. Following that, Senator HEINZ and I introduced legislation which has gone through an elaborate period of consideration. It was considered by the President when Senator

HEINZ, Governor Thornburgh of Pennsylvania, and I had occasion to bring it to his attention and it received his personal interest and later the blessing of the administration, as evidenced by the Director of OMB, David Stockman.

There have been extensive deliberations on this matter, where leadership has been provided by Senators DOLE, HEINZ, DURENBERGER, HATCH, and QUAYLE.

We have worked out, I think, the mechanism for paying for this program, which will be a 2-year block grant to the States, at a cost of some $1.8 billion. I believe there has been an agreement that the measure would be paid for by modifying income averaging, which would provide for full payment for this bill.

I have discussed the matter, as has Senator HEINZ, with Senator DOLE prior to submission, with the goal being to find a date certain when this body can take up this bill. I am aware that it is considered a fast track to have a major piece of legislation like this acted on within 1 year, but for those people who are unemployed and not covered by health insurance, this risk weighs very heavily on them. Those who have needed immediate care and not had it are, of course, very much in need of action by the Congress and the signature of the President. That is the reason for its submission at this time.

Mr. President, I yield the floor to my colleague and distinguished senior Senator (Mr. HEINZ).

Mr. HEINZ. Mr. President, I thank my distinguished colleague for yielding. I want to commend my colleague for offering this amendment and in view of the discussion, indeed the announcement, that Senator DOLE made to the Finance Committee on Friday, I am optimistic that we can make progress on not only having legislation that will meet the needs for health care of people who are unemployed, but will do so in a responsible way by paying for it, as my colleague (Mr. SPECTER) has outlined.

I also simply want to say that the Senator from Kansas, the distinguished chairman of our committee (Mr. DOLE) has been extraordinarily helpful at every twist and turn of what seems to many as perhaps an unduly long road. If my constitutents were represented by the Senator from Kansas, they would be fortunate, indeed, because at every opportunity, he has tried to work out differences in approach to avoid problems that might be caused by the House to find an acceptable means of paying for it and even he, in all his efforts, which have been considerable, has not been able to achieve total unanimity. We do know the administration still wants to have its tax cap instead of income averaging. The tax cap simply is not going to happen this year, as far as this Senator can tell. Senator DOLE is not only a man of commitment to his principle; he has been very realistic in what can and cannot be achieved. I would be remiss, Mr. President, if I did not thank him and comment him most sincerely for it.

Let me say, in just 60 seconds, again I think I speak for Senator SPECTER as well as myself, that it is true that economic recovery is continuing. It is also true that in some States, like Pennsylvania, it is pretty hard to find it. We have too many towns with 10-, 15-, 20-percent unemployment—Johnstown, Lock Haven—many communities in the Mahoning Valley, many in Beaver County.

We have terrible problems in our State, and we hope that we can quite promptly lock into an appropriate time to address the issue in full. Obviously, the FSB program needs to be extended today. I think that Senator SPECTER and I shall understand that. We look forward to discussing this and having a colloquy here with Senator DOLE.

Mr. DOLE. Mr. President, there are three good reasons we should not act on this matter at this time. First, because a process is underway which will result in the presentation of a better program of health benefits for the unemployed; second, because the program should be financed; and third, because we need to move ahead with the FSC extension.

Currently, there are two bills on the Senate calendar which would provide health care benefits for the unemployed. Both S. 951 and S. 242 address the urgent needs of the unemployed and their families for health benefit protection during a period of economic difficulty. Although the bills address the problem somewhat differently, we have been working to resolve those differences.

That process is almost complete. As a result, we will have put together features from both bills so that the program we will then propose is better defined and provides a better basis for administration and service delivery.

The health benefits for the unemployed we seek to provide must be financed. Both the Finance Committee and the Labor and Human Resources Committee have recognized that funds need to be made available to meet this commitment. A spending program such as this should not be created simply by raising the deficit. The committees agree and the administration agrees on this point. The Finance Committee meets next week to take up possible revenue-raising provisions which can be used to pay for this program.

I am led to believe that this amendment is needed because without it there will be no health benefits program for the unemployed. That is just not so. The Senate will have plenty of opportunity to move on this matter. What is important here is the extension of the FSC program. This amendment can slow down and complicate the extension of this needed program. Unless the FSC program is acted on by September 30, there will be a loss of cash benefits for many unemployed workers in this Nation.

There are a number of measures which will be coming out of the Finance Committee—several of which can be used as the vehicle to move on health benefits for the unemployed. I am committed to seeing that we so move on this important program and give you my assurance that the matter will come to the floor for our consideration.

I am not certain I can give a date certain, because I have checked with the majority leader and it is very difficult to do. We have been negotiating, as Senator HEINZ pointed out, Senator SPECTER and others who have an interest in this, with the Labor Committee and the Finance Committee. As I understand it, nearly every issue has been resolved. There is one question of jurisdiction, which is rather important. But I think that may be resolved.

I think the one area we agree on is if we are going to pass this bill, we ought to find a way to pay for it, not just do as the House did, pass out a program without a means of financing it.

We did provide some means in our committee to pay for it, but that was not satisfactory to the administration. Now we are looking for some other way to pay for it, from revenue, that is satisfactory to the administration.

There has been one administration request, I think a proper one, that we not pass a bill out here that just creates a program without proper financing. I think on a bipartisan basis we can agree to do that, or this program is never going to come into fruition.

I know that Senator HEINZ of Pennsylvania has a matter he wants to bring up the first week we are back, the Export Administration Act. There is going to be a farm bill pending, I assume, about that time. But it seems to me that in the second week—I cannot say for certain—but the second week after we return, which would be the week of the 24th, we ought to be able to bring this matter to the floor.

Mr. HEINZ. If the Senator will yield for a question, we anticipate that we shall act on this matter before we act on the debt ceiling.

Mr. DOLE. Knowing what would happen if we did not, I would say yes, because someone is going to offer it on the debt ceiling. I would like to act on it on its own. I think it has merit and ought to be done. I think we can do it before that.

Mr. HEINZ. I thank the Senator. I think he understands the situation better than anybody else except maybe the Senators from Pennsylvania.

Mr. SPECTER. Would the Senator yield for a further inquiry?

Mr. DOLE. Yes, Mr. President.

Mr. SPECTER. Assuming it is acted on in the week of the 24th, what kind of chronology does the Senator from

Kansas anticipate with respect to the other body? My concern is that we move through to final passage and submission to the President before we adjourn, which is now, apparently, set for mid-November, before Thanksgiving. That has been the announcement of the majority leader, that he and the Speaker have come to that understanding.

I know the concern Senator HEINZ shares with me is that we act on it early enough to go to conference, iron it out, and submit it to the President so we do not have this matter as pending business when we come back on January 23, which the majority leader has announced is our date of return.

Mr. DOLE. Mr. President, I would like to say yes, that we are going to make certain the President signs it. I think I can assure both Senators from Pennsylvania that we are going to bring it up on the Senate floor, we are going to dispose of it on the Senate floor, I hope favorably. But there are some Members who are opposed to anything at this time.

As I have indicated, the majority leader is just not able to say we are going to bring it up on the 17th, the 18th, or the 22d, but generally it seems to me that we can do it in the second week.

I hope that will satisfy the Senator.

Mr. SPECTER. What kind of timetable does the Senator anticipate?

Mr. DOLE. I should not think it would take too long. We would have to work out our differences with the committee, any amendments that might be offered, and we should be able to dispose of it in a couple of days.

Mr. SPECTER. I realize the chairman of the Finance Committee cannot make any assurances as to what the President is going to do by way of signature, but is it his expectation that we would be able to conclude the matter before we adjourn in mid-November?

Mr. DOLE. That is my expectation, yes.

Mr. SPECTER. With the assurance, I thank the Senator from Kansas. I thank him for his leadership on this important matter.

Mr. DOLE. Mr. President, I thank both Senators from Pennsylvania.

As far as I know, the only other amendment is an amendment that may be offered by the Senator from Indiana.

The PRESIDING OFFICER. Is there any further debate? That amendment has not been withdrawn.

Mr. SPECTER. Mr. President, I announced my intention to withdraw the amendment, and I do withdraw it.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. DOLE. Mr. President, I hope the Senator from Indiana could resolve a serious problem he has in his State in the conference rather than through the amendment route. We need to go to conference yet this afternoon and report back to the Senate either today or tomorrow. I would like to do it today. I know other Senators would like to leave.

Mr. RIEGLE. Mr. President, it is imperative that we act today to extend the Federal supplemental compensation (FSC) program, which is scheduled to expire tomorrow night. This emergency supplemental program has provided needed benefits for hundreds of thousands of unemployed who have lost their jobs through no fault of their own. Congress enacted this program on a temporary basis a little over a year ago to address the problem of disastrously high levels of unemployment. The disastrous 9.8-percent rate that existed then does not differ much from the 9.5-percent rate reported last month. Clearly, the need for this program exists today as it did 1 year ago.

The continuing need for a supplemental program in my State of Michigan is also evident. The 14.5-percent unemployment rate that plagued Michigan when Congress enacted the FSC program is virtually the same as the 14.3-percent rate that Michigan reported last month. Nearly 30,000 Michigan unemployed currently receive FSC benefits and they will find these benefits cut off abruptly if the program is not extended. Another 95,000 currently receive regular benefits and many of them will be left without benefits this winter should they remain unemployed and without a FSC program. While the slight upsurge in the number of employed in Michigan in the past few months is heartening, we must recognize that a large group of unemployed will be unable to secure employment in the next few months. Since Michigan and virtually all other States cannot qualify for the extended benefits program because of the unfair and irrational eligibility requirements, a FSC program is absolutely essential.

I believe that most of my colleagues in this body support the extension of this important program. The substance of the program that we extend, however, is the real issue to be addressed today. We in Congress cannot pat overselves on the back for supporting a FSC extension if the program we extend lacks certain necessary elements. The long-term unemployed, who have already suffered through endless weeks of fruitless job searches, depend on us to construct a fair and complete program to aid them through this difficult period.

I believe that the FSC program that we extend must contain certain provisions to address the problems of the long-term unemployed. While the bill reported out by the Finance Committee contains some of these provisions, I am cosponsoring certain amendments today to rectify some of the bill's deficiencies. Let me outline what I believe this FSC program must include.

SUFFICIENT WEEKS OF BENEFITS

Mr. President, providing a sufficient amount of protection to aid unemployed individuals' survival during their temporary period of unemployment constitutes the basic reason for having an unemployment insurance system. During long recessionary periods, such as the one we have suffered through during the past 3 years, a supplemental program is necessary because employment is that much more difficult to secure. When we extended the FSC program last winter, we felt that 16 weeks of FSC benefits were needed to provide sufficient protection for the unemployed in high unemployment States such as Michigan. When the program was extended last spring, 14 weeks constituted the maximum entitlement for the unemployed in high unemployment States. The bill reported by the Finance Committee before us advocates a maximum of 12 weeks of basic FSC benefits. While Michigan qualifies for the maximum in contrast to the original administration proposal under which Michigan was delegated to the minimum tier despite having the second highest unemployment rate in the Nation, the 12-week maximum is not acceptable.

As I have stated earlier, Michigan's unemployment rate remains nearly as high as when the FSC program was enacted. Furthermore, because of the misplaced reliance on the insured unemployment rate to determine the number of benefit weeks, Michigan unemployed have lost a significant amount of needed protection during the past few months. An unemployed worker in Michigan today can qualify for a maximum of 10 weeks of benefits beyond the regular program compared to a maximum of 29 weeks as recently as last March. At the very least, the long-term unemployed today deserve the maximum of 14 FSC weeks that was provided in last spring's extension. Consequently, I am supporting efforts on the floor today to increase the number of weeks provided.

REACH-BACK PROVISION

Mr. President, as Michigan has suffered through 44 consecutive months of double-digit unemployment, thousands of unemployed have exhausted their unemployment benefits without being able to find a job. In fact, estimates indicate that nearly 100,000 unemployed in Michigan have exhausted their FSC benefits. These unemployed need our support as much today as they did a few months ago. While I agree that we must increase our efforts to retrain many of these workers and to increase the number of local job opportunities, these efforts will take time. We cannot simply withdraw our support and delegate many of these proud workers to the welfare rolls when they cannot find jobs in their communities today. Yet, that is exactly what the administration advocates by opposing a reach-back provision that provides additional weeks of benefits to FSC exhaustees.

The bill before us today does not include a reach-back provision. With

nearly 100,000 FSC exhaustees in my State alone depending on further assistance, I find this omission unconscionable. I strongly urge my colleagues to join me in supporting those amendments that provide for a reach-back provision. We cannot turn our backs when jobs remain difficult to find.

TOTAL UNEMPLOYMENT RATE (TUR) OPTION

The number of FSC weeks for which a State qualifies depends on its insured unemployment rate (IUR). As I have noted in my bill (S. 1663) to extend the FSC program and in several statements, reliance on the IUR to determine eligibility is unfair. The IUR, which excludes FSC recipients and exhaustees, gives an inaccurate picture of many States' unemployment problems. This is certainly true in Michigan where the gap between the most recent IUR—3.54 percent—and the seasonally adjusted TUR—14.3 percent—is nearly 11 percent. I have advocated the use of the TUR as a State option in addition to the IUR. While the use of the TUR also poses some problems, I would support its use as an option until a better indicator than it or the IUR can be found.

The Finance Committee has agreed with us that the use of the IUR is often unwarranted. In fact, the report that accompanies the bill before us states that:

When a State experiences a prolonged period of extremely high unemployment, the validity of the current insured unemployment rate as an indicator of its relative unemployment situation compared with other States is weakened * * *

In order to correct this problem, the committee bill includes a special provision that grants a State the maximum FSC benefits if the State's average IUR over the period since January 1982 exceeds 6 percent. This alternative insured unemployment measure takes account of the many unemployed who have exhausted their regular benefits and who, therefore, are not included in the IUR. Since this answers many of the problems associated with the use of the IUR, I can support that provision.

Since the committee admits that the use of the IUR is often flawed, logic dictates that its use to determine eligibility for the extended benefits (EB) program is similarly flawed. Reliance on the IUR caused nearly 57,000 unemployed Michigan workers to trigger off the EB program this June even though Michigan had the second highest rate of unemployment in the Nation. No good reason exists to require that all States rely on this flawed measure to be eligible for the EB program. Consequently, I believe that the special provisions included in the committee bill should apply at each State's option to determine eligibility for the EB program.

LENGTH OF EXTENSION

Mr. President, it is time that we address the problems associated with the Federal unemployment insurance programs. We should consider the Byrd-Heinz proposal to combine the EB and FSC programs into a permanent program. We need to find a better measure than the IUR to determine eligibility for these benefits. These are problems that this Congress should address. Frankly, I am fearful that an 18-month extension of the FSC program will remove the incentive for this Congress to act.

Consequently, I support a 9-month extension of a more complete FSC program than the Finance Committee has proposed. In this way, this Congress will have to address the problems facing the EB and FSC programs without letting the FSC program expire. Moreover, we will not lock the long-term unemployed into a deficient program for 18 months.

Mr. President, we must extend the FSC program to aid the millions of Americans who remain unemployed today. We must also extend a FSC program that will truly address the problems of the long-term unemployed. Consequently, I urge my colleagues to support those amendments to the committee bill that address the problems that I have noted.

● Mr. BOSCHWITZ. Mr. President, I rise to express my support for S. 1887, the Federal supplemental compensation amendments of 1983. This bill will extend the FSC program for an additional 18 months through March 31, 1985. Without this extension FSC will expire at midnight tomorrow.

Mr. President, the FSC program was enacted in 1982 as we recognized the severity of the unemployment problem and the inadequacies of the existing unemployment compensation program.

Since then, we have extended FSC twice, once in December 1982 and then again in March 1983. Now, once again we face the termination of the program.

I firmly believe that we should extend FSC—given that the extended benefit program has been so ineffectual. Thus, I am very pleased to see that the administration and the Finance Committee moved so quickly to push this extension along.

We need to take a good look at the overall unemployment compensation program—however, until this occurs we need something to fill the gap.

This is why the continuation of FSC is so important. FSC has assisted over 41,000 Minnesotans in the past year alone, and without this extension, thousands of Minnesotans will face falling off the unemployment compensation rolls.

The economy is clearly in the midst of a recovery. Unemployment is dropping. In fact, the unemployment rate in Minnesota has fallen over 3 full percentage points in the last 9 months. Also, optimism about next year and employment opportunities is increasing.

But because unemployment is a lag indicator, there still are many people—like those on Minnesota's iron range—who are not able to find work. And unfortunately for those on the range, until the steel industry picks up, this problem will persist. It is people in this position who need FSC.

I urge my colleagues to speedily pass this important legislation.●

Mr. DOLE. Mr. President, as far as the manager of the bill knows, there are no further amendments, and I suggest we go to third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was orderd to be engrossed for a third reading and was read the third time.

Mr. DOLE. Mr. President, I move that the Senate proceed to H.R. 3929, Calendar Order No. 440.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3929) to extend the Federal Supplemental Compensation Act of 1982, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. DOLE. Mr. President, I move that all after the enacting clause be stricken and the language of S. 1887, as amended, be substituted.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to.

Mr. DOLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the engrossment and the third reading of the bill.

The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Kansas (Mrs. KASSEBAUM), and the Senator from Oklahoma (Mr. NICKLES) are necessarily absent.

Mr. BYRD. I announced that the Senator from Califorina (Mr. CRANSTON), the Senator from Arizona (Mr. DECONCINI), the Senator from Connecticut (Mr. DODD), the Senator from Nebraska (Mr. EXON), the Senator from Ohio (Mr. GLENN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from New Jersey (Mr.

LAUTENBERG), and the Senator from Nebraska (Mr. ZORINSKY) are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey (Mr. LAUTENBERG) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 278 Leg.]

YEAS—89

Abdnor	Goldwater	Murkowski
Andrews	Gorton	Nunn
Armstrong	Grassley	Packwood
Baker	Hart	Pell
Baucus	Hatch	Percy
Bentsen	Hatfield	Pressler
Biden	Hawkins	Proxmire
Bingaman	Hecht	Pryor
Boren	Heflin	Quayle
Boschwitz	Heinz	Randolph
Bradley	Helms	Riegle
Bumpers	Huddleston	Roth
Burdick	Inouye	Rudman
Byrd	Jepsen	Sarbanes
Chafee	Johnston	Sasser
Chiles	Kasten	Simpson
Cochran	Kennedy	Specter
Cohen	Laxalt	Stafford
D'Amato	Leahy	Stennis
Danforth	Levin	Stevens
Denton	Long	Symms
Dixon	Lugar	Thurmond
Dole	Mathias	Tower
Domenici	Matsunaga	Trible
Durenberger	Mattingly	Tsongas
Eagleton	McClure	Wallop
East	Melcher	Warner
Evans	Metzenbaum	Weicker
Ford	Mitchell	Wilson
Garn	Moynihan	

NOT VOTING—11

Cranston	Glenn	Lautenberg
DeConcini	Hollings	Nickles
Dodd	Humphrey	Zorinsky
Exon	Kassebaum	

So the bill (H.R. 3929), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BYRD. I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I move that the Senate insist on its amendment and appoint conferees.

The motion was agreed to, and the Presiding Officer appointed Mr. DOLE, Mr. ARMSTRONG, Mr. ROTH, Mr. CHAFEE, Mr. LONG, Mr. MOYNIHAN, and Mr. BOREN conferees on the part of the Senate.

Mr. DOLE. Mr. President, I ask that S. 1887 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The minority leader is recognized.

Mr. BYRD. Mr. President, I have sought recognition and received it for the purpose of asking the distinguished majority leader what the program is for the rest of today and for next week, insofar as he can at this point tell us.

Mr. BAKER. Mr. President, I thank the minority leader.

First of all, Mr. President, I wish to congratulate the chairman of the Finance Committee and the ranking minority member for managing a difficult bill in good time and bringing it to a unanimous conclusion.

Mr. BYRD. In good will and good humor.

Mr. BAKER. In good will and good humor.

I hope they can complete the conference report in the same spirit and do so promptly because I would like to get this thing back and out of the way in the next couple of hours, if we can.

LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 98-27

October 4, 1983

On Friday, September 30, the Senate passed (by vote of 89-0) H.R. 3929, an unemployment supplemental authorization bill, after amending the House-passed bill to include SSA-related amendments to:

- Extend for 90 days the temporary provision of Public Law 97-455 to continue disability payments during appeal (Cohen, R. ME, and a number of cosponsors). H.R. 3929 passed the House on September 29 with an amendment to continue disability payments for 45 days.

- Modify Public Law 98-21, the Social Security Amendments of 1983, to delay for two years (from January 1, 1984 to January 1, 1986) the effective date of the provision to treat as wages, for Social Security purposes, compensation paid to retired judges for periods when they assume a judicial workload (Mitchell, D., ME).

We understand that House and Senate conferees have tentatively agreed to extend the disability payments provision through December 7, 1983, and to the Senate-passed provision on treatment of compensation for retired judges. The Congress is expected to complete action on the bill before recess begins at close of business October 7.

EXCERPTS ONLY

I

98TH CONGRESS
1ST SESSION

H. R. 4101

To extend the Federal Supplemental Compensation Act of 1982, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1983

Mr. ROSTENKOWSKI introduced the following bill; which was referred to the Committee on Ways and Means

OCTOBER 6, 1983

The Committee on Ways and Means discharged; considered and passed

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A BILL

To extend the Federal Supplemental Compensation Act of 1982, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

EXTENSION OF PROGRAM

EXTENSION OF PROVISION ALLOWING PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 6. Section 223(g)(3)(B) of the Social Security Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "December 7, 1983".

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

SEC. 10. Notwithstanding section 101(d) of the Social Security Amendments of 1983, the amendments made by section 101(c) of such Act shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986 under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982 EXTENSION

Mr. PEASE. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means be discharged from further consideration of the bill (H.R. 4101) to extend the Federal Supplemental Compensation Act of 1982, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. FRENZEL. Reserving the right to object, Mr. Speaker, I yield to the gentleman to explain the nature of his request.

Mr. PEASE. Mr. Speaker, I thank the gentleman for yielding.

The Federal supplemental compensation program expired on September 30. This program provides additional weeks of unemployment benefits to jobless workers who have exhausted all other State and Federal benefits.

The House passed, on September 29, the bill, H.R. 3929, that would have extended the program for 45 days and substantially modified the benefits provided under the program. The Senate, on September 30, passed H.R. 3929 with amendments and requested a conference. The Senate's extension is for 18 months with a drastically reduced benefit package. The conference committee has not been able to resolve the differences between the House and Senate versions of the bill.

Mr. Speaker, the bill we are now considering would simply extend the program from September 30 through October 31. This is a simple extension of current law. The passage of the bill is vital if we are to avoid the disruption of this program and the delay in the payment of unemployment benefits. When we adjourn today, we will not be returning until the week of October 17. Failure to pass this temporary extension will result, at a minimum, in a 3-week delay in the payment of unemployment benefits.

In addition to the 30-day extension of the FSC program, this bill contains all of the items that have been agreed to by the conference. These items are unrelated to an FSC extension.

They include:

An increase in the permanent cap on title XX social service funds from $2.5 billion to $2.7 billion.

An extension of the authority to continue social security disability payments during an appeal from October 1 through December 7.

A provision to conform the Federal unemployment tax treatment of payments to the estate or survivor of a deceased individual with the social security tax treatment of such payments.

A 2-year extension of the exclusion from Federal unemployment tax of wages paid to certain alien farmworkers.

Provisions requiring Department of Labor studies on the use of substate triggers to target unemployment benefits; the identification of structurally unemployed workers; and the prevention of incorrect payments of unemployment benefits.

Two technical amendments relating to the repayment of Federal loans to State unemployment trust funds and the payment of interest on such loans.

The extension of an expiring program that provides financial incentives to States for the voluntary placement of children in foster care facilities.

A 2-year delay in the social security tax coverage of salaries paid to Federal judges in senior status.

And an authorization of not more than $5 million for the Department of Education to assist in the development of the Mansfield Center for Public Affairs and the Maureen and Mike Mansfield Center at the University of Montana.

If we adjourn without extending the FSC program, we will be sending a cruel message to the jobless workers of this country. I urge my colleagues to support the passage of this bill.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Further reserving the right to object, Mr. Speaker, I shall not object. I know that States will have to stop paying unemployment compensation claims that are otherwise valid.

We ought to modify the Federal supplemental compensation, but we should not let it expire merely because we cannot reach agreement in the conference committee on the details of the program.

This request will allow the conference committee another month to work out the details of a new FSC program. It should be passed.

Mr. FRENZEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio (Mr. PEASE)?

Mr. CAMPBELL. Mr. Speaker, reserving the right to object, I will not object to the unanimous-consent request of the gentleman, because the principal objective of this course of action is to provide a 30-day extension of the Federal supplemental compensation program, as he has so adequately explained; however, I think there are some major differences that are resting between this body and the other body in what we passed. I do not think we can reconcile those differences. We are too far apart, and yet we do not want to have this program expire.

Accordingly, the conference committee has been unable to resolve any of the difficult issues and has agreed only on those provisions that are considered relatively minor.

This measure that we have before us today will assure that eligible claimants will continue to receive their benefits for an additional 30 days while we try to reconcile those differences—and I certainly support that. I do not want to see anyone cut off of FSC because of differences in what we are trying to do.

The differences essentially are in the amounts of money, not in the extension of the benefits and not in taking care of the problems of the high unemployment States. The differences are whether we are going to spend a couple of billion dollars beyond anything that we had agreed to earlier, or whether we are going to go back and be realistic about deficits and this sort of thing. I happen to be one that wants to be realistic; but in addition to the 30-day extension of the current program, the legislation includes other incidental provisions which we did agree to.

As has been explained, these provisions include a 2-year extension of the exclusion of H-2 agricultural workers from the Federal Unemployment Tax Act, as well las the exclusion of payments of deferred compensation paid to survivors of deceased persons.

□ 1400

The Department of Labor will be directed to perform a 6-month study of the feasibility of substate area triggers and the feasibility of identifying structurally unemployed workers in this extension. The legislation also includes an increase in the title XX ceiling to $2.7 billion for fiscal year 1984 and following years. This will provide an additional $200 million this year and $100 million in 1984 and 1985 respectively for these programs, and these programs alone. The title XX money will not be targeted in this bill. Furthermore, no report language will deal with recommendations to the States. I think the Members should know that this provision is in the legislation.

Next, it extends until December 7 the time period in which a person may continue to receive social security disability payments during his appeal of a determination which seeks to deny benefits to the person. All of these provisions were part of H.R. 3929, though we did have some minor adjustments that have been agreed to in the conference committee.

The House conferees agreed to several provisions that were part of S. 1887. In the Senate bill, the ones that we agree to included directing the Department of Labor to study methods to prevent the payment of incorrect unemployment benefits. Next, it includes a 1-year extension of Federal participation in voluntary foster child placement programs. There is a 2-year delay in the application of social security coverage to the salaries of certain senior status judges.

Finally, the bill clarifies the treatment of the interest on certain cash management loans made to the State unemployment compensation agency. All of the provisions which our House conferees agreed to were not in controversy in the committee.

Mr. Speaker, I would have preferred for the conference committee to have concluded its action on H.R. 3929. However, the reality of the situation is that it could not reach agreement in a timely manner, and so, this somewhat unusual course of action is necessary.

We had the choice of either spending an enormous sum to reach agreement or going this route. I chose as others to go this route, and I think that we should honor the gentleman's unanimous-consent request, and I withdraw my reservation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 4101

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

EXTENSION OF PROGRAM

SECTION 1. (a) Paragraph (2) of section 602(f) of the Federal Supplemental Compensation Act of 1982 is amended by striking out "September 30, 1983" and inserting in lieu thereof "October 31, 1983".

(b) Pagagraph (2) of section 605 of such Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "November 1, 1983".

PAYMENT TO SURVIVORS OF DECEASED EMPLOYEES

SEC. 2. (a) Subsection (b) of section 3306 of the Internal Revenue Code of 1954 (defining wages) is amended by striking out "or" at the end of paragraph (13), by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; or", and by inserting after paragraph (14) the following new paragraph:

"(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died.",

(b) The amendments made by subsection (a) shall apply to remuneration paid after the date of the enactment of this Act.

TREATMENT OF CERTAIN AGRICULTURAL LABOR

SEC. 3. Subparagraph (B) of section 3306(c)(1) of the Internal Revenue Code of 1954 (relating to agricultural labor) is amended by striking out "January 1, 1984" and inserting in lieu thereof "January 1, 1986".

REPORT BY SECRETARY OF LABOR

SEC. 4. Not later than April 1, 1984, the Secretary of Labor shall submit a report to the Congress on—

(1) the feasibility of using area triggers in unemployment compensation programs, and

(2) the feasibility of determining whether individuals filing claims for unemployment compensation are structurally unemployed.

INCREASE IN TITLE XX FUNDING

SEC. 5. Section 2003 (c) of the Social Security Act is amended—

(1) by adding "and" at the end of paragraph (2); and

(2) by striking out paragraphs (3), (4), and (5), and inserting in lieu thereof the following:

"(3) $2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year.".

EXTENSION OF PROVISION ALLOWING PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 6. Section 223(g)(3)(B) of the Social Security Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "December 7, 1983"

DIRECT REPAYMENT OF GENERAL REVENUE ADVANCES

SEC. 7. (a) Section 1203 of the Social Security Act is amended by inserting after the first sentence the following: "Amounts appropriated as repayable advances shall be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section.".

(b) Any amounts transferred from the Federal unemployment account to the employment security administration account as of September 30, 1983, shall be transferred back to the Federal unemployment account.

ARRANGEMENTS TO PREVENT PAYMENTS OF UNEMPLOYMENT COMPENSATION TO RETIREES AND PRISONERS

SEC. 8. (a) The Secretary of Labor, the Director of the Office of Personnel Management, and the Attorney General are directed to enter into arrangements to make available to the States, computer or other data regarding current and retired Federal employees and Federal prisoners so that States may review the eligibility of these individuals for unemployment compensation, and take action where appropriate.

(b) The Secretary of Labor shall report to the Congress, prior to January 31, 1984, on arrangements which have been entered into under subsection (a), and any arrangements which could be entered into with other appropriate State agencies, for the purpose of ensuring that unemployment compensation is not paid to retired individuals or prisoners in violation of law. The report shall include any recommendations for further legislation which might be necessary to aid in preventing such payments.

EXTENSION OF PROVISIONS RELATING TO DEPENDENT CHILDREN VOLUNTARILY PLACED IN FOSTER CARE

SEC. 9. (a) Section 102(a)(1) of the Adoption Assistance and Child Welfare Act of 1980 is amended by striking out "October 1, 1983" and inserting in lieu thereof "October 1, 1984".

(b) Section 102(c) of such Act is amended by striking out "October 1, 1983" each place it appears and inserting in lieu thereof in each instance "October 1, 1984".

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

SEC. 10. Notwithstanding section 101(d) of the Social Security Amendments of 1983, the amendments made by section 101(c) of such Act shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986 under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

MAUREEN AND MIKE MANSFIELD FOUNDATION

SEC. 11. (a) The Secretary of Education is authorized to provide financial assistance in accordance with the provisions of this section to the Maureen and Mike Mansfield Foundation to assist in the development of the Mansfield Center for Pacific Affairs and the Maureen and Mike Mansfield Center at the University of Montana.

(b) No financial assistance provided under this section may be made except upon an application at such time, in such manner, and containing such information as the Secretary of Education may require.

(c) There are authorized to be appropriated such sums, not to exceed $5,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

CLARIFICATION WITH RESPECT TO REPAYMENT OF LOANS

SEC. 12. (a) Section 1202(b)(2) of the Social Security Act is amended—

(1) in the matter preceding subparagraph (A), by striking out "advance" and inserting in lieu thereof "advance or advances";

(2) in subparagraph (A), by striking out "advance is" and inserting in lieu thereof "advances are";

(3) in subparagraph (A), by striking out "advance was" and inserting in lieu thereof "advances were"; and

(4) in subparagraph (B), by striking out "advance" the second place it appears and inserting in lieu thereof "advances".

(b) The amendments made by this section shall apply to advances made on or after April 1, 1982.

The bill was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid upon the table.

GENERAL LEAVE

Mr. PEASE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982 EXTENSION

Mr. PEASE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4101) to extend the Federal Supplemental Compensation Act of 1982, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

EXTENSION OF PROGRAM

SECTION 1. (a) Parapagrah (2) of section 602(f) of the Federal Supplemental Compensation Act of 1982 is amended by striking out "September 30, 1983" and inserting in lieu thereof "October 18, 1983".

(b) Paragraph (2) of section 505 of such Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "October 19, 1983".

EXTENSION OF PROVISION ALLOWING PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 2. Section 223(g)(3)(B) of the Social Security Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "December 7, 1983".

EXTENSION OF PROVISIONS RELATING TO DEPENDENT CHILDREN VOLUNTARILY PLACED IN FOSTER CARE

SEC. 3. (a) Section 102(a)(1) of the Adoption Assistance and Child Welfare Act of 1980 is amended by striking out "October 1, 1983" and inserting in lieu thereof "October 1, 1984".

(b) Section 102(c) of such Act is amended by striking out "October 1, 1983" each place it appears and inserting in lieu thereof in each instance "October 1, 1984".

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

SEC. 4. Notwithstanding section 101(d) of the Social Security Amendments of 1983, the amendments made by section 101(c) of such Act shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986 under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

CLARIFICATION WITH RESPECT TO REPAYMENT OF LOANS

SEC. 5. (a) Section 1202(b)(2) of the Social Security Act is amended—

(1) in the matter preceding subparagraph (A), by striking out "advance" and inserting in lieu thereof "advance or advances";

(2) in subparagraph (A), by striking out "advance is" and inserting in lieu thereof "advances are";

(3) in subparagraph (A), by striking out "advance was" and inserting in lieu thereof "advances were"; and

(4) in subparagraph (B), by striking out "advance" the second place it appears and inserting in lieu thereof "advances".

(b) The amendments made by this section shall apply to advances made on or after April 1, 1982.

Mr. PEASE (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Ohio?

Mr. CAMPBELL. Reserving the right to object, Mr. Speaker, I do not intend to object to the gentleman's unanimous-consent request. However, I would like to take this opportunity to describe the changes which the

other body made to H.R. 4101 which we passed earlier this afternoon.

First, the amended bill provides an 18-day extension of the Federal supplemental compensation program (FSC) or until October 18, 1983. H.R. 4101 as it passed the House provided for a 30-day extension. The 18-day extension will prevent any disruption in benefits paid to claimants. It also will create a little added incentive for the conference committee on H.R. 3929 to act promptly when we return from the district work period.

In addition, H.R. 4101 as amended by the other body retains 4 of the 11 minor provisions which were in the House-passed bill. First, it provides a 2-year delay in the social security coverage of certain senior status judges. Second, it provides a 1-year extension of the Federal participation in the voluntary foster care placement program which began in the Adoption Assistance and Child Welfare Act of 1983. Third, it provides an extension of the period during which social security disability payments may be made while a contested case is on appeal. Four, it makes a technical clarification in the provisions related to the interest charges on certain temporary loans to State unemployment agencies.

Mr. Speaker, considering the urgency of the situation, I acknowledge the need to accept H.R. 4101 as amended by the other body. It is by no means the preferable approach but it is the best we can do under the current circumstances.

(Mr. CAMPBELL asked and was given permission to revise and extend his remarks.)

Mr. PEASE. Mr. Speaker, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from Ohio.

(Mr. PEASE asked and was given permission to revise and extend his remarks.)

Mr. PEASE. Mr. Speaker, the Federal supplemental compensation program expired on September 30. This program provides additional weeks of unemployment benefits to jobless workers who have exhausted all other State and Federal benefits.

The House passed, on September 29, the bill H.R. 3929, that would have extended the program for 45 days and substantially modified the benefits provided under the program. The Senate, on September 30, passed H.R. 3929 with amendments and requested a conference. The Senate's extension is for 18 months with a drastically reduced benefit package. The conference committee has not been able to resolve the differences between the House and Senate versions of the bill.

Earlier today, under a unanimous-consent request, the House passed H.R. 4101. This bill would extend the FSC program through October 31. This is an extension only of current law. It is designed to prevent the delay of unemployment benefits that will occur if we adjourn without acting on this program.

As originally passed, H.R. 4101 also included provisions unrelated to an FSC extension that had been agreed to by the conference committee on H.R. 3929. H.R. 4101, as amended by the Senate, provides for an extension of the FSC program through October 18. The provisions unrelated to FSC now only include:

An extension of the authority to continue social security disability payments during an appeal from October 1 through December 7;

The extension of an expiring program that provides financial incentives to States for the voluntary placement of children in foster-care facilities;

A 2-year delay in the social security tax coverage of salaries paid to Federal judges in senior status; and

A technical amendment relating to the payment of interest on Federal loans to State unemployment trust funds.

Mr. Speaker, I urge passage of H.R. 4101 as amended.

Mr. CAMPBELL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Ohio (Mr. PEASE)?

There was no objection.

A motion to reconsider was laid on the table.

ORDER OF BUSINESS

Mr. DOLE. Madam President, I hope that very quickly we can take up the extension of the unemployment compensation matter. I shall just explain what we propose to do. We propose to extend for 18 days the existing FSC law so that no one who may become eligible between now and the 18th, which is the Tuesday following when we return, will be adversely impacted. I repeat, it is an 18-day extension.

The House sent us a 30-day extension with a number of amendments that had been agreed to in conference. We have stricken seven of those amendments. We are going to send back four because there is some urgency to these provisions. They include a 60-day extension of disability benefits during appeal—that expires September 30. There is clearly some urgency there. Second, we included a 1-year extension of provisions relating to dependent children voluntarily placed in foster care. That provision otherwise expires on September 30. Third, we included a 2-year delay of social security coverage of retired Federal judges on active duty. I am told by the Chief Justice that that is a matter of urgency needing immediate attention.

The last is clarification with respect to repayment of State unemployment insurance loans. This provision is extremely important in the State of Vermont, and needs to be acted on now. This provision is retroactive to April 1, 1982, so that any State adversely affected under the incorrect interpretation of prior law will be reimbursed for interest already paid.

That would leave about seven provisions that have been approved in conference. These will likely become law but, very honestly, until we have some more indication on the House side that they want to be be reasonable in conference, it did not seem that we should accept all those provisions at this time. As soon as the majority leader is willing, we are prepared to bring the substitute up.

Mr. BAKER. Madam President, will the Senator from Kansas yield to me?

Mr. DOLE. I am happy to yield.

Mr. BAKER. Would it be fair to characterize this bill—is it H.R. 4101?

Mr. DOLE. Yes, H.R. 4101.

Mr. BAKER. What the Senator proposes to do is pass a simple 18-day extension?

Mr. DOLE. Yes, Madam President. On October 18, we will be in the same position we are in today. No unemployed worker gets hurt in the interim.

Mr. BAKER. Nothing is being added to it, not even those things that were agreed to in conference?

Mr. DOLE. Only those things I have cited which need to be added because of a expiration date of September 30 or some other urgent time consideration.

Mr. BAKER. May I inquire of the Senator if he is prepared to proceed on it now?

Mr. DOLE. I am prepared to proceed. This has been discussed with the ranking Democratic member on the Finance Committee (Mr. LONG). He is agreeable.

Mr. BAKER. Madam President, if I may have a moment to consult with the minority leader on final clearance, I believe we are ready to proceed.

Mr. BAKER. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Mr. BAKER. Madam President, may I inquire now of the minority leader if he is prepared to proceed to consideration of H.R. 4101, which is the unemployment compensation measure?

Mr. BYRD. Madam President, I have consulted with Members on this side. We on this side are prepared to proceed.

Mr. BAKER. Madam President, I ask unanimous consent that the Senate now turn to consideration of H.R. 4101.

The PRESIDING OFFICER. Is there objection?

The clerk will state the bill by title. The assistant legislative clerk read as follows:

A bill (H.R. 4101) to extend the Federal Supplemental Compensation Act of 1982, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 2308

Mr. DOLE. Madam President, I call up an amendment which is at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an amendment numbered 2308.

Mr. DOLE. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

EXTENSION OF PROGRAM

SECTION 1. (a) Paragraph (2) of section 602(f) of the Federal Supplemental Compensation Act of 1982 is amended by striking out "September 30, 1983" and inserting in lieu thereof "October 18, 1983".

(b) Paragraph (2) of section 605 of such Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "October 19, 1983".

EXTENSION OF PROVISION ALLOWING PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 2. Section 223(g)(3)(B) of the Social Security Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "December 7, 1983".

EXTENSION OF PROVISIONS RELATING TO DEPENDENT CHILDREN VOLUNTARILY PLACED IN FOSTER CARE

SEC. 3. (a) Section 102(a)(1) of the Adoption Assistance and Child Welfare Act of 1980 is amended by striking out "October 1, 1983" and inserting in lieu thereof "October 1, 1984".

(b) Section 102(c) of such Act is amended by striking out "October 1, 1983" each place it appears and inserting in lieu thereof in each instance "October 1, 1984".

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

SEC. 4. Notwithstanding section 101(d) of the Social Security Amendments of 1983, the amendments made by section 101(c) of such Act shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986 under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

CLARIFICATION WITH RESPECT TO REPAYMENT OF LOANS

SEC. 5. (a) Section 1202(b)(2) of the Social Security Act is amended—

(1) In the matter preceding subparagraph (A), by striking out "advance" and inserting in lieu thereof "advance or advances";

(2) In subparagraph (A), by striking out "advance is" and inserting in lieu thereof "advances are";

(3) In subparagraph (A), by striking out "advance was" and inserting in lieu thereof "advances were";

(4)In subparagraph (A), by striking out "advance " the second place it appears and inserting in lieu thereof "advances".

(b) The amendments made by this section shall apply to advances made on or after April 1, 1982.

Mr. DOLE. Madam President, the provisions I outlined earlier are included in this amendment. All we seek to do with this amendment is as follows: the House sent us a simple 30-day extension of the existing law. They also added to that about 11 or 12 provisions agreed to in conference last week. The House conferees did not consult with the Senate conferees before taking this step. I have since had a conversation with the distinguished chairman of the Committee on Ways and Means (Mr. ROSTENKOWSKI). He indicated we could eliminate any of those provisions not important on a time-sensitive basis and send back the simple extension.

So what we have before the Senate is an 18-day extension of the current

FSC program. We have included those provisions agreed to in conference which would expire on September 30, or which were pointed out to us as urgent matters. It is simply this: a 67-day extension of disability payments; the 1-year extension of the foster care provision; a 2-year delay of social security coverage for judges; and a clarification of the repayment of State UI loans. That amendment simply involved changing the word "advance" to "advances." At this time, the amendment is very important to the State of Vermont. In the future it could affect other States.

That, essentially, is what we have done. We will come back on the 17th. We hope to go to conference again on the 18th and to conclude the conference, as I have indicated, if we have some willingness on the part of the House to come down a bit on their demands.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2308) was agreed to.

Mr. DIXON. Mr. President, here we are again, applying a band-aid to the gaping wound of unemployment. Last week, the House and Senate passed differing versions of an extension of the Federal supplemental compensation program. There were major differences in the two bills.

The conferees have failed to reach an agreement between the House and Senate versions, so now we have an 18-day extension of current law. I guess it's better than leaving people who depend on these benefits with nothing, but how much more confusing can we make it?

In my State of Illinois, approximately 5,500 people would exhaust FSC benefits, either because of the termination of the program, or because they have used all available weeks, by October 15.

Other States have already begun to mail notices to recipients, informing them that the program has not been extended. A rough calculation, assuming approximately 700,000 recipients, multiplied by 5 minutes for notification, calculation and mailing, plus 20-cent postage means that every time we have to notify people of a change in this program, it costs taxpayers $1,162,196. Couple that with the sheer complexity of this whole system to begin with, and you have one of the biggest legislative lalapaloozas ever created.

I certainly hope that in the next 18 days, we will be able to address this program with some rationality—an optimisitic hope, I realize. But we cannot continue to fail to provide leadership on an issue of such importance to so many.

This morning's editorial in the Washington Post supports the position of many of us in this body, as well as in the House, that the insured unemployment rate is an inadequate measure of the labor market. It also points to the time constaints which face us. It supports the House-offered position as reasonable. I agree. At this point, I would like to include that editorial in the RECORD.

I am disappointed that we are faced with another emergency and we have failed to address it responsibly.

In the meantime, Mr. President, I support this extension, because I have no choice. We cannot turn our backs on 700,000 people who need this program, while we continue to search for a better way.

JOBLESS BENEFITS IN DANGER

Unless House and Senate conferees are able to resolve their differences quickly, thousands of jobless workers around the country will have their unemployment benefits abruptly terminated. These are workers who have used up all their regular unemployment benefits and have been receiving special federal benefits under a law that expired last Friday.

Both houses recognize the need to extend the temporary federal benefit program until more permanent reforms can be made. Because of changes made in 1981, extra state benefits are being paid in only two states while total unemployment remains at record levels. But the House wants to provide somewhat more generous benefits—especially for people who have been out of work for many months. It is also rightly concerned that the so-called insured unemployment rate, which now determines how long extra benefits are paid in each state, has been behaving in mysterious ways. Not only is the gap between insured unemployment and total unemployment abnormally high, but some states with lower total unemployment now measure higher insured rates than other states that are in more serious labor market trouble. To make the system fairer, the House would count total unemployment in determining state benefit extensions.

The Senate, under strong pressure from the administration, wants to keep cost much lower—primarily by denying extra benefits to the long-term jobless who have already used up their previous benefits. It also wants to renew the federal program long enough to delay reconsidering this politically tricky issue until after the next election. And the Senate is also concerned about the technicalities of changing the yardstick by which unemployment is measured for program purposes.

These are not trivia concerns, but they are not important enough to justify considerable hardship for the very people who have suffered most from the recent deep recession. The unemployment insurance system is certainly in need of basic overhaul, but for the moment only stopgap measures are attainable. Ways and Means Committee chairman Dan Rostenkowski has proposed a reasonable compromise between the House and Senate positions that the conferees should take.

Mr. BYRD. Mr. President, before us is a bill that can only be described as emergency legislation—to keep the Federal supplemental compensation program from dying while thousands of innocent jobless workers and their family members are left to suffer the deprivation of these essential benefits.

I am distressed, Mr. President, that we have come to this point. Although immediate passage is absolutely critical, an 18-day extension fails to care for a number of inequitable and destructive circumstances in the current program. For example, several States ranking in the top five of total unemployment are eligible for the bottom tier of FSC benefits. And this emergency bill will do nothing about the plight of those who already have exhausted all FSC benefits—the longest term of the long-term unemployed, whose cases are most desperate.

It did not have to be this way. Both the House and the Senate last week passed legislation to make changes in the program and extend it. Unfortunately, the Senate bill did not provide the level of assistance that I believe we should be providing to the long-term unemployed. But the House's bill was strong and worthy, and a reasonable compromise between the two would have resulted in a suitable FSC program that would remedy a number of the worst flaws in the current program.

Sadly, the conferees could not bridge their differences. The House yesterday evening made a good-faith effort to present a possible compromise, but the administration's inflexibility and refusal to move toward a fair compromise destroyed that effort. The unemployed and their families should have no illusions about why many of them will continue to receive no benefits, and others will receive benefits of shorter duration than both the House and Senate earlier approved. They can place the responsibility squarely on the administration's shoulders.

There must be no higher priority when the Congress returns to Washington on October 17 than for the conferees on the original FSC extension bill to complete action—to achieve a suitable bridging of differences—and to return a bilil to both Houses forthwith so that the stopgap extension we must now pass can be retired.

There now is no alternative to passing the bill before us. Sadly, it is the very least we can do for the victims of the recession before we leave this weekend. I regret that the administration's stiffness on this issue has delayed a more nearly sufficient response. I hold high hope that a truly fair agreement on the bill we passed last week will be reached by the conferees immediately after we return from our States on October 17.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read a third time, the question is, Shall it pass?

The bill (H.R. 4101), as amended, passed.

Mr. BAKER. I move to reconsider the vote by which the bill passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 98-29

October 7, 1983

Yesterday, the House and Senate passed H.R. 4101, a bill extending supplemental unemployment benefits for 18 days. The bill contains two Social Security amendments to:

- To provide a 67-day extension (from October 1, 1983, to December 7, 1983) of the temporary provision in Public Law 97-455 to continue disability payments during appeal.

- Modify Public Law 98-21, the Social Security Amendments of 1983, to delay for two years (from January 1, 1984, to January 1, 1986) the effective date of the provision to treat as wages, for Social Security purposes, compensation paid to retired judges for periods when they assume a judicial workload.

H.R. 4101 has been sent to the President for approval. The bill incorporates provisions--including the above Social Security provisions--from H.R. 3929 (see Legislative Bulletin #98-27) on which House and Senate conferees were able to reach timely agreement.

Public Law 98-118
98th Congress

An Act

To extend the Federal Supplemental Compensation Act of 1982, and for other purposes.

Oct. 11, 1983
[H.R. 4101]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal Supplemental Compensation Act of 1982, amendment.

EXTENSION OF PROGRAM

SECTION 1. (a) Paragraph (2) of section 602(f) of the Federal Supplemental Compensation Act of 1982 is amended by striking out "September 30, 1983" and inserting in lieu thereof "October 18, 1983".

Ante, p. 141. 26 USC 3304 note.

(b) Paragraph (2) of section 605 of such Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "October 19, 1983".

Ante, p. 141. 26 USC 3304 note.

EXTENSION OF PROVISION ALLOWING PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 2. Section 223(g)(3)(B) of the Social Security Act is amended by striking out "October 1, 1983" and inserting in lieu thereof "December 7, 1983".

96 Stat. 2498. 42 USC 423.

EXTENSION OF PROVISIONS RELATING TO DEPENDENT CHILDREN VOLUNTARILY PLACED IN FOSTER CARE

SEC. 3. (a) Section 102(a)(1) of the Adoption Assistance and Child Welfare Act of 1980 is amended by striking out "October 1, 1983" and inserting in lieu thereof "October 1, 1984".

42 USC 672 note.

(b) Section 102(c) of such Act is amended by striking out "October 1, 1983" each place it appears and inserting in lieu thereof in each instance "October 1, 1984".

42 USC 672 note.

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

SEC. 4. Notwithstanding section 101(d) of the Social Security Amendments of 1983, the amendments made by section 101(c) of such Act shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

Ante, p. 70. 26 USC 3121 note.

28 USC 294.

42 USC 409. 26 USC 3121.

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CLARIFICATION WITH RESPECT TO REPAYMENT OF LOANS

42 USC 1322.

SEC. 5. (a) Section 1202(b)(2) of the Social Security Act is amended—

(1) in the matter preceding subparagraph (A), by striking out "advance" and inserting in lieu thereof "advance or advances";

(2) in subparagraph (A), by striking out "advance is" and inserting in lieu thereof "advances are";

(3) in subparagraph (A), by striking out "advance was" and inserting in lieu thereof "advances were"; and

(4) in subparagraph (B), by striking out "advance" the second place it appears and inserting in lieu thereof "advances".

Effective date.
42 USC 1322 note.

(b) The amendments made by this section shall apply to advances made on or after April 1, 1982.

Approved October 11, 1983.

LEGISLATIVE HISTORY—H.R. 4101:

CONGRESSIONAL RECORD, Vol. 129 (1983):
Oct. 6, considered and passed House; considered and passed Senate, amended; House concurred in Senate amendment.

○

97TH CONGRESS
2D SESSION

H. R. 6181

To amend title II of the Social Security Act to provide adjustment benefits, vocational training, and waiver of overpayments for individuals terminated from the disability program, to strengthen the reconsideration process by providing for the earlier introduction of evidence of record, to provide for more uniformity in decisionmaking at all levels of adjudication, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1982

Mr. PICKLE (for himself and Mr. ARCHER) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend title II of the Social Security Act to provide adjustment benefits, vocational training, and waiver of overpayments for individuals terminated from the disability program, to strengthen the reconsideration process by providing for the earlier introduction of evidence of record, to provide for more uniformity in decisionmaking at all levels of adjudication, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Disability Amendments of 1982".

TABLE OF CONTENTS

CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 2. (a) Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Continued Payment of Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined not to be entitled to such benefits, and

"(C) a timely request for reconsideration of the determination that he is not so entitled is made under section 221(d)(1),

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits based on such individual's wages and self-employment income, continued for an additional period beginning with the first month for which (under such determination) such benefits are no longer otherwise payable and ending with the month preceding the month in which a decision is made upon such reconsideration or (if earlier) with the sixth month after the month in which he was initially notified in writing (by the applicable State agency or the Secretary) of such determination.

"(2) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1) pending reconsideration, and the decision upon such reconsideration affirms the determination that he is not entitled to such benefits, any benefits paid pursuant to such election (for months in such additional period) shall be considered overpayments for all the purposes of this title.

"(3) If any month in the additional period during which benefits are payable to an individual pursuant to an election under paragraph (1) is a month for which an adjustment

benefit (of the type involved) is also payable to such individual under subsection (a)(3), the benefit which is paid to him for such month shall be deemed to be an adjustment benefit under such subsection (a)(3) rather than a benefit payable pursuant to such election under paragraph (1).".

(b)(1) Subject to paragraph (2), the amendment made by subsection (a) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this Act.

(2) Effective January 1, 1984, section 223(g)(1) of the Social Security Act (as added by subsection (a) of this section) is amended by striking out "or (if earlier) until the close of the sixth month after the month in which he was initially notified in writing (by the applicable State agency or the Secretary) of such determination".

ADJUSTMENT BENEFITS

SEC. 3. (a) Section 223(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(3)(A) In any case where—

"(i) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability, and has been a recipient of such benefits for a period of not less than 36 consecutive months, and

"(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this paragraph and before January 1, 1985, not to be entitled to such benefits,

such individual shall be entitled (subject to subparagraph (B)) to have the payment of such benefits, and the payment of any other benefits based on such individual's wages and self-employment income, continued for an additional period of four months, beginning with the first month for which (under such determination) such benefits are no longer otherwise payable or (if later) with the month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination.

"(B) No benefit shall be payable to any individual (or to any other person on the basis of such individual's wages and self-employment income) under subparagraph (A) for any month in the additional period referred to in such subparagraph if—

"(i) such individual is determined by the Secretary to have engaged in substantial gainful activity in that month, or

"(ii) such individual (or other person) is entitled or would upon application be entitled, for such month, to a monthly benefit of any other type under this title.".

(b)(1) The first sentence of section 223(a)(1) of such Act is amended by striking out "and ending with the month" and inserting in lieu thereof "and ending (subject to paragraph (3) of this subsection and to subsections (g) and (h)) with the month".

(2)(A) Subsections (b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) of section 202 of such Act are each amended by striking out "and ending with the month" and inserting in lieu thereof "and ending (subject to subsections (a)(3), (g), and (h) of section 223) with the month".

(B) Subsection (d)(6) of such section 202 is amended by striking out "shall end with the month" and inserting in lieu thereof "shall end (subject to subsections (a)(3), (g), and (h) of section 223) with the month".

(3) Section 216(i)(2) of such Act is amended—

(A) by striking out "shall end" in subparagraph (D) and inserting in lieu thereof "shall (subject to subparagraph (H)) end"; and

(B) by adding at the end thereof the following new subparagraph:

"(H) The provisions of subsections (a)(3), (g), and (h) of section 223 shall apply with respect to the duration of an

individual's period of disability under this subsection in the same way that they apply with respect to the duration of the period for which an individual's disability insurance benefits are payable under such section 223.".

(c) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)) has been a recipient of benefits under this title for a period of not less than 36 consecutive months, and

"(ii) the impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this paragraph (or October 1, 1982, if later) and before January 1, 1985, not to be eligible for such benefits,

such individual shall be entitled (subject to subparagraph (B)) to have the payment of such benefits continued for an additional period of four months, beginning with the first month for which (under such determination) such benefits are no longer otherwise payable under this title or (if later) with the

month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination.

"(B) No benefit shall be payable to any individual under subparagraph (A) for any month in the additional period referred to in such subparagraph if such individual is determined by the Secretary to have engaged in substantial gainful activity in that month.".

BENEFIT PAYMENTS NOT TO BE TREATED AS OVERPAYMENTS IN CERTAIN CASES

SEC. 4. (a) Section 223 of the Social Security Act (as amended by section 2(a) of this Act) is further amended by adding at the end thereof the following new subsection:

"Benefit Payments Not To Be Treated as Overpayments in Certain Cases

"(h) Notwithstanding any other provision of this title, in any case where—

"(1) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability, and

"(2) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this

subsection and before January 1, 1985, not to be entitled to such benefits,

no such benefit which was paid to such individual for any month prior to the month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination, and no benefit which was paid to any other person for any such month on the basis of such individual's wages and self-employment income, shall be considered an overpayment for any of the purposes of this title.".

(b) Section 223(g)(2) of such Act (as added by section 2(a) of this Act) is amended by striking out "If an individual" and inserting in lieu thereof "Subject to subsection (h), if an individual".

(c) Section 1631(b) of such Act is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) Notwithstanding any other provision of this title, in any case where—

"(A) an individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)) is a recipient of benefits under this title, and

"(B) the impairment on the basis of which such benefits are payable is found to have ceased or not to

have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this subsection (or October 1, 1982, if later) and before January 1, 1985, not to be eligible for such benefits,

no such benefit which was paid to such individual for any month prior to the month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination shall be considered an overpayment for any of the purposes of this title.".

CLOSING OF THE RECORD ON APPLICATIONS INVOLVING DETERMINATIONS OF DISABILITY; DISABILITY DECISIONS, APPEALS, AND REVIEW

SEC. 5. (a)(1) Section 202(j)(2) of the Social Security Act is amended to read as follows:

"(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and—

"(A) no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon

the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary), and

"(B) in the case of an applicant with respect to whom disability is required for such benefits under subsection (d)(1)(B)(ii), (e)(1)(B)(ii), or (f)(1)(B)(ii), no request for reconsideration under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d).".

(2) Section 216(i)(2)(G) of such Act is amended by striking out "and no request" and all that follows and inserting in lieu thereof the following: "and no request for reconsideration under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d).".

(3) Section 223(b) of such Act is amended by striking out "and no request" and all that follows down through the end of the first sentence and inserting in lieu thereof the following: "and no request under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d).".

(b) Section 205(b) of such Act is amended to read as follows:

"(b)(1) The Secretary is directed to make findings of fact and decisions as to the rights of any individual applying for a payment under this title.

"(2)(A) The Secretary may provide for reconsideration of such decisions (other than decisions to which subparagraph (B) applies) and shall provide for hearings in accordance with paragraph (3).

"(B) If the determinations required in the course of making any such decision include a determination relating to disability or to a period of disability and such decision is in whole or in part unfavorable to an individual applying for a payment under this title, the Secretary shall provide for reconsideration of such decision and for hearings in accordance with section 221.

"(3) Upon request by any individual applying for a payment under this title or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered (other than a decision to which paragraph (2)(B) applies), he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such deci-

sion. Any such request with respect to any such determination must be filed within sixty days after notice of the decision is received by the individual making such request.

"(4) The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this section, section 221, and the other provisions of this title.

"(5) In the course of any hearing, investigation, or other proceeding referred to in paragraph (4), the Secretary may administer oaths and affirmations, examine witnesses, and receive evidence.

"(6) Evidence may be received at any hearing referred to in paragraph (4), subject to section 221(d)(5), even though inadmissible under rules of evidence applicable to court procedure.

"(7) Subject to the specific provisions and requirements of this Act—

"(A) any hearing held pursuant to this subsection or section 221(e) shall be conducted on the record and shall be subject to sections 554 through 557 of title 5, United States Code, and any decision made by the Secretary after such a hearing shall constitute an 'adjudication' within the meaning of section 551(7) of such title; and

"(B) the Secretary, in accordance with section 3105 of title 5, United States Code, shall appoint administrative law judges who, in any case in which authority to conduct hearings under this subsection or section 221(e) is delegated by the Secretary, shall conduct such hearings, issue decisions after such hearings, and perform such other functions and duties described in sections 554 and 557 of such title as are applicable to such hearings.".

(c) Section 205(g) of such Act is amended—

(1) in the fourth sentence, by striking out ", with or without remanding the case for a rehearing" and inserting in lieu thereof "without any remand of the case"; and

(2) by striking out the sixth and seventh sentences.

(d)(1) Section 221 of such Act is amended—

(A) by striking out the heading and inserting in lieu thereof "DISABILITY DETERMINATIONS, APPEALS, AND REVIEW";

(B) by redesignating subsections (d), (e), (f), (g), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and

(C) by inserting after subsection (c) the following new subsections:

"(d)(1) Any initial decision the Secretary renders with respect to an individual's rights for a payment under this title (including a decision the Secretary renders by reason of a review under subsection (c)) in the course of which a determination relating to disability or to a period of disability is required for such payment and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, the Secretary's decision, and the reason or reasons upon which the decision is based. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such a decision, he or she shall be entitled to reconsideration of such decision under this subsection. Any such request with respect to any such decision must be filed within 180 days after notice of the decision is received by the individual making such request.

"(2)(A) If a reconsideration is requested by an individual under paragraph (1) and a showing is made by such individual that he or she may be prejudiced in such decision by a determination relating to disability or to a period of disability, such individual shall be entitled in the course of such reconsideration to a determination relating to such disability or period of disability.

"(B)(i) In the case of a reconsideration to be made by the Secretary of a decision to terminate benefits in which a determination relating to disability or to a period of disability was made by a State agency, any determination under subparagraph (A) relating to disability or to a period of disability shall be made by the State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make determinations under this subparagraph commencing with such month as the Secretary and the State agree upon, but only if (I) the Secretary has not found, under subsection (b)(1), that the State agency has substantially failed to make determinations under this subparagraph in accordance with the applicable provisions of this section or rules issued thereunder, and (II) the State has not notified the Secretary, under subsection (b)(2), that it does not wish to make determinations under this subparagraph. If the Secretary once makes the finding described in clause (I) of the preceding sentence, or the State gives the notice referred to in clause (II) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make determinations under this subparagraph.

"(ii) Any determination made by a State agency under clause (i) shall be made in the manner prescribed for determinations under subsection (a)(2) and regulations prescribed

thereunder, except that it shall be made after opportunity for an evidentiary hearing.

"(3) A decision by the Secretary on reconsideration under this subsection in the course of which a determination relating to disability or to a period of disability is required and which is in whole or in part unfavorable to the individual requesting the reconsideration shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, the Secretary's decision, and the reason or reasons upon which the decision is based.

"(4) The Secretary shall prescribe by regulation procedures for the reconsideration under this subsection of issues other than issues relating to disability or a period of disability.

"(5) No documentary evidence which is submitted on or after the date of a decision on reconsideration under this subsection relating to entitlement to benefits for periods preceding the date of such decision (hereafter in this section referred to as the 'relevant periods'), and which could have been available before such date, shall be admitted or considered in connection with entitlement to such benefits for such periods, except as provided in subsection (e)(3). Nothing in the preceding sentence, subsection (e)(3), or section 202(j)(2), 216(i)(2)(G), or 223(b) shall be construed to permit, prohibit, or otherwise affect the admission or consideration, at or in

connection with any proceeding in which a reconsideration decision relating to an individual's entitlement to benefits for particular relevant periods is involved, of evidence relating to such individual's entitlement to benefits for any other period.

"(6) Each individual who requests a reconsideration under paragraph (1) shall be informed, orally and in writing, before the reconsideration, of the preceding provisions of this subsection, and shall be advised that the individual may wish to retain an attorney or other representative to assist him during the reconsideration.

"(e)(1) Upon request by any individual described in subsection (d)(1) who makes a showing in writing that his or her rights may be prejudiced by a decision on reconsideration under this section, the Secretary shall give such individual and the other individuals described in subsection (d)(1) reasonable notice and opportunity for a hearing. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request.

"(2) If a hearing under paragraph (1) is held, the Secretary shall, on the basis of the evidence considered in reaching the reconsideration decision and the testimony given at the hearing, and in accordance with the relevant provisions of this title, regulations of the Secretary, and any written guidelines which the Secretary may prescribe in carrying out the

last sentence of section 205(a), render a decision on entitlement to benefits for the relevant periods, including in such decision a statement of the findings of fact, conclusions, and the reasons or bases therefor. The hearing decision may affirm, modify, or reverse the Secretary's findings of fact and the decison on reconsideration.

"(3)(A) In any case in which the individual making the request under paragraph (1) or any other individual described in subsection (d)(1) submits to the Secretary, on or after the date of the decision on reconsideration under subsection (d) and before the commencement of a hearing under this subsection, additional documentary evidence relating to disability or to a period of disability affecting entitlement to benefits for the relevant periods which could have been submitted before the date of the decision on reconsideration, and the individual does not make the election under subparagraph (B)—

"(i) if the determinations made in the course of such decision on reconsideration include a determination relating to disability or to a period of disability which was made by a State agency under subsection (d)(2)(B), such additional evidence, together with the evidence considered in reaching the reconsideration decision, shall be remanded to the State agency, or

"(ii) if such determination relating to disability or to a period of disability was made by the Secretary in

accordance with subsection (i), such additional evidence, together with the evidence considered in reaching the reconsideration decision, shall be reviewed by the Secretary.

"(B) An individual who submits additional evidence as described in subparagraph (A) may nevertheless elect that no remand or review occur under subparagraph (A) with respect to such evidence and that such additional evidence be disregarded for purposes of determining entitlement under this subsection. The Secretary shall notify such individual upon submitting such evidence of the provisions of this paragraph and of the election available under this subparagraph and provide such individual with a reasonable period of time within which to make such election before remanding or reviewing such evidence under subparagraph (A).

"(C) The State agency, on remand, or the Secretary, on review, shall consider the record, as supplemented by such additional evidence, in connection with benefits for the relevant periods and shall affirm, modify, or reverse the determination on reconsideration relating to disability or to a period of disability. The Secretary shall inform such applicant or other individual of the decision on further reconsideration based on determinations made on such remand or in such review and of the right to request a hearing thereon under this subsection.

"(4) The Secretary shall prescribe by regulation a period of time after hearing decisions under this section during which the Secretary, on his own motion or on the request of the individual requesting the hearing, may undertake a review of such decision. If such decision is not so reviewed, such decision shall be considered the final decision of the Secretary at the end of such period. If such decision is so reviewed, at the end of any such review the Secretary shall affirm, modify, or reverse the decision and such decision as so affirmed, modified, or reversed shall be considered the final decision of the Secretary. Any such review shall be governed by the requirements of this subsection.".

(2) Section 221 of such Act is further amended—

(A) in subsection (b)(1), by inserting "under subsection (a)(1) or subsection (d)" after "disability determination" the first place it appears, and by inserting before the period the following: "or the disability determinations referred to in subsection (d)(2) (as the case may be)";

(B) in subsection (b)(2), by inserting "or under subsection (d)(2) (as the case may be)" after "subsection (a)(1)" the first place it appears, and by inserting before the period in the last sentence the following: "or the disability redeterminations referred to in subsection (d)(2) (as the case may be)";

(C) in subsection (b)(3)(A), by inserting "under subsection (a) or subsection (d)" after "function", and by inserting "under subsection (a) or subsection (d) (as the case may be)" after "process";

(D) in subsection (b)(3)(B), by inserting "under subsection (a) or subsection (d)" after "function", and by inserting "under subsection (a) or subsection (d) (as the case may be)" after "process";

(E) in subsection (f) (as redesignated by paragraph (1)), by inserting "(1)" before "Any", by striking out "subsection (a), (b), (c), or (g)" and inserting in lieu thereof "subsection (b)", and by adding at the end thereof the following new paragraph:

"(2) Any individual who requests a hearing under subsection (e) and who is dissatisfied with the Secretary's final decision after such hearing shall be entitled to judicial review of such decision as is provided in section 205(g).";

(F) in subsection (g) (as redesignated by paragraph (1)), by striking out "under this section" and inserting in lieu thereof "or subsection (d)(2)", by inserting "or under subsection (d)(2), as the case may be" after "under subsection (a)(1)" the second place it appears, and by striking out "subsection (f)" and inserting in lieu thereof "subsection (h)";

(G) in subsection (i) (as redesignated by paragraph (1)), by inserting "or subsection (d)(2)" after "subsection (a)(1)", by inserting "under subsection (a)(1) or subsection (d)(2)" after "disability determinations" the second place it appears, by inserting after "guidelines," the following: "in the case of disability determinations under subsection (d)(2) to which subparagraph (B) thereof does not apply,", by inserting "under subsection (a) or subsection (d)" after "disability determinations" the third place it appears, by inserting "or the determinations referred to in subsection (d) (as the case may be)" after "in subsection (a)", and by adding at the end thereof the following new sentence: "In the case of a reconsideration by the Secretary of a decision to terminate benefits, any disability determination made by the Secretary under this subsection in the course of such reconsideration shall be made after opportunity for an evidentiary hearing."; and

(H) in subsection (j) (as redesignated by paragraph (1)), by adding at the end thereof the following new sentence: "An individual who makes a showing in writing that his or her rights may be prejudiced by a determination under this subsection with respect to continuing eligibility shall be entitled to a reconsider-

ation and a hearing to the same extent and in the same manner as provided under subsections (d) and (e).".

(e)(1) The third sentence of section 1631(c)(1) of such Act is amended by striking out "within sixty days after notice of such determination is received" and inserting in lieu thereof "within 180 days after notice of such determination is received where the matter in disagreement involves blindness (within the meaning of section 1614(a)(2)) or disability (within the meaning of section 1614(a)(3)) or within 60 days after such notice is received in any other case".

(2) Section 1631(c)(3) of such Act is amended by inserting "(but without regard to the amendments made by section 5(c) of the Disability Amendments of 1982)" after "judicial review as provided in section 205(g)".

(f)(1) Except as provided in paragraph (2), the amendments made by this section shall apply with respect to requests for reconsideration of decisions by the Secretary of Health and Human Services filed after the date of the enactment of this Act, except that section 221(d)(2)(B) of the Social Security Act (as amended by subsection (d) of this section) shall apply with respect to such requests filed on or after January 1, 1984.

(2) The amendments made by subsection (a) shall apply with respect to applications for benefits filed after the date of the enactment of this Act.

(g) Notwithstanding any other provison of law, the Office of Personnel Management shall treat relevant experience of attorneys employed by the Social Security Administration in the process of adjudicating social security claims (without regard to the grade or level at which the employment involved is performed) as qualifying experience for appointment by the Secretary of Health and Human Services to the position of administrative law judge under section 3105 of title 5, United States Code, pursuant to section 205(b)(7)(B) of the Social Security Act (as added by this section).

OWN MOTION REVIEW; REVIEW OF STATE AGENCY DETERMINATIONS

SEC. 6. (a) Section 304(g) of the Social Security Disability Amendments of 1980 is amended by inserting "(1)" after "(g)", and by adding at the end thereof the following new paragraph:

"(2) In implementing and carrying out the program referred to in paragraph (1), the Secretary shall review—

"(A) at least 15 percent of all decisions, rendered by administrative law judges in the fiscal year 1982 as a result of hearings under section 221(e) of the Social Security Act, that individuals are or continue to be under disabilities (as defined in section 216(i) or 223(d) of such Act); and

"(B) at least 25 percent of all such decisions so rendered in any fiscal year after the fiscal year 1982 and before the fiscal year 1988.".

(b)(1) Section 221(c) of the Social Security Act is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) The Secretary shall review at least 10 percent of all determinations, made by State agencies under this section in any fiscal year after the fiscal year 1982 and before the fiscal year 1988, that individuals are or are not under disabilities (as defined in section 216(i) or 223(d)), with at least one-sixth of all of the determinations so reviewed being determinations that the individuals involved are not under disabilities (as so defined). Any review by the Secretary of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.".

(2)(A) Section 221(c)(1) of such Act is amended by striking out "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph (2)".

(B) Effective October 1, 1987, section 221(c)(1) of such Act (as amended by subparagraph (A) of this paragraph) is further amended by striking out "or as required under paragraph (2)".

(3) Except as provided in paragraph (2)(B), the amendments made by this subsection shall become effective October 1, 1982.

STANDARDS FOR DISABILITY DETERMINATIONS

SEC. 7. Section 205(a) of the Social Security Act is amended by adding at the end thereof the following new sentence: "The Secretary shall assure that uniform standards are applied at all levels of adjudication in making determinations of whether individuals are under disabilities as defined in section 216(i) or 223(d).".

EVALUATION OF PAIN

SEC. 8. (a) Section 223(d)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentence: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical condition that could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the

medical signs and findings), would lead to a conclusion that the individual is under a disability.".

(b) The amendment made by subsection (a) shall apply with respect to determinations of disability made on or after the date of the enactment of this Act.

SUBSTANTIAL GAINFUL ACTIVITY AND TRIAL WORK

SEC. 9. (a) The second sentence of section 223(d)(4) of the Social Security Act is amended by inserting before the period at the end thereof the following: "; and no other individual shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed (i) the amount which was sufficient, under the regulations of the Secretary then in effect, to cause an individual to be treated as having demonstrated such an ability in the month in which the Disability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) and ending with the month in which the particular earnings involved are derived, the amount to which the amount specified in clause (i) would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).".

(b) The second sentence of section 222(c)(2) of such Act is amended to read as follows: "For purposes of this subsection the term 'services' means activity which is determined by the Secretary to be of a type normally performed for remuneration or gain, and which is performed (by the particular individual involved) in any month for remuneration or gain at least equal to (A) the amount of remuneration or gain which was sufficient, under the regulations of the Secretary then in effect, to cause the activity to be treated as constituting 'services' for such purposes in the month in which the Disability Amendments of 1982 were enacted, or (B) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (A) of this sentence and ending with the month in which the particular activity involved is performed, the amount to which the amount specified in clause (A) of this sentence would have increased under such section 203(f)(8) during such period if (in the month specified in clause (A)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).".

(c)(1) Section 1614(a)(3)(D) of such Act is amended by inserting after the first sentence the following new sentence: "No individual who is an aged, blind, or disabled individual

solely by reason of disability (as determined under this paragraph (shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed (i) the amount which was sufficient, under the regulations of the Secretary then in effect, to cause an individual to be treated as having demonstrated such an ability in the month in which the Disability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) and ending with the month in which the particular earnings involved are derived, the amount to which the amount specified in clause (i) would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).".

(2) The second sentence of section 1614(a)(4)(A) of such Act is amended to read as follows: "As used in this paragraph with respect to any individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3)), the term 'services' means activity which is determined by the Secretary to be of a type normally performed for remuneration or gain, and which is performed (by the particular individual involved) in any month

for remuneration or gain at least equal to (i) the amount of remuneration or gain which was sufficient, under the regulations of the Secretary then in effect, to cause the activity to be treated as constituting 'services' for purposes of this paragraph in the month in which the Disability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) of this sentence and ending with the month in which the particular activity involved is performed, the amount to which the amount specified in clause (i) of this sentence would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).''.

(d) The amendments made by this section shall apply with respect to months after December 1982.

PROHIBITION AGAINST INTERIM PAYMENTS

SEC. 10. Section 205 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Prohibition Against Interim Payments

"(r) No amount shall be paid to any individual applying for benefits under this title until a final determination of his or her entitlement to such benefits has been made.".

AMENDMENTS RELATING TO REDUCTION IN DISABILITY INSURANCE BENEFITS ON ACCOUNT OF OTHER RELATED PAYMENTS

SEC. 11. (a) Section 2208(b) of the Omnibus Budget Reconciliation Act of 1981 is amended by inserting before the period at the end thereof the following: "; except that the amendment made by subsection (a)(2) shall be effective in the case of an individual who attains age 62 after the month in which the Disability Amendments of 1982 are enacted even though he became disabled within the meaning of section 223(d) of the Social Security Act in or prior to such sixth month".

(b) Section 202(q)(7)(F) of the Social Security Act is amended to read as follows:

"(F) in the case of old-age insurance benefits, any month for which such individual (i) received a disability insurance benefit, or (ii)(I) would have received a disability insurance benefit but for the application of section 223(f) or section 224 and (II) did not receive an old-age insurance benefit.".

(c) Section 224(a)(2) of such Act (as amended by section 2208 of the Omnibus Budget Reconciliation Act of 1981) is further amended to read as follows:

"(2) such individual is entitled for such month on account of his total or partial disability (whether or not permanent)—

"(A) to periodic benefits under a workmen's compensation law or plan of the United States or a State, or

"(B) to periodic benefits under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)), other than benefits payable under title 38, United States Code, benefits payable under a program of assistance which is based on need, benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 218, and benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 210,".

(d) Section 224(a) of such Act is further amended—

(1) by striking out clause (A) in the sentence immediately following clause (8);

(2) by redesignating clauses (B) and (C) in such sentence as clauses (A) and (B), respectively;

(3) by striking out "(computed without regard to the limitations specified in sections 209(a) and 211(b)(1))" each place it appears in such sentence; and

(4) by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the total of an individual's wages and self-employment income for any year or other period shall be computed without regard to the limitations specified in sections 209(a) and 211(b)(1); and the total of an individual's wages for the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding that year shall also include the amount of any additional earnings which would have been credited to such individual under this title as wages for that period (computed without regard to such limitations) if none of the exclusions contained in paragraphs (5), (6), (7), and (8)(B) of section 210(a) had been in effect, to the extent that such individual substantiates his receipt of such amount (and the performance of the services involved) to the satisfaction of the Secretary.".

(e) The amendments made by this section shall be effective in the same manner and as of the same time as they would if they had been included in section 2208(a) of the Omnibus Budget Reconciliation Act of 1981; except that the amendment made by subsection (b) shall be effective only with respect to individuals who attain age 65 after the date of the enactment of this Act, and the amendments made by subsection (d) shall be effective only with respect to individuals who first become entitled to benefits under section 223 of the Social Security Act for months beginning after the month in which this Act is enacted.

PAYMENT OF COSTS OF REHABILITATION SERVICES FROM TRUST FUNDS; EXPERIMENTS AND DEMONSTRATION PROJECTS

SEC. 12. (a)(1) So much of section 222(d) of the Social Security Act as precedes paragraph (4) thereof is amended to read as follows:

"Payment of Costs of Rehabilitation Services From Trust Funds

"(d)(1)(A) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

"(i) entitled to disability insurance benefits under section 223,

"(ii) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

"(iii) entitled to widow's insurance benefits under section 202(e) before attaining age 60, or

"(iv) entitled to widower's insurance benefits under section 202(f) before attaining age 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals into substantial gainful activity, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Secretary to pay the State (under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.)), or another public or private agency, organization, institution, or individual (under an agreement or contract entered into under subparagraph (D) of this paragraph), the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods) which meet the requirements of subparagraph (B). The determination that the vocational rehabilitation services meet the requirements of subparagraph (B) and the determination of the amount of costs to be paid under this paragraph shall be made by the

Commissioner of Social Security in accordance with criteria formulated by him.

"(B) Vocational rehabilitation services furnished a disabled individual described in subparagraph (A) meet the requirements of this subparagraph—

"(i) to the extent such services consist of evaluation services as determined by the Commissioner of Social Security,

"(ii) if such services result in—

"(I) his performance of substantial gainful activity which lasts for a continuous period of nine months, or

"(II) his recovery from his disabling physical or mental impairment, or

"(iii) if such individual refuses without good cause to continue to accept vocational rehabilitation services or fails to cooperate in such a manner as to preclude such individual's successful rehabilitation.

"(C) Payments under this paragraph shall be made in advance (or, at the election of the recipient, by way of reimbursement), with necessary adjustments for overpayments and underpayments.

"(D) The Commissioner of Social Security may provide vocational rehabilitation services in States under regulations prescribed by the Secretary or by agreement, or contract,

with other public or private agencies, organizations, institutions, or individuals. There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund such sums as are necessary for the payment of the reasonable and necessary costs of such services. The provision of such services, and the payment of costs for such services, shall be subject to the same requirements as otherwise apply under the preceding provisions of this paragraph.

"(E) The Commissioner of Social Security shall require each State and each public or private agency, organization, institution, or individual receiving payments under this paragraph to make such periodic reports to him concerning the operation of its program furnishing vocational rehabilitation services as are necessary to satisfy him that the amounts paid to such State, agency, organization, institution, or individual are used exclusively for furnishing such services in accordance with this paragraph.

"(2)(A) For purposes of making vocational evaluation and job placement services more readily available to individuals who were disabled individuals described in paragraph (1)(A) but whose entitlement to the benefits described in paragraph (1)(A) was terminated by reason of recovery from the disabling physical or mental impairment on which their disability was based or by reason of a finding that such im-

pairment has not existed, there shall be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund not to exceed $15,000,000 for each of the fiscal years beginning on October 1, 1982, and October 1, 1983, respectively, to enable the Commissioner of the Rehabilitation Services Administration to pay to the State the costs of the reasonable and necessary costs of such services furnished such individuals by State agencies under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973. The amount paid to each State for each year shall not exceed the amount which bears the same ratio to the total amount paid to States for such year under this paragraph as the ratio which the number of such entitlement terminations in such State in the preceding year bears to the total number of such entitlement terminations in the United States in such preceding year. Amounts remaining unpaid under this paragraph at the end of a fiscal year shall revert to the Trust Funds. The determination of the amount of costs to be paid under this paragraph shall be made by the Commissioner of the Rehabilitation Services Administration in accordance with criteria formulated by him.

"(B) Payments under this paragraph shall be made in advance (or, at the election of the recipient, by way of reim-

bursement), with necessary adjustments for overpayments and underpayments.

"(C) The Commissioner of the Rehabilitation Services Administration shall require each State agency receiving payments under this paragraph to make such periodic reports to him concerning the operation of its program furnishing vocational rehabilitation services as are necessary to satisfy him that amounts paid to such State, agency, organization, institution, or individual are used exclusively for furnishing such services in accordance with this paragraph.".

(2)(A) Section 222(d) of such Act is further amended by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(B) Section 1615(d) of such Act is amended by striking out "section 222(d)(1)" and inserting in lieu thereof "section 222(d)(1)(A)".

(3) Section 222(a) of such Act is amended—

(A) by striking out "and";

(B) by inserting before "shall" the following: "and individuals whose entitlement to such benefits is terminated by reason of recovery from the disabling physical or mental impairment on which their disability was based or by reason of a finding that such impairment has not existed (or is no longer disabling)"; and

(C) by inserting after "the State agency or agencies administering or supervising the administration of the State plan approved under the Vocational Rehabilitation Act" the following: ", or to other appropriate public or private agencies, organizations, institutions, or individuals,".

(b)(1)(A) Section 225(b) of such Act is repealed.

(B) Section 225(a) of such Act is amended—

(i) by striking out "(a)" after SEC. *225.*"; *and*

(ii) by striking out "this subsection" each place it appears and inserting in lieu thereof "this section".

(C) Notwithstanding the preceding provisions of this paragraph, any individual who, immediately before the date of the enactment of this Act, was entitled to benefits based on disability referred to in section 225(b) of the Social Security Act (as in effect before its repeal by this subsection) by reason of participation in an approved vocational rehabilitation program referred to in such section shall continue to be so entitled in accordance with such section until the expiration of such program as if this paragraph had not been enacted.

(2)(A) Section 1615(d) of such Act is amended to read as follows:

"(d)(1) The Secretary is authorized to pay the State agency administering or supervising the administration of a

State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 for the costs incurred under such plan in the provision of vocational rehabilitation services which meet the requirements of paragraph (2) to individuals who are referred for such services pursuant to subsection (a). The determination that services meet the requirements of paragraph (2), and the determination of the amount of the costs to be paid under this paragraph, shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1)(A).

"(2) Vocational rehabilitation services provided to an individual described in subsection (a) meets the requirements of this paragraph—

"(A) to the extent such services consist of evaluation services as determined by the Commissioner of Social Security,

"(B) if such services result in—

"(i) such individual's performance of substantial gainful activity which lasts for a continuous period of nine months, or

"(ii) such individual's recovery from his disabling physical or mental impairment, or

"(C) if such individual refuses without good cause to continue to accept vocational rehabilitation services

or fails to cooperate in such a manner as to preclude such individual's successful rehabilitation.

"(3) Payments under this subsection shall be made in advance (or, at the election of the State agency involved, by way of reimbursement), with necessary adjustments for overpayments and underpayments.".

(B) Section 1615 of such Act is further amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of this section, the Secretary, instead of referring individuals age 16 or over to a designated State agency for vocational rehabilitation services as otherwise required by subsection (a), may provide such services to those individuals (in such cases as he may determine) by agreement or contract with other public or private agencies, organizations, institutions, or individuals. To the extent appropriate and feasible—

"(1) vocational rehabilitation services under the preceding sentence shall be provided in the same manner, and in accordance with the same requirements and criteria, as in the case of vocational rehabilitation services provided by agreement or contract under section 222(d)(1); and

"(2) all of the preceding provisions of this section which relate to services for individuals age 16 or over who are referred to a State agency under subsection

(a) shall apply with respect to services provided to individuals age 16 or over by agreement or contract under the preceding sentence, in the same way that they apply with respect to services provided pursuant to such a referral, as though the agency, organization, institution, or individual involved were the designated State agency and such individuals had been referred to it under subsection (a).".

(c)(1) Section 505(a)(1) of the Social Security Disability Amendments of 1980 (Public Law 96–265; 94 Stat. 473) is amended—

(A) by striking out "(A)" and "(B)" and inserting in lieu thereof "(i)" and "(ii)", respectively;

(B) by inserting "(A)" before "the relative advantages";

(C) by inserting "and" after "administered,"; and

(D) by striking out "rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation)," and inserting in lieu thereof the following: "rehabilitation); and (B) how best to use organizations organized for profit and those not so organized in providing vocational rehabilitation services to disabled beneficiaries;".

(2) Section 505(a)(2) of such Amendments is amended by adding at the end thereof the following new sentence:

"Not later than 18 months after the date of the enactment of the Disability Amendments of 1982, the Secretary shall develop and commence at least 10 experiments or projects referred to in clause (B) of paragraph (1), with one or more of such experiments or projects commencing in each of at least 5 States.".

(3) Section 505(a)(4) of such Amendments is amended—

(A) by inserting "(A)" after "(4)"; and

(B) by adding at the end thereof the following new subparagraph:

"(B) The Secretary shall submit to the Congress no later than the end of the 18-month period referred to in the last sentence of paragraph (2) a report on the experiments and demonstration projects described in clause (B) of paragraph (1) which are commenced under this subsection together with any related data and materials which he may consider appropriate.".

(d)(1) The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and section 222(d)(1) of the Social Security Act (as amended by such subsection) shall apply (from and after such date) with respect to services rendered on or after October 1, 1981; except that in the case of services of the type described in clause (i) of section 222(d)(1)(B) of such Act (as amended by such subsec-

tion) such amendments shall apply only with respect to services rendered on or after October 1, 1982.

(2) The amendments made by subsections (b) and (c) shall take effect on the date of the enactment of this Act; except that the amendment made by subsection (b)(2) shall apply only with respect to services provided on or after October 1, 1982.

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97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 97-588

DISABILITY AMENDMENTS OF 1982

MAY 26, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

SEPARATE VIEWS

[To accompany H.R. 6181]

[Including cost estimate and comparison of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6181) to amend title II of the Social Security Act to provide adjustment benefits, vocational training, and waiver of overpayments for individuals terminated from the disability program, to strengthen the reconsideration process by providing for the earlier introduction of evidence of record, to provide for more uniformity in decision-making at all levels of adjudication, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 3, line 7, after "benefits" insert "under this Act".

Page 3, line 20, after "benefits paid" insert "under this title".

Page 4, line 2, after "paid to him" insert "under this title".

Page 5, line 10, after "benefits" insert "under this Act".

Page 9, line 6, after "paid" insert "under this Act".

Page 14, strike out lines 10 through 16.

Page 14, line 17, strike out "(d)(1)" and insert in lieu thereof "(c)(1)".

Page 17, lines 1 and 2, strike out "thereunder, except that it shall be made after opportunity for an evidentiary hearing" and insert in lieu thereof "thereunder; except that it shall be made after oppor-

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tunity for an evidentiary hearing which is reasonably accessible to the claimant, and which is held by an adjudicatory unit of the State agency other than the unit that made the determination (relating to the claimant's disability or period of disability) on which the decision being reconsidered was based".

Page 17, lines 19 and 20, strike out "and which could have been available before such date," and insert in lieu thereof "where such decision was made after opportunity for an evidentiary hearing pursuant to paragraph (2)(B)(ii) or subsection (i) and where such evidence could have been available before the date of that decision,".

Page 19, lines 14 and 15, strike out "which could have been submitted before the date of the decision on reconsideration," and insert in lieu thereof "which is otherwise prevented by subsection (d)(5) from being admitted or considered in connection with such entitlement,".

Page 21, lines 15 and 16, strike out "determination" and insert in lieu thereof "determinations".

Page 21, line 24, strike out "redeterminations" and insert in lieu thereof "determinations".

Page 23, line 18, strike out "an evidentiary hearing" and insert in lieu theerof "an evidentiary hearing which is reasonably accessible to the claimant (and which is not held by the same person or persons who made the determination, relating to the claimant's disability or period of disability, on which the decision being reconsidered was based)".

Page 24, line 3, strike out "(e)(1)" and insert in lieu thereof "d".

Page 24, strike out lines 11 through 14.

Page 24, line 15, strike out "(f)(1)" and insert in lieu thereof "(e)(1)", and strike out "paragraph (2)" and insert in lieu thereof "paragraphs (2) and (3)".

Page 24, strike out "Act," in line 19 and all that follows down through "1984" in line 22 and insert in lieu thereof "Act".

Page 24, after line 25, insert the following new paragraph:

(3) Section 221(d)(2)(B) of the Social Security Act, as amended by subsection (c) of this section, shall apply only with respect to requests (for reconsideration of decisions by the Secretary) filed—

(A) on or after January 1, 1984, or

(B) with respect to determinations (relating to disability or to periods of disability) to be made by a State agency in any State which notifies the Secretary in writing that it wishes to make determinations under such section 221(d)(2)(B) prior to January 1, 1984, on or after the first day of such month (after the month in which this Act is enacted and prior to January 1984) as may be specified in such notice.

For purposes of such section 221(d)(2)(B), each State shall initially notify the Secretary in writing that it wishes to make determinations under such section (specifying the month with which it wishes to commence making such determina-

tions), or shall notify the Secretary in writing that it does not wish to make such determinations, no later than January 1, 1983; and any State which has not so notified the Secretary by January 1, 1983, shall be deemed for all the purposes of section 221 of the Social Security Act to have notified the Secretary in writing (as of that date) that it does not wish to make such determinations.

Page 25, strike out lines 1 through 11.

Page 28, line 25, strike out "203(f)(8)." and insert in lieu thereof "203(f)(8)".

Page 35, lines 7 and 8, strike out "and the amendment made by subsection (d)" and insert in lieu thereof "the amendments made by paragraphs (1) and (2) of subsection (d)".

Page 35, line 11, strike out "enacted" and insert in lieu thereof the following: "enacted, and the amendments made by paragraphs (3) and (4) of subsection (d) shall be effective with respect to months beginning after the month in which this Act is enacted".

Page 40, line 11, strike out "(2)(A)" and insert in lieu thereof "(2)".

Page 40, strike out lines 14 through 16.

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I. Capsule Summary of Principal Provisions of Disability Amendments of 1982 (H.R. 6181)

PROVISIONS TO PROVIDE ADJUSTMENTS IN DISABILITY TERMINATION (CDI) PROCESS

Permanent changes

Allow benefits to continue until reconsideration (similar to SSI program), subject to overpayment if appeal is lost. (Sec. 2)

Temporary changes (apply only through calendar year 1984)

Allow additional "adjustment benefits" for four months in cases of medical termination for individuals on rolls at least 36 months. (Sec. 3)

Waive overpayments for period before notice in medically terminated cases. (Sec. 4)

Provide vocational evaluation and placement services through the State rehabilitation agencies for medically terminated CDIs. (Sec. 12)

PROVISIONS TO INCREASE ROLE OF RECONSIDERATION PROCESS

Provide face-to-face evidentiary hearing at reconsideration (through Social Security if the State agency wishes) for medical termination cases only (established by January 1984). Partially close record for purposes of introducing evidence after reconsideration level. (Sec. 5)

Lengthen appeal time to reconsideration level from 60 days to six months. (Sec. 5)

PROVISIONS FOR MORE UNIFORMITY OF DECISION-MAKING

Own-motion review of ALJ allowances, 15 percent in fiscal 1982 and 25 percent thereafter. Modifies preadjudicative review requirements so as to require after 1982 a review of at least 10 percent of all State Agency determinations each year with at least one-sixth of all reviews being denials. (Sec. 6)

Requires the Secretary to assure that uniform standards shall be applied at all levels of adjudication. (Sec. 7)

Provides Federal definition for the evaluation of pain. (Sec. 8)

MISCELLANEOUS PROVISIONS

Automatically adjust SGA and trial work amounts on the basis of increasing wage levels. (Sec. 9)

Technical and minor policy amendments to workers compensation and megacap provisions. (Sec. 11)

Liberalized reimbursement for vocational rehabilitation program and demonstration authority to test private rehabilitation agencies. (Sec. 12)

Prohibition against unlawful payment of disability benefits. (Sec. 10)

II. Purposes and Scope

In its continuing review and evaluation of the social security disability insurance program, your Committee has found that it is generally serving the disabled people in the manner contemplated by the Congress. In recent years the disability program has been restored to an actuarially sound basis. The percentage of workers on the social security disability rolls is the lowest in the history of the program. The 1981 incidence rate is now 3.6 disabled-worker beneficiaries per thousand workers compared to a high of 7.1 beneficiaries per thousand in 1974. The numbers of workers on the rolls has leveled off after a precipitous climb during the mid 1970's and has actually declined slightly in recent years. The large swings in the allowance rate over a relatively short span of time is, however, a situation of some concern from the standpoint of the stability of disability decision-making process, and the lack of uniformity between decisions at the state agencies and ALJ level is a very real problem. The social security disability program has recently been strengthened by some important changes that were enacted in the Disability Amendments of 1980 (Public Law 96–265). These changes include strengthening work incentives, improving program accountability and uniformity of administration, and improving adjudicative and appeals procedures. However, in reviewing the disability program since the 1980 legislation, your Committee believes certain further legislative is needed, particularly in relation to the termination of benefits as a result of the existing review of the disability rolls and the lack of uniformity in disability decision-making.

Public Law 96–265 provided for periodic review of all disability cases to assure that only people whose disabilities were continuing should get benefits. This was necessary because of major deficiencies which had developed in the continuing disability investigation procedures (CDI) during the middle 1970's. The 1980 law provided that the review should begin in January 1982. However, the Social Security Administration instituted an accelerated program of review of the existing disability rolls in March 1981 as part of the Administration's budget incentives for fiscal 1982. The Administration stated in its budget transmittal in February 1981:

> The General Accounting Office (GAO) in a draft report has stated that: "there may be as many as 584,000 beneficiaries not currently disabled but still receiving disability benefits. These beneficiaries represent over $2 billion annually in Trust Fund costs."
>
> Social Security Administration (SSA) studies confirm that huge sums are paid incorrectly to individuals misclassified as disabled. As a result, DI caseloads have risen by 80 percent since 1970, and costs have climbed by 500 percent. Under the direction of this Administration, the SSA will begin to intensively review cases to insure that only the truly disabled receive disability benefits.

Although your Committee does not necessarily endorse all the findings of the GAO report, your Committee for years has strongly supported the concept of reviewing the disability rolls on a regular and periodic basis. The program came under severe criticism in the past because this was not being done. This review must not be done in a precipitous manner; beneficiaries must be given adequate notice and time to prepare their cases. The State agencies that adjudicate the cases must be given the time and resources fully to document termination decisions. Moreover, your Committee recognizes that until the review of the existing disability rolls is completed and the periodic review becomes a regular and well-functioning part of the administrative process, some adjustments and allowances are in order. There have been a number of cases where beneficiaries on the rolls for many years, whose cases have never been reviewed, have had their benefits terminated abruptly. These beneficiaries may suffer financial hardships and have a difficult time adjusting when their benefits are stopped. H.R. 6181 contains several provisions intended to deal with these problems.

The second major concern that your Committee's bill addresses is the lack of uniformity and consistency in decision-making at all levels of the adjudicative process. For example, in fiscal year 1981, the administrative law judge (ALJ's) reversed about 58 percent of State agency decisions on appealed claims. Your Committee believes that a large portion of the variations in decision-making result because State agencies and ALJ's have been making disability decisions on the basis of different criteria. H.R. 6181 would make several changes to promote uniformity by requiring that the same criteria be used at all levels of the adjudicative process.

SSA has recently reported to the Congress on the results of reviews of state agency and ALJ decisions mandated by Public Law 96–265. Your Committee believes that these reviews will improve the consistency of decision making, and the bill therefore makes several changes to strengthen this review process.

Finally, your Committee is recommending a number of miscellaneous changes which are designed to improve the vocational rehabilitation (VR) program for disabled beneficiaries, simplify program administration, clarify congressional intent, and avoid certain unintended effects of the disability offset provision.

III. Summary of Bill

A. PROTECTION FOR TERMINATED DISABILITY BENEFICIARIES

Your Committee's bill contains a number of provisions which are designed to protect Social Security and SSI beneficiaries whose disabilities are terminated by providing some additional benefits and job services which will help them to avoid severe financial hardships and to ease the adjustments they will have to make due to leaving the benefit rolls. These provisions would:

(1) Permit a terminated Social Security disability beneficiary to elect to have benefits continue until a reconsideration determination is made (repayment would be required if the termination is upheld);

(2) Provide, through calendar 1984, additional months of "adjustment benefits" in cases where Social Security or SSI benefits have been terminated due to medical cessation for beneficiaries who have been on the rolls for at least 36 consecutive months prior to termination;

(3) Not count as overpayments, through calendar year 1984, benefits paid to disabled Social Security and SSI beneficiaries for any months prior to receipt of notice of termination on account of medical recovery; and

(4) Establish a temporary VR program in fiscal years 1983–84 to provide evaluation and job-placement services to Social Security disability beneficiaries terminated due to medical recovery.

B. STRENGTHENING THE RECONSIDERATION PROCESS

H.R. 6181 contains a number of provisions designed to strengthen the reconsideration process, particularly as to termination cases.

The entire disability appeals procedure—initial decision, reconsideration and hearing—would for the first time be specifically spelled out in the law. Existing law is changed by providing that new evidence may not be entered into the record after the reconsideration decision unless the ALJ determines the evidence could not have been made available at the reconsideration level. This closing of the record would only be applicable in termination cases where there is an opportunity for a face-to-face evidentiary hearing. Such a hearing procedure would be required by January 1, 1984 and would apply to both Social Security and SSI cases. State agencies that do not wish to carry out this function can elect to have it done by Federal employees.

An individual who wishes to introduce evidence which could have been made available at the reconsideration level would have the option of having the case remanded to the State agency for incorporation of the evidence into the record or of going directly to an ALJ hearing without the evidence. Evidence of a new impairment or a worsening of the impairment would be admissible at the ALJ level. Individuals requesting reconsideration of a termination decision shall be informed both orally and in writing of the provisions of this requirement and would be advised that they may wish to retain an attorney or other representative to assist them during the reconsideration.

After an initial determination of ineligibility for disability benefits, under H.R. 6181 a claimant would have 180 days in which to request a review at the reconsideration level as opposed to 60 days under present law.

C. UNIFORMITY OF DECISION-MAKING

Your Committee's bill contains several provisions which are designed to promote uniformity and consistency of disability decision-making at all levels of the adjudicative process by:

(1) Requiring the review of 15 percent of ALJ allowances in fiscal year 1982 and 25 percent in each year fiscal years 1983–87, and requiring review of State agency denials as well as allowances before benefits my be paid;

(2) Requiring the same criteria to be used to make disability determinations at all adjudicative levels; and

(3) Including in the law an explicit statement as to how allegations of pain are to be evaluated in the disability adjudication process.

D. MISCELLANEOUS CHANGES

Your Committee's bill contains several other provisions affecting the Social Security and SSI disability programs. These include:

(1) Automatically revising, based on increases in average earnings levels, the earnings guidelines for determining whether a person is engaging in substantial gainful activity and for determining what constitutes a month of trial work for a person who returns to work despite an impairment;

(2) Making clear that Social Security benefits may not be paid until a final determination is made on an application for benefits by including in the law an explicit prohibition against interim payments;

(3) Improving the disability offset provision by correcting certain unintended effects of 1980 and 1981 legislation and by making the provisions easier to administer, and

(4) Revitalizing the VR program for disabled Social Security and SSI beneficiaries by making a number of changes, including expanding the definition of reimbursable State agency costs, and requiring SSA to experiment to determine how VR services can best be provided to beneficiaries.

IV. General Discussion

SECTION 2. CONTINUED PAYMENT OF DISABILITY INSURANCE BENEFITS DURING APPEAL

When the Social Security Administration (SSA) determines that a DI beneficiary is no longer disabled or is otherwise ineligible, a notice is sent informing him that it appears that he is ineligible for benefits, and that he has 10 days in which to notify the agency whether or not he wishes to rebut the proposed decision. The agency actually provides another 5 days to recognize mailing time, thereby delaying the termination for 15 days after the date the notice is sent. If the beneficiary informs SSA that he wants to rebut the proposed decision, he is given additional time, at least 10 days, in which to submit new evidence to support his position that he is still eligible.

If the decision is to terminate benefits, the disability beneficiary receives benefits for the month that the disability ceases based on medical factors and for 2 additional months. If a beneficiary disagrees with the decision by the State agency to terminate his benefits, he or she has 60 days after receipt of the termination notice in which he may request a reconsideration of that decision by the State agency. Subsequently, if upon reconsideration the beneficiary's disability is found to continue, benefits are resumed retroactive to the month in which they were terminated.

Your Committee is concerned that the process of terminating disability benefits is often too precipitous. Disabled persons who have been on the rolls for years without question are receiving questionnaires as to their present condition, directives to attend medical examinations, and then notices of proposed termination with little time to present evidence or to develop their cases that they are still disabled. There are even problems in some cases in locating the individuals which should be addressed by the Social Security Administration. Sections 3 and 5 of your committee's bill would provide that disabled beneficiaries whose disabilities have medically ceased may receive benefits for four additional months and extends the time period in which a beneficiary may request a reconsideration of the decision to terminate his benefits. However, your Committee is concerned that additional provisions may be necessary to help deal with financial hardship that beneficiaries may encounter during this period while the reconsideration request is pending. The present provision allowing for retroactive payment where the reconsideration is favorable to the claimant does not adequately meet the disabled person's needs during this period.

Your Committee's bill would, therefore, permit Social Security beneficiaries who have been determined by SSA to have medically ceased to elect to receive benefits (including Medicare benefits) up to the time a reconsideration determination is made, or six months if that is earlier, upon enactment of this bill. The six months alternative period expires upon institution of the face-to-face hearing requirement on January 1, 1984. However, as under the existing SSI procedures, if the reconsideration decision upholds the initial decision that the Social Security beneficiary is ineligible, benefits paid after the termination date will have to be repaid. If the individual has received Medicare benefits during the appeal period they would not be considered to be an overpayment. The bill in section 5 also would require that beneficiaries be given an opportunity for a face-to-face hearing by the State agency in Social Security disability and SSI cases at the reconsideration level for medically terminated individuals beginning in 1984. (If the State is able to put this process into effect earlier the face-to-face hearing will be available before this date.)

SECTION 3. ADJUSTMENT BENEFITS

Under existing law, a Social Security or SSI disability beneficiary receives benefits for the month the disability ceases based on medical factors and for 2 additional months. Your Committee is concerned that in some medical cessation cases, people who have been on the benefit rolls for many years and whose cases have not been previously reviewed—or have not been reviewed on a regular basis—are abruptly taken off the rolls with virtually no adjustment period. In the future, under the provision in Public Law 96–265, all persons not permanently disabled must expect to be reviewed at least once every three years and should be so informed by the Social Security Administration upon award of benefits and periodically thereafter. However, such a process has not been fully operating in the past several years and many individuals who had not been reviewed for years did not expect the government ever to review their cases.

Your Committee's bill would provide 4 additional months of benefits to give beneficiaries (and their families) terminated due to medical factors time to adjust their personal and financial arrangements to take account of the fact that they will no longer be able to rely on monthly Social Security or SSI benefits for support. Knowing that there is a source of income for several additional months should help relieve some of the anxiety that these beneficiaries have when their benefits are terminated after many years.

The bill provides that individuals who had been receiving disability benefits for at least 36 consecutive months prior to termination would receive 4 additional months of benefits beginning with the later of (1) the first month for which benefits would no longer be payable, or (2) the month the beneficiary was notified of the determination that the disability had ceased. However, an adjustment benefit would not be payable for any month the beneficiary engaged in substantial gainful activity or in the case of fraud, was ineligible for benefits for a reason other than not being under a disability, or if the Social Security beneficiary was entitled or would be entitled upon application to another monthly Social Security benefit under the same program. The individual will continue to be eligible for Medicare during the additional period. This provision would expire at the end of calendar year 1984 when the review of existing disability rolls should be completed and when regular, ongoing review procedures and notification procedures will have been implemented.

SECTION 4. BENEFIT PAYMENTS NOT TO BE TREATED AS OVERPAYMENTS IN CERTAIN CASES

Under present law, a Social Security or SSI disability beneficiary receives benefits for the month that the disability ceases and for 2 additional months. Any benefit payments made after that are overpayments which the beneficiary must repay. In the great majority of cases, overpayments are not a major problem since the date the disability terminates is usually no earlier than the date of a new medical examination that had been requested by SSA in its review of whether the beneficiary's disability is continuing. In some cases, however, there may be existing medical evidence showing that the disability ceased at a much earlier date. Your committee feels that in most of these cases it was the system's fault that the individual's case was not looked at earlier and he should not be penalized for the government's failure to act in the past.

Your Committee does not think that terminated beneficiaries should be forced to repay these benefits. Accordingly, your Committee's bill provides that any Social Security or SSI disability benefits paid before the month a person was notified of benefit termination because of medical factors would not be considered overpayments. Similarly, payments made under Medicare will not be considered overpayments. Your Committee notes that SSA has recently implemented an administrative decision eliminating retroactive terminations in cases of medical cessations unless the beneficiary fraudulently failed to report a change in his condition. However, your Committee believes that this policy should be mandated by law through 1984, until the review of the existing disability rolls is completed.

SECTION 5. PARTIALLY CLOSING THE RECORD AT RECONSIDERATION AFTER FACE-TO-FACE HEARING IN DISABILITY CASES

There are a number of interrelated provisions in this section which are designed to improve the Social Security appeals process and make it more rational.

The disability determinations and appeals structure is multi-layered and can be quite lengthy. An individual applies at the Social Security district office and the initial determination is made at the State agency. The first appeal level is a reconsideration by the State agency and, if the claimant is not successful, he may appeal to a Federal administrative law judge. If not successful before the ALJ he may take his case to the Appeals Council. After all administrative remedies are exhausted, including an Appeals Council decision, the claimant may take his case to a district court and higher Federal court if need be. In the past the cases have been able to be taken up "de novo" at each administrative level and the courts have remanded very substantial numbers of cases to the administrative process for the taking of additional evidence. In the 1980 Amendments the first step were made to reform this process by "closing the record" at the ALJ level and modifying the unrestricted nature of the court remand.

The most questionable part of the appeals process continues to be the reconsideration level. The statistics point out the problem. There is an affirmance rate of 87 percent and an appeal rate of close to 60 percent. In contrast, in 1974 the reversal rate was twice as high and only 35 percent of the reconsideration decisions of the State agencies were appealed. This level generally is now considered a pro forma review which, at least as far as the claimant is concerned, is unproductive. Many reports have been received that attorneys are withholding evidence for presentation at the ALJ level where they believe they will get more favorable attention. Also since attorney fees are based on past due benefits there is little financial incentive for the attorney to dispose of these cases quickly at the first appeal level. We do not mean to imply that this plays a controlling role in attorney's decision. On the other hand, the past due benefit mechanism may also present a problem in getting adequate representation in termination cases where there may be fewer past benefits due. Attorney fee legislation, which has also been referred to the Judiciary Committee, will be the subject of hearings later in the session.

Most informed commentators agree that one of the major problems with the disability process is the failure to develop cases adequately at the State agency level. The Ways and Means Committee over the years has emphasized the need to get adequate medical and vocational evidence at the initial levels of adjudication. As a result of these efforts, and SSA's recognition of the problem, the percentage of cases having consultative medical examinations has risen from 20 percent to almost 40 percent of the cases. However, the fact that some attorneys choose to bypass the reconsideration level means that available evidence from treating physicians and specialists consulted independently by claimants is not available until the ALJ process. Moreover, the deliberate withholding of this evidence may not expedite the case as desired, but in fact may require an additional con-

sultative exam which the ALJ must arrange through the State agency, thereby further delaying the resolution of the case.

For years people have recommended "reform" or elimination of the reconsideration level. In 1960 the Harrison Subcommitteee of Ways and Means questioned the "reconsideration" process which had just been made mandatory by regulation and asked for a report on its operation by the Department of Health, Education, and Welfare. In a report, HEW defended "reconsideration" in that the proces was reversing a substantial number of cases and that its elimination would flood the ALJ level with cases. At that time, in the early 1960s however, almost 40 percent of the initial decisions were being reversed. Unfortunately, the argument that eliminating reconsideration would flood the ALJ level still appears to be valid. It would about double the ALJ case backlog which now is at a record high of 140,000 cases. The bill then is designed to revitalize the reconsideration process as the only viable option. This would be accomplished in a number of ways.

(*a*) *Incentives to get evidence at reconsideration*

H.R. 5700 (as introduced by Mr. Pickle and Archer) would have prevented the introduction of new evidence at the ALJ level requiring that if the claimant wished this material to be part of the record that the case be remanded to the reconsideration level (State agency). This remand would have been at the option of the claimant and he could go directly to the ALJ hearing with the evidence in the record if he so chose. If the evidence was of a worsening condition or a new impairment a new application for benefits would have been required.

This provision was modified by the Subcommittee on Social Security so that evidence of new and worsening conditions would be admissible at the ALJ level. The bill would have required that there would be remand to the State agency only if the evidence was "available" at the time of the reconsideration decision. A specific provision was also placed in the bill requiring both written and oral notice to the claimant that it was essential to get available evidence into the record at reconsideration and that the individual might wish to obtain an attorney or other representative. The amendment was purposely designed to get attorneys and other representatives to proffer relevant and available material which is essential to a decision on the best evidence at reconsideration.

However, there was concern expressed at the full Committee that some people are not adequately represented at the reconsideration level and this would deny—or at least delay—benefits to unsophisticated and needy applicants. In response to these concerns, the Committee has further modified the provision (Pickle Amendment) so that there will only be a remand to the State agency where there has been opportunity for a face-to-face presentation by the claimants at the reconsideration level and where the claimants have been completely informed of their rights and the advisability of securing adequate representation. The bill provides for a face-to-face reconsideration on disability termination for both Social Security and SSI cases. This procedure would not have to be instituted until January 1, 1984, although the States could put it into effect earlier. Thus, the Committee bill would couple the modified closed record requirement with the face-to-face hearing re-

quirement, i.e., no closed record unless a face-to-face hearing is available and this would be applicable only in termination cases. The procedures involving initial applications for benefits would not be changed. The Committee believes that the combination of provisions in the bill will (1) adequately protect claimants with the potential need to obtain adequate representation at the reconsideration level, (2) improve their situation by paying benefits to them until the reconsideration decision is made (68.1 percent of the claimants are appealing their termination decision), and (3) enhance the quality of decisions at the reconsideration level on termination cases, hopefully lessening the number of appeals to the ALJ level and ameliorating, to some degree, the hearing caseload crisis.

Face-to-face contact at reconsideration is probably one of the most studied ideas for improving the appeals process. Its adoption has been supported a number of times in the past by the Social Security Administration, but never implemented. For instance, in the Social Security Subcommittee's 1979 hearings on disability insurance Secretary Califano said he was instituting such a proceeding as part of the administrative action he was taking to implement disability program reform.

The principal rationale for face-to-face at reconsideration has been the idea that it might enhance claimant acceptance of the denial at the State agency level and reduce the number of appeals. Your Committee believes that face-to-face at reconsideration might also be a useful step in reducing the disparity in adjudication between the ALJs and the State agencies since this is one of the major differences between the procedures at these levels. The past experiments with face-to-face generally show a higher level of allowance and lower level of appeals resulting from the procedure. The real issue is whether face-to-face at reconsideration leads to better decision-making and enhanced respect for the system by applicants. This provision in the bill will provide a real test as to the effectiveness and fairness of a face-to-face reconsideration and the closing of the record, and if it proves successful it could, over time, be extended to the reconsideration process of initial claims.

Some concern was expressed as to the independence of decision-making at reconsideration by the State agency. The face-to-face hearing at reconsideration must meet the requirement of the *Kelly* v. *Goldberg* decision of the Supreme Court but not those of the Administrative Procedures Act. Present procedures require that a person other than the individual who made the initial decision reconsider the case. However, the Committee bill goes further and specifically provides that the reconsideration must be held by an adjudicatory unit of the State agency other than the unit that made the initial decision. It is further the intent of the Committee that the personnel who conduct these examinations be the best qualified disability adjudicators in the agency and that they be given adequate time and resources to make quality determinations. They should scrupulously follow the adjudicative standards published in the POMs and not be bound by other informally prepared material or undocumented administrative direction. There also have been allegations that the Social Security Administration is requiring that in mental cases and certain other categories of cases the listings must either be met or equalled. Although the Committee does not have the information to either verify or refute these

allegations, it is important to emphasize that the State agencies must follow strictly the standards set forth in the POMs.

Concern was also expressed that the face-to-face could not be effectively conducted in places not accessible to the claimant. The Committee expressly provides that the hearing will be "reasonably accessible" to claimants under standards which provide accessibility at least at the level currently provided under the ALJ hearing system.

Some arguments have been made that face-to-face could not be effectively implemented in those States with a centralized operation for disability determination. The bill provides, therefore, that if the State believes it cannot adequately carry out this responsibility, it can opt out of the reconsideration function on termination cases and this can be carried out instead by federal employees. The decision to participate must be made and communicated to the Secretary by January 1, 1983.

The Social Security Administration should also take a number of steps administratively to make sure that cases are adequately developed at the reconsideration level and that individuals are adequately informed of their rights in appealing the decision to terminate. The Committee believes that the initial notices of termination should provide an explicit statement emphasizing the importance of the reconsideration decision from an evidentiary standpoint and the desirability of being represented by an attorney or other representative.

Your Committee is particularly concerned about the problem of notifying mentally impaired people of the fact that they are facing a termination proceeding and informing them of their rights and obligations in supplying evidence at that time. These cases present a particularly difficult problem. Present procedures do state that "special attention" and "additional effort" are required when a mentally impaired person does not respond or "cooperate" in the termination procedures. However, it appears that there is a question whether the "representative payee" mechanism which requires a finding that the claimant is incapable of handling his finances is an adequate mechanism in the termination situation. The Committee believes that the State agencies should be required to take more positive steps to see that every action is taken so that the rights of individuals with such conditions are adequately protected. Evaluating the nature and extent of mental impairments for disability purposes is difficult at best and early information from the GAO indicates that close to 30 percent of terminations are occurring on the basis of these conditions. There are major problems in developing an adequate medical record for mentally ill persons who qualified for benefits a number of years ago. Evidence from treating sources—physicians, hospitals, and clinics—must be aggressively pursued by State agencies and reliance cannot be exclusively on a consultative mental exam. The Social Security Administration must also see to it that the State agencies have the resources to carry out these difficult determinations. Special procedures and units to see to it that claimants are located and adequately represented may need to be instituted at the State agency level.

(*b*) *Extending period of appeal to reconsideration*

A related provision to improve the reconsideration lengthens the time that is allowed for a timely appeal of the denial of benefits. Under current law an individual has 60 days in which to appeal an

initial denial or termination of benefits. Particularly in initial decisions, the appeal is often pro forma and done with great speed. The result is that the reconsideration record reflects very little evidence other than that medical and vocational information which existed at the first consideration. The Committee bill would extend the appeal period from 60 to 180 days in disability cases. This will give the claimant and attorney more time to evaluate the case and assess the claimant's condition after a more substantial time lapse following the initial decision. It is hoped that this provision will help make the appeals process less redundant.

SECTION 6. REVIEW OF DISABILITY DECISIONS

(*a*) *Own-motion review of ALJ decisions*

In its hearings in 1979 on the disability amendments, the Subcommittee on Social Security expressed its concern with a situation where there had been no review of ALJ reversals of State agency denials for almost 5 years. At that time Commissioner Stanford Ross stated he would reinstitute "own-motion" review by administrative action, and a legislative requirement was not put in the bill then pending before the Committee. When the administrative action was not taken by the Social Security Administration by 1980, the Congress included a provision in the 1980 disability amendments (Bellmon Amendment) requiring the Secretary of Health and Human Services to implement a program of own-motion review of decisions rendered by ALJ's as a result of hearings involving disability claims and report on the progress of the re-instituted review by January 1, 1982.

SSA implemented such a program on October 1, 1981, under which 7½ percent of all Social Security and concurrent Social Security–SSI disability allowances made by ALJ's were reviewed; in April 1982, SSA increased its review to 15 percent of those decisions. In order to promote uniformity and consistency in the decision-making process, your Committee believes that a higher percentage of ALJ decisions should be reviewed because of (1) the extremely high ALJ reversal rate (about 58 percent in fiscal year 1981) of disability determinations by State agencies, and (2) the findings in the Secretary's recent Bellmon report to the Congress on the own-motion review program. In the study of own-motion review, two groups reviewed 3,600 decisions made by ALJs. One group, which applied the POMS, found that the State agency decision was correct in 87 percent of the cases while the other group, which applied the standards governing the ALJs, found the Stae agency decision was correct in 52 percent of the cases. (The study found that a primary reason for the variation in the percentages was the different decision-making criteria used by the two groups. This problem is discussed in the next section.) This data indicates that there is a serious and substantial lack of uniformity between decisions made by the State agencies and by the ALJ's. Accordingly, your Committee's bill would require SSA to review at least 15 percent of favorable ALJ decisions on Social Security disability claims in fiscal year 1982 and at least 25 percent in each year from fiscal year 1983 through fiscal year 1987. This review will be conducted in the Office of Hearings and Appeals by the Appeals Council. Since only a

few months remain in fiscal year 1982, your Committee believes that SSA's April 1 move to 15-percent review should be considered as substantially complying with this provision.

(*b*) *Review of State agency decisions*

The 1980 amendments also included a provision requiring SSA to review, before payments are made, 35 percent of all favorable State agency decisions in fiscal year 1982 and 65 percent thereafter. In a report on this review which was submitted to the Congress last year, and in the budget for fiscal year 1983, the Administration recommended that the 65-percent review required beginning in fiscal year 1983 not be implemented for a number of reasons. The basis for this recommendation was that a 65-percent review would (1) require a significant increase in Federal and State staff to conduct the reviews, (2) create a shortage of needed medical consultants, (3) result in a decline in the proportion of erroneous allowances detected because the current level of review is targeted on the most error-prone cases, and (4) result in delays in making benefit payments because of the significant workloads involved. Your Committee agrees that the review should not be increased to 65 percent at this time but that a substantial review of State agency cases should continue. However, to promote uniformity in disability determinations and to eliminate any possibility of bias that might occur because denials are not reviewed, your Committee believes that unfavorable, as well as favorable, decisions should be reviewed. Therefore, your Committee's bill requires SSA to review at least 10 percent of all State agency disability determinations (allowances and denials combined) in fiscal year 1983 through fiscal year 1987—before the decisions are effectuated—with at least one-sixth of the reviewed cases to be denials.

The requirements in your Committee's bill for review of ALJ reversals and review of State agency decisions will expire after fiscal year 1987. The expiration of these specific review requirements should not, however, be construed as precluding continuation of such reviews to the extent the Secretary finds that ongoing review is consistent with effective and efficient program administration. The authority to make such own-motion reviews has always existed in the law.

SECTION 7. UNIFORM STANDARDS FOR DISABILITY DETERMINATIONS

One of your Committee's major concerns about the disability determination process is the lack of uniformity in disability decisions made at the various adjudicative levels, particularly between those made by the State agencies and those made by administrative law judges (ALJ's) at the hearings level. In fiscal year 1981, the ALJ's reversed about 58 percent of the roughly 200,000 Social Security and concurrent Social Security-SSI disability cases that had been appealed because a State agency had either denied claim or terminated disability benefits. Several reasons have been advanced for this very high rate of reversal, including the fact that ALJ's have direct face-to-face contact with the claimants while the State agencies do not; that additional evidence is sometimes available to the ALJ that was not available to the State agency; and that the individual's medical condition may have worsened by the time the cases get to the ALJ, or that a new impairment might by then exist. However, none of these differences between the two processes fully explains the variations in results.

Your Committee believes that a large portion of these variations in decision-making results because the State agencies and the ALJ's have been making disability decisions on the basis of different criteria. In adjudicating disability claims, the State agencies are required to use a detailed set of administrative instructions known as the Program Operating Manual System (POMS). These instructions amplify and interpret the Social Security law and regulations and the Social Security Rulings. The POMS contain specific standards and procedures with which the State agency must comply in making disability determinations; it is intended to ensure uniformity of State agency and SSA operations.

Although the State agencies must use the standards in the POMS in making disability determinations, the ALJ's are not bound by the POMS and do not use it in making disability decisions. Instead, ALJ's rely on the Social Security law and regulations, the Social Security Rulings, and the Office of Hearings and Appeals Handbook to adjudicate disability claims. (It appears that substantial numbers of ALJ's are not following the regulations in allowing cases under a special "residual functional capacity less than sedentary." This departure from the sequential evaluation of disability appears to have created a new type of medical allowance at a level less severe than either "meets" or "equals" the listings of medical impairments which is required by the regulations.) As a result, the ALJ's and the State agencies may be using different criteria to adjudicate disability claims in some significant policy areas. As noted in the preceding section, the Department concluded in the Bellmon report that a primary reason for the different decisions was the different criteria used. The report submitted this year stated:

> A major finding of the initial review was that the standards for deciding disability claims are applied differently at the various levels of adjudication. SSA has concluded that a significant contributing factor to this difference is that ALJ's base their individual interpretations of the statute, applicable regulations, and Social Security Rulings without benefit of the guidance and clarification provided in the POMS, which is used by the prehearing level adjudicators. We are persuaded that all adjudicators must be provided, and required to adhere to, a consistent set of adjudicatory standards.

Your committee notes that SSA has already taken steps to promote uniformity by issuing a series of Social Security Rulings, which are binding on both state agencies and ALJ's, setting out specific standards for making disability decisions. These rulings contain standards which are incorporated in the POMS and which were not previously binding on ALJ's. As to court cases, the Social Security Administration maintains that a district or circuit court decision is binding only in the specific case it decides. The Social Security Administration may acquiesce in an adverse court decision by issuing a regulation or ruling, binding upon components. If a decision of a district court or circuit court establishes certain procedural or evidentiary requirements, the administrative law judge is required to make a reasonable effort to follow the court's views when handling similar cases. However, if a district or circuit court's decision contains interpretations of the law, regulations, or rulings which are inconsistent with the Secretary's

interpretations, the administrative law judge is required to follow the Secretary's interpretations.

To promote uniformity of disability decision-making, your Committee believes that it is essential that the same standards be used at all levels of the adjudicative process. Accordingly, a provision has been included in your Committee's bill which requires the Secretary to assure that uniform standards are used at all levels of adjudication in making Social Security and SSI disability determinations. Current SSA initiatives such as issuing a set of Social Security Rulings, which will constitute the disability standards for all levels of adjudication, move in the direction of assuring greater uniformity. Nevertheless, your Committee believes that this approach should be fully reflected in the statute itself.

The uniform standards to be made applicable should be promulgated in a manner at least as formal as those in the POMS. It also should be clearly understood that the order of priority in binding effect is, namely, the regulations, the Social Security Rulings, and the POMS. However, the Committee realizes that the ALJs make their determinations on the basis of the regulations and the Social Security rulings, and the State agencies make their decisions based upon the POMS. The intent of this section is that the same standards shall apply at all levels of adjudication and the Social Security Administration should continue its present efforts to meet this objective.

The Committee believes that it is essential that the uniform adjudicatory guidelines be made available to the public in a usable form. Also it is expected that knowledgeable groups and individuals be consulted in preparing these important adjudicatory standards even when setting guidelines outside of the regulations promulgation process.

SECTION 8. EVALUATION OF PAIN

The Social Security law has never been explicit about how pain should be evaluated in making Social Security disability determinations. This has resulted in decisions in some cases, especially at the ALJ level, being based on subjective reports of pain. These decisions often reflect the district and circuit court decisions on pain which vary throughout the country.

Your Committee believes that including an explicit statement in the law on the evaluation of pain and on the effect of subjective testimony about pain and similar symptoms will result in more uniform and consistent decisions among the courts and between the State agencies and the ALJ's. Accordingly, your Committee's bill would require medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical condition that could reasonably be expected to produce the pain or symptoms alleged. The bill also provides that an individual's statement as to pain or other symptoms will not, by itself, be conclusive evidence of disability. This provision is intended to reinforce and underscore the criteria for evaluating pain now set out in regulations, the Social Security Rulings, and the POMS.

SECTION 9. SUBSTANTIAL GAINFUL ACTIVITY AND TRIAL WORK

Under present law, the Secretary of Health and Human Services has the regulatory authority to establish earnings guidelines for determin-

ing (1) whether a person is engaging in substantial gainful activity (SGA) and (2) what constitutes a month of trial work for a person who returns to work despite an impairment. Under regulations issued by the Secretary, when a person has monthly earnings exceeding $300, he is considered to be engaging in SGA. This has been the standard since January 1980. Similarly, when a person earns at least $75 a month, that month is counted as a month of trial work. This standard has been in existence since January 1979. These earnings guidelines apply to both the Social Security and SSI disability programs.

Your Committee is concerned that the amounts of earnings used in determining whether an individual is able to engage in SGA and what constitutes a month of trial work have lagged behind increasing national wage levels. The Social Security definition of disability is such that if the SGA level is not updated the result is a deliberalization of the disability program. Similarly, the amount that triggers the utilization of any of the nine trial work months available to a disabled individual would be more representative of a work attempt if the amount were kept current with economic changes.

Your Committee's bill would provide for revising the monthly SGA level and the monthly amount that is considered a month of trial work beginning in January 1983. The SGA and trial work monthly amounts would be increased based on increases in average covered earnings using the same measurement procedures that are used under present law to update the earnings test monthly amount for people under age 65.

SECTION 10. PROHIBITION AGAINST INTERIM PAYMENTS BEFORE A FINAL DETERMINATION IS MADE

Present law does not authorize the payment of Social Security benefits from the Social Security trust funds until a final decision is made on an application for benefits. Nevertheless, a number of courts have ordered SSA to make interim payments to claimants before hearing decisions are issued. As of May 1, 1982, there were seven separate court orders requiring interim disability payments. Six of these court orders apply only in the areas under the jurisdiction of the court, but the seventh, issued in *Blankenship et al.* v. *Califano*, requires SSA to publish regulations establishing time limits for making hearings decisions and to pay interim benefits nationwide in cases in which the time limits are not met. (At this writing, the *Blankenship* case has been stayed by the Court of Appeals.)

To make clear that these interim payments are not permitted, your Committee's bill would include in the Social Security law an explicit prohibition against paying interim Social Security benefits before a final determination is made on an application for benefits.

Your Committee believes that a disability claimant is entitled to a timely hearing and decision on his appeal, but it also recognizes that the time needed before a well-reasoned and sound disability hearing decision can be made may vary widely on a case-by-case basis. (It is also interesting to note that the mean processing time for disability cases in some District courts is as high as five years and nationwide stands at an average of 12 months.) Additional time may be required

in some cases because, for example, updated, comprehensive medical reports are needed from a claimant's treating physicians or it is necessary to have a consulting medical specialist examine the claimant. Establishing strict time limits for the adjudication of every case could result in incorrect determinations because time was not available to obtain needed medical evidence or to reach well-reasoned decisions in difficult cases. SSA has recently undertaken several administrative actions to improve the timeliness of hearing decisions, such as expanding its ALJ corps and support staff, improving staff training, and installing modern equipment in hearing offices to ensure the efficient use of their resources. Your Committee will continue to emphasize and support improvements in the administrative structure and the maintenance of an adequate staff so that reasonable case-processing times exist at all levels of adjudication.

SECTION 11. IMPROVEMENTS IN DISABILITY OFFSET PROVISIONS

The law provides that the Social Security disability benefits of a worker who is also entitled to workers' compensation payments or benefits from certain other public programs on account of disability are reduced, if necessary, so that the total disability benefits payable do not exceed the worker's predisability earnings. Last year, in budget reconciliation legislation (Public Law 97–35) a number of changes in this offset provision were enacted which had certain unintended effects. Your Committee's bill amends those provisions to rectify the problems which have arisen and to make the provision easier to administer and more equitable.

Public Law 97–35 provided that the disability offset would apply up to age 65 (rather than up to age 62 as under prior law) for workers who were not yet age 62 and who became disabled in March 1981 or later. Workers not yet age 62 who became disabled before March 1981 were inadvertently excluded from the provision. As a result, there are situations where two disabled workers, both under age 62 and both now having their Social Security disability benefits offset, will be treated differently when they become age 62. The worker who became disabled in, say, March 1981 will have his benefits offset until he becomes age 65, but the benefits of the worker who became disabled in February 1981 will be offset only up until he becomes age 62. Your Committee's bill corrects this oversight by extending the time period of the offset to age 65 for those persons who became disabled before March 1981 and who attain age 62 after this bill is enacted. Treating all workers the same will not only make this provision more equitable but also make the provision easier to administer.

Present law also provides that a person who is concurrently entitled to both a disability insurance benefit and a reduced retirement insurance benefit may elect to receive either one of those benefits. In the past, a worker usually elected to receive disability benefits because the monthly benefit was higher than the reduced retirement benefit. However, the law was changed in 1980 to limit the total family benefits payable in disability cases and to suspend disability benefits payable to prisoners. In the 1981 reconciliation legislation, further amendments extended the worker's compensation offset provision to include

certain other public disability benefits and to make the offset apply to disability benefits after age 62. As a result, workers entitled to both disability and reduced retirement benefits have been electing to receive reduced retirement benefits more frequently. This creates an unfair advantage for such workers because, when these workers become age 65, their retirement benefits are increased by eliminating the reduction due to receiving retirement benefits for months before age 65 on the grounds that they were technically entitled to disability benefits for those same months. Your Committee believes that if a person elects reduced retirement benefits in order to avoid the limitations on disability benefits mandated by the Congress, the person's retirement benefits should not be increased at age 65 based on the fact that the person had technically been entitled to Social Security disability benefits. Accordingly, your Committee's bill continues after age 65 the reduction in retirement benefits for people who elected to receive reduced retirement benefits rather than disability benefits.

The Committee's bill repeals the average monthly wage method of computing average current earnings in the disability benefit offset provision but liberalizes the method of computing "average current earnings." The average monthly wage (AMW) method is one of three methods in current law for determining an individual's average current earnings for purposes of the disability offset provision. It is only applicable in about 10 percent of the cases but must be computed in all dual benefit cases. It would be eliminated for administrative simplification purposes. Also in computing "average current earnings" under current law only a person's earnings from employment covered by Social Security are taken into account. If he has earnings from non-covered employment in his work history, they are not considered. The Committee bill provides that the computation of "average-current earnings" would be determined using both covered earnings (as under present law) and non-covered earnings occurring in the year of disability and the five preceding calendar years, if their existence can be shown by the worker. This would be effective for benefits paid after enactment.

Your Committee's bill also makes a technical change to clarify that benefits received on account of disability which were subject to offset prior to the enactment of Public Law 97–35 will continue to be subject to that offset.

SECTION 12. PAYMENT OF COSTS OF REHABILITATION SERVICES FROM TRUST FUNDS; EXPERIMENTS AND DEMONSTRATION PROJECTS

Background

The 1981 budget reconciliation legislation (Public Law 97–35), which became effective on October 1, 1981, provides that State vocational rehabilitation (VR) agencies may be reimbursed only for the costs of VR services provided to disabled Social Security or Supplemental Security Income (SSI) beneficiaries that result in the beneficiary's performance of substantial gainful activity (SGA) for a continuous period of at least 9 months. Before Public Law 97–35 was enacted, the Secretary of Health and Human Services was authorized to transfer from the Social Security trust funds each year up to 1.5

percent of the total amount of Social Security benefits paid to disability beneficiaries. In addition, general revenue funds were appropriated each year for the purpose of providing VR services to disabled or blind SSI recipients. These funds were used to cover the costs incurred by the States in attempting to rehabilitate disabled Social Security and SSI beneficiaries.

In fiscal year 1980, VR expenditures from the Social Security trust funds for disabled Social Security beneficiaries were about $110 million (far below the limit of 1.5 percent of benefits) and approximately $50 million from general revenue funds were used for SSI recipients—a total of about $160 million overall. The changes in funding made by Public Law 97–35 became effective beginning fiscal year 1982, and SSA has estimated that only $2 million will be spent from the Social Security trust funds for rehabilitating disabled Social Security beneficiaries and $1.5 million from general revenues for rehabilitating SSI disability beneficiaries. The effect is to reduce services for the beneficiary group at a time when the program for the severely disabled under the Rehabilitation Act of 1973 has been greatly reduced. Your Committee is concerned that unless additional funds are available to the States specifically for the purpose of providing rehabilitation services to disabled Social Security and SSI beneficiaries, the number of disabled Social Security and SSI beneficiaries served will be seriously curtailed. These reductions could be counterproductive because, if fewer disabled Social Security and SSI beneficiaries are rehabilitated more money will be expended to pay them benefits. A benefit cost study completed by the Social Security Administration in 1981 found that savings to the trust funds were between $1.39 and $2.72 for each $1 spent in 1975 on the rehabilitation of trust fund beneficiaries. Therefore, the beneficiary rehabilitation program, even prior to the 1981 reconciliation amendments, was shown to be cost effective.

Rehabilitation services for beneficiaries

Your Committee is recommending a number of changes which are intended to revitalize the VR program for disabled Social Security and SSI beneficiaries, while still emphasizing the objective that individuals be returned to productive activity to the end that savings will accrue to the trust funds and general revenues.

Costs of evaluations for all beneficiaries referred for vocation rehabilitation services are to be payable. These services will focus on diagnostic and other evaluative procedures required to determine employment potential and to determine which other rehabilitation services are needed to achieve appropriate employment as set forth in section 7(5) of the Rehabilitation Act of 1973, as amended (without the extended evaluation as described under subsection (G)). Evaluation services are not intended to be of an extended nature nor to include training, restoration or other services which may be integral to the overall rehabilitation effort. The Commissioner of Social Security will determine the specific types of evaluation services to be payable in accordance with this intent.

Payments for extended evaluation services (as described in section 7(5)(G) of the Rehabilitation Act) will be made in cases which qualify for payment under the other provisions contained in proposed section 222(d)(1) of the Social Security Act.

The bill continues the provision in current law which requires payment for rehabilitation services resulting in 9 continuous months of employment at the level of SGA. Payment will also be made under the other provisions described herein.

Payment is to be made for vocational rehabilitation services resulting in recovery from a disabling physical or mental impairment whether or not the beneficiary was scheduled for medical re-examination. To qualify for such payment, the individuals need not perform nine continuous months of SGA.

Payment is to be made for rehabilitation services to beneficiaries who, without good cause, refuse to continue to accept services, or who fail to cooperate in the rehabilitation process such that successful completion is precluded.

The bill also makes clear it is the intent of Congress that payments for eligible rehabilitation services, based on reasonable estimates, will be made to service providers in advance or, at the election of the recipient, by way of reimbursement. Necessary adjustments for overpayments and underpayments will take place in subsequent transfers of funds.

The bill authorizes the Commissioner of Social Security to use public and for-profit and nonprofit private providers of VR services in addition to State VR agencies. All service providers will participate under the same payment criteria. Under present law, the Commissioner can use other providers only if a State VR agency is unwilling to participate in the program for rehabilitating Social Security and SSI beneficiaries or does not have a VR plan that meets the requirements of the Rehabilitation Act of 1973.

The Commissioner of Social Security shall require each State and each private rehabilitation agency participating in the payment program to provide periodic reports on payments made and services furnished under the beneficiary rehabilitation program. The Commissioner shall use the information so obtained to prepare an annual report to Congress regarding the costs and benefits of the program, including total payments and numbers of persons served under each of the payment criteria.

The Committee intends that the Commissioner of Social Security and the Commissioner of the Rehabilitation Services Administration work together so that the expertise of both agencies can be effectively utilized in meeting program objectives.

Temporary program for terminees

Your committee also believes that beneficiaries who have been on the disability rolls for a number of years may need some help in getting back to work when their disability benefits are terminated on the basis of medical recovery. Therefore, the bill would also establish a temporary VR program for fiscal years 1983 and 1984, to be administered by the Rehabilitation Services Administration. This program will be funded from the Social Security trust funds, but expenditures are not to exceed $15 million each year. Unobligated amounts at the end of a fiscal year shall revert to the trust funds.

In order that as many persons as possible may be assisted, this temporary program is not intended to provide the full range of compre-

hensive rehabilitation services. This program will provide evaluation, job-placement, and other services necessary to secure employment for persons whose Social Security disability benefits were terminated due to medical factors. States may contract with private for-profit and nonprofit organizations for the provision of such services. The Commissioner of the Rehabilitation Services Administration shall require data from State agencies necessary to prepare an annual report to the Commissioner of Social Security and to Congress regarding the use of funds and effectiveness of the program.

The special program would be terminated at the end of fiscal year 1984, because by that time the review of the existing disability rolls mandated by the 1980 disability amendments is expected to be completed and regular, ongoing review procedures should be implemented.

Persons terminated from the SSI benefit rolls due to medical recovery will not be included in this program.

Repeal of provision

The bill repeals the current-law provision that continues Social Security disability insurance benefits after unanticipated medical recovery of people who are participating in the VR program at the time they recovered. Persons already receiving extended payments at the time that this provision becomes effective will not be affected by this repeal.

In as much as we are establishing a VR program for Social Security terminees, it does not appear this program requires continuation. This repeal does not affect SSI terminees because they are not included under the new Social Security terminee program.

Referrals for rehabilitation services

The bill amends the referral procedures under section 222(a) of the Social Security Act to facilitate: (1) the participation of private VR agencies in addition to State VR agencies in the beneficiary rehabilitation program under proposed section 222(d)(1) of the Social Security Act and in the demonstration projects under section 505(a) of the Social Security Disability Amendments of 1980; (2) referrals during the temporary program under proposed section 222(d)(2) of the Social Security Act.

Referrals for VR services of all other applicants for Social Security disability insurance benefits will continue to be made to the State VR agencies.

Demonstration projects

Your Committee also believes that attention needs to be given to develop more innovative ways of providing VR services to disabled beneficiaries in order to improve the number of successful rehabilitations so that more people can leave the benefit rolls and return to productive work. To this end, your Committee's bill would amend the authority for demonstration projects provided under section 505 of Public Law 96-265 to require the Secretary of Health and Human Services to undertake, within 18 months of enactment of this bill, at least ten experiments or demonstration projects (with at least one project begun in each of five States) on how best to use private for-profit and nonprofit organizations to provide VR services to disabled Social Security beneficiaries. Some projects are to compare private and State agency operations and some State vocational rehabilitation participa-

tion is appropriate. SSA is required to report to the Congress within 18 months on these experiments and projects.

It is also the Committee's intention that, by the authority granted in section 505(a) of the Social Security Disability Amendments of 1980, the Secretary of Health and Human Services (through the Social Security Administration) shall develop and carry out experiments or pilot studies aimed at testing the use of a computer-based information system to assist disability beneficiaries and claimants in evaluation of impairments for rehabilitation purposes.

The objective is to test in the field how best to establish a computer-based information system to assist in rehabilitation. It also should be useful in determining and obtaining the training necessary to return beneficiaries or claimants to work in cases where that is possible and feasible, by assessing the particular abilities and disabilities of individual beneficiaries in a designated community, region, or the national economy; by matching abilities with occupational descriptions, and by listing specific jobs in a community, region or the national economy which beneficiaries or claimants could perform appropriately despite impairments and with or without further training.

The pilot studies also should test specific techniques to insure that the potential abilities of claimants and beneficiaries are used to the maximum, and are directed toward suitable rehabilitation services leading to a return to productive employment. The vocational and medical information used to formulate the basis for a disability decision should be used as an evaluation tool for rehabilitation planning. An "ability profile" should be generated which would indicate immediate job placement possibilities, the potential for training, job restructuring, physical restoration, education, etc. Rehabilitation evaluation information should be used to formulate concrete plans for "conditioned rewards" aimed at assuring that disability applicants follow reasonable prescribed treatment which can restore the ability to work.

The information system should, among other things, be capable of providing rehabilitation evaluation information appropriate to State and private rehabilitation providers.

Further, it is the intent of the Committee that the Secretary shall submit to the Congress no later than January 1, 1985, a report on the experiments and demonstration projects described in this section of the committee report together with any related data and materials deemed appropriate. The demonstration project should be conducted for the period of one year.

V. Section-by-Section Analysis of the Bill

SECTION 1. SHORT TITLE

Section 1 provides the short title and table of contents of the Disability Insurance Amendments of 1982.

SECTION 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL

Section 2(a) of the bill amends section 223 of the Social Security Act by adding a new subsection (g) that permits individuals receiving benefits based on a disability to elect to have their benefits (and the benefits of their dependents) under the Act continue for a period be-

ginning with the first month the benefits otherwise would no longer be payable until the earlier of (1) the month before the month a reconsideration decision is made that a person's impairment has ceased, or did not exist (or is no longer disabling), or (2) the sixth month after the month of notification of the initial decision that the person was no longer entitled to benefits. The Secretary is directed to prescribe, by regulations, the procedures an individual will use to elect continued benefit payments. Section 2(a) further provides that monthly benefits paid under title II of the Act under this procedure are to be considered overpayments (unless they can be deemed to be adjustment benefits payable under section 3(a) of the bill) subject to recoupment, if the reconsideration decision affirms that the individual is no longer entitled to disability benefits.

Section 2(b)(1) of the bill provides that the amendment made by section 2(a) shall apply to termination decisions made on or after the date of enactment of this bill.

Section 2(b)(2) of the bill removes, effective January 1, 1984, the provision limiting continued payment of benefits to 6 months after the month of notification of the initial termination decision.

SECTION 3. ADJUSTMENT BENEFITS

Section 3(a) of the bill amends section 223(a) of the Social Security Act by adding a new paragraph (3). Paragraph (3)(A) provides for 4 additional months of benefits based on disability under the Act to people who have been receiving such benefits for at least 36 consecutive months and whose impairment is determined on or after enactment of this bill before January 1, 1985 to have ceased, not to have existed or to be no longer disabling (along with any benefits payable to their dependents). Paragraph (3)(B) specifies that the monthly benefits described in paragraph (3)(A) are not payable for any month which the person is determined to have engaged in substantial gainful activity or is entitled, or would upon filling an application be entitled, to any other type of title II monthly benefit.

Section (3)(b)(1) of the bill amends section 223(a)(1) of the Social Security Act to provide that the month disability benefits will end is subject to the amendments made by sections 2, 3 and 4 of this bill.

Section (3)(b)(2)(A) of the bill amends subsections (b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) of section 202 to provide that the ending month for benefits under those subsections are subject to the amendments made by sections 2, 3, and 4 of this bill.

Section (3)(b)(2)(B) of the bill amends section 202(d)(6) of the Social Security Act to specify that the ending month of monthly benefits payable to people who become reentitled as adults disabled in childhood is subject to the amendments made by sections 2, 3 and 4 of this bill.

Section (3)(b)(3) of the bill adds a new subparagraph (H) to section 216(i)(2) of the Social Security Act that extends the duration of the period of disability to months for which benefits are payable under the amendments made by sections 2, 3 and 4 of this bill.

Section (3)(c) of the bill amends section 1631(a) of the Social Security Act by adding a new paragraph (7). Paragraph (7)(A)

provides that a disabled or blind SSI recipient who has been receiving monthly benefits for at least 36 months and whose impairment is determined, on or after enactment of this bill (or October 1, 1982, if later) and before January 1, 1985, to have ceased, not to have existed, or to be no longer disabled is entitled to adjustment benefits for 4 additional months. Paragraph (7)(B) specifies that the adjustment benefits described in (7)(A) are not payable for any month which the individual is determined to have engaged in substantial gainful activity.

SECTION 4. BENEFIT PAYMENTS NOT TO BE TREATED AS OVERPAYMENTS IN CERTAIN CASES

Section 4(a) of the bill further amends section 223 of the Social Security Act (as amended by section 2(a) of the bill) by adding a new subsection (h) that specifies that monthly benefits paid to any disabled individual (or otherwise payable under the Act on the basis of his earnings) prior to the month of written notification by a State agency or the Secretary that the individual's impairment either has ceased or does not exist or is no longer disabling are not to be considered overpayments for any of the purposes of title II. This amendment is effective for determinations made after enactment of this bill and before January 1, 1985.

Section 4(b) further amends section 223(g)(2) of the Social Security Act (as added by section 2(a) of the bill) to clarify that the amounts determined to be overpayments do not include benefits for months prior to the month of notice of termination.

Section 4(c) amends section 1631(b) of the Social Security Act by redesignating paragraph (3) as paragraph (4) and inserting a new paragraph (3) that specifies that monthly benefits to disabled or blind recipients paid prior to the month of written notification by a State agency or the Secretary that the individual's impairment has either ceased, or does not exist or is no longer disabling are not to be considered overpayments for any of the purposes of title XVI. This amendment is effective for determinations made on or after enactment of the bill (or October 1, 1982, if later) and before January 1, 1985.

SECTION 5. CLOSING OF THE RECORD ON APPLICATIONS INVOLVING DETERMINATIONS OF DISABILITY; DISABILITY DECISIONS, APPEALS, AND REVIEW

Section 5(a)(1) of the bill amends section 202(j)(2) of the Social Security Act to close the record in Social Security cases involving claims for disabled children's, disabled widows' or disabled widowers' benefits after the reconsideration decision, subject to the conditions specified in section 5(d)(1)(C) of the bill.

Section 5(a)(2) of the bill makes a conforming change to section 216(i)(2)(G) of the Social Security Act to close the record in disability freeze cases after the reconsideration decision.

Section 5(a)(3) of the bill makes a conforming change to section 223(b) of the Social Security Act to close the record in Social Security disability insurance cases after the reconsideration decision.

Section 5(b) of the bill amends section 205(b) of the Social Security Act to permit the Secretary to provide for reconsideration of Old Age

and Survivors Insurance claims and requires him to provide for reconsideration of Disability Insurance claims. The Secretary is required to conduct hearings on the record, and those hearings will be subject to the Administrative Procedure Act. The Secretary is authorized to appoint administrative law judges in accordance with section 3105 of title 5, United States Code, to conduct hearings in Social Security cases and issue decisions after such hearings.

Section 5(c)(1)(A) of the bill amends section 221 of the Social Security Act by changing its heading.

Section 5(c)(1)(B) of the bill amends section 221 of the Social Security Act by redesignating subsections (d), (e), (f), (g), and (i) as subsections (f), (g), (h), (i), and (j), respectively.

Section 5(c)(1)(C) of the bill amends section 221 of the Social Security Act by adding new subsections (d) and (e).

Paragraph (1) of the new subsection (d) provides that requests for reconsideration of a determination relating to disability or a period of disability must be filed within 180 days of the notice of the unfavorable determination, and that any such notice must include a discussion of the evidence and the reasons for the decision.

Subparagraph (A) of the new subsection (d)(2) provides that an individual is entitled to a new disability determination when he requests reconsideration.

Clause (i) of the new subsection (d)(2)(B) provides that States will have the option of making reconsideration decisions on disability terminations. If a State elected not to make such decisions or did not comply with Federal standards, SSA will make the reconsideration decision. (See section 5(e)(3)(B) for deadline on making election to make such decisions.)

Clause (ii) of the new subsection (d)(2)(B) provides that State agencies will make reconsideration determinations of disability in the same manner prescribed for making initial determinations, except that the claimant first must be afforded the opportunity for an evidentiary hearing at a location that is readily accessible to him and the hearings must be conducted by an adjudicatory unit of the State agency other than the unit which made the original determination.

Paragraph (3) of the new subsection (d) requires that the claimant must be notified of the reconsideration decision, including a discussion of the evidence and the reasons for the decision.

Paragraph (4) of the new subsection (d) requires the Secretary to issue regulations describing the reconsideration procedures that will apply to nondisability issues, that arise during the reconsideration of the disability determination.

Paragraph (5) of the new subsection (d) provides that documentary evidence submitted on or after the date of the reconsideration determination will not be accepted for the period covered by the reconsideration determination if such decision was made after opportunity was afforded for an evidentiary hearing and if the evidence could have been submitted before the date of the decision, but evidence relating to the individual's entitlement to benefits for any other period will be accepted in connected with any proceedings involving the reconsideration determination. This provision is only applicable to disability termination cases where an evidentiary hearing is required.

Paragraph (6) of the new subsection (d) provides for oral and written notification of the reconsideration procedure and that the claimant be advised of his right to be represented.

Paragraph (1) of the new subsection (e) provides that the claimant has 60 days in which to request a hearing on a reconsideration determination and that the Secretary will give the claimant reasonable notice and opportunity for a hearing.

Paragraph (2) of the new subsection (e) provides that the Secretary shall render decisions in hearings cases on the basis of the evidence considered in reaching the reconsideration decision and the testimony given at the hearing. These decisions shall be in accordance with the law, regulations, and written guidelines which the Secretary may prescribe to carry out the requirement of Section 7 of this Act to assure uniform standards.

Subparagraph (A) of the new subsection (e)(3) provides that, in cases where the claimant submits additional documentary evidence after the reconsideration and before the hearing, and where the evidence is otherwise prevented by subsection (d)(5) from being admitted or considered, the claim will be remanded to the maker of the reconsideration decision, unless the claimant makes the election described in subparagraph (B) of new subsection (e)(3).

Subparagraph (B) of the new subsection (e)(3) provides that the claimant may elect not to have his claim remanded under subparagraph (A) and, instead, to have the additional evidence disregarded for purposes of determining entitlement. This subparagraph also requires the Secretary to notify the claimant of the provisions of this paragraph and to allow reasonable time for the election.

Subparagraph (C) of the new subsection (e)(3) provides that in cases that are remanded, a new reconsideration determination will be made and that the individual will be notified of the decision and of his right to request a hearing.

Paragraph (4) of the new subsection (e) directs the Secretary to establish time limits for undertaking a review of hearing decisions. Decisions that are not reviewed will be considered final at the end of the established time period; decisions that are reviewed will be considered final at the end of the review.

Subparagraphs (A), (B), (C), and (D) of section 5(c)(2) of the bill make conforming changes to sections 221(b)(1), (b)(2), (b)(3)(A), and (b)(3)(B) of the Social Security Act.

Subparagraph (E) of section 5(c)(2) of the bill makes conforming changes in the redesignated subsection (f) of section 221 of the Social Security Act and adds a new paragraph (2) providing for judicial review of determinations under new subsection (c) as provided in section 205(g) of the Act.

Subparagraphs (F), (G), and (H) of section 5(c)(2) of the bill make conforming changes in the redesignated subsections (g), (i), and (j) of section 221 of the Social Security Act.

Paragraph (1) of section 5(d) of the bill amends section 1631(c)(1) of the Social Security Act to extend the time period for requesting a hearing in SSI cases involving disability or blindness from 60 days to 180 days after receipt of the notice of determination.

Paragraph (1) of section 5(e) of the bill provides the amendments made in section 5 of the bill apply to requests for reconsiderations filed

after the date of enactment of this bill, except as provided in paragraphs (2) and (3).

Paragraph 2 of section 5(e) provides that the provision to close the record after the reconsideration decision is made on the disability determination is effective with respect to applications for benefits filed after the date of enactment of this bill.

Paragraph 3(A) of section 5(e) provides an exception to the general effective date for section 5 as stated in paragraph 1. Reconsideration determinations involving an evidentiary hearing will be effective for requests for reconsideration filed on or after January 1, 1984.

Paragraph 3(B) of section 5(e) provides that reconsideration determinations involving an evidentiary hearing can be effective for a request filed earlier than January 1, 1984 if a State notifies the Secretary that it wishes to do so. If a State does not wish to conduct such evidentiary hearings, it must notify the Secretary of this decision by January 1, 1983, or otherwise the State will be deemed to have declined to conduct such hearings.

SECTION 6. OWN MOTION REVIEW; REVIEW OF STATE AGENCY DETERMINATIONS

Section 6(a) of the bill amends section 304(g) of the Social Security Disability Amendments of 1980 by providing that the Secretary will review at least 15 percent of all Social Security disability hearing decisions rendered by administrative law judges in fiscal year 1982 that individuals are, or continue to be, under disabilities; and to review at least 25 percent of all such decisions so rendered in any fiscal year after fiscal year 1982 and before fiscal year 1988.

Paragraph (1) of section 6(b) of the bill amends section 221(c) of the Social Security Act by striking out paragraphs (2) and (3) related to the statutory review levels and adding in lieu thereof the requirement that the Secretary will review at least 10 percent of all determinations made by State agencies under that section in any fiscal year after fiscal year 1982 and before fiscal year 1988, with at least one-sixth of all such determinations so reviewed being determinations that the individuals involved are not disabled. Any review by the Secretary of a State agency determination will be made before any action is taken to implement such determination.

Paragraph (2)(A) of section 6(b) of the bill makes a conforming change in section 221(c)(1) of the Act.

Paragraph (2)(B) of section 6(b) makes a conforming change in subsection (c)(1) of section 221, effective October 1, 1987, to delete the reference to paragraph (2) of that subsection.

Paragraph (3) of section 6(b) provides that, except for the amendment made by paragraph (2)(B), the amendments made by this section will be effective October 1, 1982.

SECTION 7. GUIDELINES FOR DISABILITY DETERMINATIONS

Section 7 of the bill amends section 205(a) of the Social Security Act to provide that the Secretary will assure that uniform standards will be used in making disability determinations at all levels of adjudication.

SECTION 8. EVALUATION OF PLAN

Section 8(a) of the bill amends section 223(d)(5) of the Social Security Act by providing an explicit statement in law as to the evaluation of pain. Under this change, a finding of disability may not be based on the allegation of symptoms of pain alone but must be supported by medical signs and findings based on established clinical or laboratory diagnostic techniques.

Section 8(b) provides that this amendment will be effective with respect to determinations of disability made on or after the date of enactment.

SECTION 9. SUBSTANTIAL GAINFUL ACTIVITY AND TRIAL WORK

Section 9(a) of the bill amends section 223(d)(4) of the Social Security Act by providing for the automatic indexing of the substantial gainful activity dollar amount (now $300) for title II purpose in the same way as the earnings test monthly exempt amount for people under age 65 is indexed.

Section 9(b) of the bill amends section 222(c)(2) of the Social Security Act by providing for the automatic indexing of the monthly amount (now $75) that is counted as a month under the trial work period provision for title II purpose in the same way as the earnings test monthly exempt amount for people under age 65 is indexed.

Section 9(c)(1) of the bill amends section 1614(a)(3)(D) of the Social Security Act by providing for the automatic indexing of the substantial gainful activity dollar amount for SSI purposes in the same way as the earnings test monthly exempt amount for people under age 65 is indexed.

Section 9(c)(2) of the bill amends section 1614(a)(4)(A) of the Social Security Act by providing for the automatic indexing of the monthly amount that is counted as a month under the trial work period provision for SSI purposes in the same way as the earnings test monthly exempt amount for people under age is indexed.

Section 9(d) of the bill provides that the amendments made by this section of the bill will be effective with respect to months after December 1982.

SECTION 10. PROHIBITION AGAINST INTERIM PAYMENTS

Section 10 of the bill amends section 205 of the Act to provide a new subsection (r) specifying that no benefits will be paid to any individual applying for benefits under title II of the Act until a final determination of his (her) entitlement to such benefits has been made.

SECTION 11. AMENDMENTS RELATING TO REDUCTION IN DISABILITY INSURANCE BENEFITS ON ACCOUNT OF OTHER RELATED PAYMENTS

Section 11 of the bill includes amendments, of a technical and perfecting nature, to current law provisions relating to disability offset.

Section 11(a) amends section 2208(b) of Public Law 97-35 to make the disability offset applicable up to age 65 for persons who attain

age 62 after the enactment date of this bill, even though they became disabled within the meaning of section 223(d) of the Social Security Act before March 1981.

Section 11(b) amends subparagraph (F) of paragraph (7) of section 202(q), Reduction of Benefit Amounts for Certain Beneficiaries, of the Social Security Act to continue the reduction in retirement insurance benefits at age 65 for people who elected to receive reduced retirement insurance benefits for months in which they were concurrently entitled to disability insurance benefits.

Section 11(c) amends paragraph (2) of section 224(a), Reduction of Benefits Based on Disability, of the Social Security Act to provide that benefits which were subject to the workers' compensation offset provision prior to the enactment of Public Law 97–35 will continue to be subject to the disability offset.

Paragraph (1) of section 11(d) of the bill amends section 224(a) of the Social Security Act by deleting clause (A) in the sentence immediately following paragraph (8). This change eliminates the average monthly wages method of determining a worker's average current earnings.

Paragraph (2) of section 11(d) of this bill redesignates clauses (B) and (C) in the sentence being amended by paragraph (1) of this section of the bill as clauses (A) and (B), respectively.

Paragraph (3) of section 11(d) of the bill removes the parenthetical phrases pertaining to sections 209(a) and 211(b)(1) of the Social Security Act in the sentence being amended by paragraph (1) of this section of the bill.

Paragraph (4) of section 11(d) of the bill adds a new sentence at the end of section 224(a) of the Social Security Act to provide that earnings from noncovered Federal, State, local and nonprofit employment in the 6-year period ending with the year in which the worker became disabled will be considered in computing the average current earnings for purposes of the disability offset. The new sentence also incorporates the substance of the parenthetical phrases pertaining to sections 209(a) and 211(b)(1) of the Social Security Act.

Section 11(e) of the bill provides that the amendments made by this section are effective in the same manner and as of the same time as they would have been if they had been included in section 2208(a) of Public Law 97–35, except that the amendment made by subsection (b) is effective only with respect to individuals who attain age 65 after the date of enactment of the bill, the amendments made by subsections (d) (1) and (2) are effective only with respect to individuals who first become entitled to disability insurance benefits for months beginning after the month the bill is enacted, and the amendments made by subsections (d) (3) and (4) are effective with respect to months begining after the month in which the bill is enacted.

SECTION 12. PAYMENT OF COSTS OF REHABILITATION SERVICES FROM TRUST FUNDS; EXPERIMENTS AND DEMONSTRATION PROJECTS

Section 12 of the bill makes changes in the present law provisions relating to the programs providing vocational rehabilitation (VR) services to disabled Social Security and SSI beneficiaries and also to

experiments and demonstration projects that the Secretary of Health and Human Services is required to undertake to explore how best to use private agencies in providing such services.

Paragraph (1) of section 12(a) of the bill amends that part of section 222(d) of the Social Security Act which precedes paragraph (4) of that section.

The new subparagraph (A) of section 222(d)(1) permits SSA to use both State VR agencies and other public or private agencies to provide VR services to disabled beneficiaries. Authority is given to make payments to these agencies from the Social Security trust funds for the reasonable and necessary costs of these services. The Commissioner of Social Security will determine what VR services meet the requirements for payment and the amount to be paid.

The new subparagraph (B) provides that payment will be made for the cost of (a) evaluation services provided to disabled beneficiaries, (b) services that result in either recovery from a disabling physical or mental impairment or the performance of substantial gainful activity for at least 9 consecutive months, and (c) services provided to a disabled beneficiary who either refuses without good cause to continue to accept VR services or fails to cooperate so as to preclude his successful rehabilitation.

The new subparagraph (C) requires that SSA pay for VR services in advance unless the provider elects to be paid on a reimbursement basis.

The new subparagraph (D) provides that SSA may provide VR services in the States under regulations prescribed by the Secretary of Health and Human Services or by an agreement or contract with other public or private agencies.

The new subparagraph (E) requires the providers of the VR services to furnish the Commissioner of Social Security with periodic reports proving that payments made to these providers are used exclusively for furnishing VR services.

The new subparagraph (A) of paragraph (2) of section 222(d) of the Social Security Act establishes a temporary VR program in fiscal year 1983 and fiscal year 1984 administered by the Rehabilitation Services Administration and financed from the Social Security trust funds, with expenditures not to exceed $15 million each year, to provide evaluation and job placement services through the State VR agencies to people terminated from the Social Security disability rolls on the basis of either medical recovery or a finding that no disabling impairment had existed.

The new subparagraph (B) of paragraph (2) provides that the payment for these services will be made in advance unless the State elects to be paid on a reimbursement basis.

The new subparagraph (C) of paragraph (2) requires the provider of these services to furnish the Commissioner of the Rehabilitation Services Administration with periodic reports satisfying him that payments made to these providers are used exclusively for furnishing VR services under this temporary VR program.

Section 12(a)(2) of the bill amends section 222(d) of the Social Security Act by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

Section 12(a)(3) of the bill amends section 222(a) of the Social Security Act to require that SSA refer for VR services those beneficiaries whose disability benefits are terminated on the basis of medical recovery or a finding that the impairment had not existed (or is no longer disabling).

Subparagraph (A) of section 12(b)(1) of the bill repeals section 225(b) of the Social Security Act. This eliminates the provision for continued Social Security benefits after medical recovery to people receiving VR services.

Subparagraph (B) makes conforming changes in section 225(a) of the Social Security Act.

Subparagraph (C) provides that the change made by section 12(b)(1)(A) of the bill will not apply to people receiving those continued payments as of its enactment.

Section 12(b)(2) of the bill makes changes to incorporate the provisions of the SSI program to those of the Social Security disability program as amended by section 12(a)(1) of this bill pursuant to proposed section 222(d)(1) of the Social Security Act.

Section 12(c)(1) of the bill amends section 505(a)(1) of Public Law 96–265 to require the Secretary of Health and Human Services to initiate experiments to determine how best to provide VR services to disabled beneficiaries through either profit or non-profit organizations.

Paragraph (2) of section 12(c) of the bill amends section 505(a)(2) of Public Law 96–265 to require SSA to undertake, within 18 months of enactment of this bill, at least 10 such experiments or projects, with one or more experiments or projects commencing in each of at least five States.

Paragraph (3) of section 12(c) of the bill amends section 505(a)(4) of Public Law 96–265 to require the Secretary to report to Congress within 18 months of enactment of this bill on those experiments and projects.

Paragraph (1) of section 12(d) of the bill provides that the amendments made by subsection (a) will be effective on the date of enactment of this bill, except that the changes relating to the VR services, other than evaluation services, will be effective with respect to services furnished after September 30, 1981, and the changes regarding the payment for evaluation services will be effective with respect to services furnished after September 30, 1982.

Paragraph (2) provides that the amendments made by subsections (b) and (c) will be effective on the date of enactment of this bill, except that the amendment made in the SSI program by subsection (b)(2) will be effective with respect to services provided after September 30, 1982.

VI. Other Matters to be Discussed Under the Rules of the House

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by your committee on the motion to report the bill, as amended. The bill was ordered reported by unanimous voice vote.

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of

the House of Representatives, the following statement is made relative to oversight findings by your committee. As a result of investigations conducted by the Subcommittee on Social Security, your committee concluded that it is necessary and desirable to provide some interim relief to beneficiaries during the first years of the "Continuing Disability Investigations" (CDI) process which was provided in the Disability Amendments of 1980 (Public Law 96-265). Your committee has also found during its oversight work of the past several years that there is an urgent need to strengthen uniformity in the disability adjudicative process.

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives your committee advises that enactment of H.R. 6181, as reported by your committee, would not result in any new budget authority or increased tax expenditures.

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, your committee states that no oversight findings or recommendations have been submitted to your committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the cost of carrying out this bill. The bill would not have any significant effect on the long-range cost of the social security program. The early year cost effects of the bill are shown in the letter from the Congressional Budget Office.

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, your committee states that enactment of H.R. 6181 will not have any inflationary impact on the national economy.

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following report prepared by the Congressional Budget Office is provided:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 25, 1982.

Hon. DANIEL ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6181, the Disability Amendments of 1982.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 6181.
2. Bill title: Disability Amendments of 1982.

3. Bill status: As ordered reported by the Committee on Ways and Means on May 19, 1982.

4. Bill purpose: To amend Title II of the Social Security Act relating to Disability Insurance benefits to provide certain adjustment benefits for those deemed recovered from a disability; to continue benefit payments for a period during appeals of terminated cases; to provide for additional vocational training; and to provide for more uniformity in all levels of eligibility and appeals decisions. Selected provisions also apply to Title XVI of the Act relating to the Supplemental Security Income program.

5. Cost estimate: The following table shows the estimated costs of this bill to the federal government.

TABLE 1.—ESTIMATED TOTAL COSTS OR SAVINGS RESULTING FROM H.R. 6181

[In millions of dollars, by fiscal years]

	1983	1984	1985	1986	1987
Function 600:					
Budget authority	7	3	−2	−6	−3
Outlays	49	59	17	−27	−36
Function 550:					
Budget authority	1	2	0	−2	−2
Outlays	8	16	11	1	1
Total costs or savings:					
Budget authority	8	5	−2	−8	−5
Outlays	57	75	28	−26	−35

The costs from this bill fall within budget functions 550 and 600. The budget authority is the net result of lower interest income on lower trust fund balances for the Disability Insurance (DI) and Hospital Insurance (HI) programs, and required additional budget authority for the Supplemental Security Income (SSI) and Supplementary Medical Insurance (SMI) programs.

6. Basis for estimate: This estimate was prepared from a draft of the bill; the Congressional Budget Office has not received the official language of the requested bill.

CBO has reviewed the Social Security Administration's estimates of the costs or savings that would result from this bill as it pertains to the Disability Insurance program. These DI estimates appear reasonable and are shown in Tables 1 and 2. However, the estimates of the major provisions of the bill are subject to considerable uncertainty. This bill primarily affects those who are terminated from the disability rolls, and those who appeal decisions relating to the status of their disability, whether they have or have not yet received benefit payments. Hence, a number of assumptions about administrative actions and recipient behavior are required. The uncertainties involved in these estimates are discussed in the sections below.

All provisions with a cost impact are assumed effective at the start of calendar year 1983, except sections 3, 4, 6 and 12, which are assumed effective at the beginning of fiscal year 1983. In addition, several of the provisions also affect the SSI and Medicare programs, and the estimated costs of these provisions are also shown.

TABLE 2.—ESTIMATED OUTLAY COSTS OR SAVINGS BY PROVISION OF H.R. 6181

[In millions of dollars, by fiscal years]

	1983	1984	1985	1986	1987
Continue DI benefit during appeal (sec. 2):					
DI	10	5	5	5	5
HI and SMI	3	1	1	1	1
Add 4 mos. of benefits for long-term medically recovered beneficiaries	(sec. 3):				
DI	15	40	25	----	----
SSI	7	7	4	----	----
HI and SMI	5	15	10	----	----
Waive DI overpayment to medically recovered beneficiaries (sec. 4):					
DI	0	0	0	0	0
SSI	0	0	0	0	0
Review 10 percent of initial determinations, 15 percent and 25 percent at ALJ level (sec. 6):					
DI	−5	−15	−20	−30	−35
Raise SGA level (sec. 9):					
DI	0	0	0	0	0
SSI	0	0	1	1	2
Expand Vocational Rehabilitation (sec. 12):					
DI	25	25	10	10	10
SSI	2	2	2	2	2
Extend worker's compensation offset to 62 to 64 yr. olds, close evidence at reconsideration level, and other technical changes (secs. 5, 7, 8, 10, 11):					
DI	−2	−6	−12	−16	−19
Total[1]	57	75	28	−26	−35

[1] Includes interactions.

Section 2—Continued payment of disability benefits during appeal

This provision would allow terminated DI beneficiaries, who appeal their termination, to receive benefits for up to six months or until a hearing occurs through the reconsideration level. If the termination is upheld, then these benefits would have to be repaid. The actuaries estimate that this provision would cost $10 million in fiscal year 1983, and $5 million each year thereafter.

This estimate assumes that approximately 50,000 to 60,000 of the 400,000 to 450,000 Title II Continuing Disability Investigations (CDI's) (excluding concurrent Title II and Title XVI cases) scheduled for 1983 will result in terminations. Of these, it is assumed that about 25,000 beneficiaries who elect to receive benefits while they appeal would then have to repay these benefits. Terminated DI recipients receive benefits for about two to three months after they receive their termination notice. It is estimated that the reconsideration appeals process requires an additional two-thirds of a month beyond this, on average. This provision would allow benefit payments to continue during this entire period. Those who lose their appeal would have to repay these benefits. The cost estimate assumes one-half of these repayments would never be collected. The outyear estimates have the number of CDI's and terminations declining slightly. Under similar assumptions, Medicare costs would also increase somewhat.

This estimate is subject to some uncertainty. It is possible that all of the 40,000 to 50,000 recipients who lose appeals would request payment rather than the assumed 25,000, potentially doubling costs each year over the period. In addition, if fewer than 50 percent of these overpayments are collected, the costs could be even higher in the 1984

to 1987 period. (It is assumed that the repayments will occur in the year after the overpayments are made; thus, the outyear estimates are one-half of the 1983 cost.) On the other hand, if all who receive the continued payment do repay, then there would be no DI cost for this provision. Thus, the costs of this provision could range from $0 million to $20 million per year in each of the five years. Moreover, the number of CDI's anticipated over the 1982 to 1984 period may be large enough so as to reduce the need for further CDI's in future years. If this occurs, future terminations and appeals will be minimal, and the costs for those who don't repay will be less than shown in the outyears.

Section 3—Additional four months of benefits for long-term disability recipients who are medically terminated

This provision would permit an additional four months of benefits for those who have collected DI benefits for three years or more (including concurrent Title II and XVI cases) and who are then terminated for medical reasons. The provision would expire on January 1, 1985, and is estimated by the Social Security actuaries to cost $15 million, $40 million, and $25 million in fiscal years 1983 to 1985, respectively. Continuation of Medicare benefits during the additional months of DI eligibility would increase Medicare spending by $30 million over the three-year period.

Approximately 27 percent of the 600,000 to 650,000 CDI's the Administration expects to perform on Title II and concurrent Title XVI recipients in 1983 have been on the rolls for 36 months or longer. Of these, 13 percent are estimated to be terminated and receive an additional four months of benefits.

There is an interaction between this section and section 2, discussed above. If some of those who do not repay the benefits granted by section 2 are given additional benefits under this section, then there would be a $1 or $2 million reduction in the total estimated costs for this bill. This interaction is shown in the total cost given in Table 2.

This section also applies to Supplemental Security Income (SSI) beneficiaries. Based on an expected 173,000 CDI's in 1983, and using the assumptions noted for DI beneficiaries, SSI costs are estimated to be $7 million, $7 million, and $4 million in fiscal years 1983 to 1985, respectively.

Section 4—Waive DI overpayments to medically recovered recipients

This provision would waive repayment by DI and SSI recipients of benefits paid to them between the time their disability was determined to have ceased by SSA and the time SSA notified them of such determination. There is no cost for this provision because this procedure has been included in recent administrative plans for 1983, and is therefore already included in the current estimates of the costs of DI and of SSI.

Section 6—Review at least 10 percent of initial determinations and review 15 percent in 1982 and 25 percent thereafter of administrative law judge reversals

This provision modifies the current law review of disability decisions in two ways. First, it requires that at least 10 percent of initial allowances and denials be reviewed each year, instead of the current

provision to review a minimum of 35 percent in 1982 and 65 percent thereafter of initial allowances only. Second, it requires a new review of 15 percent (in 1982) and of 25 percent (in 1983 through 1987) of all Administrative Law Judge (ALJ) reversals. There is no current similar review of ALJ decisions.

The Social Security Administration estimates that these two changes will save $5 million in fiscal year 1983 rising to $35 million in 1987, and a total of $105 million in the five year period. It is assumed that the provision cannot be implemented in time to affect fiscal year 1982 costs or savings.

The total savings result from the ultimate denial of approximately 1,000 cases per year which were approved by ALJ's. No costs, however, are assumed from the lower number of initial reviews—which would result in fewer denials—because SSA has said it intends to maintain the initial review at the higher levels stated in current law. If SSA were to reduce the number of initial determinations reviewed to the minimum level of 10 percent, however, then the savings from this provision could be reduced by $10 million in fiscal year 1983, and by $145 million over the period. This would give a net cost to the provision.

Section 9—Raise substantial gainful activity level

This section mandates that the dollar amount above which a disabled recipient of DI or SSI is said to have worked—the substantial gainful activity (SGA) test—be raised automatically based on a wage index. Currently, the upper limit of this amount is $300 per month. Under this provision, it will be raised to $330 per month, and increased automatically thereafter.

This provision is estimated to have no cost in DI since it has been assumed that the SGA level would increase to this amount under current law. There is no initial cost to SSI because a current demonstration project effectively eliminates the SGA criterion in 1983 and part of 1984. Thereafter, costs are low because few SSI recipients have earnings that approach the SGA level.

Section 12—Expand vocational rehabilitation

This section has two separate vocational rehabilitation provisions pertaining to DI. This first expands vocational rehabilitation services for which federal funds can be used by permitting states to be compensated for additional evaluation services. This is expected by SSA to cost $10 million per year over the 1983 to 1987 period. The second provision allows up to $15 million in each of fiscal years 1983 and 1984 for evaluation and for placement services to individuals terminated from the DI rolls for medical reasons. If these two provisions have the effect of promoting recoveries above those currently assumed, then the costs may be slightly lower in the outyears. This impact has not been included in the DI estimate.

The first of the two provisions also applies to SSI. The SSI costs are estimated to be $2 million per year over the 1983 to 1987 period.

Sections 5, 7, 8, 10, 11—Prohibit Interim Payments; Extend Workers' Compensation Offset; and Make Other Technical Changes

These provisions, which apply only to DI, would require that uniform standards of disability determinations be met at all levels of appeal, define in more detail the procedure to accept pain as a disabil-

ity criteria and prohibit benefit payments before a case has been resolved in a claimant's favor. In addition, Section 11 of the bill makes certain technical corrections in the "megacap" provision in the 1981 reconciliation bill which limits total disability payments an individual may receive, and changes the way this offset is computed. The savings from these provisions are estimated to total $55 million over the 1983 to 1987 period.

7. Estimate comparison: The estimate for DI is identical to that of the Social Security Administration, Office of the Actuary, April 28, 1982 for DI. There is no official administration estimate for SSI or HI.

8. Previous CBO estimate: None.

9. Estimate prepared by: Stephen Chaikind, Malcolm Curtis, and Janice Peskin.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis Division).

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

* * * * * * *

OLD-AGE AND SURVIVORS INSURANCE BENEFIT PAYMENTS

Old-Age Insurance Benefits

SEC. 202. (a) * * *

(b)(1) The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual.

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the

primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained age 65, the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained age 65, or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending (*subject to subsections (a) (3), (g), and (h) of section 223*) with the month preceding the month in which any of the following occurs—

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individal is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

* * * * * * *

Husband's Insurance Benefits

(c) (1) The husband (as defined in section 216(f)) of an individual entitled to old-age or disability insurance benefits, if such husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62, and

(C) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of his wife,

shall be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband has attained age 65, the first month in which he meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a husband (as so defined) —

(I) an individual entitled to old-age insurance benefits, if such husband has not attained age 65, or

(II) an individual entitled to disability benefits,

the first month throughout which he is such a husband and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending (*subject to subsections (a)(3), (g), and (h) of section 223*) with the month preceding the month in which any of the following occurs: he dies, his wife dies, they are divorced, or he becomes entitled to an old-age or disability insurance benefit, based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of his wife, or his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

* * * * * * *

Child's Insurance Benefits

(d)(1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d)) which began before he attained the age of 19; and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in paragraph (B) and (C) (if in such month he meets the criterior specified in paragraph (A)),

whichever is earlier, and ending (*subject to subsections (a)(3), (g), and (h) of section 223* with the month preceding whichever of the following first occurs—

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month.

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22, or, subject to section 223(e), the termination month (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month

(iii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iv) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month.

* * * * * * *

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 223(d)) and has not attained the age of 22, or

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,

but only if he has filed application for such reentitlement. Such reentitlement shall end (*subject to subsections (a)(3), (g), and (h) of section 223*) with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time elementary or secondary school student, or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19.

* * * * * * *

Widow's Insurance Benefits

(e)(1) The widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (5),

(C)(i) has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) or section 223, or

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained age 65, and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of such deceased individual, shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (6)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance

benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending (*subject to subsections (a)(3), (g), and (h) of section 223*) with the month preceding the first month in which any of the following occur; she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject ti section 223(e), the termination month (unless she attains age 65 on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

* * * * * * *

Widower's Insurance Benefits

(f)(1) The widower (as defined in section 216(g)) of an individual who died a fully insured individual, if such widower—

(A) has not remarried,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (6),

(C) has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) or section 223,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of his deceased wife,

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (7)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (6) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending (*subject to subsections (a)(3), (q), and (h) of section 223*) with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount of his deceased wife, or, if he became entitled to such benefits before he attained age 60, subject to section 223(e), the termination month (unless he attains age 65 on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

* * * * * * *

APPLICATION FOR MONTHLY INSURANCE BENEFITS

(j)(1) * * *

[(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).]

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant

satisfies the requirements for such benefits before the Secretary makes a final decision on the application and—

(A) no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary), and

(B) in the case of an applicant with respect to whom disability is required for such benefits under subsection (d)(1)(B)(ii), (e)(1)(B)(ii), or (f)(1)(B)(ii), no request for reconsideration under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d).

REDUCTION OF BENEFIT AMOUNTS FOR CERTAIN BENEFICIARIES

(q)(1) * * *

* * * * * * *

(7) For purposes of this subsection the "adjusted reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6)(A) for such benefit, and the "additional adjusted reduction period" for an individual's, widow's, or widower's, insurance benefit is the additional reduction period prescribed by paragraph (6)(B) for such benefit, excluding from each such period—

(A) any month in which such benefit was subject to deductions under section 203(b), 203(c)(1), 203(d)(1), or 222(b),

(B) in the case of wife's insurance benefits, any month in which she had in her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,

(D) in the case of widow's insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

[(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.]

(F) in the case of old-age insurance benefits, any month for which such individual (i) received a disability insurance benefit, or (ii)(I) would have received a disability insurance benefit but for the application of section 223(f) or section 224 and (II) did not receive an old-age insurance benefit.

* * * * * * *

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder. *The Secretary shall assure that uniform standards are applied at all levels of adjudication in making determinations of whether individuals are under disabilities as defined in section 216(i) or 223(d).*

[(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.]

(b) (1) The Secretary is directed to make findings of fact and decisions as to the rights of any individual applying for a payment under this title.

(2)(A) The Secretary may provide for reconsideration of such decisions (other than decisions to which subparagraph (B) applies) and shall provide for hearings in accordance with paragraph (3).

(B) If the determinations required in the course of making any such decision include a determination relating to disability or to a period of disability and such decision is in whole or in part unfavorable to an individual applying for a payment under this title, the Secretary shall provide for reconsideration of such decision and for hearings in accordance with section 221.

(3) Upon request by any individual applying for a payment under this title or upon request by a wife, divorced wife, widow, surviving

divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered (other than a decision to which paragraph (2)(B) applies), he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to any such determination must be filed within sixty days after notice of the decision is received by the individual making such request.

(4) The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this section, section 221, and the other provisions of this title.

(5) In the course of any hearing, investigation, or other proceeding referred to in paragraph (4), the Secretary may administer oaths and affirmations, examine witnesses, and receive evidence.

(6) Evidence may be received at any hearing referred to in paragraph (4), subject to section 221(d)(5), even though inadmissible under rules of evidence applicable to court procedure.

(7) Subject to the specific provisions and requirements of this Act—

(A) any hearing held pursuant to this subsection or section 221(e) shall be conducted on the record and shall be subject to sections 554 through 557 of title 5, United States Code, and any decision made by the Secretary after such a hearing shall constitute an "adjudication" within the meaning of section 551(7) of such title; and

(B) the Secretary, in accordance with section 3105 of title 5, United States Code, shall appoint administrative law judges who, in any case in which authority to conduct hearings under this subsection or section 221(e) is delegated by the Secretary, shall conduct such hearings, issue decisions after such hearings, and perform such other functions and duties described in sections 554 and 557 of such title as are applicable to such hearings.

* * * * * * *

Prohibition Against Interim Payments

(r) No amount shall be paid to any individual applying for benefits under this title until a final determination of his or her entitlement to such benefits has been made.

* * * * * * *

OTHER DEFINITIONS

SEC. 216. For the purposes of this title—

* * * * * * *

Disability; Period of Disability

(i)(1) Except for purposes of section 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period

of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (3), (4), (5), and (6) of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) The term "period of disability" means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 223 for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains the age of 65.

In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall (*subject to subparagraph (H)*) end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains age 65, or (ii) the month preceding (I) the termination month (as defined in section 223(a)(1)), or, if earlier (II) the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section.

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D)

as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after the month in which the Social Security Amendments of 1967 is enacted, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Secretary finds in accordance with regulations prescribed by him that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before the month in which the Social Security Amendments of 1967 as enacted,

(I) such application is filed not more than 12 months after the month in which the Social Security Amendments of 1967 is enacted,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before the month in which the Social Security Amendments of 1967 is enacted, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Secretary finds in accordance with regulations prescribed by him, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) only if the applicant satisfies the requirements for a period of disability before the Secretary makes a final decision on the application [and no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary)] *and no request for reconsideration under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d).*

(H) The provisions of subsections (a)(3), (g), and (h) of section 223 shall apply with respect to the duration of an individual's period of disability under this subsection in the same way that they apply with respect to the duration of the period for which an individual's disability insurance benefits are payable under such section 223.

* * * * * * *

DISABILITY DETERMINATIONS, *APPEALS, AND REVIEW*

SEC. 221.

(a)(1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 216(i) or 223(d)) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make such disability determinations commencing with such month as the Secretary and the State agree upon, but only if (A) the Secretary has not found, under subsection (b)(1), that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Secretary, under subsection (b)(2), that it does not wish to make such determinations. If the Secretary once make the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this title and the standards and criteria contained in regulations or other written guidelines of the Secretary pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make all such determinations. In addition, the Secretary shall promulgate regulations specifying, in such detail as he deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations,

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to applicants and beneficiaries of facilities for making disability determinations,

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Secretary, and, as he finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function,

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Secretary may require, concerning the State agency's activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Secretary to take any action except pursuant to law or to regulations promulgated pursuant to law.

(b)(1) If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations *under subsection (a)(1) or subsection (d)* in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) *or the disability determinations referred to in subsection (d)(2) (as the case may be)*.

(2) If a State, having notified the Secretary of its intent to make disability determinations under subsection (a)(1) *or under subsection (d)(2) (as the case may be)*, no longer wishes to make such determinations, it shall notify the Secretary in writing of that fact, and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than 180 days, or (if later) until the Secretary has complied with the requirements of paragraph (3). Thereafter, the Secretary shall make the disability determinations referred to in subsection (a)(1) *or the disability determinations referred to in subsection (d)(2) (as the case may be)*.

(3)(A) The Secretary shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Secretary of the disability determination function *under subsection (a) or subsection (d)* from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process *under subsection (a) or subsection (d) (as the case may be)* for the Secretary shall, notwithstanding any other provision of law, have a preference over any other individual in filing an appropriate employment position with the Secretary (subject to any system established by the Secretary for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, assistant administrator (or his equivalent) of the State agency, in which case the Secretary may accord such priority to such employee.

(B) The Secretary shall not make such assumption of the disability determination function *under subsection (a) or subsection (d)* until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Secretary and who will not be hired by the Secretary to perform duties in the disability determination process *under subsection (a) or subsection (d) (as the case may be)*, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

(c)(1) The Secretary may on his own motion [or as required under paragraphs (2) and (3)]* review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 216(i) or 223(d)) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Secretary on his own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

[(2) The Secretary (in accordance with paragraph (3)) shall review determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 216(i) or 223(d)). Any review by the Secretary of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

[(3) In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to

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*The amendment indicated to section 221(c)(1) of the Social Security Act would be effective October 1, 1987.

Effective October 1, 1982, through September 30, 1987, section 221(c)(1) of the Social Security Act would read as follows:

(c)(1) The Secretary may on his own motion or as required under [paragraphs (2) and (3)] *paragraph (2)* review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 216(i) or 223(d)) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Secretary on his own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

this section, that individuals are under disabilities (as defined in section 216(i) or 223(d)), the Secretary shall review—

[(A) at least 15 percent of all such determinations made by State agencies in the fiscal year 1981,

[(B) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982, and

[(C) at least 65 percent of all such determinations made by State agencies in any fiscal year after the fiscal year 1982.]

(2) The Secretary shall review at least 10 percent of all determinations, made by State agencies under this section in any fiscal year after the fiscal year 1982 and before the fiscal year 1988, that individuals are or are not under disabilities (as defined in section 216(i) or 223(d)), with at least one-sixth of all of the determinations so reviewed being determinations that the individuals involved are not under disabilities (as so defined). Any review by the Secretary of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

(d)(1) Any initial decision the Secretary renders with respect to an individual's rights for a payment under this title (including a decision the Secretary renders by reason of a review under subsection (c)) in the course of which a determination relating to disability or to a period of disability is required for such payment and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, the Secretary's decision, and the reason or reasons upon which the decision is based. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such a decision, he or she shall be entitled to reconsideration of such decision under this subsection. Any such request with respect to any such decision must be filed within 180 days after notice of the decision is received by the individual making such request.

(2)(A) If a reconsideration is requested by an individual under paragraph (1) and a showing is made by such individual that he or she may be prejudiced in such decision by a determination relating to disability or to a period of disability, such individual shall be entitled in the course of such reconsideration to a determination relating to such disability or period of disability.

(B)(i) In the case of a reconsideration to be made by the Secretary of a decision to terminate benefits in which a determination relating to disability or to a period of disability was made by a State agency, any determination under subparagraph (A) relating to disability or to a period of disability shall be made by the State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make determinations under this subparagraph commencing with such month as the Secretary and the State agree upon, but only if (I) the Secretary has not found, under

subsection (b)(1), that the State agency has substantially failed to make determinations under this subparagraph in accordance with the applicable provisions of this section or rules issued thereunder, and (II) the State has not notified the Secretary, under subsection (b)(2), that it does not wish to make determinations under this subparagraph. If the Secretary once makes the finding described in clause (I) of the preceding sentence, or the State gives the notice refered to in clause (II) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make determinations under this subparagraph.

(ii) Any determination made by a State agency under clause (i) shall be made in the manner prescribed for determinations under subsection (a)(2) and regulations prescribed thereunder; except that it shall be made after opportunity for an evidentiary hearing which is reasonably accessible to the claimant, and which is held by an adjudicatory unit of the State agency other than the unit that made the determination (relating to the claimant's disability or period of disability) on which the decision being reconsidered was based.

(3) A decision by the Secretary on reconsideration under this subsection in the course of which a determination relating to disability or to a period of disability is required and which is in whole or in part unfavorable to the individual requesting the reconsideration shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, the Secretary's decision, and the reason or reasons upon which the decision is based.

(4) The Secretary shall prescribe by regulation procedures for the reconsideration under this subsection of issues other than issues relating to disability or a period of disability.

(5) No documentary evidence which is submitted on or after the date of a decision on reconsideration under this subsection relating to entitlement to benefits for periods preceding the date of such decision (hereafter in this section referred to as the "relevant periods"), where such decision was made after opportunity for an evidentiary hearing pursuant to paragraph (2)(B)(ii) or subsection (i) and where such evidence could have been available before the date of that decision, shall be admitted or considered in connection with entitlement to such benefits for such periods, except as provided in subsection (e)(3). Nothing in the preceding sentence, subsection (e)(3), or section 202(j)(2), 216(i)(2)(G), or 223(b) shall be construed to permit, prohibit, or otherwise affect the admission or consideration, at or in connection with any proceeding in which a reconsideration decision relating to an individual's entitlement to benefits for particular relevant periods is involved, of evidence relating to such individual's entitlement to benefits for any other period.

(6) Each individual who requests a reconsideration under paragraph (1) shall be informed, orally and in writing, before the reconsideration, of the preceding provisions of this subsection, and shall be advised that the individual may wish to retain an attorney or other representative to assist him during the reconsideration.

(e)(1) Upon request by any individual described in subsection (d)(1) who makes a showing in writing that his or her rights may be prejudiced by a decision on reconsideration under this section, the Sec-

retary shall give such individual and the other individuals described in subsection (d)(1) reasonable notice and opportunity for a hearing. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request.

(2) If a hearing under paragraph (1) is held, the Secretary shall, on the basis of the evidence considered in reaching the reconsideration decision and the testimony given at the hearing, and in accordance with the relevant provisions of this title, regulations of the Secretary, and any written guidelines which the Secretary may prescribe in carrying out the last sentence of section 205(a), render a decision on entitlement to benefits for the relevant periods, including in such decision a statement of the findings of fact, conclusions, and the reasons or bases therefor. The hearing decision may affirm, modify, or reverse the Secretary's findings of fact and the decision on reconsideration.

(3)(A) In any case in which the individual making the request under paragraph (1) or any other individual described in subsection (d)(1) submits to the Secretary, on or after the date of the decision on reconsideration under subsection (d) and before the commencement of a hearing under this subsection, additional documentary evidence relating to disability or to a period of disability affecting entitlement to benefits for the relevant periods which is otherwise prevented by subsection (d)(5) from being admitted or considered in connection with such entitlement, and the individual does not make the election under subparagraph (B)—

(i) if the determinations made in the course of such decision on reconsideration include a determination relating to disability or to a period of disability which was made by a State agency under subsection (d)(2)(B), such additional evidence, together with the evidence considered in reaching the reconsideration decision, shall be remanded to the State agency, or

(ii) if such determination relating to disability or to a period of disability was made by the Secretary in accordance with subsection (i), such additional evidence, together with the evidence considered in reaching the reconsideration decision, shall be reviewed by the Secretary.

(B) An individual who submits additional evidence as described in subparagraph (A) may nevertheless elect that no remand or review occur under subparagraph (A) with respect to such evidence and that such additional evidence be disregarded for purposes of determining entitlement under this subsection. The Secretary shall notify such individual upon submitting such evidence of the provisions of this paragraph and of the election available under this subparagraph and provide such individual with a reasonable period of time within which to make such election before remanding or reviewing such evidence under subparagraph (A).

(C) The State agency, on remand, or the Secretary, on review, shall consider the record, as supplemented by such additional evidence, in connection with benefits for the relevant periods and shall affirm, modify, or reverse the determination on reconsideration relating to disability or to a period of disability. The Secretary shall inform such applicant or other individual of the decision on further reconsideration

based on determinations made on such remand or in such review and of the right to request a hearing thereon under this subsection.

(4) The Secretary shall prescribe by regulation a period of time after hearing decisions under this section during which the Secretary, on his own motion or on the request of the individual requesting the hearing, may undertake a review of such decision. If such decision is not so reviewed, such decision shall be considered the final decision of the Secretary at the end of such period. If such decision is so reviewed, at the end of any such review the Secretary shall affirm, modify, or reverse the decision and such decision as so affirmed, modified, or reversed shall be considered the final decision of the Secretary. Any such review shall be governed by the requirements of this subsection.

[(d)] *(f)(1)* Any individual dissatisfied with any determination under [subsection (a), (b), (c), or (g)] *subsection (b)* shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(2) Any individual who requests a hearing under subsection (e) and who is dissatisfied with the Secretary's final decision after such hearing shall be entitled to judicial review of such decision as is provided in section 205(g).

[(e)] *(g)* Each State which is making disability determinations under subsection (a)(1) [under this section] *or subsection (d)(2)* shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Secretary, the cost to the State of making disability determinations under subsection (a)(1) *or under subsection (d)(2), as the case may be.* The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period: and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 201 (but taking into account any refunds under subsection [(f)] *(h)* of this section) to insure that the Federal Disability Trust Fund is charged with all expenses incurred which are attributable to the administration of section 223 and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

[(f)] *(h)* All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.

[(g)](*i*) In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a)(1) *or subsection (d)(2)*, or which has been found by the Secretary to have subtantially failed to make disability determinations *under subsection (a)(1) or subsection (d)(2)* in a manner consistent with his regulations and guidelines, *in the case of disability determinations under subsection (d)(2) to which subparagraph (B) thereof does not apply*, in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations *under subsection (a) or subsection (d)*, the determinations refered to in subsection (a) *or the determinations referred to in subsection (d) (as the case may be)* shall be made by the Secretary in accordance with regulations prescribed by him. *In the case of a reconsideration by the Secretary of a decision to terminate benefits, any disability determination made by the Secretary under this subsection in the course of such reconsideration shall be made after opportunity for an evidentiary hearing which is reasonably accessible to the claimant (and which is not held by the same person or persons who made the determination, relating to the claimant's disability or period of disability, on which the decision being reconsidered was based)*.

[(i)] (*j*) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Secretary (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years; except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Secretary determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this title. *An individual who makes a showing in writing that his or her rghts may be prejudiced by a determination under this subsection with respect to contnuing eligibility shall be entitled to a reconsideration and a hearing to the same extent and in the same manner as provided under subsection (d) and (e)*.

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REHABILITATION SERVICES

Referral for Rehabilitation Services

SEC. 222. (a) It is hereby declared to be the policy of the Congress that disabled individuals applying for a determination of disability, [and] disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, *and individuals whose entitlement to such benefits is terminated by reason of recovery from the disabling physical or mental impairment on which their disability was based or by reason of a finding that such impairment has not existed (or is no longer disabling)* shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under the

Vocational Rehabilitation Act, *or to other appropriate public or private agencies, organizations, institutions, or individuals*, for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

* * * * * * *

Period of Trial Work

(c)(1) The term "period of trial work", with respect to an individual entitled to benefits under section 223, 202(d), 202(e), or 202(f), means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 216(i) and 223, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. [For purposes of this subsection the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.] *For purposes of this subsection the term "services" means activity which is determined by the Secretary to be of a type normally performed for remuneration or gain, and which is performed (by the particular individual involved) in any month for remuneration or gain at least equal to (A) the amount of remuneration or gain which was sufficient, under the regulations of the Secretary then in effect, to cause the activity to be treated as constituting "services" for such purposes in the month in which the Disability Amendments of 1982 were enacted, or (B) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (A) of this sentence and ending with the month in which the particular activity involved is performed, the amount to which the amount specified in clause (A) of this sentence would have increased under such section 203(f)(8) during such period if in the month specified in clause (A)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).*

[Costs of Rehabilitation Services From Trust Funds

[(d)(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

[(A) entitled to disability insurance benefits under section 223,

[(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

[(C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

[(D) entitled to widower's insurance benefits under section 202(f) prior to attaining age 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals into substantial gainful activity, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance

Trust Fund each fiscal year such sums as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), which result in their performance of substantial gainful activity which lasts for a continuous period of nine months. The determination that the vocational rehabilitation services contributed to the successful return of such individuals to substantial gainful activity and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.

[(2) In the case of any State which is unwilling to participate or does not have a plan which meets the requirements of paragraph (1), the Commissioner of Social Security may provide such services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals. The provision of such services shall be subject to the same conditions as otherwise apply under paragraph (1).

[(3) Payments under this subsection shall be made in advance or by way of reimbursement, with necessary adjustments for overpayments and underpayments.]

Payment of Costs of Rehabilitation Services From Trust Funds

(d)(1)(A) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(i) entitled to disability insurance benefits under section 223.

(ii) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

(iii) entitled to widow's insurance benefits under section 202(e) before attaining age 60, or

(iv) entitled to widower's insurance benefits under section 202(f) before attaining age 60,

to the end that savings will accrue to the Trust Fund as a result of rehabilitating such individuals into substantial gainful activity, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Secretary to pay the State (under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.)), or another public or private agency, organization, institution, or individual (under an agreement or contract entered into under subparagraph (D) of this paragraph), the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods) which meet the requirements of subparagraph (B). The determination that the vocational rehabilitation services meet the requirements of subparagraph (B) and the determination of the amount of costs to be paid under this paragraph shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.

(B) Vocational rehabilitation services furnished a disabled individual described in subparagraph (A) meet the requirements of this subparagraph—

(i) to the extent such services consist of evaluation services as determined by the Commissioner of Social Security,

(ii) if such services result in—

(I) his performance of substantial gainful activity which lasts for a continuous period of nine months, or

(II) his recovery from his disabling physical or mental impairment, or

(iii) if such individual refuses without good cause to continue to accept vocational rehabilitation services or fails to cooperate in such a manner as to preclude such individual's successful rehabilitation.

(C) Payments under this paragraph shall be made in advance (or, at the election of the recipient, by way of reimbursement), with necessary adjustments for overpayments and underpayments.

(D) The Commissioner of Social Security may provide vocational rehabilitation services in States under regulations prescribed by the Secretary or by agreement, or contract, with other public or private agencies, organizations, institutions, or individuals. There are authorzed to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund such sums as are necessary for the payment of the reasonable and necessary costs of such services. The provision of such services, and the payment of costs for such service, shall be subject to the same requirements as otherwise apply under the preceding provisions of this paragraph.

(E) The Commissioner of Social Security shall require each State and each public or private agency, organization, institution, or individual receiving payments under this paragraph to make such periodic reports to him concerning the operation of its program furnishing vocational rehabilitation services as are necessary to satisfy him that the amounts paid to such State, agency, organization, institution, or individual are used exclusively for furnishing such services in accordance with this paragraph.

(2)(A) For purposes of making vocational evaluation and job placement services more readily available to individuals who were disabled individuals described in paragraph (1)(A) but whose entitlement to the benefits described in paragraph (1)(A) was terminated by reason of recovery from the disabling physical or mental impairment on which their disability was based or by reason of a finding that such impairment has not existed, there shall be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund not to exceed $15,000,000 for each of the fiscal years beginning on October 1, 1982, and October 1, 1983, respectively, to enable the Commissioner of the Rehabilitation Services Administration to pay to the State the costs of the reasonable and necessary costs of such services furnished such individuals by State agencies under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973. The amount paid to each State for each year shall not exceed the amount which bears the same ratio to the total amount paid to States for such year

under this paragraph as the ratio which the number of such entitlement terminations in such State in the preceding year bears to the total number of such entitlement terminations in the United States in such preceding year. Amounts remaining unpaid under this paragraph at the end of a fiscal year shall revert to the Trust Funds. The determination of the amount of costs to be paid under this paragraph shall be made by the Commissioner of the Rehabilitation Services Administration in accordance with criteria formulated by him.

(B) Payments under this paragraph shall be made in advance (or, at the election of the recipient, by way of reimbursement), with necessary adjustments for overpayments and underpayments.

(C) The Commissioner of the Rehabilitation Services Administration shall require each State agency receiving payments under this paragraph to make such periodic reports to him concerning the operation of its program furnishing vocational rehabilitation services as are necessary to satisfy him that amounts paid to such State, agency organization, institution, or individual are used exclusively for furnishing such services in accordance with this paragraph.

[(4)] *(3)* Money paid from the Trust Funds under this subsection for the reimbursement of the costs of providing services to individuals who are entitled to benefits under section 223 (including services during their waiting periods), or who are entitled to benefits under section 202(d) on the basis of the wages and self-employment income of such individuals, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Secretary shall determine according to such methods and procedures as he may deem appropriate—

(A) the total amount to be reimbursed for the cost of services under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount which should be charged to each of the Trust Funds.

[(5)] *(4)* For purposes of this subsection the term "vocational rehabilitation services" shall have the meaning assigned to it in title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), except that such services may be limited in type, scope, or amount in accordance with regulations of the Secretary designed to achieve the purpose of this section.

DISABILITY INSURANCE BENEFIT PAYMENTS

Disability Insurance Benefits

SEC. 223. (a)(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1)),

(B) has not attained the age of sixty-five,

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d))

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2)) in which he becomes so entitled to such insurance

benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 216(i)) which ceased, within the sixty-month period preceding the first month in which he is under such disability, and ending (*subject to paragraph (3) of this subsection and to subsections (g) and (h)*) with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains age 65, or, subject to subsection (e), the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 202 to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

* * * * * * *

(3)(A) In any case where—

(i) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability, and has been a recipient of such benefits for a period of not less than 36 consecutive months, and

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this paragraph and before January 1, 1985, not to be entitled to such benefits,

such individual shall be entitled (subject to subparagraph (B)) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income, continued for an additional period of four months, beginning with the first month for which (under such determination) such benefits are no longer otherwise payable or (if later) with the

month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination.

(B) No benefit shall be payable to any individual (or to any other person on the basis of such individual's wages and self-employment income) under subparagraph (A) for any month in the additional period referred to in such subparagraph if—

(i) such individual is determined by the Secretary to have engaged in substantial gainful activity in that month, or

(ii) such individual (or other person) is entitled or would upon application be entitled, for such month, to a monthly benefit of any other type under this title.

Filing of Application

(b) An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(11)) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application [and no request under section 205(b) for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary)] *and no request under section 221(d) is made, or if such a request is made, subject to section 221(d)(5), before a decision on reconsideration is made under section 221(d).* An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

* * * * * * *

Definition of Disability

(d)(1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202 (e) or (f) shall be determined to be under a disability only if his physical or mental

impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, or widower shall not be determined to be under a disability (for purposes of section 202 (e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof*; and no other individual shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed (i) the amount which was sufficient, under the regulations of the Secretary then in effect, to cause an individual to be treated as having demonstrated such an ability in the month in which the Disability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203 (f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) and ending with the month in which the particular earnings involved are derived, the amount to which the amount specified in clause (i) would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8)*. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine

medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe.

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require. *An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical condition that could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability.* Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Secretary under this paragraph shall be entitled to payment from the Secretary for the reasonable cost of providing such evidence.

* * * * * * *

Continued Payment of Benefits During Appeal

(g) (1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined not to be entitled to such benefits, and

(C) a timely request for reconsideration of the determination that he is not so entitled is made under section 221(d)(1),

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income, continued for an additional period beginning with the first month for which (under such determination) such benefits are no longer otherwise payable and ending with the month preceding the month in which a decision is made upon such reconsideration or (if earlier) with the sixth month after the month in which he was initially notified in writing (by the applicable State agency or the Secretary) of such determination.

(2) Subject to subsection (h), if an individual elects to have the payment of his benefits continued for an additional period under para-

graph (1) pending reconsideration, and the decision upon such reconsideration affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant of such election (for months in such additional period) shall be considered overpayments for all the purposes of this title.

(3) If any month in the additional period during which benefits are payable to an individual pursuant to an election under paragraph (1) is a month for which an adjustment benefit (of the type involved) is also payable to such individual under subsection (a)(3), the benefit which is paid to him under this title for such month shall be deemed to be an adjustment benefit under such subsection (a)(3) rather than a benefit payable pursuant to such election under paragraph (1).

Benefit Payments Not To Be Treated as Overpayments in Certain Cases

(h) Notwithstanding any other provisions of this title, in any case where—

(v) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability, and

(2) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this subsection and before January 1, 1985, not to be entitled to such benefits,

no such benefit which was paid to such individual for any month prior to the month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination, and no benefit which was paid under this Act to any other person for any such month on the basis of such individual's wages and self-employment income, shall be considered an overpayment for any of the purposes of this title.

REDUCTION OF BENEFITS BASED ON DISABILITY

SEC. 224. (a) If for any month prior to the month in which an individual attains the age of 65—

(1) such individual is entitled to benefits under section 223, and

[(2) such individual is entitled for such month to periodic benefits on account of such individual's total or partial disability (whether or not permanent) under—

[(A) a workmen's compensation law or plan of the United States or a State, or

[(B) any other law or plan of the Unted States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)),

[other than benefits payable under title 38, United States Code, benefits payable under a program of assistance which is based on need, benefits based on service all, or substantially all, of which

was included under an agreement entered into by a State and the Secretary under section 218, and benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 210,]

(2) such individual is entitled for such month on account of his total or partial disability (whether or not permanent)—

(A) to periodic benefits under a workmen's compensation law or plan of the United States or a State, or

(B) to periodic benefits under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)), other than benefits payable under title 38, United States Code, benefits payable under a program of assistance which is based on need, benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 218, and benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 210,

the total of his benefits under section 223 for such month and of any benefits under section 202 for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 223 and 202 for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under,

exceeds the higher of—

(5) 80 per centum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 223 for such month and of any monthly insurance benefits under section 202 for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 223 and 202, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of [(A) the average monthly wage (determined under section 215(b) as in effect prior to January 1979) used for purposes of computing his benefits under section 223, (B)] *(A)* one-sixtieth

of the total of his wages and self-employment income [(computed without regard to the limitations specified in sections 209(a) and 211(b)(1))] for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or [(C)] *(B)* one-twelfth of the total of his wages and self-employment income [(computed without regard to the limitations specified in sections 209(a) and 211(b)(1))] for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding that year. In any case where an individual's wages and self-employment income reported to the Secretary for a calendar year reach the limitations specified in sections 209(a) and 211(b)(1), the Secretary under regulations shall estimate the total of such wages and self-employment income for purposes of clauses (B) and (C) of the preceding sentence on the basis of such information as may be available to him indicating the extent (if any) by which such wages and self-employment income exceed such limitations. For purposes of the preceding sentence, the total of an individual's wages and self-employment income for any year or other period shall be computed without regard to the limitations specified in sections 209(a) and 211(b)(1); and the total of an individual's wages for the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding that year shall also include the amount of any additional earnings which would have been credited to such individual under this title as wages for that period (computed without regard to such limitations) if none of the exclusions contained in paragraphs (5), (6), (7), and (8)(B) of section 210(a) had been in effect, to the extent that such individual substantiates his receipt of such amount (and the performance of the services involved) to the satisfaction of the Secretary.

SUSPENSION OF BENEFITS BASED ON DISABILITY

SEC. 225. [(a)] If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 223, or that a child who has attained the age of eighteen and is entitled to benefits under section 202(d), or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 202(e), or that a widower who has not attained age 60 and is entitled to benefits under section 202(f), may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 202(d), 202(e), 202(f), or 223, until it is determined (as provided in section 221) whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 221(b), the Secretary shall promptly notify the appropriate State of his action under [this subsection] *this section* and shall request a prompt determination of whether such individual's disability has ceased. For purposes of [this subsection] *this section*, the term "disability" has the meaning assigned to such term in section 223(d). Whenever the benefits of an individual entitled to a disability

insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 202, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of [this subsection] *this section* shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

[(b) Notwithstanding any other provision of this title, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement to such benefits is based, has or may have ceased, if—

[(1) such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and

(2) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.]

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TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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PART A—DETERMINATION OF BENEFITS

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MEANING OF TERMS

Aged, Blind, or Disabled Individual

SEC. 1614. (a)(1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diam-

eter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) An individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. *No individual who is an aged, blind, or disabled paragraph (shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed (i) the amount which was sufficient, under the regulations of the Secretary then in effect, to cause an individual to be treated as having demonstrated such an ability in the month in which the Disindividual solely by reason of disability (as determined under this ability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) and ending with the month in which the particular earnings involved are derived, the amount to which the amount specified in clause (i) would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).* In determining whether an individual is able to

engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria, except for purposes of subparagraph (F) or paragraph (4), shall be found not to be disabled.

(E) Notwithstanding the provisions of subparagraphs (A) through (D), an individual shall also be considered to be disabled for purposes of this title if he is permanently and totally disabled as defined under a State plan approved under title XIV or XVI as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(F) For purposes of this title, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1611(e)(4), nonetheless be considered (except for purposes of section 1631(a)(5)) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity.

(4)(A) For purposes of this title, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. [As used in this paragraph, the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.] *As used in this paragraph with respect to any individual who is an aged, blind, or disabled individual solely by reason of disability (a determined under paragraph (3)), the term "services" means activity which is determined by the Secretary to be of a type normally performed for remuneration or gain, and which is performed (by the particular individual involved) in any month for remuneration or gain at least equal to (i) the amount of remuneration or gain which was sufficient, under the regulations of the Secretary then in effect, to cause the activity to be treated as constituting "services" for purposes*

of this paragraph in the month in which the Disability Amendments of 1982 were enacted, or (ii) if one or more increases in exempt amounts under section 203(f)(8) have occurred pursuant to subparagraph (B) thereof during the period beginning with the month after the month specified in clause (i) of this sentence and ending with the month in which the particular activity involved is performed, the amount to which the amount specified in clause (i) of this sentence would have increased under such section 203(f)(8) during such period if (in the month specified in clause (i)) it had been an exempt amount applicable to individuals other than those described in subparagraph (D) of such section 203(f)(8).

REHABILITATION SERVICES FOR BLIND AND DISABLED INDIVIDUALS

SEC. 1615. (a) * * *

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[(d) The Secretary is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months. The determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1).]

(d)(1) The Secretary is authorized to pay the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 for the costs incurred under such plan in the provision of vocational rehabilitation services which meet the requirements of paragraph (2) to individuals who are referred for such services pursuant to subsection (a). The determination that services meet the requirements of paragraph (2), and the determination of the amount of the costs to be paid under this paragraph, shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1)(A).

(2) Vocational rehabilitation services provided to an individual described in subsection (a) meets the requirements of this paragraph—

(A) to the extent such services consist of evaluation services as determined by the Commissioner of Social Security,

(B) if such services result in—

(i) such individual's performance of substantial gainful activity which lasts for a continuous period of nine months, or

(ii) such individual's recovery from his disabling physical or mental impairment, or

(C) if such individual refuses without good cause to continue to accept vocational rehabilitation services or fails to cooperate in such a manner as to preclude such individual's successful rehabilitation.

(3) Payments under this subsection shall be made in advance (or, at the election of the State agency involved, by way of reimbursement), with necessary adjustments for overpayments and underpayments.

(f) Notwithstanding any other provision of this section, the Secretary, instead of referring individuals age 16 or over to a designated State agency for vocational rehabilitation services as otherwise required by subsection (a), may provide such services to those individuals (in such cases as he may determine) by agreement or contract with other public or private agencies, organizations, institutions, or individuals. To the extent appropriate and feasible—

(1) vocational rehabilitation services under the preceding sentence shall be provided in the same manner, and in accordance with the same requirements and criteria, as in the case of vocational rehabilitation services provided by agreement or contract under section 222(d)(1); and

(2) all of the preceding provisions of this section which relate to services for individuals age 16 or over who are referred to a State agency under subsection (a) shall apply with respect to services provided to individuals age 16 or over by agreement or contract under the preceding sentence, in the same way that they apply with respect to services provided pursuant to such a referral, as though the agency, organization, institution, or individual involved were the designated State agency and such individuals had been referred to it under subsection (a).

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a)(1) Benefits under this title shall be paid at such time or times and in such installments as will best effectuate the purposes of this title, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1611(e)(3)(A), the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

(3) The Secretary may by regulation establish ranges of incomes within which a single amount of benefits under this title shall apply.

(4) The Secretary—

(A) may ake to any individual initially applying for benefits under this title who is presumptively eligible for such benefits

and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding $100; and

(B) may pay benefits under this title to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 3 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this title, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

(7)(A) In any case where—

(i) an individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)) has been a recipient of benefits under this title for a period of not less than 36 consecutive months, and

(ii) the impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this paragraph (or October 1, 1982, if later) and before January 1, 1985, not to be eligible for such benefits,

such individual shall be entitled (subject to subparagraph (B)) to have the payment of such benefits continued for an additional period of four months, beginning with the first month for which (under such determination) such benefits are no longer otherwise payable under this title or (if later) with the month in which he is initially notified in writing (by the applicable State agency or the Secretary) of such determination.

(B) No benefit shall be payable to any individual under subparagraph (A) for any month in the additional period referred to in such subparagraph if such individual is determined by the Secretary to have engaged in substantial gainful activity in that month.

Overpayments and Underpayments

(b)(1) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this title, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of this title.

(2) In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1954 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 43 of such Code for such year, so that such individual is liable under section 43(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this title so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.

(3) Notwithstanding any other provision of this title, in any case where—

(A) an individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)) is a recipient of benefits under this title, and

(B) the impairment on the basis of which such benefits are payable is found to have ceased or not to have existed (or to be no longer disabling), and as a consequence such individual is determined, on or after the date of the enactment of this subsection (or October 1, 1982, if later) and before January 1, 1985, not to be eligible for such benefits,

no such benefit which was paid to such individual for any month prior to the month in which he is initially notified in writing (by the applicable State agency or the Secretary of such determination shall be considered an overpayment for any of the purposes of this title.

[(3)](4) *For payments for which adjustments are made by reason* of a retroactive payment of benefits under title II, see section 1127.

Hearings and Review

(c)(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement [within sixty days after notice of such determination is received] *within 180 days after notice of such determination is received where the matter in disagreement involves blindness (within the meaning of section 1614(a)(2)) or disability (within the meaning of section 1614(a)(3)) or within 60 days after such notice is received in any other case*, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

* * * * * * *

SOCIAL SECURITY DISABILITY AMENDMENTS OF 1980

* * * * * * *

TITLE III—PROVISIONS AFFECTING DISABILITY RECIPIENTS UNDER OASDI AND SSI PROGRAMS; ADMINISTRATIVE PROVISIONS

* * * * * * *

DISABILITY DETERMINATIONS; FEDERAL REVIEW OF STATE AGENCY DETERMINATIONS

SEC. 304. (a) * * *

* * * * * * *

(g) (*1*) The Secretary of Health and Human Services shall implement a program of reviewing, on his own motion, decisions rendered by administrative law judges as a result of hearings under section 221(d) of the Social Security Act, and shall report to the Congress by January 1, 1982, on his progress.

(2) In implementing and carrying out the program referred to in paragraph (1), the Secretary shall review—

(A) at least 15 percent of all decisions, rendered by administrative law judges in the fiscal year 1982 as a result of hearings under section 221(e) of the Social Security Act, that individuals are or continue to be under disabilities (as defined in section 216(i) or 223(d) of such Act); and

(B) at least 25 percent of all such decisions so rendered in any fiscal year after the fiscal year 1982 and before the fiscal year 1988.

* * * * * * *

TITLE V—OTHER PROVISIONS RELATING TO THE SOCIAL SECURITY ACT

* * * * * * *

AUTHORITY FOR DEMONSTRATION PROJECTS

SEC. 505. (a) (1) The Secretary of Health and Human Services shall develop and carry out experiments and demonstration projects designed to determine (*A*) the relative advantages and disadvantages of [(A)] (*i*) various alternative methods of treating the work activity of disabled beneficiaries under the old-age, surivors, and disability insurance program, including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of disabled beneficiaries [(B)] (*ii*) altering other limitations and conditions applicable to such disabled beneficiaries (including, but not limited to, lengthening the trial work period, altering the 24-month waiting period for medicare benefits, altering the manner in which such program is administered, *and* earlier referral of beneficiaries for [rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation),] *rehabilitation); and (B) how best to use organizations for profit and those not so organized in providing vocational rehabilitation services to disabled beneficiaries;* to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of title II of the Social Security Act.

(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program without committing such program to the adoption of any particular system either locally or nationally. *Not later than 18 months after the date of the enactment of the Disability Amendments of 1982, the Secretary shall develop and commence at least 10 experiments or projects referred to in clause (B) of paragraph (1), with one or more of such experiments or projects commencing in each of at least 5 States.*

(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the benefit requirements of titles II and XVIII of the Social Security Act insofar as is necessary for a thorough evaluation of the alternative methods

under consideration. No such experiment or project shall be actually placed in operation unless at least ninety days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Secretary to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Secretary to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in paragraph (1).

(4) (*A*) The Secretary shall submit to the Congress no later than January 1, 1983, a report on the experiments and demonstration projects with respect to work incentives carried out under this subsection together with any related data and materials which he may consider appropriate.

(*b*) *The Secretary shall submit to the Congress no later than the end of the 18-month period referred to in the last sentence of paragraph (2) a report on the experiments and demonstration projects described in clause (B) of paragraph (1) which are commenced under this subsection together with any related data and materials which he may consider appropriate.*

* * * * * * *

SECTION 2208 OF THE OMNIBUS BUDGET RECONCILATION ACT OF 1981

REDUCTION IN DISABILITY BENEFITS ON ACCOUNT OF OTHER RELATED PAYMENTS; EXTENSION OF OFFSET TO DISABLED WORKER BENEFICIARIES AGED 62 THROUGH 64 AND THEIR FAMILIES; CHANGE IN MONTH IN WHICH PAYMENTS ARE OFFSET

SEC. 2208. (*a*) * * *

(b) The amendments made by subsection (a) shall be effective with respect to individuals who first become entitled to benefits under section 223(a) of the Social Security Act for months beginning after the month in which this Act is enacted, but only in the case of an individual who became disabled within the meaning of section 223(d) of such Act after the sixth month preceding the month in which this Act is enacted*; except that the amendment made by subsection (a) (2) shall be effective in the case of an individual who attains age 62 after the month in which the Disability Amendments of 1982 are enacted even though he became disabled within the meaning of section 223(d) of the Social Security Act in or prior to such sixth month.*

SEPARATE VIEWS OF HON. HAROLD FORD, JAMES SHANNON, ROBERT MATSUI, DON BAILEY, CHARLES RANGEL, PETE STARK, FRANK GUARINI, WILLIAM BRODHEAD, MARTY RUSSO, BERYL ANTHONY, THOMAS DOWNEY AND KEN HOLLAND

H.R. 6181, the "Disability Amendments of 1982," contains a number of provisions which make needed improvements in the Disability Insurance and SSI disability programs. One of the provisions in the bill, however, will result in some disabled individuals being denied a fair chance to present all of the evidence of their disability when their benefits are being terminated. This is the provision in Section 5 of the bill which will close the record in termination cases at the reconsideration stage of the disability determination process. We believe this limitation will seriously undermine the appeal rights of thousands of individuals whose benefits are being terminated under the Administration's current criteria and procedures.

The disability determination process involves several levels:

State Agency Determinations:

(a) Initial determination, and

(b) Reconsideration.

Hearing before an Administrative Law Judge (ALJ).

Appeals Council Review.

Federal District Court.

Under present law, the record is closed to additional evidence after a decision is made at the ALJ hearing. Section 5 of H.R. 6181 would close the record after the reconsideration level in the case of benefit terminations.

The hearing before an Administrative Law Judge is the first autonomous, independent review of the decision by the State agency to terminate an individual's disability benefits. Such review is particularly important in light of the hundreds of thousands of disability redeterminations which are going to take place over the coming months. Overworked and underfinanced State agencies simply cannot be expected to be 100% correct in making disability determinations. All of the evidence in support of a disability claim cannot be expected to be gathered in every case in time for the State agency hearing. Not every individual will be represented by counsel at the State level or understand the importance of presenting documentary evidence at the reconsideration hearing. It is reasonable to expect that some mistakes and omissions are going to be made at the State level. By allowing the record to remain open to additional evidence through the ALJ hearing, tragic mistakes can be avoided.

The stated intent of H.R. 6181 is to respond to the crises facing the Disability Insurance program and the SSI disability program.

The first crisis is in the disability appeals system, with an expanding backlog of cases awaiting a hearing before Administrative Law Judges. The second crisis is that of the disabled people, many without other means of support, who are being denied disability benefits because of the new criteria and procedures which the Social Security Administration is requiring State agencies to use in determining eligibility.

The bill's approach to addressing the crisis in the *system* will compound and exacerbate the crisis faced by the *people* who are losing their disability benefits. Restricting the right to appeal the decision made by the State agency is not the way to improve the system at the State level.

Making the reconsideration level a more meaningful step in the disability determination process is a sound goal. To the extent that cases are resolved at this stage, the system will be improved. Closing the record at this stage, however, as Section 5 would do, is an unfair and inefficient means of improving the process at the State level. The whole purpose of the hearing by an Administrative Law Judge is to provide an independent check and balance to executive discretion under the law. If the hearing before the Administrative Law Judge is to have any meaning at all, the individual's appealing the State agency decision must be allowed to present all of their evidence.

We intend to offer an amendment on the House floor to retain present law and keep the record open through the ALJ level.

HAROLD FORD.
DON BAILEY.
FRANK GUARINI.
BERYL ANTHONY, Jr.
JIM SHANNON.
CHARLES B. RANGEL.
BILL BRODHEAD.
THOMAS DOWNEY.
ROBERT MATSUI.
PETE STARK.
MARTY RUSSO.
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HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

RELEASE: 2:00p.m. EDT
June 7, 1983

Contact: Jim Brown
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Statement by

Margaret M. Heckler

Secretary of Health and Human Services

I announce today a specific series of steps -- a package of major reforms in the process of reviewing the eligibility of Social Security Disability beneficiaries. That review was long ago mandated by the 1980 Congress.

The contents of this package -- and especially its fairness -- have been a prime priority of mine since I took command of this Department in March.

President Reagan fully shares my concern. He has personally approved the reforms I am announcing today. He is as committed as I am to making these reforms work -- and to making sure that this program is as fair and humane and compassionate as humanly possible. He is also concerned, as I am, that this program be responsive to the mandate placed on us by the Congress.

These reforms will:

--Slow down the Disability review process by increasing those exempt from review by fully 25 percent;

--Institute and implement a "pause" by temporarily stopping the reviews of two thirds of all mentally impaired individuals. That will give us time to reevaluate the program's mental health standards in consultation with appropriate experts.

--Reduce the growing backlog of appeal cases, giving us more time to review the most difficult case;

--Remove an existing bias against beneficiaries that has crept into the law itself; and,

--Accelerate the comprehensive review of all other policies and procedures which affect the people served by this program.

Like most of my colleagues in the 96th Congress, I was appalled when the Carter Administration and GAO audit findings documented the fact that as many as one-in-five of the 2.8 million workers then on the Disability rolls were ineligible to receive benefits.

There was an immediate rush to find a remedy: -- to protect the truly eligible recipients (and the taxpayers!) but also to staunch the $2 billion dollars in annual losses to the hard-pressed Social Security Trust Fund.

But, like most of my colleagues, I had no idea that the sudden, three-year review of millions of cases we then mandated might result in hardships and heartbreaks for innocent and worthy disability recipients who would fall through the cracks of the existing long-time, paper-oriented review process that had never before had to cope with such an overwhelming workload.

It is clear to me now from my own review of our experience to date with this program, that the old, paper-oriented review process we inherited was too insensitive, too bureaucratic. Mistakes were too easy to make -- and too hard to rectify.

The reforms which Social Security instituted last year -- which introduced a face-to-face human contact at the very beginning of the review process and set the stage for a face-to-face hearing at the very first level of appeal -- represented a giant step toward humanizing this program.

But we need to go further. Our review has been ongoing; we have told the Congress time and again in hearings on this program that we would achieve further progress and we are doing just that with the reforms I am announcing today.

These reforms respond to the concerns expressed by leaders of the Congress. These reforms respond to concerns raised by medical and mental health professional groups. These reforms respond to the concerns of the State agencies which administer much of the program for us. And, most importantly, these reforms respond to the demands of beneficiaries that the review system be as fair and humane and error-free as possible.

We have been listening, we have been studying and searching for further improvements. We are responding with clear-cut actions that will put the highest premium on fairness and compassion -- and will minimize the chance for injustice, dislocation and personal trauma.

First, I am authorizing an expansion of the number of those exempted from the Continuing Disability Investigation process by 200,000, bringing the total so exempted to more than 1 million, or 37 percent of the disabled workers now on the rolls.

This action will ease the workload on State agencies, giving them more time to review each case.

Second, I am authorizing a temporary exemption from review of two-thirds of all mental impairment cases, or 135,000 of those still to be reviewed.

This exemption, involving those diagnosed as having "functional psychotic disorders," will last until we and appropriate, compassionate outside experts have thoroughly reviewed the standards we use in this most controversial area.

Once we have acceptable standards, I will authorize going back to re-review those who may have been dropped from the rolls in the past under existing standards.

Third, I am authorizing a major change in the way the Social Security Administration selects cases for review by State agencies.

This change, which will mean moving from a selection of cases by means of a "profile" to selection on a more random basis, should sharply reduce the number of initial decisions to stop benefits. This will mean a major reduction in the growing backlog of cases being appealed, freeing staff resources for closer review of the most difficult cases.

Fourth, I am proposing legislation to remove a built-in bias against recipients now in the law that forces the Social Security Administration to review fully two-thirds of all State decisions to allow benefits -- but does not mandate a review of decisions to deny benefits.

I believe that any audit system we use should be absolutely neutral -- which would be the case under my proposal that we review an appropriate mix of both allowance and denial decisions.

Fifth, I am proposing legislation to make permanent the practice of paying benefits to individuals through their first opportunity for a face-to-face evidentiary hearing.

This would replace the temporary legislation passed last December -- with Administration support -- which provided payment through the Administrative Law Judge level, the first chance anyone now has to take his or her case personally to a decision-maker.

Beginning in January we will have a new face-to-face hearing process in place Nationwide.

We have tested that process -- and it works, just as we predicted. It produces far more favorable decisions very early on in the review process -- and far fewer appeals to the Administrative Law Judge level.

If we could get this new system fully in place tomorrow, I would order it done. I have ordered the Social Security Administration to move as rapidly as humanly possible.

Sixth, I have ordered the Social Security Administration to accelerate its top-to-bottom review, in consultation with appropriate experts and the States, of any other policies and procedures which have any affect on both the decisions on cases that are made and on the adjudicatory climate in which they are made.

This review has already paid off in many of the reforms I am announcing today. I am determined that it be comprehensive. I am determined that it lead to change when it's clear that change is needed.

Taken together, these reforms will mean the loss of one-third to one-half of the savings projected for this program over the next three years, or $200 million dollars to $300 million dollars. The exact number will depend in part on the outcome of our further review of our policy and procedures.

There is a broad, non-partisan consensus in this Nation that when any American woman or man is truly disabled -- mentally or physically -- our Social Security system should respond by extending a prompt, humane helping hand. Almost all Americans are agreed: - the trauma of disability is enough. It should not be compounded by a loss of independence and dignity.

At the same time, we have a delicate balance to strike.

The Congress acted in 1980 out of concern that the traditional and instinctive generosity of working Americans was being abused -- that too many other than the truly disabled were benefitting from the Social Security program.

I believe these reforms, will help us better maintain that delicate balance.

HHS FACT SHEET

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

RELEASE: 2:00 p.m., EDT
Tuesday, June 7, 1983

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REFORMING THE DISABILITY REVIEW PROCESS

BACKGROUND

The review of the Social Security Disability rolls begun in 1981 under a 1980 Congressional mandate has brought to light many longstanding problems in this 27-year-old program.

The Congress ordered an every-three-year review of those on the rolls considered not permanently disabled in response to administrative looseness and consequent rapid growth in the program during the 1970s after Carter Administration studies, confirmed by the General Accounting Office (GAO), showed that as many as 20 percent, or one-in-five of the 2.8 million then on the rolls were ineligible.

Prior to March, 1981, when the Continuing Disability Investigation (CDI) reviews began, only about 150,000 disability cases were subject to eligibility reviews each year by the Social Security Administration and the State Disability Determination Agencies which operate the program on behalf of SSA.

The reviews were begun in March, 1981, nine months prior to the January, 1982 deadline set in the law, in direct response to a GAO report urging that all available resources be redirected to such reviews, given the extraordinarily high ineligibility rate in this $18 billion program.

That report, issued formally on March 4, 1981, but made available to the Administration transition team in December, 1980, reiterated GAO's earlier concerns, pointing out that:

> "As a result of SSA's limited followup activity and poor management of the CDI process, as many as 584,000 beneficiaries who do not currently meet SSA's eligibility criteria may be receiving disability benefits. These beneficiaries represent over $2 billion annually in Trust Fund costs. Since SSA decisions on the continued eligibility of Disability Insurance beneficiaries are subject to appeal, it may not be realistic to expect that all these beneficiaries would be removed from the rolls. However, substantial savings could be achieved if SSA focused on this problem."

The program's long-time review procedures, which were essentially unchanged, proved to be overly-bureaucratic and sometimes insensitive in light of the vastly increased workload mandated under the law. Despite a 60 percent increase in Federal funding for the State agencies and a one-third increase in their staffs, the reviews sometimes resulted in disabled persons being improperly dropped from the rolls.

Of the first 750,000 cases reviewed, about 340,000, or 45 percent, have been initially ruled ineligible by the State agencies. This rate is due to a policy of assigning first review priority to cases selected under a profile of characteristics of those most likely to be able to return to work. Of the approximately one-in-three who appeal termination of benefits to a Federal Administrative Law Judge, the first opportunity for a face-to-face meeting with a decision-maker under the old procedures, about 60 percent have been restored to the rolls.

The review process has been complicated by widespread misunderstanding of the Disability Insurance program among both the general public and beneficiaries.

-- First, few understand that eligibility standards are extremely strict under the law. Benefits are limited to those totally unable to work at any job anywhere in the economy. Unlike Veterans Disability programs and other disability and/or unemployment insurance programs, Social Security Disability benefits cannot be paid to those only partially disabled or those whose condition may prevent them from continuing in their current jobs.

-- Second, due to the administrative laxity in the program during the 1970s found by the GAO, few beneficiaries were ever told that they might be asked to re-prove their eligibility at any time once on the rolls. For such individuals, many of whom have been out of the workforce for many years, the eligibility reviews mandated under the 1980 statute have come as a major shock and threat to their income.

REFORMS IMPLEMENTED TO DATE

Based on first-year experience with the CDI review process, the Social Security Administration has moved administratively and in cooperation with the Congress to initiate major reforms in policies and procedures. These have included:

-- Face-to-Face interviews at the start of each review. Since last October, each person selected for review has received a face-to-face interview in a local Social Security office before being sent to the State agency for medical review. This policy alone, designed to detect obviously disabled persons who should not be subject to a CDI review, is exempting from 3 to 5 percent of cases from further action.

-- Exemption of more persons from review. In May, 1982, SSA expanded its definition of the "permanently disabled" to exempt 125,000 individuals from the CDI process, bringing the total exempted under SSA policies to more than 800,000, or 27 percent of those on the rolls.

-- Payment of benefits through appeal. Beginning in January, 1983, SSA began paying monthly benefits to those awaiting hearings on their appeals by Administrative Law Judges. This policy, adopted under Administration-supported interim legislation (PL 97-455, signed by the President in January), replaces prior law policy which terminated an individual's benefits 60 days after a State agency decision.

-- Testing Face-to-Face evidentiary hearings. Also under PL 97-455, SSA has pilot-tested a face-to-face hearing process designed to replace the wholly paper-oriented review which now serves as the first level of appeal in benefit termination cases. Under the law, the new face-to-face proceeding will be in place Nationwide by January, 1984.

FURTHER REFORMS IN THE CDI PROCESS

These and related reforms have gone far toward making the CDI process more fair, more humane and more effective than the old paper-review procedures in effect before 1981.

However, further experience with the program, along with consultation with Congressional leaders, the States and interest groups, have pointed the way to further major reforms that are still needed to ensure that this program is as responsive as humanly possible to the needs of beneficiaries while still being as responsible as possible to the demands of the Congress and the taxpaying public.

Most of the reforms outlined below can be done administratively and immediately. The rest will be proposed for quick action by the Congress.

Taken together, these reforms will mean:

-- Permanent exemption of 200,000 more individuals from the CDI reviews, bringing the total exempted to more than one million, or 37 percent of those on the rolls, giving States more time to review the remaining cases.

-- Exempting about two-thirds, or 135,000 mental impairment cases from CDI reviews pending consultation with outside mental health professionals on revisions to standards and procedures now in use.

-- Sharply reducing the backlog of appeal cases, by moving to random selection of cases for State review, which will give us more time to review the most difficult cases.

-- Proposing legislation to remove a built-in, statutory bias against recipients resulting from a Congressional mandate that two-thirds of all State decisions to allow benefits be reviewed by Federal officials.

-- Proposing legislation to make permanent the continuation of benefits through the first level of face-to-face appeal.

-- Accelerating a top-to-bottom review of all other Disability program standards and procedures in consultation with appropriate experts.

The total cost of these reforms to the Disability Trust Fund, which will depend in part on the outcome of this comprehensive review of current policies and procedures, will be from one-third to one-half of savings anticipated from the CDI reviews, or from $200 to $300 million over the next three years.

NEW REFORMS DETAILED

A. EXEMPTION OF 200,000 ADDITIONAL CASES FROM CDI REVIEWS

Individuals classified as "permanently" disabled are exempt under the law from the every-three-year CDI review process. These cases will be subject to some form of review at a later date under procedures and time frames to be established by the Secretary.

Based on experience with the CDI review process to date, SSA has identified several additional impairments which most appropriately belong in the "permanent" classification. This action will raise the number of people exempted from the CDI review process to more than 1 million.

B. EXEMPTION OF 135,000 MENTAL IMPAIRMENT CASES PENDING POLICY REVIEW

Based on experience with the program and consultation with mental health experts, SSA has concluded that certain individuals classified as having "functional psychotic disorders" are most prone to being terminated incorrectly.

Recognizing that diagnosis, treatment and standards of measurement involving such disorders have become highly controversial among the mental health professions, SSA will suspend further reviews of such cases pending further consultation with experts.

Once acceptable standards and procedures have been adopted, SSA will resume reviews of these cases and will attempt to identify and re-review those individuals who may have been terminated in the past but have failed to pursue appeals for reinstatement to the rolls.

C. REDUCING BACKLOG OF APPEALS

Under current policy, SSA selects cases for review using a profile of characteristics known to be common to those most likely to be able to return to the work force.

Because of this policy, the cases now sent to State agencies are more likely to result in terminations leading to appeals.

To ease the backlog of appeal cases, thereby freeing staff resources for closer review of the most difficult cases, SSA will immediately move to a policy of random selection of cases. This change is expected to result in markedly fewer decisions to cease benefits in any given month over the next two years.

D. REMOVE A STATUTORY BIAS AGAINST RECIPIENTS

Under current law, SSA is required to review fully two-thirds of all State decisions to allow benefits but has no parallel mandate to review cases that are dis-allowed.

While SSA has, on its own, undertaken reviews of disallowance decisions, it does not have the staff resources to review more than a small fraction of these cases.

SSA will propose that Congress change the statute to permit Federal reviews of a proportional sample of both allowances and denials.

E. PAYING BENEFITS THROUGH A FACE-TO-FACE HEARING

SSA will propose that Congress replace the interim legislation (PL 97-455) passed last year with permanent statutory authority to pay benefits to any beneficiary appealing a State agency decision until he or she has a face-to-face hearing under the new evidentiary hearing process to be implemented in January, 1984.

Prior to enactment of PL 97-455, persons removed from the rolls at the State agency level lost benefits within two months, even though an appeal to a Federal Administrative Law Judge might take as many as nine months due to a rapidly growing backlog of cases at the ALJ level.

Under PL 97-455, individuals are now eligible for benefits to the ALJ level or until the interim law expires in June, 1984.

Based on pilot test results, SSA has found that the new face-to-face hearing process will markedly increase the number of decisions to continue benefits in CDI review cases, thus sharply reducing the number of appeals to the ALJ level with a resulting decrease in the backlog of cases awaiting ALJ action.

F. COMPREHENSIVE REVIEW OF DISABILITY POLICY AND PROCEDURES

Experience with the CDI review program and consultation with medical and mental health experts and State agency directors have pointed to a number of long-time policies, procedures and issues that should be fully reviewed.

SSA has begun such a review -- leading to the reforms announced today -- and will accelerate its work, with outside experts and the States, over the next several months.

Among the areas under study:

-- Updating eligibility criteria involving all medical and mental impairment cases;

-- Re-examining the issue of whether or not an acceptable "medical improvement" standard can be developed to be applied in certain cases;

-- Reviewing the issue of whether an improved standard of "non-severe impairment" can be developed to better insure that a marginally disabled person is accorded a review of his or her age, education and work history before any decision is made;

-- Reviewing all other policies and procedures which not only affect the way cases are reviewed but also set the tone of the adjudicatory climate which itself can affect the outcome of those reviews.

WHY DISABILITY REVIEWS WERE MANDATED BY CONGRESS

- **1977 — 1980** Carter Administration, GAO Studies Find Uncontrolled Growth, High Ineligibility In This $18 Billion Program

- **1980** Congress Orders Review of Disability Rolls In Three Years — 1982-84

- **1981** GAO Urges Reagan Administration To Begin Reviews Earlier — Cites 584,000 Ineligible, $2 Billion Annual Loss to Social Security

PREVIOUS REFORMS IN THE DISABILITY REVIEW PROCESS

• Exempt 125,000 More From Reviews	May 1982
• Mandate Review of More Medical Evidence	May 1982
• Face-to-Face Interviews at Start of Reviews	October 1982
• Payment of Benefits Through Face-to-Face Hearing	January 1983
• Pilot-Test New Face-to-Face Hearings Process	1983
• Major Review of All Policies and Procedures	1982-83
• Set January 1, 1984 Start-Up For New Face-to-Face Hearings	

REFORMING THE DISABILITY REVIEW PROCESS

ADMINISTRATIVE INITIATIVES

- Exempt 200,000 More From Reviews — 1,000,000 Now Exempted
- Exempt 135,000 Mental Impairment Cases Pending Policy Review
- Change Review Process — Shorten Appeals Backlog Delays
- Accelerate Review of All Other Policies

LEGISLATIVE PROPOSALS

- Remove Built-In Bias Against Recipients Currently in Law
- Make Permanent Payment of Benefits Through Face-to-Face Appeal

COST TO DISABILITY TRUST FUNDS

- $200-$300 Million in Fiscal Years 1984-86

98TH CONGRESS
1ST SESSION

H. R. 3755

To amend title II of the Social Security Act to provide for reform in the disability determination process.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1983

Mr. PICKLE introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend title II of the Social Security Act to provide for reform in the disability determination process.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1983".

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TITLE I—STANDARDS OF DISABILITY

STANDARD OF REVIEW FOR TERMINATIONS OF DISABILITY BENEFITS

SEC. 101. Section 223 of the Social Security Act is amended by inserting after subsection (e) the following new subsection:

"(f) In the case of an individual who is a recipient of disability benefits, such individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are payable has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence indicating one or more of the following:

"(1) that there has been medical improvement in the individual's impairment or combination of impairments so that the individual now is able to engage in substantial gainful activity;

"(2) that new medical evidence and a new assessment of the individual's residual functional capacity demonstrate that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology which result in ability to engage in substantial gainful activity; or

"(3) that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that such individual was under a disability or continued to be under a disability, so that the individual now is able to engage in substantial gainful activity.

Nothing in this subsection shall be construed to require a determination that an individual is entitled to disability benefits if evidence on the face of the record shows that any prior determination of such entitlement to disability benefits was either clearly erroneous at the time it was made or was fraudulently obtained or if the individual is engaged in substantial gainful activity. For purposes of this subsection, the term 'disability benefit' means a disability insurance benefit or a child's, widow's, or widower's insurance benefit based on disability.".

STUDY CONCERNING EVALUATION OF PAIN

SEC. 102. (a) The Secretary of Health and Human Services shall, in conjunction with the National Academy of Sciences, conduct a study concerning the question of using subjective evidence of pain, including statements of the individual alleging such pain as to the intensity and persistence of such pain and corroborating evidence provided by treating physicians, family, neighbors, or behavioral indicia, in determining under section 221 of the Social Security Act whether an individual is under a disability.

(b) The Secretary shall submit the results of the study under subsection (a), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1985.

MULTIPLE IMPAIRMENTS

SEC. 103. Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments

without regard to whether any such impairment, if considered separately, would be of such severity.".

TITLE II—DISABILITY DETERMINATION PROCESS

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 201. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than April 1, 1984.

(b) The Secretary shall make the revisions pursuant to subsection (a) in consultation with the Advisory Council on Medical Aspects of Disability (established by section 304 of this Act), and shall take the advice and recommendations of such Council fully into account in making such revisions.

(c)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (d)(1) the term "continuing eligibility review", when used to refer to a review under section 221(i) of such Act of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual is engaged in substantial gainful activity.

(d)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II of such Act in a reconsideration of, hearing on, or judicial review of a decision rendered in any continuing eligibility review to which subsection (c)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any mentally impaired individual who was found to be not disabled pursuant to an initial disability determination or continuing eligibility review between March 1, 1981, and

the date of the enactment of this Act, and who reapplies for benefits under title II of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be submitted within one year after the date of the enactment of this Act; and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

REVIEW PROCEDURE GOVERNING DISABILITY DETERMINATIONS AFFECTING CONTINUED ENTITLEMENT TO DISABILITY BENEFITS; DEMONSTRATION PROJECTS RELATING TO REVIEW OF DENIALS OF DISABILITY BENEFIT APPLICATIONS

SEC. 202. (a)(1) Section 221(d) of the Social Security Act is amended—

(A) by inserting "(1)" after "(d)"; and

(B) by adding at the end thereof the following new paragraph:

"(2)(A) In any case where—

"(i) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability, and

"(ii) the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Secretary in a case to which

subsection (g) applies) to have ceased, not to have existed, or to no longer be disabling,

such individual shall be entitled to notice and opportunity for review as provided in this paragraph.

"(B)(i) Any determination referred to in subparagraph (A)(ii)—

"(I) which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for an initial decision of the Secretary with regard to an individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or otherwise changed), and

"(II) which is in whole or in part unfavorable to such individual,

shall remain pending until after the notice and opportunity for review provided in this subparagraph.

"(ii) Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (including the right to make a personal appearance as provided in this subparagraph) and the right to submit additional evidence prior to or in such review as provided in this clause. Such

statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsection (g) applies) of such determination, including the right to make a personal appearance, and may submit additional evidence for purposes of such review prior to or in such review. Any such request must be filed within 30 days after notice of the pending determination is received by the individual making such request. Any review carried out by a State agency under this subparagraph shall be made in accordance with the pertinent provisions of this title and regulations thereunder.

"(iii) A review under this subparagraph shall include a review of evidence and medical history in the record at the time such disability determination is pending, shall examine any new medical evidence submitted or obtained in the review, and shall afford the individual requesting the review the opportunity to make a personal appearance with respect to the case at a place which is reasonably accessible to such individual.

"(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination as so affirmed or modified.

"(C) An initial decision by the Secretary as to the continued rights of any individual to benefits under this title which is based in whole or in part on a determination described in subparagraph (A)(ii) and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's decision, the reason or reasons upon which the decision is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

"(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with an initial decision of the Secretary referred to in subparagraph (C) as to continued rights to benefits under this title shall be entitled to a hearing thereon to the same extent as is provided in section 205(b) with respect to decisions of the

Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b) with respect to matters other than the determination referred to in subparagraph (A)(ii).

"(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly appointed in accordance with section 3105 of title 5, United States Code.".

(2) Section 205(b)(1) of such Act is amended by inserting after the fourth sentence the following new sentence: "Reviews of decisions relating to continued entitlement to benefits based on disability shall be governed by the provisions of section 221(d)(2) in addition to the provisions of this section.".

(b)(1) Section 205(b) of such Act (as amended by subsection (a)(2)) is further amended—

(A) by striking out "(1)" after "(b)"; and

(B) by striking out paragraph (2).

(2) Section 4 of Public Law 97–455 (relating to evidentiary hearings in reconsiderations of disability benefit terminations) (96 Stat. 2499) and section 5 of such Act (relating to

conduct of face-to-face reconsiderations in disability cases) (96 Stat. 2500) are repealed.

(c) The amendments made by this section shall apply with respect to determinations (referred to in section 221(d)(2)(A)(ii) of the Social Security Act (as amended by this section)) issued after December 31, 1984.

(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement as demonstration projects the amendments made by this section with respect to all disability determinations under subsections (a), (c), (g), and (i) of section 221 of the Social Security Act and decisions of entitlement to benefits based thereon in the same manner and to the same extent as is provided in such amendments with respect to determinations referred to in section 221(d)(2)(A)(ii) of such Act (as amended by this section) and decisions of entitlement to benefits based thereon. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than April 1, 1985.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 203. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in clause (i), by inserting "or" after "hearing,"; and

(B) by striking out ", or (iii) June 1984".

(2) Section 223(g)(3) of such Act is amended by striking out "which are made" and all that follows down through the end thereof and inserting in lieu thereof the following: "which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.".

(b)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Disability Insurance Trust Fund and the rate of appeals to administrative law judges of unfavorable benefit entitlement determinations involving determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 204. Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) A determination under subsection (a), (c), (g), or (i) that an individual is not under a disability by reason of a mental impairment shall be made only after a qualified psychiatrist or psychologist employed by the State agency or the Secretary (or whose services are contracted for by the State agency or the Secretary) has completed the medical portion of any applicable sequential evaluation and residual functional capacity assessment.".

REGULATORY STANDARDS FOR CONSULTATIVE EXAMINATIONS

SEC. 205. Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

TITLE III—MISCELLANEOUS PROVISIONS

ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS

SEC. 301. Section 205(a) of the Social Security Act is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to matters relating to benefits under this title. With respect to matters to which rulemaking requirements under the preceding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provi-

sions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State agency or the Secretary, including any hearing before an administrative law judge.".

COMPLIANCE WITH CERTAIN COURT ORDERS

SEC. 302. (a) Title II of the Social Security Act is amended by adding at the end thereof the following new section:

"COMPLIANCE WITH CERTAIN COURT ORDERS

"SEC. 234. In the case of any decision rendered by a United States court of appeals which—

"(1) involves an interpretation of this title or any regulation prescribed under this title;

"(2) involves a case to which the Department of Health and Human Services or any officer or employee thereof is a party; and

"(3) requires that such department, or officer or employee thereof, apply or carry out any provision, procedure, or policy under this title with respect to any individual or circumstance in a manner which varies from the manner in which such provision, procedure, or policy is generally applied or carried out,

the Secretary of Health and Human Services, or such other officer or employee of the Department of Health and Human

Services as may be a party to such case, or such other officer of the United States as may be appropriate, shall acquiesce in such decision with respect to all beneficiaries whose appeals would be within the jurisdiction of such court of appeals, unless the Secretary makes a timely request for review of such decision by the United States Supreme Court pursuant to section 1254 of title 28, United States Code. If the United States Supreme Court denies such a request for review, the Secretary shall so acquiesce in such decision on and after the date of such denial of review until such time as the United States Supreme Court rules on the issue involved and reaches a different result.".

(b) The amendment made by subsection (a) of this section shall not apply with respect to a decision by a United States court of appeals if the period for making a timely request for review of such decision by the United States Supreme Court expired before the date of the enactment of this Act.

BENEFITS FOR INDIVIDUALS PARTICIPATING IN VOCATIONAL REHABILITATION PROGRAMS

SEC. 303. The first sentence of section 222(d)(1) of the Social Security Act is amended by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "in cases where the furnishing of such

services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months or where such individuals are determined to be no longer entitled to such benefits because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this paragraph shall be made with respect to any individual for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and in cases where such individuals refuse without good cause to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

ADVISORY COUNCIL ON MEDICAL ASPECTS OF DISABILITY

SEC. 304. (a) There is hereby established in the Department of Health and Human Services an Advisory Council on the Medical Aspects of Disability (hereafter in this section referred to as the "Council").

(b)(1) The Council shall consist of—

(A) 10 members appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 30 days after the date of the enactment of this Act from among independent medical and vocational

experts, including at least one psychiatrist, one rehabilitation psychologist, and one medical social worker; and

(B) the Commissioner of Social Security ex officio.

The Secretary shall from time to time appoint one of the members to serve as Chairman. The Council shall meet as often as the Secretary deems necessary, but not less often than twice each year.

(2) Members of the Council appointed under paragraph (1)(A) shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such members, while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be paid at rates fixed by the Secretary, but not exceeding $100 for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Council; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(3) The Council may engage such technical assistance from individuals skilled in medical and other aspects of disability as may be necessary to carry out its functions. The Secretary shall make available to the Council such secretari-

al, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out its functions.

(c) It shall be the function of the Council to provide advice and recommendations to the Secretary of Health and Human Services on disability standards, policies, and procedures, including advice and recommendations with respect to—

(1) the revisions to be made by the Secretary, under section 201(a) of this Act, in the criteria embodied under the category 'Mental Disorders' in the 'Listing of Impairments'; and

(2) the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as the assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved.

(d) Whenever the Council deems it necessary or desirable to assist in the performance of its functions under this section, the Council may—

(1) call together larger groups of experts, including representatives of appropriate professional and con-

sumer organizations, in order to obtain a broad expression of views on the issues involved; and

(2) establish temporary short-term task forces of experts to consider and comment upon specialized issues.

(e)(1) Any advice and recommendations provided by the Council to the Secretary of Health and Human Services shall be included in the ensuing annual report made by the Secretary to Congress under section 704 of the Social Security Act.

(2) Section 704 of the Social Security Act is amended by inserting after the first sentence the following new sentence: "Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommendations provided to the Secretary by the Advisory Council on Medical Aspects of Disability, with respect to disability standards, policies, and procedures, during the preceding year).".

(f) The Council shall cease to exist at the close of December 31, 1985.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 305. (a)(1) The Secretary of Health and Human Services shall, within 180 days after the date of the enactment of this Act, establish a sufficient number of attorney adviser positions at grades GS–13 and GS–14 in the Department of Health and Human Services to ensure adequate opportunity for career advancement for attorneys employed by the Social Security Administration in the process of adjudicating claims under section 205(b) or 221(d) of the Social Security Act. In assigning duties and responsibilities to such a position, the Secretary shall assign duties and responsibilities to enable an individual serving in such a position to achieve qualifying experience for appointment by the Secretary for the position of administrative law judge under section 3105 of title 5, United States Code.

(b) The Secretary of Health and Human Services shall—

(1) within 90 days after the date of the enactment of this Act, submit an interim report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the Secretary's progress in meeting the requirements of subsection (a), and

(2) within 180 days after the date of the enactment of this Act, submit a final report to such committees setting forth specifically the manner and extent to which the Secretary has complied with the requirements of subsection (a).

EFFECTIVE DATE

SEC. 306. Except as otherwise provided in this Act, the amendments made by this Act shall apply with respect to cases involving disability determinations pending in the Department of Health and Human Services or in court on the date of the enactment of this Act, or initiated on or after such date.

○

98th Congress
1st Session

COMMITTEE PRINT

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Staff Data and Materials Related to the

Social Security Act Disability Programs

COMMITTEE ON FINANCE
UNITED STATES SENATE

ROBERT J. DOLE, *Chairman*

SEPTEMBER 1983

Printed for the use of the Committee on Finance

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INTRODUCTION

The social security disability insurance program (DI) is the Nation's largest disability connected cash benefit program. Under the DI program and the supplemental security income program (which provides mean-tested benefits to the aged, blind and disabled), the Social Security Administration is responsible for nearly half of all benefit expenditures made from publicly financed disability programs. Over the past 5 years, the Committee on Finance has reviewed the operations of the two social security disability programs on two occasions, first in 1979, and again in 1982.

Responding to the rapid growth of program costs during the 1970's, the committee held public hearings in 1979 and the Congress subsequently enacted the Social Security Disability Amendments of 1980 (P.L. 96-265). Numerous measures were included in the legislation that were intended to address excessive benefit levels, work disincentives and apparent weaknesses in program administration.

One of the administrative requirements of the 1980 legislation has been the source of considerable attention—the requirement that the eligibility of DI beneficiaries be reviewed at least once every 3 years. The provision was adopted because of congressional concern over the lack of monitoring of the benefit rolls and the possibly large number of ineligibles continuing to receive benefits. The stepped-up eligibility reviews, known as continuing disability investigations (CDI's), were implemented in March 1981 and have led to the termination of benefits for many individuals. Between March 1981 and June 1983, some 946,000 CDI decisions were rendered by State agencies, of which 421,000 (about 45%) were terminations. In more than half of the cases appealed to administrative law judges, however, benefits have been reinstated.

In 1982, the Committee on Finance once again reviewed the DI program, focusing on the problems that had been highlighted by the implementation of the CDI reviews. Among the issues raised were the adequacy of the disability determination process, the proper standards to be applied in determining whether an individual continues to qualify for benefits, the appropriateness of applying different concepts of disability at the initial and appellate levels of decisionmaking, and the ability of State agencies to handle the new workload. Subsequently, the Congress passed additional disability legislation in 1982 (P.L. 97-455, signed by the President on January 12, 1983) which, among other things, provided relief to terminated beneficiaries pursuing appeals. Under this provision, a beneficiary who is found ineligible for benefits and appeals the decision may elect to receive continued payments pending a decision by the administrative law judge. This provision is scheduled to expire on October 1, 1983.

This document has been prepared to provide the committee with the most recent data available on CDI activity and on the short- and long-range financial condition of the DI trust fund. Basic program data (on the DI program and the SSI program as it relates to the disabled population) is also included. Those interested in a discussion of, and elaboration on, the DI program, and the events leading to the 1980 legislation and the CDI provision in the law should refer to "Staff Data and Materials Related to the Social Security Disability Insurance Program" (CP97-16), which was prepared for the use of the committee in 1982.

I. DI Program Cost and Beneficiary Data

24-490 O—83——2

TABLE 1.—DI PROGRAM COSTS, 1957–83

[In millions]

Calendar year	Total costs
1957	$59
1958	261
1959	485
1960	600
1961	956
1962	1,183
1963	1,297
1964	1,407
1965	1,687
1966	1,947
1967	2,089
1968	2,458
1969	2,716
1970	3,259
1971	4,000
1972	4,759
1973	5,973
1974	7,196
1975	8,790
1976	10,366
1977	11,946
1978	12,954
1979	14,186
1980	15,872
1981	17,658
1982	17,992
1983	[1] 17,852

[1] Estimated based on the Intermediate II–B assumptions contained in the 1983 OASDI Trustees' Report.

Source: Social Security Bulletin, Annual Statistical Supplement, 1980, and 1983 OASDI Trustees' Report.

TABLE 2.—DI BENEFICIARIES, YEAR-BY-YEAR, 1957–83 [1]

Calendar year	Disabled workers	Total DI beneficiaries [2]
1957	149,850	149,850
1958	237,719	268,057
1959	334,443	460,354
1960	455,371	687,451
1961	618,075	1,027,089
1962	740,867	1,275,105
1963	827,014	1,452,472
1964	894,173	1,563,366
1965	988,074	1,739,051
1966	1,097,190	1,970,322
1967	1,193,120	2,140,214
1968	1,295,300	2,335,134
1969	1,394,291	2,487,548
1970	1,492,948	2,664,995
1971	1,647,684	2,930,008
1972	1,832,916	3,271,486
1973	2,016,626	3,558,982
1974	2,236,882	3,911,334
1975	2,488,774	4,352,200
1976	2,670,208	4,623,757
1977	2,837,432	4,860,431
1978	2,879,774	4,868,490
1979	2,870,590	4,777,412
1980	2,861,253	4,682,172
1981	2,776,519	4,456,274
1982	2,603,713	3,973,465
1983	2,591,361	3,892,599

[1] As of December of each year, except for 1983 which is for the month of June.
[2] Includes spouses and children of disabled workers.

Source: Social Security Bulletin, Annual Statistical Supplement, 1981, supplemented with figures for 1982 and 1983 from the Office of Research and Statistics of the Social Security Administration.

TABLE 3.—AVERAGE DI CASH BENEFITS FOR WORKERS AND THEIR DEPENDENTS, SELECTED YEARS

Calendar year [1]	Average monthly benefit			
	Disabled worker	Spouses	Children	Disabled-worker families
Current beneficiaries:				
1970	$131	$43	$39	$272
1975	226	67	62	442
1981	414	122	111	809
1982	443	131	129	851
1983	441	129	128	[2] 841
New awards				
1970	139	40	37	([3])
1975	244	73	68	([3])
1981	439	117	125	([3])
1982	454	126	130	([3])
1983	433	120	121	([3])

[1] As of June of each year.
[2] For July 1983.
[3] Not available.

Source: Various issues of SSA's "Monthly Benefit Statistics" supplemented with data supplied by the Office of the Actuary, SSA, August 1983.

TABLE 4.—PERSONS INSURED FOR DI AND RATES OF DISABILITY, 1960–82

Calendar year [1]	Persons insured for DI (in millions)	Awards per 1,000 insured workers
1960	46.4	4.5
1961	48.5	5.8
1962	50.5	5.0
1963	51.5	4.4
1964	52.3	4.0
1965	53.3	4.7
1966	55.0	5.1
1967	55.7	5.4
1968	56.9	4.8
1969	70.1	4.9
1970	72.4	4.8
1971	74.5	5.6
1972	76.1	6.0
1973	77.8	6.3
1974	80.4	6.7
1975	83.3	7.1
1976	85.3	6.5
1977	87.0	6.6
1978	89.4	5.2
1979	93.8	4.4
1980	95.6	4.1
1981 [2]	96.8	3.6
1982 [2]	98.7	3.0

[1] January 1 of each year.
[2] Preliminary.

Source: Office of Actuary, SSA, August 1983.

Note: See also Table 10 in this print for total new awards and allowance rates over time.

TABLE 5.—DI WORKER BENEFICIARIES COMPARED WITH ADULT U.S. POPULATION, 1980

[In percent]

Characteristics	DI worker beneficiaries	Adult U.S. population under age 64 [1]
Ages:		
Total percent	100.0	100.0
15 to 29	3.9	41.1
30 to 39	9.1	21.2
40 to 49	14.4	15.6
50 to 59	38.8	15.6
60 to 64	33.7	6.6
Median age	56.9	32.5
Sex:		
Male	67.4	49.8
Female	32.6	50.2

[1] Includes persons ages 15–64 who are residents of the 50 States and the District of Columbia adjusted for net census undercount; civilian residents of Puerto Rico, the Virgin Islands, Guam, and American Samoa; Federal civilian employees and persons in the Armed Forces abroad and their dependents; crew members of Merchant Vessels; and all other citizens abroad.

Source: Derived from tables in the Social Security Bulletin: Annual Statistical Supplement, 1981, supplemented by data supplied by the Office of Research and Statistics of the Social Security Administration and other census data.

TABLE 6.—NEW DI WORKER BENEFICIARY AWARDS COMPARED WITH NUMBER OF PERSONS INSURED FOR DISABILITY, BY AGE, 1980 [1]

Characteristics	In thousands of persons		DI worker awards as percent of insured population
	DI worker awards	Workers insured in event of disability	
Total	397	95,578	0.415
Age:			
Under 30	32	36,605	.087
30 to 39	39	21,449	.180
40 to 44	24	7,954	.305
45 to 49	34	7,553	.455
50 to 54	60	7,914	.763
55 to 59	99	7,600	1.299
60 to 64	109	6,504	1.669
Median age	55.7	34.0	.....
Sex:			
Male	275	58,128	.473
Female	121	37,450	.324

[1] Excludes dependents of disabled workers.

Source: Derived from tables in the Social Security Bulletin: Annual Statistical Supplement, 1981, supplemented by data supplied by the Office of Research and Statistics of the Social Security Administration.

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TABLE 7.—DI WORKER BENEFICIARIES: NUMBER, AVERAGE AGE, AND DISTRIBUTION BY AGE AND SEX, 1957–80

At end of year	Total number (in thousands)	Average age	Percent of disabled workers, by age							
			Total	Under 30	30–39	40–44	45–49	50–54	55–59	60–64
Men										
1957	121	59.4	100.0					18.5	29.9	51.6
1960	356	57.3	100.0	0.5	3.3	3.0	4.9	16.6	26.7	44.9
1965	734	54.4	100.0	1.0	7.5	7.6	10.4	15.4	24.7	33.3
1970	1,069	53.9	100.0	3.3	6.8	6.9	10.9	15.2	23.2	33.7
1975	1,711	53.5	100.0	4.6	7.5	6.2	9.7	15.8	23.2	33.0
1980	1,928	[1] 52.9	100.0	4.1	9.6	6.0	8.9	14.3	24.0	33.1
Women										
1957	29	57.9	100.0					25.6	39.2	35.2
1960	99	56.7	100.0	0.3	3.2	3.2	5.3	19.4	31.4	37.2
1965	254	55.2	100.0	.6	5.4	6.3	9.8	16.2	27.3	34.3
1970	424	55.0	100.0	1.9	5.1	5.6	10.1	15.9	26.0	35.3
1975	778	54.4	100.0	3.3	6.1	5.3	9.0	16.3	25.5	34.5
1980	931	[1] 53.7	100.0	3.4	8.2	5.3	8.2	14.4	25.4	35.0

[1] Not to be confused with the median age shown on earlier table, which was higher.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 8.—NEW DI WORKER AWARDS BY CAUSE OF DISABILITY AND SEX, 1979

	Number of cases	Total	Men	Women
Total number	408,680	408,680	281,992	126,688
Total percent		100.0	69.0	31.0
			In percent	
Total		100.00	100.00	100.0
Infective and parasitic	2,704	0.7	0.7	0.7
Neoplasms	55,643	13.6	12.7	15.6
Endocrine, nutritional, and metabolic	14,280	3.5	2.0	4.8
Blood and blood-forming organs	1,236	0.3	0.3	0.3
Mental disorders	46,345	11.3	10.8	12.5
Nervous system and sense organs	30,966	7.6	7.7	9.5
Circulatory system	115,578	28.3	31.8	20.5
Respiratory system	25,864	6.3	6.8	5.3
Digestive system	9,263	2.3	2.3	2.1
Genitourinary system	3,455	0.8	0.8	1.0
Skin and subcutaneous tissue	1,757	0.4	0.3	0.7
Musculoskeletal system	70,511	17.3	15.4	21.3
Cogenital anomalies	3,657	0.9	0.9	0.8
Accidents	26,438	6.5	7.3	4.6
Other	839	0.2	0.2	0.2
Unknown	144	0.0	0.0	0.1

Source: Social Security Administration, Office of Research and Statistics, "Characteristics of Social Security Disability Beneticiaries, 1977–1979," August 1983.

TABLE 9.—NEW DI AWARDS BY CAUSE OF DISABILITY AND AGE, 1979

	Number of cases	Total percent	Age		
			Under 35	35 to 49	50 and over
Total number	408,680		55,796	86,589	266,295
Total percent		100.0	13.7	21.2	65.2
			In percent		
Infective and parasitic	2,704	100.0	19.4	28.0	52.6
Neoplasms	55,643	100.0	7.0	20.6	72.3
Endocrine, nutritional, and metabolic	14,280	100.0	10.6	23.3	66.1
Blood and blood-forming organs	1,236	100.0	28.3	23.0	48.6
Mental disorders	46,345	100.0	40.5	27.8	31.8
Nervous system and sense organs	30,966	100.0	24.9	24.2	50.9
Circulatory system	115,578	100.0	2.2	16.9	81.0
Respiratory system	25,864	100.0	1.7	12.9	85.5
Digestive system	9,263	100.0	9.5	28.5	61.9
Genitourinary system	3,455	100.0	18.9	23.6	57.5
Skin and subcutaneous tissue	1,757	100.0	16.5	28.4	55.1
Musculoskeletal system	70,511	100.0	10.3	22.2	67.5
Congenital anomalies	3,657	100.0	32.3	25.2	42.5
Accidents	26,438	100.0	37.0	25.1	37.9
Other	839	100.0	9.1	31.8	59.1
Unknown	144	100.0	5.3	57.4	37.2

Source: Social Security Administration, Office of Research and Statistics, "Characteristics of Social Security Disability Beneficiaries, 1977–1979," August 1983.

TABLE 10.—DI APPLICATIONS, AWARDS, AND ALLOWANCE RATES OVER TIME

Calendar year	Applications received in district offices (thousands)	New disabled-worker awards (thousands)	Allowance rate [1] (in percent)	Total new awards [2] (thousands)
1969	725.1	344.7	48	753.1
1970	868.2	350.8	40	763.2
1971 [3]	924.4	415.9	45	901.3
1972	947.8	455.4	48	991.6
1973	1,066.9	491.6	46	1,033.6
1974	1,330.2	536.0	40	1,111.9
1975	1,267.2	592.0	47	1,256.0
1976 [3]	1,232.2	551.5	45	1,210.7
1977	1,235.2	[4] 569.0	46	1,239.4
1978	1,184.7	464.4	39	1,045.5
1979	1,187.8	408.7	34	921.2
1980	1,262.3	389.2	31	884.0
1981	1,161.3	345.3	30	787.3
1982	1,020.0	298.6	29	641.4

[1] Allowance rate is defined here as total awards divided by total applications.

[2] Awards to workers and their dependents combined.

[3] 1971 and 1976 contained 53 report weeks; all other years contain 52 report weeks.

[4] It appears that a shortening of processing lags between allowance and award due to improvements in the automated claims processing system resulted in processing a substantial number of awards in 1977 that otherwise would have been processed in 1978.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 11.—BASIS FOR INITIAL DI ALLOWANCES, FISCAL YEARS 1975–82

[In percent]

Fiscal year	Meets listing	Equals listing	Medical and vocational considerations
1965	52	32	16
1970	39	43	18
1975	30	44	27
1976	29	45	26
1977	34	42	24
1978	46	32	23
1979	55	23	22
1980	62	14	24
1981	64	12	24
1982	73	9	19

Source: Ways and Means Committee Print, 97–3, March 16, 1981, as updated by the Office of Research and Statistics, SSA, August 1983.

TABLE 12.—BASIS FOR INITIAL DI DENIALS, FISCAL YEARS 1975–82

[In percent]

Fiscal year	Failure to meet 12-mo. duration	Slight impairment	Able to perform usual work	Able to perform other work	All other [1]
1975	19.6	8.4	44.3	18.2	9.5
1976	19.9	10.8	41.9	20.1	7.3
1977	21.2	24.8	30.0	15.7	8.3
1978	21.1	31.8	25.0	14.6	7.5
1979	20.0	41.6	21.5	12.5	4.4
1980	20.6	39.0	23.7	12.7	3.9
1981	19.6	39.0	24.3	13.0	4.0
1982	17.6	43.5	18.8	11.3	8.8

[1] Such as failure to cooperate or performing SGA.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 13.—BASIS FOR INITIAL DI-WORKER ALLOWANCES BY AGE, 1979

Basis for allowance	Total	Age							
		Under 30	30–34	35–39	40–44	45–49	50–54	55–59	60 and over
Total number	408,680	37,693	18,103	20,937	25,613	40,039	70,771	110,114	85,411
Total percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	In percent								
Severe impairment—meets medical listings	44.4	55.9	48.6	47.0	45.7	47.1	44.3	41.0	40.6
Severe impairment—equals medical listings	18.0	23.1	20.2	19.6	19.6	20.1	17.8	15.8	16.6
Adverse vocational factors	19.7	5.7	5.4	3.9	4.0	5.1	16.8	28.3	35.8
Older/unskilled worker	0.1	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.2
Basis for allowance unknown	17.8	15.4	25.9	29.5	30.7	27.8	21.1	14.8	6.9

Source: Social Security Administration, Office of Research and Statistics, "Characteristics of Social Security by Disability Insurance Beneficiaries, 1977–1979," August 1983.

TABLE 14.—DI WORKER TERMINATIONS FROM THE ROLLS, 1957–80

Calendar year	Average DI worker beneficiaries during year (in thousands)	Number of terminations		Gross termination rates (per thousand beneficiaries)		
		Death	Recovery [1]	Death	Recovery [1]	Death or recovery
1957	81	8,931	52	110.1	0.6	110.7
1958	201	28,099	1,397	152.2	7.6	159.8
1959	289	42,771	3,228	136.7	10.3	147.0
1960	397	43,543	3,124	109.6	7.9	117.5
1961	540	60,538	2,936	112.1	5.4	117.5
1962	684	67,020	9,555	97.9	14.0	111.9
1963	790	73,344	12,931	92.9	16.4	109.3
1964	867	75,812	16,487	87.5	19.0	106.5
1965	948	79,823	18,441	84.2	19.4	103.6
1966	1,053	84,399	23,111	80.1	21.9	102.0
1967	1,159	92,084	37,151	79.5	32.1	111.6
1968	1,259	99,924	37,723	79.4	30.0	109.4
1969	1,360	108,762	38,108	79.9	28.0	107.9
1970	1,460	105,799	40,802	72.5	27.9	100.4
1971	1,586	109,883	42,981	69.3	27.1	96.4
1972	1,754	108,663	39,393	62.0	22.5	84.5
1973	1,937	125,582	36,696	64.8	18.9	83.7
1974	2,129	135,083	[2] 38,000	63.4	[2] 17.8	[2] 81.2
1975	2,391	139,809	[2] 39,000	58.5	[2] 16.3	[2] 74.8
1976	2,615	137,889	[2] 40,000	52.7	[2] 15.3	[2] 68.0
1977	2,781	140,340	[2] 60,000	50.5	[2] 21.6	[2] 72.1
1978	2,882	140,620	64,144	48.8	22.3	71.1
1979	2,893	143,023	72,325	49.4	25.0	74.4
1980	2,876	142,454	61,762	49.5	21.5	71.0

[1] Recovery means medical improvement, return to work, or other findings of ineligibility.

[2] Numbers of recovery terminations have been estimated for years 1974 through 1977 on the basis of data from other sources.

Source: Experience of Disabled Worker Beneficiaries under OASDI, 1974–78, Actuarial Study No. 81, April 1980, supplemented by data supplied by Office of Research and Statistics of the Social Security Administration.

Note: Excludes cases converted to retirement program due to attainment of age 65.

II. Continuing Disability Investigation (CDI) Activity

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TABLE 15.—PLANNED AND ACTUAL CONTINUING DISABILITY INVESTIGATION (CDI) REVIEW, UNDER VARIOUS PRESIDENT'S BUDGETS [1]

	Planned and actual number of CDI reviews				
	Fiscal years				
	1981	1982	1983	1984	1985
Fiscal year 1982 budget:					
Planned	165,000	360,000	.....	.....	.....
Actual	93,000	337,000	.....	.....	.....
Fiscal year 1983 budget:					
Planned		415,000	654,000	.....	.....
Actual		337,000	.....	.....	.....
Fiscal year 1984 budget:					
Planned			465,000	453,000	.....
Revision due to June 1983 Initiatives:					
Projected			335,000	312,000	282,000

[1] Includes only the new CDI's to be conducted under the 3-year periodic review provision of the 1980 disability amendments (PL 96-265).

Source: SSA, September 1983.

TABLE 16.—ACTUAL AND PROJECTED CDI BENEFIT SAVINGS [1]

[In millions]

	March 1981—September 1981	Fiscal years			
		1982	1983	1984	1985
CDI benefit savings	$50	$250	$600	$850	$1,000

[1] Estimates for 1981 and fiscal year 1982 are based on actual DI terminations; projections for fiscal years 1983-85 are based on 1984 Budget assumptions, revised to take account of the Administration's initiatives in June 1983.

Source: SSA, September 1983.

TABLE 17.—CONTINUING DISABILITY INVESTIGATION (CDI) ACTIVITY AND STATE AGENCY WORKLOAD UNDER THE DI PROGRAM, FISCAL YEARS 1980–83 [1]

Fiscal year	Total DI and concurrent cases	
	Sent to State agencies	State agency decisions [2]
1980	123,310	94,550
1981	310,120	168,922
1982	492,930	401,182
1983:		
October 1982 to December 1982	83,667	95,147
January 1983 to March 1983	126,549	112,323
April 1983 to June 1983	162,563	134,002

[1] Includes DI and concurrent DI/SSI cases. Excludes purely SSI disability cases.
[2] These figures exclude CDI's where the State agency has not had to make a new medical determination of disability.

Source: SSA, August 1983.

TABLE 18.—COMPARISON OF CONTINUING DISABILITY INVESTIGATION (CDI) REVIEWS TO TOTAL DI-WORKER BENEFICIARIES OVER THE YEARS

Fiscal year	CDI reviews [1]	CDI's per 1,000 DI-worker beneficiaries [2]
1970	[3] 167,000	111.8
1973	[3] 142,000	70.4
1974	[3] 120,000	53.6
1975	[3] 116,000	46.6
1976	103,509	38.8
1977	128,241	45.3
1978	103,153	35.8
1979	113,384	39.5
1980	115,030	40.2
1981	204,343	72.1
1982	455,219	187.8

[1] DI and concurrent cases only. Includes all cases reviewed, even those where no decision was rendered (the review was terminated, for instance, because it was learned that the beneficiary had died or attained age 65 and converted to the retirement rolls)..
[2] Based on average number of DI worker beneficiaries during the year, except for 1981 and 1982 which are based on June 30 enrollment.
[3] Figures provided by SSA in 1977, but not currently verifiable.

Source: SSA, August 1983.

TABLE 19.—RECENT DI ALLOWANCE RATES, INITIAL CLAIMS AND CDI's

Level of adjudication	Percent of cases allowed			
	Initial claims		CDI's	
	January to March 1983	April to June 1983	January to March 1983	April to June 1983
Initial	30.4	32.3	54.2	61.0
Reconsideration	12.2	13.2	15.2	15.2
Hearing	50.0	50.0	61.0	62.0

Source: SSA, August 1983.

TABLE 20.—CONTINUING DISABILITY INVESTIGATION (CDI) CONTINUANCES AND TERMINATIONS BY STATE AGENCIES, DI AND SSI COMBINED, FISCAL YEARS 1977–83

Fiscal year	Total CDI reviews [1]	Number of State agency CDI decisions	Continuances	Terminations	Continuance rate [2] (percent)	Termination rate [2] (percent)
1977	192,000	150,305	92,529	57,776	62	38
1978	149,000	118,819	64,097	54,722	54	46
1979	165,000	134,462	72,353	62,109	54	46
1980	160,000	129,084	69,505	59,579	54	46
1981	257,000	208,934	110,134	98,800	53	47
1982	497,000	435,247	239,787	195,460	55	45
1983:						
October 1982 to December 1982	122,318	101,175	54,665	46,510	54	46
January 1983 to March 1983	141,467	120,835	66,081	54,754	55	45
April 1983 to June 1983	193,573	142,601	87,486	55,115	61	39

[1] Reflects all cases reviewed by State agencies, including those in which no decision was rendered (the review was terminated, for instance, because it was learned that the beneficiary had died or attained age 65 and converted to the retirement rolls).

[2] Reflects continuance and cessation rates only at the initial State agency level—not at the district office or at the hearing or appeal levels of adjudication.

Source: SSA, August, 1983.

TABLE 21.—STATE AGENCY CONTINUING DISABILITY INVESTIGATION (CDI) CONTINUANCES AND TERMINATIONS, DI AND SSI/DI CONCURRENT CASES [1], FISCAL YEARS 1977–83

Fiscal year	DI cases				SSI/DI cases			
	Continuances	As percent of total reviews	Terminations	As percent of total reviews	Continuances	As percent of total reviews	Terminations	As percent of total reviews
1977	51,270	62	31,287	38	14,475	59	10,188	41
1978	35,800	54	30,715	46	9,004	53	8,132	47
1979	38,386	52	35,474	48	10,482	52	9,742	48
1980	40,228	54	34,798	46	10,049	51	9,475	49
1981	73,539	52	66,742	48	14,427	50	14,214	50
1982	200,457	56	159,733	44	20,877	51	20,124	49
1983:								
October 1982 to December 1982	46,644	54	39,840	46	4,545	52	4,118	47
January 1983 to March 1983	55,532	54	47,602	46	5,299	58	3,890	42
April 1983 to June 1983	73,843	61	47,846	39	7,915	64	4,398	36

[1] State agency medical determinations only. The figures exclude CDI's where a medical determination of disability by the State agency was not required.

Source: SSA, August 1983.

TABLE 22.—STATE AGENCY CONTINUING DISABILITY INVESTIGATION (CDI) CONTINUANCES AND TERMINATIONS, SSI CASES,[1] FISCAL YEARS 1977–83

Fiscal year	SSI cases			
	Continuances	As percent of total reviews	Terminations	As percent of total reviews
1977	26,784	62	16,301	38
1978	19,293	55	15,875	45
1979	23,485	58	16,893	42
1980	19,228	56	15,306	44
1981	22,168	55	17,844	45
1982	18,453	54	15,603	46
1983:				
October 1982 to December 1982	3,476	58	2,552	42
January 1983 to March 1983	5,250	62	3,262	38
April 1983 to June 1983	5,728	67	2,871	33

[1] State agency medical determinations only. The figures exclude CDI's where a medical determination of disability by the State agency was not required.

Source: SSA, August 1983.

TABLE 23.—CONTINUING DISABILITY INVESTIGATIONS: SUMMARY DATA MARCH 1981 THROUGH JUNE 1983

[DI and SSI cases']

Period	Initial State Agency Decisions				Reconsiderations			Hearings [1]			
	Total cases reviewed	Total decisions made	Continuances	Terminations	Total decisions made	Continuances	Terminations	Total decisions made	Continuances	Terminations	Dismissals
3/81–9/81	180,000	146,000	76,000	70,000	(2)	(2)	(2)	(2)	(2)	(2)	(2)
10/81–9/82	497,000	435,000	240,000	195,000	96,000	12,000	84,000	[3] 41,000	[3] 25,000	[3] 13,000	[3] 3,000
10/82–6/83 [4]	457,000	365,000	208,000	156,000	116,000	18,000	98,000	[5] 85,000	[5] 52,000	[5] 28,000	[5] 5,000
Total	1,134,000	946,000	524,000	421,000	(2)	(2)	(2)	(2)	(2)	(2)	(2)

[1] Data on Appeals Council CDI decisions are not available for any portion of the 3/81 to 7/83 period.
[2] Not available.
[3] 2/82–9/82 period. No data on CDI hearing decisions are available prior to February 1982.
[4] Preliminary data.
[5] 10/82–7/83.

Source: SSA, September 1983.

TABLE 24.—ALLOWANCE RATES FOR INITIAL DI DETERMINATIONS, INITIAL CLAIMS AND CDI's, 1970–83

[In percent]

Calendar year/fiscal year [1]	Initial claims [2]	CDI's [2]
1970	44	([3])
1974	40	([3])
1975	40	([3])
1976	39	([3])
1977	38	62
1978	42	54
1979	39	52
1980	33	54
1981	29	52
1982	28	55
1st qtr./1983	30	54
2nd qtr./1983	32	61

[1] Initial claims data are on calendar year basis; CDI data are on fiscal year basis.
[2] Includes only determinations made by State agencies involving medical determinations. Does not include reconsiderations or later appeal decisions.
[3] Not available.

Source: Bellmon Report, and SSA, August 1983.

TABLE 25.—ADMINISTRATIVE LAW JUDGE ALLOWANCE RATES—INITIAL DI DENIALS AND TERMINATIONS, FISCAL YEARS 1970–83

[In percent]

Fiscal year	Total cases	Initial claims	CDI cases
1970	43	([2])	([2])
1974	48	([2])	([2])
1975	49	([2])	([2])
1976	46	([2])	([2])
1977	49	([2])	([2])
1978	52	([2])	([2])
1979	57	([2])	([2])
1980	60	([2])	([2])
1981	60	([2])	([2])
1982	58	[3]55	[3]66
1983 [1]	57	52	63

[1] First 9 months of fiscal year.
[2] Operating statistics do not differentiate ALJ decisions by type of case prior to February 1982.
[3] February 1982–September 1982 period.

Source: Social Security Administration, Office of Hearings and Appeals, August 1983.

TABLE 26.—RECENT ALLOWANCE RATES FOR INITIAL CLAIMS,[1] STATE BY STATE, DI AND SSI COMBINED

[In percent]

State	Allowance rates	
	Fiscal years	
	1981	1982
Rhode Island	41.5	41.2
South Dakota	41.3	39.3
Vermont	41.2	34.9
Nebraska	40.2	36.8
Alaska	39.5	35.9
Delaware	38.9	41.1
Wisconsin	38.6	36.7
District of Columbia	38.5	36.9
Minnesota	37.2	40.3
Utah	36.6	36.3
Arizona	36.5	34.6
Iowa	36.1	35.5
Hawaii	35.6	37.3
Indiana	34.7	30.4
Kansas	34.6	32.8
Maine	34.3	36.9
Connecticut	33.9	35.2
North Carolina	33.9	31.5
New Jersey	33.7	29.5
Missouri	33.0	30.8
Ohio	32.8	31.0
North Dakota	32.8	34.6
Illinois	32.6	27.3
Montana	32.5	30.8
Pennsylvania	31.9	31.2
New Hampshire	31.6	36.5
Colorado	31.6	31.5
Nevada	31.5	30.5
Wyoming	31.1	35.5
Virginia	31.0	31.5
South Carolina	30.9	29.0
Oregon	30.9	28.4
Washington	30.8	31.5
Florida	30.7	29.5
Texas	30.3	29.2
Tennessee	30.2	29.3

TABLE 26.—RECENT ALLOWANCE RATES FOR INITIAL CLAIMS,[1] STATE BY STATE, DI AND SSI COMBINED—Continued

[In percent]

State	Allowance rates	
	Fiscal years	
	1981	1982
Idaho	29.6	30.3
California	28.9	27.5
Oklahoma	28.7	28.5
Kentucky	28.5	30.1
Maryland	28.2	28.7
Massachusetts	28.0	30.6
Michigan	27.8	26.7
Alabama	27.6	26.8
Mississippi	27.5	27.0
Georgia	25.7	24.7
New York	25.4	22.3
West Virginia	25.3	24.1
Louisiana	25.2	23.6
New Mexico	25.1	23.0
Arkansas	24.3	25.9
Puerto Rico	19.3	17.7

[1] Does not take appellate actions into account and excludes non-medical determinations. Numbers include one count for each concurrent (DI-SSI) case.

Source: SSA, August 1983.

TABLE 27.—RECENT ALLOWANCE RATES FOR INITIAL CDI DECISIONS,[1] STATE BY STATE, DI AND SSI COMBINED

[In percent]

State	Allowance rates	
	October 1981–May 1982	Fiscal year 1982
South Dakota	79.6	76.2
Alaska	72.8	67.7
New Hampshire	69.8	67.7
Hawaii	69.6	70.7
Nebraska	69.3	64.5
Minnesota	68.3	65.7
Vermont	67.6	66.4
Wyoming	67.6	68.0
Washington	67.0	65.1
Delaware	66.1	70.4
Maryland	64.5	64.4
North Dakota	63.5	62.0
Utah	62.6	62.5
Iowa	62.6	65.2
Colorado	62.2	60.3
Montana	61.3	58.4
Arizona	60.8	60.8
Missouri	60.4	60.5
North Carolina	60.2	60.6
Mississippi	60.1	57.3
Massachusetts	59.9	63.2
Oregon	59.7	59.9
Virginia	59.4	57.8
Connecticut	59.3	59.8
Kentucky	58.3	61.4
South Carolina	58.0	58.5
Ohio	57.9	57.2
Maine	57.8	59.4
Nevada	57.7	55.5
District of Columbia	57.4	61.3
Kansas	56.6	60.1
Alabama	56.2	58.1
West Virginia	55.9	57.0
Rhode Island	55.7	59.2
Indiana	55.4	53.8
Pennsylvania	55.3	56.9
Tennessee	54.8	60.5

TABLE 27.—RECENT ALLOWANCE RATES FOR INITIAL CDI DECISIONS,[1] STATE BY STATE, DI AND SSI COMBINED—Continued

[In percent]

State	Allowance rates	
	October 1981–May 1982	Fiscal year 1982
Michigan	54.5	55.8
Florida	54.1	55.7
Georgia	53.5	53.5
Illinois	52.4	52.2
California	52.1	52.2
Idaho	51.5	51.2
Oklahoma	51.5	52.7
Wisconsin	49.8	49.0
Texas	49.0	51.0
New Jersey	48.7	48.6
Arkansas	48.2	49.3
New York	47.5	51.6
Louisiana	46.8	45.9
New Mexico	38.8	42.5
Puerto Rico	29.0	27.7

[1] Does not take appellate actions into account and excludes non-medical determinations. Numbers include one count for each concurrent (OASDI/SSI) case.

Source: SSA, August 1983.

III. Additional Data on Hearings and Appeals

TABLE 28.—REQUESTS FOR ALJ HEARINGS—NUMBER OF CASES RECEIVED, PROCESSED, AND PENDING,[1] FISCAL YEARS 1960–83

Fiscal years	Requests received	Processed	Pending (end of year)
1960	13,778	20,262	5,959
1965	23,323	23,393	6,454
1966	22,634	23,434	5,654
1967	20,742	20,081	6,315
1968	26,946	25,939	7,322
1969	34,244	31,912	9,654
1970	42,573	38,480	13,747
1972	103,691	61,030	63,534
1974	121,504	80,783	77,233
1975	154,962	121,026	111,169
1976 (15 mo)	203,106	229,359	84,916
1977	193,657	186,822	91,751
1978	196,428	215,445	74,747
1979	226,240	210,775	90,212
1980	252,023	232,590	109,636
1981	281,737	262,609	128,164
1982 [2]	320,680	296,548	152,896
1983 [2]	357,200	366,406	143,690

[1] Includes DI, OASI, SSI, HI and Black Lung cases. The vast majority are disability related.
[2] Estimated.

Source: Estimates provided by SSA, OHA, August 1983.

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TABLE 29.—HEARINGS AND APPEALS STATISTICS, FISCAL YEARS 1973–83

Fiscal year	Average number of ALJ's on duty[1]	Average support staff ratio[2]	Average hearings received per ALJ[3]	Average monthly dispositions per ALJ[1]	Average number of cases pending per ALJ[1]
1973	420	2.2	172	14	117
1974	478	2.7	254	13	122
1975	591	2.9	262	16	173
1976	647	3.6	244	21	153
1977	629	3.8	308	25	136
1978	657	3.9	299	27	128
1979	655	4.3	345	27	141
1980	669	4.4	377	30	169
1981	699	4.4	403	32	188
1982	754	4.7	425	34	203
1983[4]	802	4.5	340	[4] 36	[5] 228

[1] ALJ average dispositions are calculated to include the learning curve for new ALJs. Beginning fiscal year 1983, excludes ALJs on leave in excess of 30 consecutive calendar days.

[2] Permanent staff fiscal year 1973–1978; fiscal year 1979–1982 includes temporary positions; beginning fiscal year 1983 includes only hearing office full-time permanent staff.

[3] Number of hearings received divided by average number of ALJs on duty, not productive work months.

[4] Average for first nine months of fiscal year.

[5] As of June 30, 1983.

Source: SSA, Office of Hearings and Appeals. 1982.

TABLE 30.—VARIANCES IN ALLOWANCE RATES OF ADMINISTRATIVE LAW JUDGES, FISCAL YEAR 1982 [1]

Allowance rate in percent	Number of ALJs	Percent of ALJs
0 to 10	0	
11 to 25	12	1.6
26 to 45	186	27.3
46 to 65	354	54.0
66 to 89	120	17.1
90 to 100	0	

[1] This table reflects the extent to which State agency decisions (initial denials and CDI terminations) which are appealed are subsequently reversed (and thus benefits granted) by an ALJ. Only reflects average monthly rates for fully experienced and on duty ALJs during the period (672 ALJs).

Source: Social Security Administration, Office of Hearings and Appeals, August 1983.

IV. Financing Disability Insurance

NOTE

A tabular presentation of the short- and long-range financial condition of the DI trust fund is included in this section. The estimates are based on the assumptions underlying the 1983 OASDI Board of Trustees Report, in particular, the Intermediate II-B assumptions.

These estimates should be viewed with a degree of caution. The financial condition of the DI trust fund has been extremely volatile over the years and the costs of the program have proven to be highly sensitive to changes in administration and the adjudicative climate in which decisions are rendered. Under the intermediate II-B assumptions, total enrollment in the program is projected to decline from approximately 3.9 million persons in June 1983 to 3.75 million persons in June 1985. This assumes that terminations continue at a high level, actually exceeding the number of new entrants to the program over the next two years. The changing adjudicative climate in the past six to nine months and the recent decline in termination rates suggest that this may now be unlikely.

It also should be noted that the 1983 Trustees' Report estimates do not reflect the costs of the recent administrative measures announced by Secretary Heckler in June of this year. Under the intermediate II-B assumptions, the low point of DI reserves (after 1983) would occur in 1987 when reserves would be equal to 28 percent of outgo. Under the high-cost assumptions for the Administration's June 1983 initiatives, the Office of the Actuary now projects that DI reserves could fall to as low as 11 percent of outgo in 1988, as a consequence of some $5 billion in additional benefit costs over the next five years. This is illustrated in the next table.

TABLE 31.—ESTIMATED ASSETS OF THE DI TRUST FUND AT BEGINNING OF YEAR, AS A PERCENTAGE OF EXPENDITURES DURING YEAR UNDER PRESENT LAW [1]

[In percent]

	Calendar year						
	1983	1984	1985	1986	1987	1988	1989
Disability insurance:							
Present law, as shown in 1983 trustees report	15	38	32	29	28	30	38
Present law, adjusted to reflect administrative changes and initiatives not included in Trustees Report, assuming following illustrative mental impairment proportions (see footnote) and repayment of loans by OASI in 1989: [2]							
10 to 20 percent	15	38	32	28	26	26	33
25 to 40 percent	15	38	31	25	22	20	25
50 to 70 percent	15	37	29	22	16	11	13

[1] Based on intermediate (II–B) assumptions contained in 1983 OASDI Trustees Report.

[2] The financial effect of the initiatives would depend on the proportions of current mental impairment denials and terminations that would be allowed or continued as a result of revising the eligibility criteria. Those proportions will not be known until some months after the revisions are made. Illustrative cost estimates for this initiative are shown below under various assumptions concerning such proportions:

Characterization of assumptions	Proportion of initial denials changed to allowances (percent)	Proportion of CDI terminations changed to continuances (percent)	Additional OASDI benefit payments during 1984–88 (in millions)
Minor effect	10	20	$1,110
Intermediate effect	25	40	2,680
Major effect	50	70	5,050

Source: Social Security Administration, Memo from the Office of the Actuary, Sept. 12, 1983.

TABLE 32.—TAX RATES AND THE TAXABLE EARNINGS BASE, PAST AND FUTURE

Calendar Year	Taxable earnings base	Tax rate (percent)			
		Employer and employee, each		Self-employed persons	
		DI	OASDHI	DI	OASDHI
1957	4,200	0.25	2.25	0.375	3.375
1959	4,800	.25	2.5	.375	3.75
1960	4,800	.25	3.0	.375	4.5
1962	4,800	.25	3.125	.375	4.7
1963	4,800	.25	3.625	.375	5.4
1966	6,600	.35	4.2	.525	6.15
1967	6,600	.35	4.4	.525	6.4
1968	7,800	.475	4.4	.7125	6.4
1969	7,800	.475	4.8	.7125	6.9
1970	7,800	.55	4.8	.825	6.9
1971	7,800	.55	5.2	.825	7.5
1972	9,000	.55	5.2	.825	7.5
1973	10,800	.55	5.85	.795	8.0
1974	13,200	.575	5.85	.815	7.9
1975	[1] 14,100	.575	5.85	.815	7.9
1976	15,300	.575	5.85	.815	7.9
1977	16,500	.575	5.85	.815	7.9
1978	17,700	.775	6.05	1.09	8.10
1979	22,900	.75	6.13	1.04	8.10
1980	25,900	.56	6.13	.7775	8.10
1981	29,700	.65	6.65	.975	9.30
1982	32,400	.825	6.70	1.2375	9.35
1983	35,700	.625	6.70	.9375	9.35
Future schedule:					
1984	37,500	.500	7.00	1.000	14.00
1985	[2] 39,300	.500	7.05	1.000	14.10
1986	40,800	.500	7.15	1.000	14.30
1987	42,900	.500	7.15	1.000	14.30
1988	45,300	.530	7.51	1.060	15.02
1989	48,000	.530	7.51	1.060	15.02
1990	50,700	.600	7.65	1.200	15.30
2000	87,000	.710	7.65	1.420	15.30

[1] Beginning in 1975, automatic increases, except 1978–81.

[2] Projections of taxable earnings base based on the intermediate II–B assumptions in the 1983 OASDI Trustees' Report. The actual taxable earnings base for calendar year 1984 and later will depend upon how much average wages rise in the economy from one year to the next.

TABLE 33.—ESTIMATED OPERATIONS OF THE OASI, DI, AND HI TRUST FUNDS UNDER PRESENT LAW BASED ON 1983 TRUSTEES' REPORT INTERMEDIATE (II–B) ASSUMPTIONS, CALENDAR YEARS 1982–92

[Amounts in billions]

Calendar year	Income					Outgo					Interfund borrowing transfers [1]		
	OASI	DI	OASDI	HI	Total	OASI	DI	OASDI	HI	Total	OASI	DI	HI
1982	$125.2	$22.7	$147.9	$38.0	$185.9	$142.1	$18.0	$160.1	$36.1	$196.3	$17.5	—$5.1	—$12.4
1983	151.4	20.9	172.2	44.7	216.9	151.6	17.9	169.5	41.2	210.7	.....	.....	.....
1984	163.9	17.1	180.9	45.6	226.5	162.3	18.0	180.3	46.6	226.8	—.5	.....	.5
1985	180.4	18.3	198.7	51.3	250.0	175.2	18.6	193.8	52.3	246.1	.....	.....	.....
1986	194.9	19.6	214.5	58.4	273.0	190.2	19.6	209.9	58.0	267.9	—1.1	.....	1.1
1987	210.2	21.0	231.2	62.5	293.7	204.6	20.6	225.2	64.1	289.2	—2.4	.....	2.4
1988	239.7	23.8	263.4	66.0	329.5	219.2	21.7	240.8	71.0	311.8	—8.4	.....	8.4
1989	259.5	25.5	285.1	70.0	355.0	233.6	22.9	256.5	78.4	334.8	—5.1	5.1	.....
1990 [4]	283.1	30.7	313.8	73.9	387.7	248.4	24.3	272.7	86.6	359.3	.....	.....	.....
1991	305.2	33.4	338.6	77.8	416.4	263.9	25.9	289.8	95.1	384.9	.....	.....	.....
1992	329.5	36.1	365.6	81.8	447.4	280.0	27.7	307.7	104.5	412.1	.....	.....	.....

	Net increase in funds					Funds at end of year					Assets at beginning of year as a percentage of outgo during year [2]				
	OASI	DI	OASDI	HI	Total	OASI	DI	OASDI	HI	Total	OASI	DI	OASDI	HI	Total
1982	$0.6	−$0.4	$0.2	−$10.6	−$10.3	$22.1	$2.7	$24.8	$8.2	$32.2	15	17	15	52	22
1983	−.3	3.0	2.7	3.5	6.3	21.8	5.7	27.5	11.7	39.2	15	15	15	20	16
1984	1.0	−.9	.1	−.5	−.4	22.8	4.8	27.6	11.2	38.9	20	38	22	25	23
1985	5.2	−.4	4.9	−1.0	3.9	28.1	4.4	32.5	10.2	42.7	20	32	21	21	21
1986	3.6	([3])	3.6	1.5	5.1	31.7	4.4	36.1	11.8	47.9	22	29	23	18	22
1987	3.2	.4	3.6	.8	4.5	34.9	4.8	39.7	12.6	52.3	23	28	23	18	22
1988	12.1	2.1	14.2	3.5	17.7	46.9	6.9	53.9	16.1	70.0	23	30	24	18	23
1989	20.9	7.7	28.6	−8.4	20.2	67.8	14.6	82.4	7.8	90.2	28	38	29	21	27
1990 [4]	34.8	6.3	41.1	−12.6	28.5	102.6	21.0	123.5	−4.9	118.7	35	69	38	9	31
1991	41.4	7.4	48.8	−17.3	31.5	143.9	28.4	172.3	−22.2	150.1	47	89	51	−5	37
1992	49.5	8.4	57.9	−22.7	35.2	193.5	36.8	230.2	−44.9	185.4	59	111	64	−21	42

[1] Positive figures represent amounts borrowed by the trust fund or recoveries of prior loans to other trust funds; negative figures represent amounts loaned by the trust fund or repayments of prior loans from other trust funds.
[2] Assets at beginning of year are defined for the OASI and DI trust funds as assets at end of prior year plus the respective OASI and DI advance tax transfers (under P.L. 98–21, payroll tax income expected to be collected each month is credited to the trust funds on the first day of the month) for January.
[3] Between 0 and −$50 million.
[4] The estimated operations for HI and OASDI and HI combined in 1990 and later are theoretical because the HI trust fund would be depleted.

Note.—These estimates do not include the potential costs of the Administration's June 1983 DI initiatives.

Source: Office of the Actuary, SSA, June 24, 1983.

TABLE 34.—ESTIMATED OPERATIONS OF THE OASI, DI, AND HI TRUST FUNDS BASED ON 1983 TRUSTEES' REPORT ALTERNATIVE III ASSUMPTIONS, CALENDAR YEARS 1982–92

[Amounts in billions]

Calendar year	Income					Outgo					Interfund borrowing transfers [1]		
	OASI	DI	OASDI	HI	Total	OASI	DI	OASDI	HI	Total	OASI	DI	HI
1982	$125.2	$22.7	$147.9	$38.0	$185.9	$142.1	$18.0	$160.1	$36.1	$196.3	$17.5	—$5.1	—$12.4
1983	150.3	20.7	171.0	44.4	215.4	151.7	17.9	169.6	41.2	210.8			
1984	159.6	16.7	176.3	44.5	220.8	162.5	18.0	180.5	46.8	227.4			
1985	177.5	18.0	195.5	50.5	246.0	174.5	18.6	193.2	54.1	247.2			
1986	195.2	19.6	214.8	58.2	273.0	187.3	19.5	206.8	61.9	268.7			
1987	213.5	21.3	234.8	62.6	297.5	206.3	21.1	227.4	70.5	297.9	—12.4		12.4
1988	246.5	24.4	270.9	66.5	337.4	224.4	22.7	247.0	80.4	327.4			
1989	269.5	26.4	295.9	70.2	366.2	242.6	24.4	267.0	91.2	358.1	—5.1	5.1	
1990	296.3	32.0	328.3	73.7	402.0	261.2	26.4	287.6	103.3	390.9			
1991	321.4	35.0	356.4	76.7	433.1	295.3	29.4	324.6	116.3	441.0			
1992	347.2	37.9	385.1	79.5	464.6	316.2	31.8	348.0	130.7	478.7			

	Net increase in funds					Funds at end of year					Assets at beginning of year as a percentage of outgo during year [2]				
	OASI	DI	OASDI	HI	Total	OASI	DI	OASDI	HI	Total	OASI	DI	OASDI	HI	Total
1982	$0.6	—$0.4	$0.2	—$10.6	—$10.3	$22.1	$2.7	$24.8	$8.2	$32.9	15	17	15	52	22
1983	—1.4	2.8	1.4	3.2	4.6	20.6	5.5	26.2	11.4	37.6	15	15	15	20	16
1984	—2.9	—1.4	—4.3	—2.3	—6.6	17.7	4.2	21.9	9.1	31.0	19	37	21	24	22
1985	3.0	—.7	2.3	—3.6	—1.3	20.7	3.5	24.2	5.5	29.7	17	29	18	17	18
1986	7.9	.1	8.0	—3.7	4.3	28.6	3.6	32.2	1.8	34.0	18	25	19	9	17
1987	—5.2	.2	—5.0	4.5	—.5	23.4	3.8	27.2	6.3	33.6	21	24	21	3	17

	Net increase in funds					Funds at end of year					Assets at beginning of year as a percentage of outgo during year [2]				
	OASI	DI	OASDI	HI	Total	OASI	DI	OASDI	HI	Total	OASI	DI	OASDI	HI	Total
1988	22.2	1.7	23.9	−13.9	10.0	45.5	5.5	51.1	−7.5	43.5	18	24	19	8	16
1989	21.9	7.1	29.0	−20.9	8.0	67.4	12.6	80.0	−28.5	51.6	26	30	27	−8	18
1990 [3]	35.2	5.6	40.7	−29.6	11.1	102.6	18.2	120.8	−58.1	62.7	34	56	36	−28	19
1991	26.2	5.6	31.8	−39.7	−7.9	128.7	23.8	152.6	−97.7	54.8	42	70	45	−50	20
1992	31.0	6.1	37.1	−51.2	−14.0	159.7	30.0	189.7	−148.9	40.8	48	83	51	−75	17

[1] Positive figures represent amounts borrowed by the trust fund or recoveries or prior loans to other trust funds; negative figures represent amounts loaned by the trust fund or repayments of prior loans from other trust funds.
[2] Assets at beginning of year are defined for the OASI and DI trust funds as assets at end of prior year plus the respective OASI and DI advance tax transfers (under P.L. 98-21, payroll tax income expected to be collected during each month is credited to the trust funds on the first day of the month) for January
[3] The estimated operations for HI and for OASDI and HI combined in 1988 and later are theoretical because the HI trust fund would be depleted in that year under this set of assumptions.

Note.—These estimates do not include the potential costs of the Administration's June 1983 DI initiatives.

Source: Office of the Actuary, SSA, June 24, 1983.

TABLE 35.—LONG-RANGE OASDHI COST AND INCOME PROJECTIONS: 1983 INTERMEDIATE (II–B) ASSUMPTIONS

[As percent of taxable payroll]

Calendar year	Cost rate				Total income rate	Balance [1]
	OASI	DI	HI	Total		
25-year averages:						
1983–2007	9.61	1.06	4.02	14.69	15.37	0.68
2008–2032	11.14	1.49	7.08	19.71	15.85	−3.86
2033–2057	13.65	1.58	9.29	24.52	16.05	−8.47
75-year average:						
1983–2057	11.46	1.38	[2] 6.79	19.64	15.76	−3.88

[1] The balance is the total income rate minus the OASDHI cost rate. Positive balances are surpluses, and negative balances are deficits.

[2] Differs from the corresponding figure in the 1983 HI Trustees' Report as a result of an adjustment to treat the 1983 lump-sum transfer for deemed military service wage credits on a consistent basis with the OASDI estimates.

Source: 1983 OASDI and HI Trustees' Report.

Note: In terms of 1983 payroll, 1 percent of payroll is equivalent to about $15 billion annually.

TABLE 36.—LONG-RANGE OASDI TRUST FUND RESERVE RATIOS: 1983 INTERMEDIATE (II-B) ASSUMPTIONS

[Start-of-year assets as percent of annual outgo]

Calendar year	OASI	DI	OASDI
1983	15	15	15
1984	20	38	22
1985	20	32	21
1986	22	29	23
1987	23	28	23
1988	23	30	24
1989	28	38	29
1990	35	69	38
1991	47	89	51
1992	59	111	64
1993	75	136	80
1994	91	161	98
1995	110	186	117
1996	130	213	137
1997	152	240	160
1998	175	262	183
1999	200	280	208
2000	227	297	234
2001	253	329	261
2002	281	357	289
2003	309	379	317
2004	338	396	345
2005	367	409	372
2006	397	419	399
2007	425	425	425
2010	501	431	491
2015	563	421	544
2020	556	405	538
2025	507	390	494
2030	442	393	437
2035	372	388	374
2040	308	369	314
2045	245	339	255
2050	178	311	192
2055	106	284	125
2060	31	260	54

Source: 1983 OASDI Trustees' Report.

TABLE 37.—LONG-RANGE DI FINANCIAL FORECASTS OVER THE YEARS

[Intermediate assumptions]

Year of trustees' report	Long-range cost (in percent of taxable payroll)
1957	0.42
1960	.35
1965	.63
1970	1.10
1975	2.97
1980	1.50
1983	1.41

Source: Various Trustees' Reports.

V. Supplemental Security Income for the Aged, Blind and Disabled

TABLE 38.—SSI FEDERAL BENEFIT COSTS AND PROPORTION SPENT ON BLIND AND DISABLED, 1974–83

[Amounts in millions]

Calendar year	Total	Blind and disabled	Blind and disabled costs as percent of total costs
1974	$3,833	$2,050	53
1975	4,314	2,471	57
1976	4,512	2,727	60
1977	4,703	2,966	63
1978	4,881	3,174	65
1979	5,279	3,520	67
1980	5,866	4,006	68
1981	6,518	4,551	70
1982	7,133	5,104	72
1983 [1]	7,410	5,400	73

[1] Estimates.

Source: Social Security Bulletin, Annual Statistical Supplement, 1981, with 1982 and 1983 figures supplied by the Office of Research and Statistics, SSA.

TABLE 39.—SSI RECIPIENTS: TOTAL NUMBER AND PROPORTION BLIND AND DISABLED, 1974–83 [1]

[In millions]

Calendar year	Total SSI recipients [2]	Number disabled	Number blind	Disabled and blind recipients as percent of total
1974	3.996	1.636	0.075	43
1975	4.314	1.933	.074	47
1976	4.236	2.012	.076	49
1977	4.238	2.109	.077	52
1978	4.216	2.172	.077	53
1979	4.150	2.201	.077	55
1980	4.142	2.256	.078	56
1981	4.019	2.262	.079	58
1982	3.858	2.231	.077	60
1983	3.856	2.255	.078	61

[1] Receiving Federally administered payments.
[2] As of December of each year 1974 through 1982. As of May for 1983.

Source: Social Security Bulletin, August 1983 and SSA's "Monthly Benefit Statistics," No. 6, July 1983.

TABLE 40.—SSI RECIPIENTS: TOTAL NUMBER AND PROPORTION BLIND AND DISABLED, BY STATE, JULY 1983

State	Total	Aged	Blind	Disabled	Blind and disabled as percent of total
Total [1]	3,881,739	1,525,403	78,706	2,277,630	61
Alabama	127,209	65,618	1,913	59,678	48
Alaska	3,078	1,123	54	1,901	64
Arizona	28,905	9,980	604	18,321	65
Arkansas	70,892	35,643	1,382	33,867	50
California	656,090	270,616	18,087	367,387	59
Colorado	28,163	10,344	403	17,416	63
Connecticut	23,487	6,391	455	16,641	73
Delaware	6,806	2,058	157	4,591	70
District of Columbia	14,766	3,922	210	10,634	73
Florida	169,410	77,363	2,867	89,180	54
Georgia	145,682	61,161	2,842	81,679	58
Hawaii	9,937	4,446	170	5,321	55
Idaho	7,402	2,156	123	5,123	71
Illinois	118,811	29,547	2,054	87,210	75
Indiana	40,261	11,734	1,178	27,349	71
Iowa	24,791	8,821	1,026	14,944	64
Kansas	19,256	6,070	320	12,866	68
Kentucky	91,761	35,471	2,056	54,234	61
Louisiana	122,565	52,524	2,069	67,972	57
Maine	20,425	8,053	302	12,070	61
Maryland	46,654	13,726	708	32,220	71
Massachusetts	108,184	53,591	4,939	49,654	50
Michigan	109,410	30,196	1,985	77,229	72
Minnesota	29,705	10,197	630	18,878	66
Mississippi	108,527	53,786	1,809	52,932	50
Missouri	76,931	31,161	1,251	44,519	59
Montana	6,522	1,775	131	4,616	73
Nebraska	12,857	4,150	221	8,486	68
Nevada	6,811	3,249	450	3,112	52
New Hampshire	5,223	1,646	109	3,468	68
New Jersey	83,638	28,634	1,146	53,858	66
New Mexico	24,245	9,081	479	14,685	63
New York	335,655	114,025	4,043	217,587	66
North Carolina	121,201	54,789	2,910	74,502	59
North Dakota	5,803	2,523	88	3,192	57
Ohio	114,407	27,667	2,346	84,394	76

TABLE 40.—SSI RECIPIENTS: TOTAL NUMBER AND PROPORTION BLIND AND DISABLED, BY STATE, JULY 1983—Continued

State	Total	Aged	Blind	Disabled	Blind and disabled as percent of total
Oklahoma	58,952	26,911	966	31,075	54
Oregon	22,407	6,449	503	15,455	71
Pennsylvania	153,289	46,683	3,056	103,550	70
Rhode Island	14,342	5,045	219	9,078	65
South Carolina	80,346	33,453	1,881	45,012	58
South Dakota	7,818	3,157	149	4,512	60
Tennessee	124,052	51,722	2,000	70,330	58
Texas	242,142	124,996	4,303	112,843	48
Utah	7,644	1,967	189	5,488	74
Vermont	8,657	3,065	123	5,469	65
Virginia	78,446	30,161	1,446	46,839	62
Washington	43,185	12,295	642	30,248	72
West Virginia	39,141	11,012	650	27,479	72
Wisconsin	62,467	24,289	1,001	37,177	61
Wyoming	1,747	623	43	1,081	64
Other:					
Northern Mariana Islands	613	334	18	261	46

[1] Includes persons with Federal SSI payments and/or federally administered State supplementation.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 41.—NUMBER OF SSI RECIPIENTS AND AVERAGE MONTHLY PAYMENT, JULY 1983

Type of payment	Total	Aged	Blind	Disabled
Number of persons:				
Total	3,881,739	1,525,403	[1] 78,706	[2] 2,227.630
Federal SSI payments [3]	3,568,790	1,348,095	70,894	2,149,801
State supplementation [4]	1,555,720	586,148	36,237	933,335
Average monthly amount:				
Total	$210.79	$159.38	$254.47	$243.71
Federal SSI payments	$187.98	$139.74	$215.08	$217.34
State supplementation	$94.73	$93.38	$131.90	$94.13

[1] Includes approximately 23,000 persons aged 65 and over.
[2] Includes approximately 447,000 persons aged 65 and over.
[3] Includes persons with Federal SSI payments only, and Federal SSI and federally administered State supplementation. Data partly estimated.
[4] Includes persons with federally administered State supplementation only, and Federal SSI and federally administered State supplementation. Data partly estimated.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 42.—NUMBER OF SSI RECIPIENTS AND AVERAGE MONTHLY PAYMENT, BY REASON FOR ELIGIBILITY AND TYPE OF PAYMENT, DECEMBER 1982

Type of payment	All persons	Adults						Blind and disabled children
		Aged		Blind		Disabled		
		Individual	Couple	Individual	Couple	Individual	Couple	
	Number							
Total	3,857,590	1,273,368	137,726	62,814	3,871	1,841,118	65,963	229,151
Federal SSI payments	3,473,301	1,107.682	111,372	55,506	3,189	1,715,769	54,566	227,941
Federal SSI payments only	2,307,185	777,027	86,697	33,149	2,189	1.065,590	39,265	150,935
Federal SSI and State supplementation	1,166,116	330,655	24,675	22,357	1,000	650,179	15,301	77,006
State supplementation	1,550,405	496,341	51,029	29,665	1,682	775,528	26,698	78,216
State supplementation only	384,289	165,686	26,354	7,308	682	125,349	11,397	1,210
	Average monthly amount							
Total	$195.83	$151.01	$239.65	$243.18	$353.87	$231.82	$288.73	$263.22
Federal SSI payments	174.72	133.17	196.48	203.90	270.26	204.55	237.95	241.96
State supplementation	95.81	90.23	218.00	133.40	302.00	97.80	227.04	63.13

[1] Recipients of Federal SSI payments and/or federally administered State supplements.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 43.—NUMBER AND DISTRIBUTION OF SSI RECIPIENTS, BY MONTHLY PAYMENT AMOUNT, DECEMBER 1982

Monthly amount	Individuals [1]			Blind and disabled children	Couples		
	Aged	Blind	Disabled		Aged	Blind	Disabled
Total number	1,107,682	55,506	1,715,769	227,941	111,372	3,189	54,566
Total percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Less than $10	3.7	1.7	1.8	.3	3.1	1.4	2.2
$10 to $19	4.4	2.1	2.4	.7	3.4	1.4	2.4
$20 to $39	14.5	8.3	10.1	11.2	6.9	3.5	5.1
$40 to $59	7.8	3.6	3.8	.8	6.9	4.4	5.3
$60 to $79	6.6	3.3	3.5	.8	6.6	3.6	5.3
$80 to $99	6.1	3.3	3.6	.9	6.6	4.4	5.5
$100 to $119	5.5	3.2	3.2	1.1	5.7	3.4	5.0
$120 to $139	17.4	7.3	5.6	1.4	4.5	4.1	4.7
$140 to $179	4.9	4.7	4.7	3.1	9.6	8.6	9.4
$180 to $219	5.0	9.3	8.3	9.3	16.2	10.0	9.4
$220 to $259	1.2	3.7	3.2	7.2	2.2	4.4	5.2
$260 to $279	.7	1.8	1.8	3.3	4.3	5.8	4.7
$280 and over [2 3]	22.1	47.8	48.0	59.9	24.1	45.0	35.8

[1] Excludes couples.
[2] Individuals living in their own household with no countable income were eligible for a Federal SSI payment of $284.30.
[3] Couples living in their own household with no countable income were eligible for a Federal SSI payment of $426.40.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 44.—AGE DISTRIBUTION OF ADULT SSI RECIPIENTS, DECEMBER 1982 [1]

Age	Total	Reason for eligibility		
		Aged	Blind	Disabled
Total number	3,628,439	1,548,741	70,158	2,009.540
Total percent	100.0	100.0	100.0	100.0
18 to 21	2.3	.....	4.5	4.0
22 to 29	7.5	.....	13.9	13.0
30 to 39	7.2	.....	12.3	12.6
40 to 49	6.9	.....	10.1	12.0
50 to 59	12.2	.....	15.7	21.5
60 to 64	8.5	.....	10.2	14.9
65 to 69	12.8	12.5	9.6	13.1
70 to 74	14.2	22.4	8.4	8.1
75 to 79	12.1	27.6	5.1	.5
80 and over	16.3	37.5	10.2	.1

[1] Recipients of Federal SSI payments and/or federally administered State supplements.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 45.—AGE DISTRIBUTION OF SSI CHILD RECIPIENTS, BY REASON FOR ELIGIBILITY, DECEMBER 1982 [1]

Age	Total	Blind	Disabled
Total number	229,151	7,198	221,953
Total percent	100.0	100.0	100.0
Under 5	12.3	15.2	12.2
5 to 9	21.5	21.7	21.5
10 to 14	28.8	27.3	28.9
15 to 17	20.8	18.7	20.9
18 and over	16.6	17.1	16.5

[1] Recipients of Federal SSI payments and/or federally administered State supplements.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 46.—NUMBER AND DISTRIBUTION OF NEW AWARDS TO BLIND AND DISABLED SSI RECIPIENTS, BY DIAGNOSTIC GROUP, 1977 [1]

Diagnostic group	Number			Percentage distribution		
	Total [2]	Blind and disabled		Total	Blind and disabled	
		Adults	Children		Adults	Children
Total	335,783	288,904	46,879	100.0	100.0	100.0
Infective and parasitic diseases	4,190	3,871	319	1.2	1.3	.7
Neoplasms	19,650	18,605	1,045	5.9	6.4	2.2
Endocrine, nutritional, and metabolic diseases	13,476	12,712	764	4.0	4.4	1.6
Mental disorders	117,609	89,936	27,673	35.0	31.1	59.0
Mental retardation	63,981	38,713	25,268	19.1	13.4	53.9
Diseases of the—						
Nervous system and sense organs	37,951	29,035	8,916	11.3	10.1	19.0
Eye	8,738	7,800	938	2.6	2.7	2.0
Circulatory system	58,922	58,561	361	17.5	20.3	.8
Respiratory system	13,651	13,318	333	4.1	4.6	.7
Digestive system	6,021	5,894	127	1.8	2.0	.3
Genitourinary system	2,794	2,513	281	.8	.9	.6
Musculoskeletal system and connective tissue	32,834	32,126	708	9.8	11.1	1.5
Congenital anomalies	8,168	4,160	4,008	2.4	1.4	8.5
Accidents, poisonings, and violence (nature of injury)	11,774	11,094	680	3.5	3.8	1.4
Other	8,742	7,078	1,644	2.6	2.4	3.6

[1] Recipients of Federal SSI payments and/or federally administered State supplements.
[2] Excludes those previously entitled to OASDI benefits. Data do not add to total because of rounding of estimates to integral values.

Source: Social Security Bulletin, Annual Statistical Supplement, 1981.

TABLE 47.—NUMBER OF DISABLED SSI RECIPIENTS AND AVERAGE MONTHLY PAYMENT, BY STATE, DECEMBER 1982

State	Total		Federal SSI		State supplementation	
	Number [1]	Average monthly amount	Number	Average monthly amount	Number	Average monthly amount
Total	2,231,493	$229.04	2,075,232	$203.89	917,741	$95.87
Alabama	57,999	.....	57,999	196.48	.....	.....
Alaska	1,813	.....	1,813	207.72	.....	.....
Arizona	17,754	.....	17,754	227.17	.....	.....
Arkansas	33,156	180.44	33,153	180.39	101	20.82
California	363,240	310.45	261,583	213.39	352,028	161.77
Colorado	17,111	.....	17,111	194.65	.....	.....
Connecticut	16,150	.....	16,150	209.60	.....	.....
Delaware	4,430	206.25	4,392	202.01	258	102.64
District of Columbia	10,361	250.62	10,154	230.64	10,151	25.10
Florida	87,515	207.19	87,515	207.19	2	(2)
Georgia	80,337	192.81	80,321	192.82	119	16.61
Hawaii	5,157	238.99	4,907	205.74	4,824	46.21
Idaho	4,952	.....	4,952	191.10	.....	.....
Illinois	85,112	.....	85,112	205.03	.....	.....
Indiana	26,448	.....	26,448	194.44	.....	.....
Iowa	14,233	180.66	14,144	178.07	552	95.51
Kansas	12,343	176.62	12,338	176.36	131	31.12
Kentucky	52,076	.....	52,076	210.97	.....	.....
Louisiana	67,362	201.49	67,355	201.50	52	23.71
Maine	11,666	188.79	10,290	189.99	11,042	22.40
Maryland	31,395	215.21	31,383	215.01	279	32.36
Massachusetts	48,730	255.05	40,409	207.55	45,708	88.42
Michigan	75,110	242.70	69,153	209.88	70,828	52.46
Minnesota	18,293	.....	18,293	164.90	.....	.....
Mississippi	51,646	201.30	51,638	201.29	121	15.92
Missouri	43,387	.....	43,387	202.54	.....	.....
Montana	4,451	203.66	4,362	193.16	687	93.09
Nebraska	8,289	.....	8,289	186.20	.....	.....
Nevada	2,920	210.68	2,911	211.33	43	.....
New Hampshire	3,314	.....	3,314	201.76	.....	.....
New Jersey	52,531	238.54	49,004	211.15	49,298	44.28
New Mexico	14,410	.....	14,410	207.66	.....	.....
New York	216,077	255.39	197,883	218.68	204,338	58.29
North Carolina	73,279	.....	73,279	197.88	.....	.....
North Dakota	3,089	.....	3,089	183.47	.....	.....

TABLE 47.—NUMBER OF DISABLED SSI RECIPIENTS AND AVERAGE MONTHLY PAYMENT, BY STATE, DECEMBER 1982—Continued

State	Total		Federal SSI		State supplementation	
	Number [1]	Average monthly amount	Number	Average monthly amount	Number	Average monthly amount
Ohio	82,243	208.56	82,226	208.53	224	25.94
Oklahoma	30,846	.....	30,846	184.38	.....	.....
Oregon	14,937	.....	14,937	201.27	.....	.....
Pennsylvania	101,166	230.77	95,329	210.64	95,661	34.14
Rhode Island	8,927	213.10	7,883	189.04	8,110	50.81
South Carolina	44,075	.....	44,075	194.58	.....	.....
South Dakota	4,240	183.26	4,239	182.87	60	31.07
Tennessee	68,745	200.78	68,745	200.77	31	23.29
Texas	110,553	.....	110,553	186.71	.....	.....
Utah	5,308	.....	5,308	185.36	.....	.....
Vermont	5,296	227.00	4,691	190.24	4,968	62.36
Virginia	45,583	.....	45,583	196.73	.....	.....
Washington	29,258	225.32	27,349	204.49	26,611	37.58
West Virginia	26,957	.....	26,957	217.93	.....	.....
Wisconsin	35,938	236.91	28,856	180.58	31,505	104.85
Wyoming	1,018	.....	1,018	202.88	.....	.....
Unknown	13	.....	12	.....	9	.....
Other areas:						
Northern Mariana Islands	254	.....	254	248.26	.....	.....

[1] All persons with Federal SSI payments and/or federally administered State supplementation.
[2] Not computed for fewer than 5 persons.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

TABLE 48.—NUMBER OF BLIND SSI RECIPIENTS AND AVERAGE MONTHLY PAYMENT, BY STATE, DECEMBER 1982

State	Total		Federal SSI		State supplementation	
	Number [1]	Average monthly amount	Number	Average monthly amount	Number	Average monthly amount
Total	77,356	$241.59	68,584	$202.67	35,584	$134.58
Alabama	1,898	.....	1,898	199.25	.....	.....
Alaska	59	.....	59	212.92	.....	.....
Arizona	575	.....	575	227.04	.....	.....
Arkansas	1,401	192.43	1,401	192.29	18	11.28
California	17,710	324.96	11,746	195.09	17,273	200.51
Colorado	382	.....	382	195.41	.....	.....
Connecticut	425	.....	425	205.49	.....	.....
Delaware	155	181.55	143	182.34	44	46.98
District of Columbia	201	226.51	199	209.18	198	19.71
Florida	2,798	211.78	2,798	211.76	1	(2)
Georgia	2,857	200.81	2,857	200.73	10	23.00
Hawaii	164	234.38	161	207.86	157	31.67
Idaho	117	.....	117	190.09	.....	.....
Illinois	1,941	.....	1,941	212.15	.....	.....
Indiana	1,181	.....	1,181	202.19	.....	.....
Iowa	1,011	193.80	970	175.26	900	28.81
Kansas	315	190.30	315	189.56	6	39.00
Kentucky	2,012	.....	2,012	230.96	.....	.....
Louisiana	2,056	211.31	2,056	211.29	2	(2)
Maine	293	183.14	268	178.15	282	20.97
Maryland	677	221.57	677	220.34	21	39.67
Massachusetts	4,938	257.72	3,072	180.18	4,804	149.69
Michigan	1,913	243.14	1,827	220.18	1,859	33.82
Minnesota	627	.....	627	176.64	.....	.....
Mississippi	1,781	201.18	1,781	201.15	6	9.00
Missouri	1,247	.....	1,247	187.32	.....	.....
Montana	131	209.00	131	205.12	3	(2)
Nebraska	227	.....	227	191.46	.....	.....
Nevada	450	236.62	297	188.32	432	117.01
New Hampshire	109	.....	109	192.40	.....	.....
New Jersey	1,119	237.18	1,068	209.49	1,077	38.69
New Mexico	458	.....	458	207.01	.....	.....
New York	3,971	243.00	3,688	212.27	3,859	47.19
North Carolina	2,916	.....	2,916	198.95	.....	.....
North Dakota	79	.....	79	209.71	.....	.....

TABLE 48.—NUMBER OF BLIND SSI RECIPIENTS AND AVERAGE MONTHLY PAYMENT, BY STATE, DECEMBER 1982—Continued

State	Total		Federal SSI		State supplementation	
	Number [1]	Average monthly amount	Number	Average monthly amount	Number	Average monthly amount
Ohio	2,318	205.59	2,316	205.55	21	24.24
Oklahoma	956	.....	956	216.32	.....	.....
Oregon	498	.....	498	187.51	.....	.....
Pennsylvania	3,033	234.14	2,943	208.66	2,895	33.19
Rhode Island	209	221.74	191	190.88	197	50.18
South Carolina	1,861	.....	1,861	210.22	.....	.....
South Dakota	134	231.51	133	232.14	4	(2)
Tennessee	1,962	211.20	1,962	211.12	3	(2)
Texas	4,220	.....	4,220	201.27	.....	.....
Utah	165	.....	165	201.26	.....	.....
Vermont	119	234.72	112	198.77	115	49.30
Virginia	1,421	.....	1,421	206.17	.....	.....
Washington	604	227.33	565	203.60	555	40.14
West Virginia	633	.....	633	226.92	.....	.....
Wisconsin	972	250.35	843	181.91	842	106.87
Wyoming	40	.....	40	198.12	.....	.....
Unknown	.....	.....	.....	.....	.....	.....
Other areas:						
Northern Mariana Islands	17	.....	17	301.76	.....	.....

[1] All persons with Federal SSI payments and/or federally administered State supplementation.
[2] Not computed for fewer than 5 persons.

Source: Social Security Administration, Office of Research and Statistics, August 1983.

VI. Additional Charts

Chart 1

DISABILITY INSURANCE PROGRAM
TOTAL COSTS

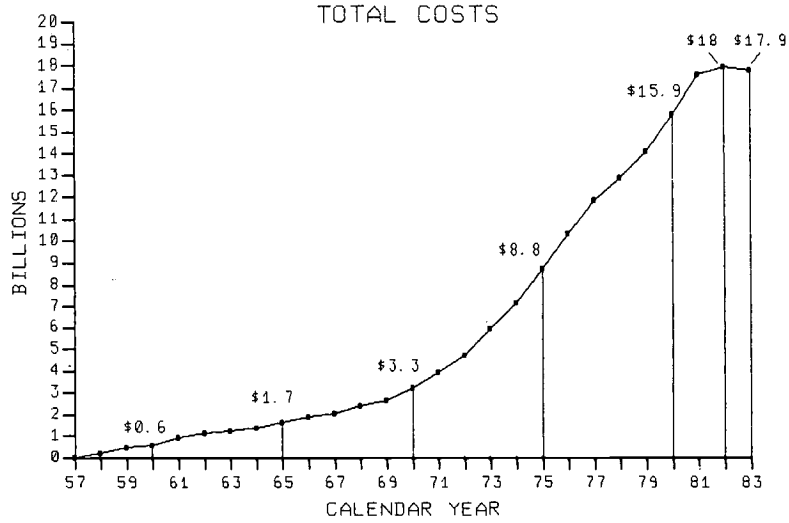


Chart 2

NUMBER OF NEW DI WORKER AWARDS
1970 - 1982

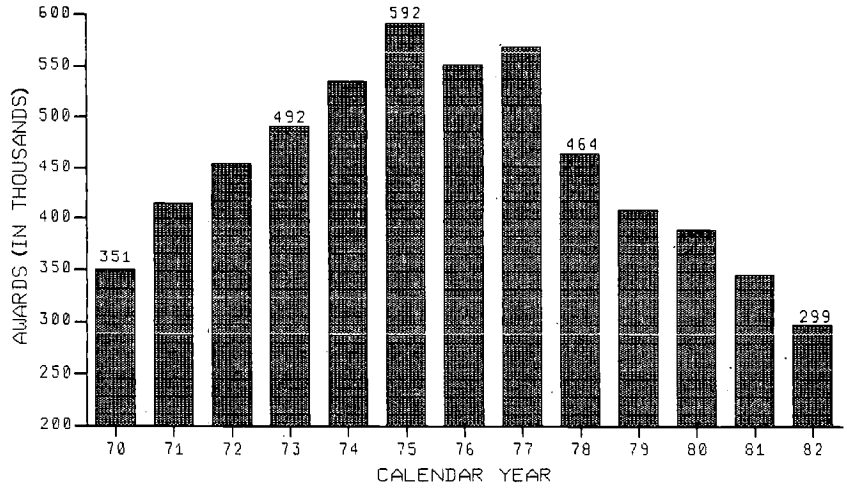
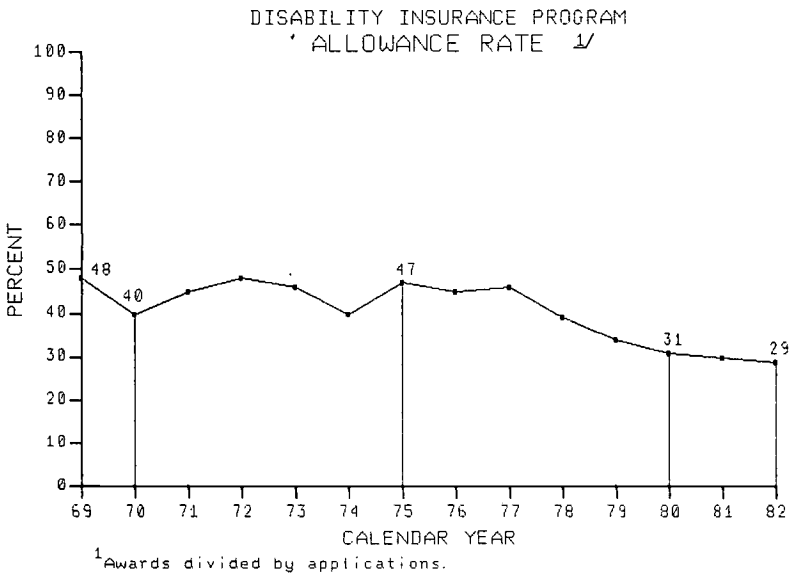


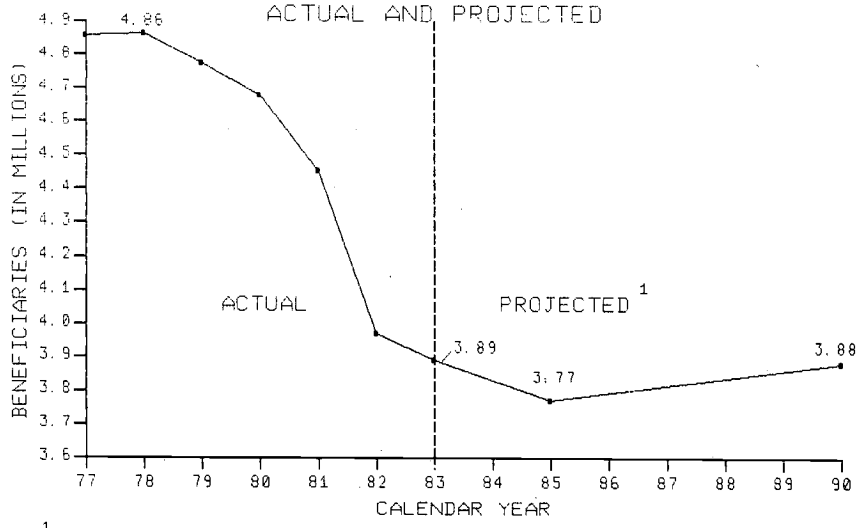
Chart 3



[1]Awards divided by applications.

Chart 4

DI BENEFICIARIES:
ACTUAL AND PROJECTED



1 1983 OASDI Trustees Report, Intermediate II-B Assumptions.

Chart 5

PROJECTED DI BENEFIT COSTS:
1981 - 1987

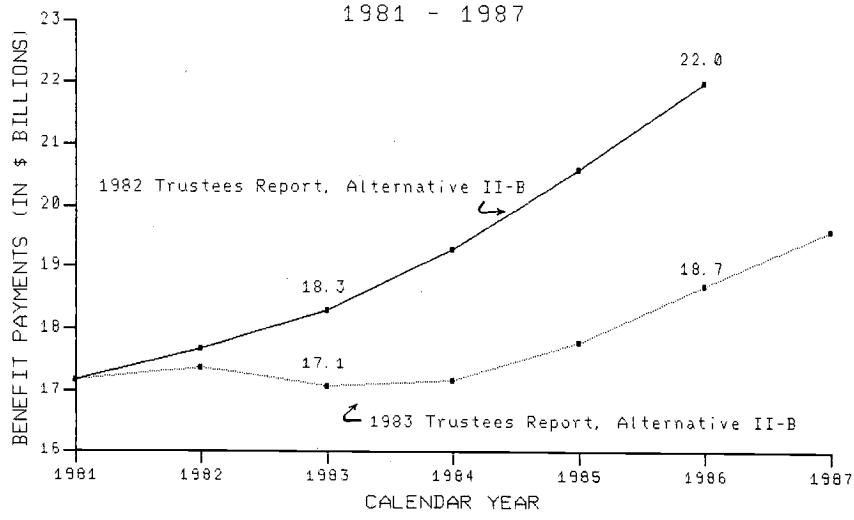
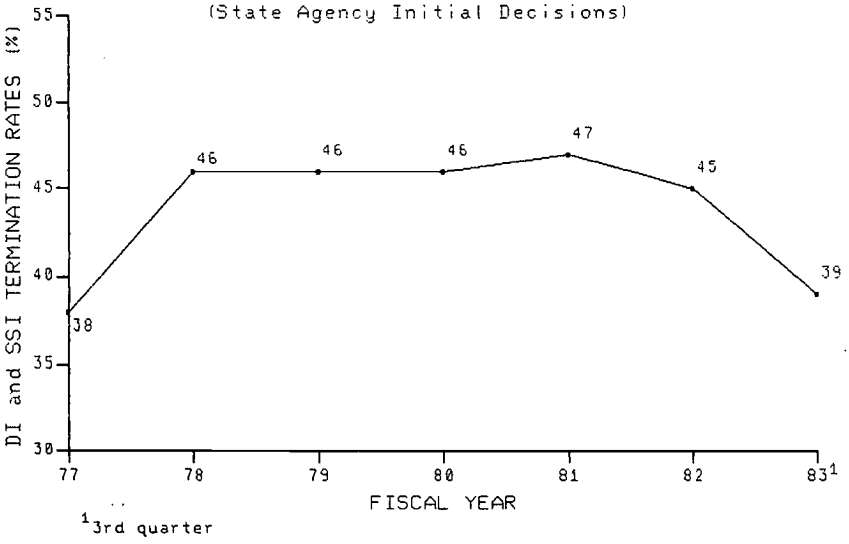


Chart 6

RECENT CDI TERMINATION RATES

(State Agency Initial Decisions)



[1] 3rd quarter

Chart 7

NUMBER OF SSA ALJs

1973 - 1983

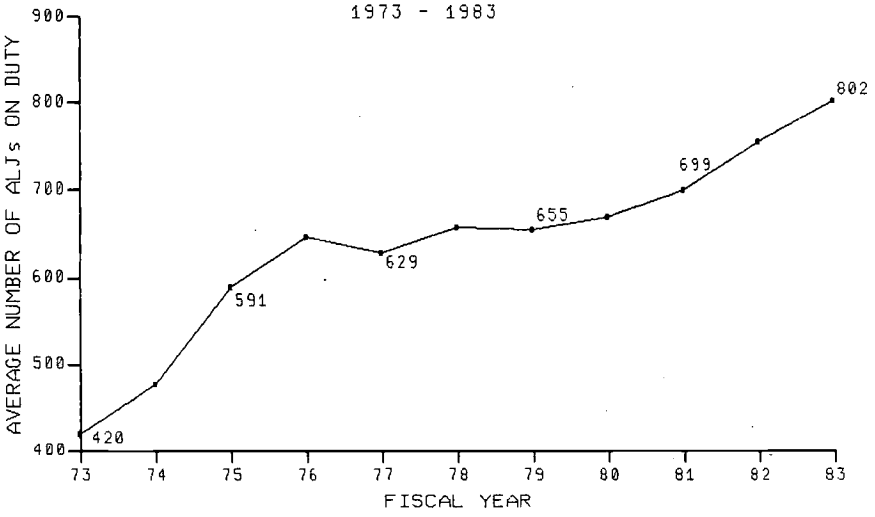
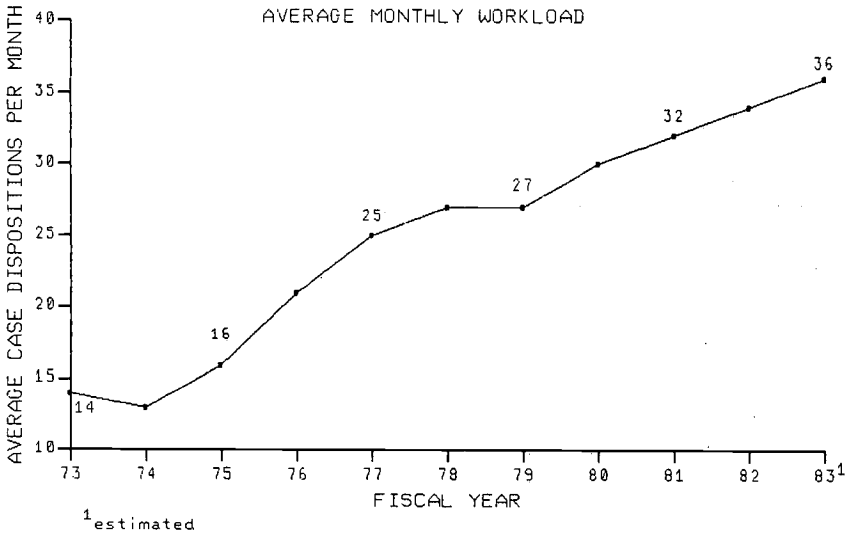


Chart 8

HEARING DECISIONS PER ALJ

AVERAGE MONTHLY WORKLOAD



[1]estimated

Chart 9

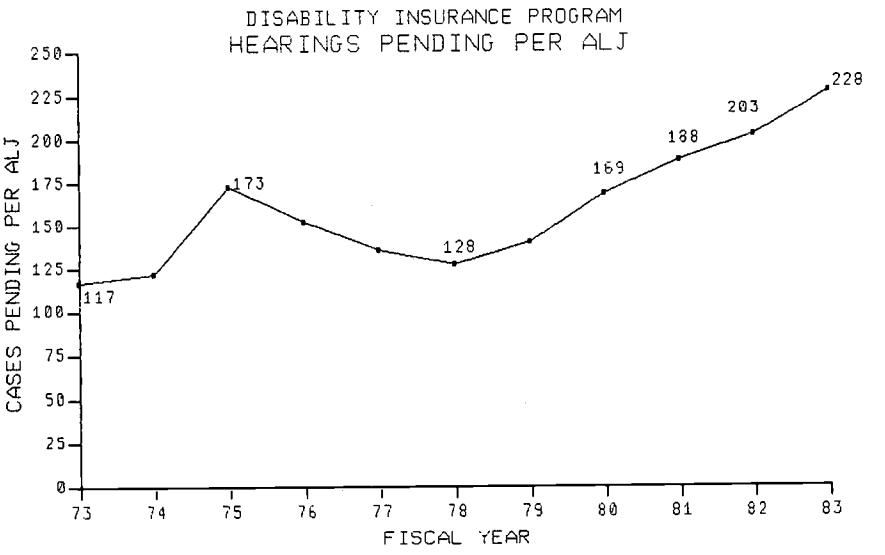

DISABILITY INSURANCE PROGRAM
HEARINGS PENDING PER ALJ
CASES PENDING PER ALJ
250
225
200
175
150
125
100
75
50
25
0
117
173
128
169
188
203
228
73
74
75
76
77
78
79
80
81
82
83
FISCAL YEAR

CHART 10

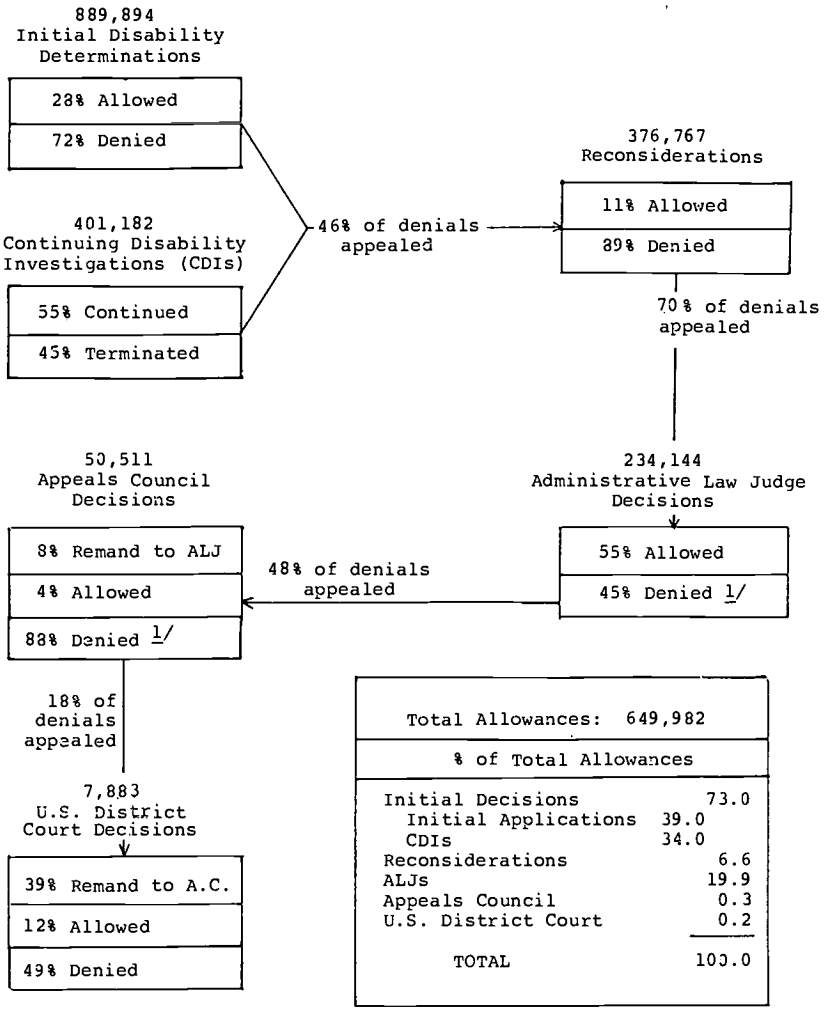
STAGES OF DI DECISION-MAKING

	Administered by:	Time allowed to request next stage	Average time from request to decision[1]/
INITIAL CLAIM	SSA District Office	60 days	65 days
RECONSIDERATION	State Agency (DDS)*	60 days	50 days
HEARING	SSA's Administrative Law Judges	60 days	184 days[2]/
APPEAL	SSA's Appeals Council	60 days	80 days[2]/
FEDERAL COURT REVIEW	Federal Court System	--	N.A.

*Disability Determination Service.
1/ May 1983.
2/ Estimate; includes appeals of both initial denials and CDI terminations.

CHART 11

DISABILITY DETERMINATIONS AND APPEALS,
FISCAL YEAR 1982*



*Includes concurrent DI/SSI cases.
1/ Includes dismissals.

CHART 12

THE DISABILITY DECISION:
A SEQUENTIAL EVALUATION PROCESS

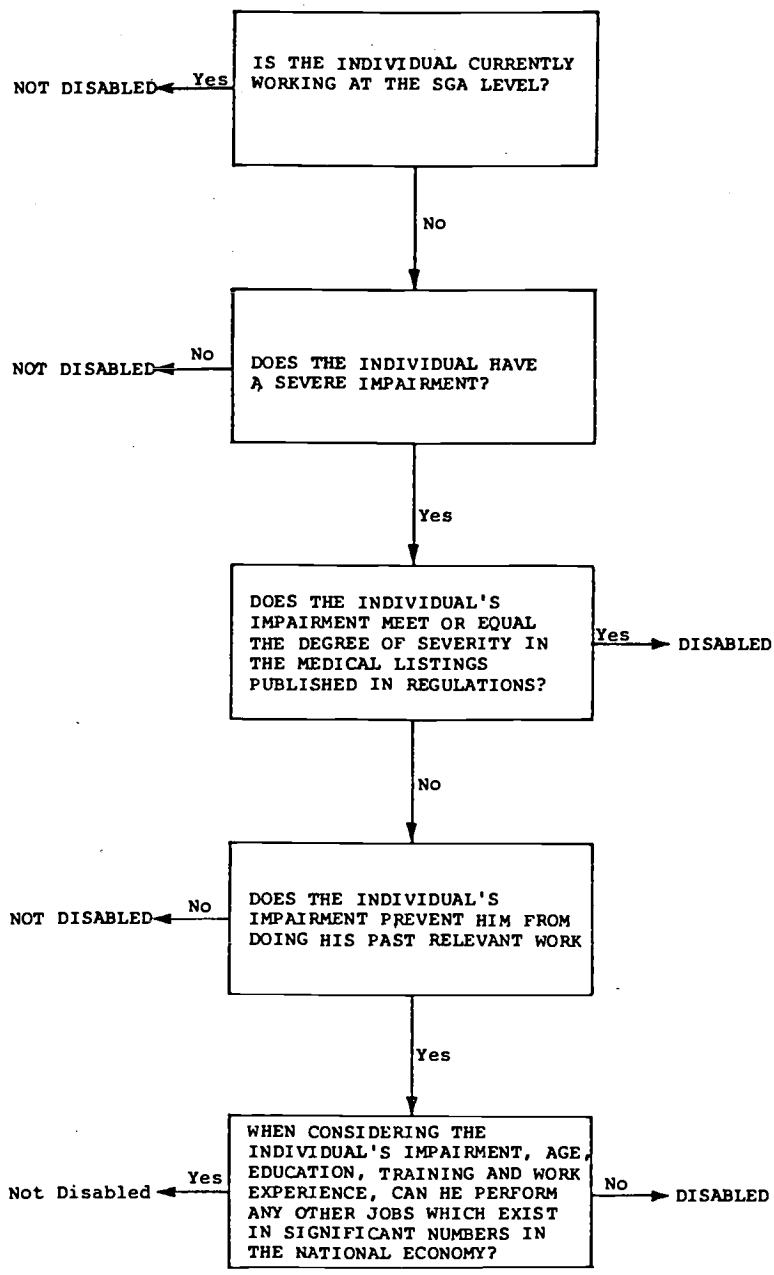


CHART 13

INITIAL ELIGIBILITY DETERMINATION PROCESS

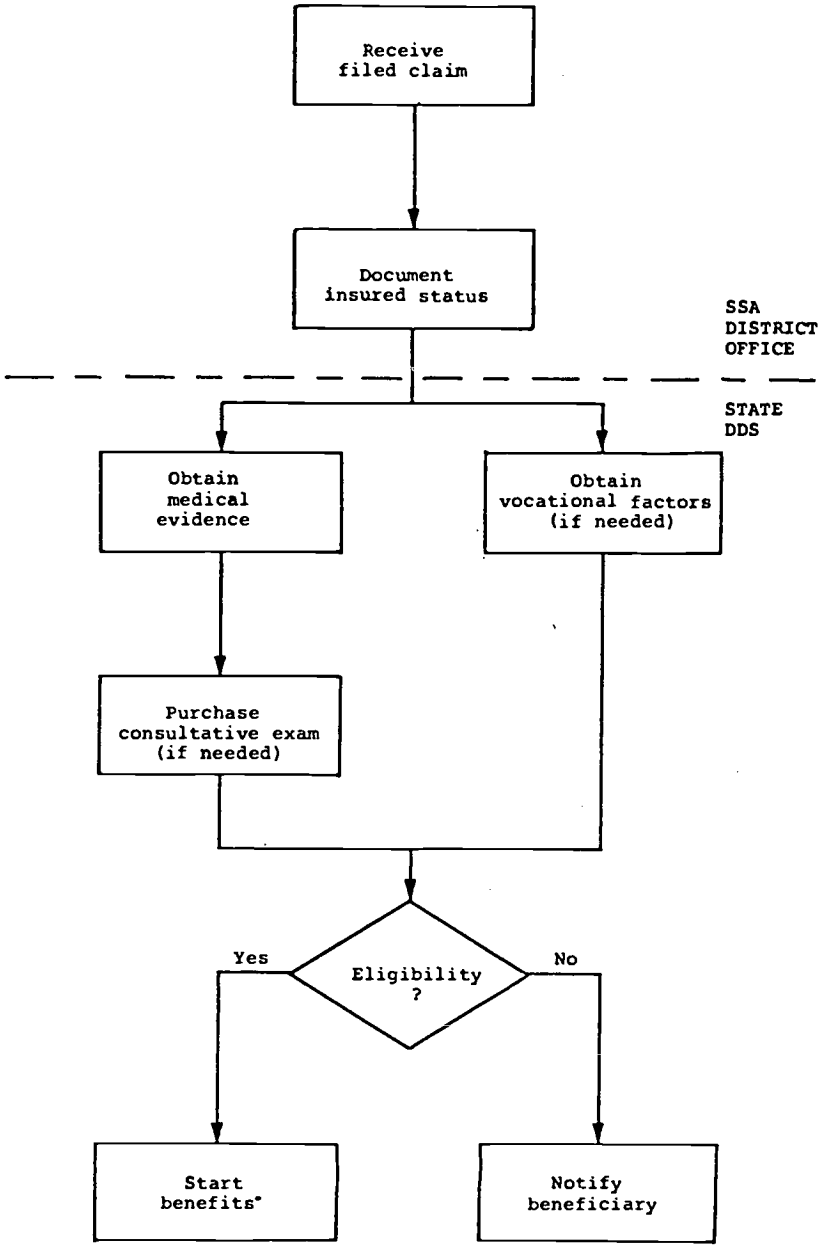
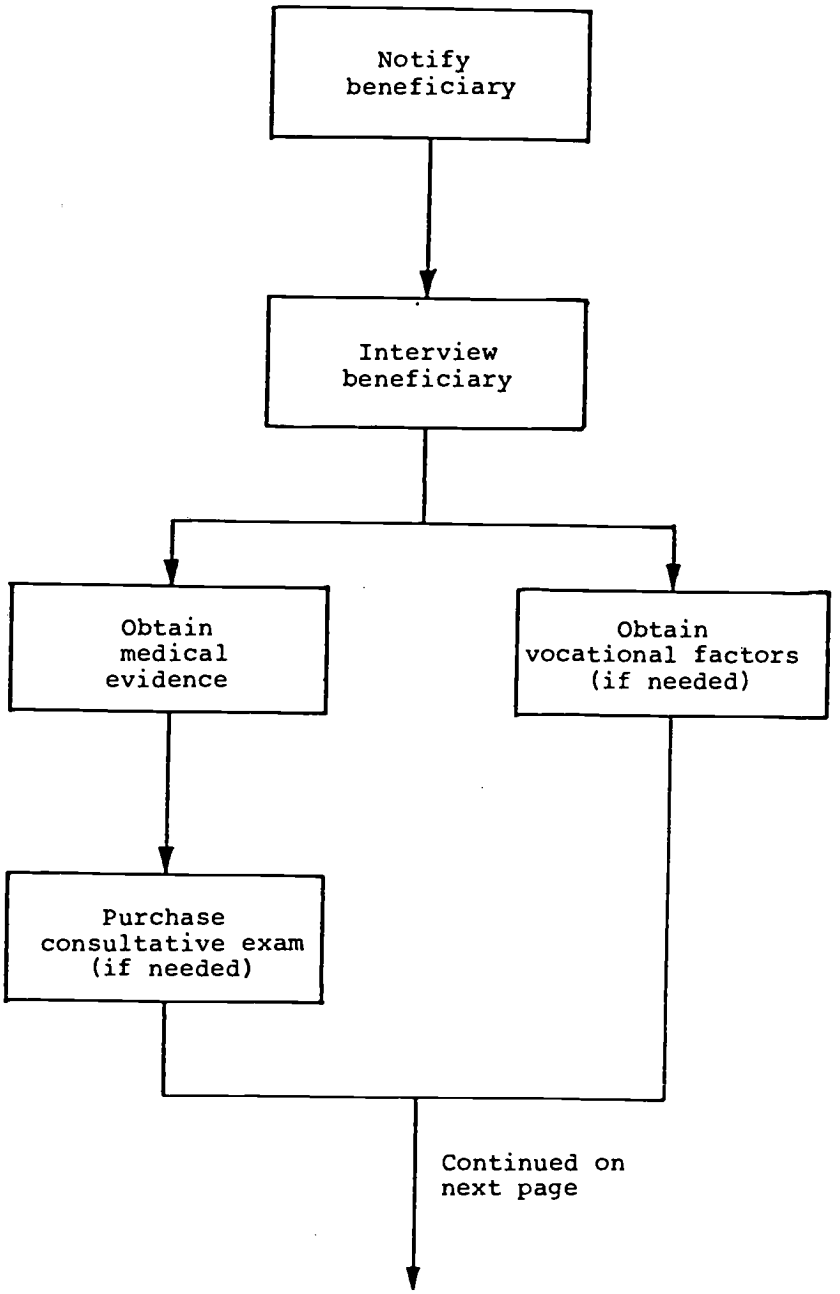


CHART 14

CONTINUING DISABILITY INVESTIGATIONS PROCESS



CONTINUING DISABILITY INVESTIGATIONS PROCESS

(continued)

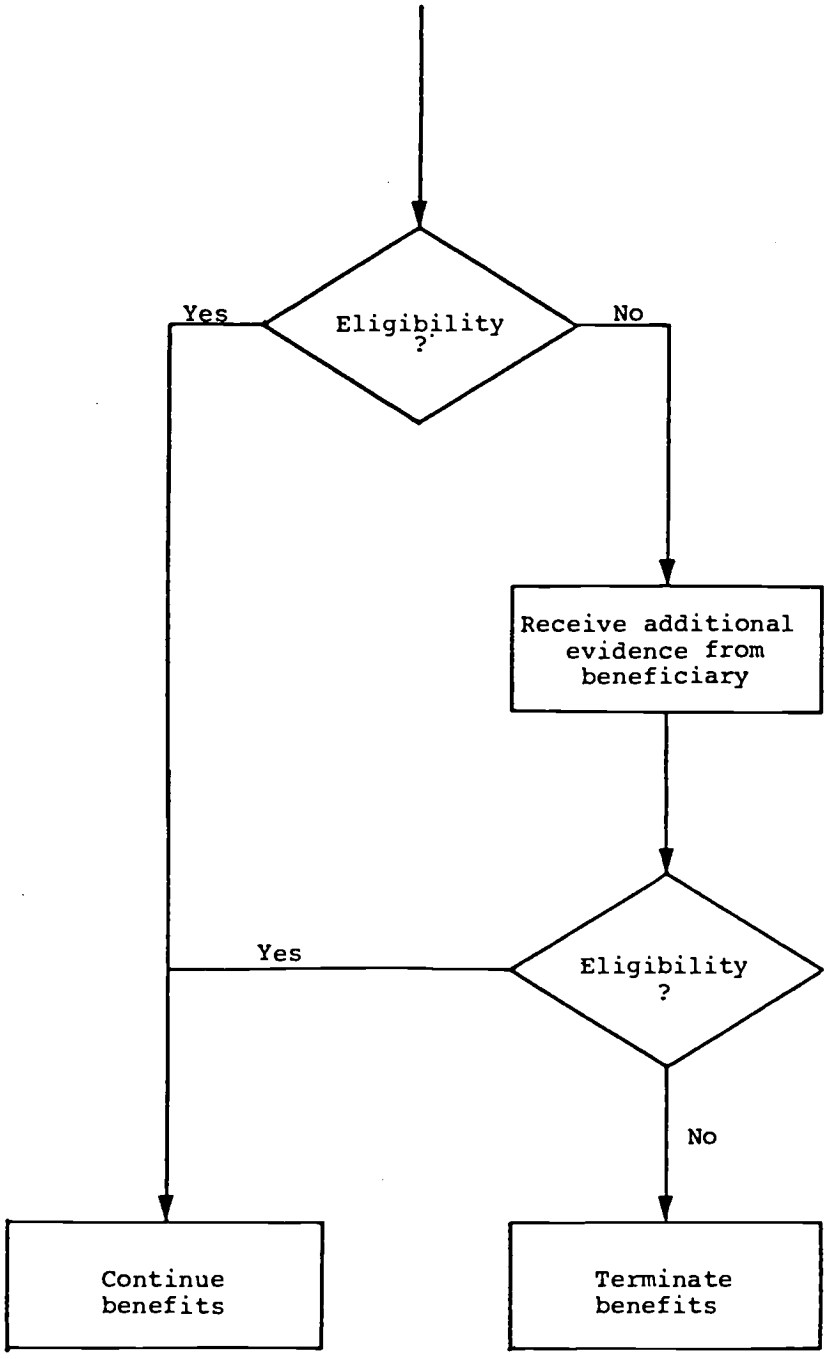


CHART 15

HISTORY OF SIGNIFICANT PROVISIONS RELATING TO DI ELIGIBILITY REQUIREMENTS

Act	Provision
1956	Monthly cash benefits provided for insured workers aged 50-64 unable to engage in substantial gainful activity because of a medically determined impairment expected to end in death or be of "long-continued and indefinite duration."
	Benefits payable after 6-month waiting period.
	Recent and substantial attachment to covered employment required: "currently insured" (6 quarters of coverage in the preceding 13 quarters, including the quarter of disablement), "disability insured" (20 quarters of coverage in the preceding 40 quarters, including the quarter of disablement), and "fully insured" (one quarter of coverage for each year after 1950 and prior to the attainment of age 65 for men, age 62 for women).
1958	Monthly cash benefits provided for the dependents of disabled workers.
	"Currently insured" requirement eliminated.
1960	Age 50 limitation eliminated. DI benefits made payable to insured workers (and their dependents) at any age under 65.
	"Disability insured" requirement eased.
	6-month waiting period eliminated for workers applying for benefits for a second time after failing in attempt to return to work.
	"Trial work period" of 9 months provided during which disabled worker may have earnings without having benefits terminated.

1965 Duration of disability requirement eased from "long-continued and indefinite" to one lasting for at least 12 months.

In the case of blind workers, aged 55-64, benefits made payable on the basis of inability to engage in usual occupation rather than inability to engage in substantial gainful activity.

"Disability insured" requirements eased for blind workers under age 31.

1967 Definition of disability tightened so that the impairment must preclude engaging in any substantial gainful activity existing in the national economy.

"Disability insured" requirements eased for all disabled workers under age 31.

1972 Waiting period reduced to 5 months.

Medicare provided for disabled workers on the rolls for at least 24 months.

For blind workers, "disability insured" requirement eliminated.

1977 SGA guidelines liberalized for the blind.

1980 Medicare provided for disabled workers for 3 years after leaving the benefit rolls to engage in substantial gainful activity.

24-month waiting period for Medicare eliminated for workers applying for benefits for a second time.

TABLE 49.—DI ADMINISTRATIVE COSTS

[Dollars in millions]

Calendar year	DI administrative costs	
	Total	As percent of DI benefits
1957	$3	4.9
1960	36	6.4
1965	90	5.7
1970	164	5.3
1975	256	3.0
1980	368	2.4
1981	436	2.5
1982	590	3.4
1983 [1]	681	3.8

[1] Estimated under Intermediate II–B Assumptions contained in 1983 OASDI Trustees' Report.

Source: Social Security Bulletin, Annual Statistical Supplement, 1981, and 1983 OASDI Trustees' Report.

○

Union Calendar No. 261

98TH CONGRESS
1ST SESSION

H. R. 4170

[Report No. 98-432]

To provide for tax reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1983

Mr. ROSTENKOWSKI (for himself, Mr. CONABLE, Mr. GIBBONS, Mr. PICKLE, Mr. RANGEL, Mr. STARK, Mr. GEPHARDT, Mr. DOWNEY of New York, Mr. HEFTEL of Hawaii, Mr. FOWLER, Mr. GUARINI, Mr. SHANNON, Mr. PEASE, Mr. MATSUI, Mr. FLIPPO, Mr. DORGAN, Mrs. KENNELLY, Mr. VANDER JAGT, Mr. FRENZEL, Mr. MARTIN of North Carolina, Mr. SCHULZE, Mr. GRADISON, Mr. MOORE, and Mr. THOMAS of California) introduced the following bill; which was referred to the Committee on Ways and Means

OCTOBER 21, 1983

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To provide for tax reform, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

"(or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1983.

(2) TRANSITIONAL RULE.—Rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 shall apply with respect to any pre-ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1954) for plan years beginning after December 31, 1979, and before January 1, 1984.

TITLE IX—SOCIAL SECURITY DISABILITY BENEFITS REFORM

SEC. 900. SHORT TITLE; TABLE OF CONTENTS.

This title may be cited as the "Social Security Disability Benefits Reform Act of 1983".

TABLE OF CONTENTS

Subtitle A—Standards of Disability

SEC. 901. STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY.

(a) Section 223 of the Social Security Act is amended by inserting after subsection (e) the following new subsection:

"Standard of Review for Termination of Disability Benefits

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that—

"(A) the individual is now able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii) does not apply) a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that—

"(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or

her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(B) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that the requirements of clause (i) or (ii) of subparagraph (A) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations pre-

scribed by the Secretary sufficient to preclude the individual from engaging in gainful activity.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to disability benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subsection shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subsection, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "A period of disabil-

ity may be determined to end on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence described in paragraph (1), (2), or (3) of section 223(f). Nothing in the preceding sentence shall be construed to require a determination that a period of disability continues if evidence on the record at the time any prior determination of such period of disability was made, or new evidence which relates to such determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subparagraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subparagraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination.".

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not be to entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has

ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that the individual is now able to engage in substantial gainful activity, or

"(ii) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that he or she is now able to engage in substantial gainful activity; or

"(C) substantial evidence which demonstrates that, as determined on the basis of new or improved di-

agnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity.

Nothing in this paragraph shall be construed to require a determination that a recipient of benefits under this title based on disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual (unless he or she is eligible to receive benefits under section 1619) is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior determination of disability nothing in this paragraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this paragraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior determination.".

SEC. 902. STUDY CONCERNING EVALUATION OF PAIN.

(a) The Secretary of Health and Human Services shall, in conjunction with the National Academy of Sciences, conduct a study of the issues concerning (1) the use of subjective evidence of pain, including statements of the individual alleging such pain as to the intensity and persistence of such pain and corroborating evidence provided by treating physicians, family, neighbors, or behavioral indicia, in determining under section 221 *or title XVI* of the Social Security Act whether an individual is under a disability, and (2) the state of the art of preventing, reducing, or coping with pain.

(b) The Secretary shall submit the results of the study under subsection (a), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than April 1, 1985.

SEC. 903. MULTIPLE IMPAIRMENTS.

(a) *(1)* Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments

without regard to whether any such impairment, if considered separately, would be of such severity.".

~~(b)~~ *(2)* The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physicial or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

Subtitle B—Disability Determination Process

SEC. 911. MORATORIUM ON MENTAL IMPAIRMENT REVIEWS.

(a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individ-

uals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than nine months after the date of the enactment of this Act.

(b) The Secretary shall make the revisions pursuant to subsection (a) in consultation with the Advisory Council on the Medical Aspects of Disability (established by section 924 of this Act), and shall take the advice and recommendations of such Council fully into account in making such revisions.

(c)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(h) of the Social Security Act (as redesignated by section 914(1) of this Act) , *or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act,* with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date

of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (d)(1) the term "continuing eligibility review", when used to refer to a review ~~under section 221(h) of such Act (as so redesignated)~~ of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual *(other than an individual eligible to receive benefits under section 1619 of the Social Security Act)* is determined by the Secretary to be engaged in substantial gainful activity.

(d)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II *or XVI* of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an indi-

vidual is not under a disability by reason of a mental impairment made under or in accordance with title II *or XVI* of such Act in a reconsideration of, hearing on, or judicial review of a decision rendered in any continuing eligibility review to which subsection (c)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II *or XVI* of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

SEC. 912. REVIEW PROCEDURE GOVERNING DISABILITY DETERMINATIONS AFFECTING CONTINUED ENTITLEMENT TO DISABILITY BENEFITS; DEMONSTRATION PROJECTS RELATING TO REVIEW OF OTHER DISABILITY DETERMINATIONS.

(a)(1) Section 221(d) of the Social Security Act is amended—

(A) by striking out "Any" and inserting in lieu thereof "(1) Except in cases to which paragraph (2) applies, any"; and

(B) by adding at the end thereof the following new paragraph:

"(2)(A) In any case where—

"(i) an individual is a recipient of disability insurance benefits, child's, widow's, or widower's insurance benefits based on disability, mother's or father's insurance benefits based on the disability of the mother's or father's child who has attained age 16, or benefits under title XVIII based on disability, and

"(ii) the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Secretary in a case to which subsection (g) applies) to have ceased, not to have existed, or to no longer be disabling,

such individual shall be entitled to notice and opportunity for review as provided in this paragraph.

"(B)(i) Any determination referred to in subparagraph (A)(ii)—

"(I) which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for a decision of the Secretary with regard to the individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or otherwise changed), and

"(II) which is in whole or in part unfavorable to such individual,

shall remain pending until after the notice and opportunity for review provided in this subparagraph.

"(ii) Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (including the right to make a personal appearance as provided in this subparagraph), the right to submit additional evidence prior to or during such review as provided in this clause, and that, if such review is not requested, the individual will not be entitled to a hearing on such determination and such determination will be the disability determination upon which the final decision of the Secretary on entitlement will be based.

Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsection (g) applies) of such determination, including the right of such individual to make a personal appearance, and may submit additional evidence for purposes of such review prior to or during such review. Any such request must be filed within 30 days after notice of the pending determination is received by the individual making such request. Any review carried out by a State agency under this subparagraph shall be made in accordance with the pertinent provisions of this title and regulations thereunder.

"(iii) A review under this subparagraph shall include a review of evidence and medical history in the record at the time such disability determination is pending, shall examine any new medical evidence submitted or obtained for purposes of the review, and shall afford the individual requesting the review the opportunity to make a personal appearance with

respect to the case at a place which is reasonably accessible to such individual.

"(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination, as so affirmed or modified, as the disability determination under subsection (a), (c), (g), or (h) (as applicable).

"(C) Any disability determination described in subparagraph (A)(ii) which is issued by the State agency (or the Secretary) and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the determination, the reason or reasons upon which the determination is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

"(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with the disability determination referred to in subparagraph (C) shall be entitled to a hearing thereon to the same extent as is

provided in section 205(b) with respect to decisions of the Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b) with respect to matters other than the determination referred to in subparagraph (A)(ii).

"(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly appointed in accordance with section 3105 of title 5, United States Code.".

(2) Section 205(b)(1) of such Act is amended by inserting after the fourth sentence the following new sentence: "Reviews of disability determinations on which decisions relating to continued entitlement to benefits are based shall be governed by the provisions of section 221(d)(2).".

(b)(1) Section 205(b) of such Act (as amended by subsection (a)(2)) is further amended—

(A) by striking out "(1)" after "(b)"; and

(B) by striking out paragraph (2).

(2) Section 4 of Public Law 97–455 (relating to evidentiary hearings in reconsiderations of disability benefit terminations) (96 Stat. 2499) and section 5 of such Act (relating to

conduct of face-to-face reconsiderations in disability cases) (96 Stat. 2500) are repealed.

(c) Section 223(g) of the Social Security Act (as amended by section 913(a) of this Act) is further amended—

(1) in paragraph (1)(C), by striking out "for a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "for review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)";

(2) in paragraph (1)(ii), by striking out "a hearing or an administrative review" and inserting in lieu thereof "review or a hearing"; and

(3) in paragraph (3), by striking out "a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)".

(d) The amendments made by this section shall apply with respect to determinations (referred to in section 221(d)(2)(A)(ii) of the Social Security Act (as amended by this section)), *and determinations under the corresponding requirements established for disability determinations and reviews under title XVI of such Act,* which are issued after December 31, 1984.

(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement as demonstration projects the amendments made by this section with respect to all disability determinations under subsections (a), (c), (g), and (h) of section 221 of the Social Security Act, *and with respect to all disability determinations under title XVI of such Act* in the same manner and to the same extent as is provided in such amendments with respect to determinations referred to in section 221(d)(2)(A)(ii) of such Act (as amended by this section). Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than April 1, 1985.

SEC. 913. CONTINUATION OF BENEFITS DURING APPEAL.

(a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such in-

dividual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,";

(B) in clause (i), by inserting "or" after "hearing,"; and

(C) by striking out ", or (iii) June 1984".

(2) Section 223(g)(3) of such Act is amended by striking out "which are made" and all that follows down through the end thereof and inserting in lieu thereof the following: "which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

"(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be dis-

abling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

"(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith,

all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1).

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.".

~~(b)~~*(c)*(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

SEC. 914. QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS.

Section 221 of the Social Security Act is amended—

(1) by redesignating subsection (i) as subsection (h); and

(2) by adding at the end thereof the following new subsection:

"(i) A determination under subsection (a), (c), (g), or (h) that an individual is not under a disability by reason of a mental impairment shall be made only if, before its issuance by the State (or the Secretary), a qualified psychiatrist or psychologist who is employed by the State agency or the Secretary (or whose services are contracted for by the State agency or the Secretary) has completed the medical portion of the case review, including any applicable residual functional capacity assessment.".

SEC. 915. REGULATORY STANDARDS FOR CONSULTATIVE EXAMINATIONS.

Section 221 of the Social Security Act (as amended by section 914 of this Act) is further amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in de-

termining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

Subtitle C—Miscellaneous Provisions

SEC. 921. ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS.

(a) Section 205(b) of the Social Security Act (as amended by sections 912(a)(2) and 912(b)(1) of this Act) is further amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to mat-

ters relating to benefits under this title. With respect to matters to which rulemaking requirements under the preceding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provisions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State agency or the Secretary, including any hearing before an administrative law judge.".

(b) Section 1631(d)(1) of such Act is amended by inserting "(b)(2)," after "(a),".

SEC. 922. COMPLIANCE WITH COURT OF APPEALS DECISIONS.

(a) Title II of the Social Security Act is amended by adding at the end the following new section:

"COMPLIANCE WITH COURT OF APPEALS DECISIONS

"SEC. 234. (a) Except as provided in subsection (b), if, in any decision in a case to which the Department of Health and Human Services or an officer or employee thereof is a party, a United States court of appeals—

"(1) interprets a provision of this title or of any regulation prescribed under this title, and

"(2) requires such Department or such officer or employee to apply or carry out the provision in a manner which varies from the manner in which the

provision is generally applied or carried out in the circuit involved,

the Secretary shall acquiesce in the decision and apply the interpretation with respect to all individuals and circumstances covered by the provision in the circuit until a different result is reached by a ruling by the Supreme Court of the United States on the issue involved or by a subsequently enacted provision of Federal law.

"(b) Acquiescence shall not be required under subsection (a) during the pendency of any direct appeal of the case by the Secretary under section 1252 of title 28, United States Code, or any request for review of the case by the Secretary under section 1254 of such title if such direct appeal or request for review is filed during the period of time allowed for such filing. If the Supreme Court finds that the requirements for the direct appeal under such section 1252 have not been met or denies a request for review under such section 1254, the Secretary shall resume acquiescence in the decision of the court of appeals in accordance with subsection (a) from the date of such finding or denial.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) Section 234 shall apply with respect to decisions of United States courts of appeals involving interpretations of provisions of this title or of regulations prescribed under this

title (and requiring action with respect to such provisions) in the same manner and to the same extent as it applies with respect to decisions involving interpretations of provisions of title II or of regulations prescribed thereunder (and requiring action with respect to such provisions).".

~~(b) The amendment made by subsection (a)~~ *(c) The amendments made by subsections (a) and (b)* of this section shall not apply with respect to a decision by a United States court of appeals in any case if the period allowed for filing the direct appeal or request for review of the case with the Supreme Court of the United States expired before the date of the enactment of this Act.

SEC. 923. PAYMENT OF COSTS OF REHABILITATION SERVICES.

(a) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(1) by striking out "into substantial gainful activity"; and

(2) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b)

(except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(b) The second sentence of section 222(d)(1) of such Act is amended by inserting after "substantial gainful activity" the following: ", the determination that an individual, without good cause, refused to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

"(c) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months, (2) in cases where such individuals are determined to be no longer entitled to benefits under this title because the

physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

~~(c)~~ *(d)* The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) of the Social Security Act *(or who are determined to be no longer entitled to benefits under title XVI of such Act because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling)*, or who refuse to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

SEC. 924. ADVISORY COUNCIL ON MEDICAL ASPECTS OF DISABILITY.

(a) There is hereby established in the Department of Health and Human Services an Advisory Council on the

Medical Aspects of Disability (hereafter in this section referred to as the "Council").

(b)(1) The Council shall consist of—

(A) 10 members appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act from among independent medical and vocational experts, including at least one psychiatrist, one rehabilitation psychologist, and one medical social worker; and

(B) the Commissioner of Social Security ex officio.

The Secretary shall from time to time appoint one of the members to serve as Chairman. The Council shall meet as often as the Secretary deems necessary, but not less often than twice each year.

(2) Members of the Council appointed under paragraph (1)(A) shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such members, while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be paid at rates fixed by the Secretary, but not exceeding $100 for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Council; and while so serving away from their

homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(3) The Council may engage such technical assistance from individuals skilled in medical and other aspects of disability as may be necessary to carry out its functions. The Secretary shall make available to the Council such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out its functions.

(c) It shall be the function of the Council to provide advice and recommendations to the Secretary of Health and Human Services on disability standards, policies, ~~and procedures,~~ *and procedures under titles II and XVI of the Social Security Act,* including advice and recommendations with respect to—

(1) the revisions to be made by the Secretary, under section 911(a) of this Act, in the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments"; and

(2) the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be

completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved. *The Council shall also have the functions and responsibilities (with respect to work evaluations in the case of applicants for and recipients of benefits based on disability under title XVI) which are set forth in section 307 of this Act.*

(d) Whenever the Council deems it necessary or desirable to obtain assistance in order to perform its functions under this section, the Council may—

(1) call together larger groups of experts, including representatives of appropriate professional and consumer organizations, in order to obtain a broad expression of views on the issues involved; and

(2) establish temporary short-term task forces of experts to consider and comment upon specialized issues.

(e)(1) Any advice and recommendations provided by the Council to the Secretary of Health and Human Services shall be included in the ensuing annual report made by the Secretary to Congress under section 704 of the Social Security Act.

(2) Section 704 of the Social Security Act is amended by inserting after the first sentence the following new sen-

tence: "Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II *and the program of benefits for the blind and disabled under title XVI* (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommendations provided to the Secretary by the Advisory Council on the Medical Aspects of Disability, with respect to disability standards, policies, and procedures, during the preceding year).".

(f) The Council shall cease to exist at the close of December 31, 1985.

SEC. 925. QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS.

(a)(1) The Secretary of Health and Human Services shall, within 180 days after the date of the enactment of this Act, establish a sufficient number of attorney adviser positions at grades GS–13 and GS–14 in the Department of Health and Human Services to ensure adequate opportunity for career advancement for attorneys employed by the Social Security Administration in the process of adjudicating claims under section ~~205(b)~~ ~~or~~ ~~221(d)~~ *section 205(b), 221(d), or 1631(c)* of the Social Security Act. In assigning duties and responsibilities to such a position, the Secretary shall assign duties and responsibilities to enable an individual serving in

such a position to achieve qualifying experience for appointment by the Secretary for the position of administrative law judge under section 3105 of title 5, United States Code.

(b) The Secretary of Health and Human Services shall—

(1) within 90 days after the date of the enactment of this Act, submit an interim report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the Secretary's progress in meeting the requirements of subsection (a), and

(2) within 180 days after the date of the enactment of this Act, submit a final report to such committees setting forth specifically the manner and extent to which the Secretary has complied with the requirements of subsection (a).

SSI BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 306. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1986".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.".

ADDITIONAL FUNCTIONS OF ADVISORY COUNCIL; WORK EVALUATIONS IN CASE OF APPLICANTS FOR AND RECIPIENTS OF SSI BENEFITS BASED ON DISABILITY

SEC. 307. The functions and responsibilities of the Advisory Council on the Medical Aspects of Disability (established by section 304 of this Act) shall include—

(1) a consideration of alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(2) an examination of the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(3) a review of the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations, in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(4) an examination of possible criteria for assessing the probability that an applicant for or recipient of

benefits based on disability under title XVI will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

For purposes of this section, "work evaluation" includes (with respect to any individual) a determination of (A) such individual's skills, (B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate, (C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated, (D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and (E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

~~SEC. 926.~~ *SEC. 928.* **EFFECTIVE DATE.**

Except as otherwise provided in this title, the amendments made by this title shall apply with respect to cases involving disability determinations pending in the Depart-

ment of Health and Human Services or in court on the date of the enactment of this Act, or initiated on or after such date.

HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOR IMMEDIATE RELEASE
Friday, April 13, 1984

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HHS Secretary Margaret M. Heckler today ordered a suspension of the disability review process "until new disability legislation is enacted and can be effectively implemented."

She also ordered the Social Security Administration to continue benefit payments to all individuals who now have claims properly pending at all levels of administrative review as a result of the periodic review process.

Secretary Heckler's actions will allow benefits to continue for some recipients who, under current law, would receive their last disability checks May 3.

"I am taking this action so that no new periodic reviews are begun and no person with a claim properly pending before us loses benefits," Secretary Heckler said.

She announced she will work with Congress to enact disability legislation. The House has already passed a disability bill.

"I have talked with the leaders of the Senate Finance Committee and received assurance that they will act within the next few weeks," Secretary Heckler said. "I have pledged the full cooperation of our department in securing legislation that maintains our commitment to fair and humane treatment of the disabled."

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"The Social Security Disability Program is a national program that requires consistent, nationwide criteria," she said. "Although we have made important progress in reforming the review process within Social Security, the confusion of differing court orders and state actions persists. The disability program cannot serve those who need its help when its policies are splintered and divided. For that reason, we must suspend the process and work together with Congress to regain order and consensus in the disability program.

"The time which we gain now can help us re-establish national criteria and also help the reforms which I announced last June take firmer hold in the disability review process," she said.

Heckler cited major improvements in the program since she announced reforms last June:

o The review process, formerly almost entirely a "paper" review of files, "has been replaced with a 'people process,' with increased face-to-face contact and more opportunity for beneficiaries to present their cases directly to Social Security and state agency employees," Heckler said.

o Nearly a million beneficiaries, or about one in four, have been exempted from the periodic review process by recognizing their impairments as permanent.

o Cases are now selected for review on a random basis so that no group is unfairly targeted, Heckler said.

o Difficult mental evaluation cases have been excluded from review pending re-examination of mental evaluation standards. New recommendations will be ready for publication soon, Secretary Heckler said.

o "A top-to-bottom review of disability policies is underway. Governnment and non-government physicians and vocational specialists are working together to improve disability criteria and to ensure fairness," she said.

"Despite these improvements, debate has continued on how the Social Security Administration should carry out the disability review process and which criteria are correct under the law," Secretary Heckler said. "I am determined to work with Congress to end this debate and clearly define criteria for determining continuing eligibility. Until a final decision is reached, the only fair thing to do is to stop the process, while at the same time protecting current beneficiaries."

The Continuing Disability Review was ordered by Congress in 1980 following findings that as many as one in five disability recipients might be collecting benefits improperly.

Under the new process which Congress established, disability cases were to be reviewed every three years to determine whether disability benefits were still warranted.

In announcing reforms in the program last June, Secretary Heckler blamed problems on "the old, paper-oriented review process we inherited." She called that process "too insensitive and too bureaucratic," and she aimed reforms at increasing face-to-face contact between reviewers and recipients, exempting more beneficiaries from the review, and improving criteria used to determine disability.

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