

CONTENTS

CONFERENCE REPORT ON H.R. 4277, TO ESTABLISH THE SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY

Page

1.	Establishment of the Social Security Administration as an Independent Agency.....	
	a. Status of Agency..	
	b. Agency Leadership and Management.....	
	c. Deputy Commissioner of Social Security..	
	d. General Counsel.....:~::~:	
	e. Inspector General.....	
	f. Chief Financial Officer.....	
	g. Beneficiary Ombudsman.....	
	h. Office of Chief Administrative Law Judge.....	
	i. Interim Authority of the Commissioner.....	
	j. Personnel; Budgetary Matters; Facilities and Procurement; Seal of Office.....	
	k. Transfers and Transitional Rules.....	
	l. Transition Director.....	
	m. Advisory Council.....	
	n. Annual Report.....	
	o. Data Exchange.....	
	p. Effective Date.....	
2.	Restrict Disability Insurance and Supplemental Security Income Disability Payments to Substance Abusers.....	
	a. Require that All DI Beneficiaries Receive Payment Through a Representative Payee.....	
	b. Studies.....	
	c. Preference for Organizations as Representative Payees and Expansion of Qualified Organizations..	
	d. Treatment Requirement.....	
	e. Appropriate Treatment and Standards for Compliance.....	
	f. Benefit Suspensions for Noncompliance With Treatment.....	
	g. Referral and Monitoring Activities and Report on Testing.....	
	h. 36-Month Limit.....	
	i. Dependents Benefits After 12-Month and 36-Month Termination.....	
	j. Proration of Retroactive Lump-Sum Benefits.....	
	k. Illegal Activity and SGA.....	
	l. Demonstration Projects.....	
	m. Effective Date.....	
3.	Issuance of Physical Documents in the Form of Bonds, Notes, or Certificates to the Social Security Trust Funds.....	
4.	GAO Study Regarding Telephone Access to Local Offices of the Social Security Administration.....	

5. Expansion of State Option to Exclude **Service** of Election Officials or Election Workers from Coverage
6. Use of Social Security Numbers By States and Local Governments and Federal District Courts for Jury Selection Purposes.....
7. Authorization for All States to Extend Coverage to State and Local Police Officers and Firefighters Under Existing Coverage Agreements.....
8. Limited Exemption For Canadian Ministers From Certain Self-Employment Tax Liability.....
9. Exclusion of Totalization Benefits from the Application of the Windfall Elimination Provision.....
10. Exclusion of Military Reservists from Application of the Government Pension Offset and the Windfall Elimination Provisions.....
11. Repeal of Facility-of-Payment Provision.....
12. Maximum Family Benefits in Guarantee Cases.....
13. Authorization for Disclosure of Social Security Administration Information for Purposes of Public of Private Epidemiological and Similar Research.....
14. Misuse of Symbols, Emblems or Names in reference to Social Security Administration, Department of Health and Human Services, Treasury Department and Internal Revenue Service.....
15. Increase Penalties for Unauthorized Disclosure of Social Security Information.....
16. Increase in Authorized Period for Extension of Time to File Annual Earnings Report.....
17. Extension of Disability Insurance Program Demonstration Project Authority.....;
18. Cross-Matching of Social Security Account Number Information and Employer Identification Number Maintained by the Department of Agriculture.....
19. Certain Transfers to Railroad Retirement Account made Permanent.....
20. Authorization for Use of Social Security Account Numbers by Department of Labor in Administration of Federal Workers' Compensation Laws.....
21. Coverage under FICA of Federal Employees Transferred Temporarily to International Organizations.....
22. Extension of the FICA Tax Exemption and Certain Tax Rules to Individuals Who Enter the United States under a VISA Issued under the Section 101 of the Immigration and Nationality **Act**.....
23. Study Rising Cost of Disability Insurance **Benefits**.....
24. Commission on Childhood Disability.....
25. Disregard of Deemed Income and Resources of Ineligible Spouse in Determining Continued Eligibility under Section **1619**.....

26. Plans for Achieving Self-Support Not Disapproved Within 60 days to be Deemed Approved.....
27. Temporary Authority to Approve a Limited Number of Plans for Achieving Self-Support that Include Housing **Goals**.....
28. Regulations Regarding Completion of PASS.....
29. Treatment of Certain Grant, Scholarship, or Fellowship Income.....
30. SSI Eligibility for Students Temporarily Abroad
31. Disregard of Cost-of-Living Increases for Continued Eligibility for Work Incentives.....
32. Expansion of the Authority of the Social Security Administration to Prevent, Detect, and Terminate Fraudulent Claims for **OASDI** and **SSI** Benefits
 - a. Prevention of **Fraud in the SSI Program** by Translators of Foreign **Languages**.....
 - b. Civil Monetary Penalties in SSI and **OASDI** Cases Involving Fraud
 - c. **SSI** Fraud Considered a **Felony**.....
 - d. Authority to Redetermine Eligibility in Disability Cases if Fraud is Involved and to Terminate Benefits if There is Insufficient Reliable Evidence of Disability.....
 - e. Availability of Recipient Identifying Information From the Inspector **General, Social Security Administration**.....
 - f. Authority to use Available Pre-admission Immigrant and Refugee Medical Information.....
 - g. Annual Reports on Reviews of **SSI** Cases.....
 - h. Effective Date.....
33. Disability Review Required for SII Recipients Who **are** 18 Years of Age.....
34. Continuing Disability Reviews.....
35. Technical and Clerical Amendments.....
36. Exemption from Adjustment in Pass-Along Requirements

1. Establishment of the *Social Security Administration as an Independent Agency* (**Secs. 101-110** of the House bill, **secs. 101-204** of the Senate amendment, and **secs. 101-110** of the conference agreement)

- a. *Status of Agency*

Present Law

The Social Security Administration (**SSA**) is a component of the Department of Health and Human Services (**HHS**).

House Bill

SSA would be made an independent agency in the executive branch of the Federal government, with responsibility for administration of the Old-Age, Survivors, and Disability Insurance (**OASDI**) and Supplemental Security Income (**SSI**) programs.

Senate Amendment

Same as House provision.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with amendments providing that SSA would continue to perform its current functions in administering the Coal Industry Retirees Health Benefits Act and Part B of the Black Lung Benefits Act.

b. *Agency Leadership and Management*

Present Law

The Secretary of HHS has responsibility for administration of the OASDI and SSI programs. Administration of these programs has been delegated to the Commissioner of Social Security. The Commissioner is appointed by the President with the advice and consent of the Senate, but reports to the Secretary.

House Bill

SSA would be governed by a three-member, full-time Board, appointed by the President with the advice and consent of the Senate. The Board members would serve **6-year** terms, with no more than 2 members being from the same political party. Board members would be chosen on the basis of their integrity, impartiality, and good judgment, and would be individuals who, by reason of education, experience, and attainments, are exceptionally qualified to perform the duties of the Board. Board members could be removed from office by the President only pursuant to a finding of neglect of duty or malfeasance in office. The terms of the first members would expire after two, four and six years.

Recommendations for persons to serve on the Board would be made by the Chairman of the House Committee on Ways and Means and the Senate Committee on Finance. A member could, at the request of the President, serve for up to a year after the member's term expires until a successor has taken office. A member could be appointed for additional terms.

The President would appoint one of the members to be a chairperson of the Board for a **4-year** term. The chairperson or two members could call a meeting of the Board with any two members constituting a quorum. Any member alone would be permitted to hold a hearing.

Each member of the Board would be compensated at the rate provided in level II of the Executive Schedule. No member would be permitted to engage in any other business, vocation, profession, or employment.

The Board would:

- govern OASDI and SSI by regulation;
- establish the agency and oversee its efficient and effective operation;
- establish policy and devise long-range plans for the agency;
- appoint an Executive Director to act as the

- agency's chief operating officer;
- constitute three members of a new seven-member Board of Trustees of the Social Security Trust Funds, with the chairperson of the agency's Board serving as chairperson of the Board of Trustees (the Secretary of Labor would be dropped as a member of the Board of Trustees);
- prepare an annual budget, which would be presented by the President to Congress without revision, together with the President's annual budget for the agency;
- study and make recommendations to the Congress and President on the most effective methods of providing economic security through social insurance, SSI, and related programs, as well as on matters related to **OASDI** and SSI administration;
- provide the Congress and President with ongoing actuarial and other analyses; and
- conduct policy analysis and research.

The Board would be authorized to prescribe rules and regulations. It would also be authorized to establish, alter, consolidate, or discontinue organizational units and components of the agency (other than those provided by statute). Further, it would be permitted to assign duties and delegate (or authorize successive redelegations of) authority to act and to render decisions to such officers and employees as it deems necessary.

Senate Amendment

SSA would be governed by a Commissioner appointed by the President, with the advice and consent of the Senate, for a 4-year term coinciding with the term of the President (or until the appointment of a successor). The Commissioner would be compensated at the rate for level I of the Executive Schedule (equivalent to Cabinet officer pay). The Commissioner would be responsible for the exercise of all powers and the discharge of all duties of SSA, have authority and control over all personnel and activities of the agency, and serve as a member of the 5-member Board of Trustees.

The President would be required to appoint a Commissioner within 60 days of the enactment. Upon such appointment and confirmation by the Senate, the Commissioner appointed under this title would assume the duties of the HHS Commissioner of Social Security until SSA is established as an independent agency.

The Commissioner would be authorized to prescribe rules and regulations; establish, alter, consolidate, or discontinue organizational units and components of the agency (except for

those prescribed by law); and assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees as the Commissioner may find necessary.

The Commissioner and the Secretary of Health and Human Services would be directed to consult with one another on an on-going basis to assure: (1) the coordination of the Social Security, SSI, and Medicare and Medicaid programs and (2) that adequate information concerning Medicare and Medicaid benefits would be available to the public.

Conference Agreement

The conference agreement follows the Senate amendment, modified to provide that the Commissioner would serve a fixed six-year term, except that the initial term of office would terminate January 19, 2001. As in the **case** of the Board members in the House bill, the Commissioner could be removed from office by the President only pursuant to a finding of neglect of duty or malfeasance in office.

In providing that a single administrator, rather than a bipartisan board, will head the independent **agency, the** conferees place high priority on management efficiency, which they see as essential in enabling the independent SSA to address the problems that confront it. At the same time, the conferees are concerned by the high rate of turnover, and resulting instability, that has characterized **SSA's** top management in recent years. A number of problems in service delivery associated with this instability have been documented in studies by the General Accounting Office **and** in hearings by the House Committee on Ways and Means and the Senate Committee on Finance. A description of these studies and hearings is contained in both Committees, reports on this legislation.

The conferees expect that the key features of **SSA's** leadership structure as established in the conference agreement --i.e., independent status, a six-year term and the limitation on removal by the President, and a bipartisan advisory **board** -- will be effective in assuring that policy errors resulting from inappropriate influence from outside the agency such **as those** occurring in the early 1980s do not recur in the future.

1) *Board of Trustees*

Present Law

The Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds consists of the Secretary of the Treasury, the Secretary of Labor, the Secretary of Health and Human Services, and two public trustees. The Commissioner of Social Security serves as the Secretary of the Board.

House Bill

The provision would expand the Board of Trustees and alter its membership. As restructured, the Board would consist of the 3 members of the independent agency's board of directors, the Secretary of the Treasury, the Secretary of Health and Human Services, and the two public trustees. The Secretary of Labor would be dropped from the Board. Also, the chairperson of SSA's board of directors would **serve** as the chairperson of the Board of Trustees. The Executive Director would **serve** as the Secretary of the Board.

Senate Amendment

The Commissioner of the independent agency would serve as a member of the Board of Trustees, and the Secretary of Labor would be dropped from the Board. The Deputy Commissioner would serve as the Secretary of the Board.

Conference Agreement

The conference agreement follows the Senate amendment, with an amendment providing that the Secretary of Labor **would** continue to serve as a member of the Board.

2) *SSA Budget*

Present Law

SSA's annual budget request is submitted to Congress by the President, as part of his proposal for the overall budget for the executive branch.

House Bill

SSA's board of directors would be required to prepare an annual budget for the agency, which would be presented by the President to Congress without revision, together with the President's annual budget for the agency.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the budget would be prepared and forwarded to the President by the Commissioner, rather than the Board.

3) *Advisory Board*

Present Law

No provision.

House Bill

No provision.

Senate Amendment

A 7-member part-time Advisory Board would be appointed for **6-year** terms, made up as follows: 3 appointed by the President (no more than 1 from the same political party); 2 each (no more than 1 from the same political party) by the Speaker of the House (in consultation with the Chairman and Ranking Minority Member of the Committee on Ways and Means) and the President pro tempore of the Senate (in consultation with the Chairman and Ranking Minority member of the Committee on Finance). Presidential appointees would be subject to Senate confirmation. Board members would serve staggered terms. The chairman of the Board would be appointed by the President for a B-year term, coincident with the term of the President, or until the designation of a successor. The Board would meet at least 6 times each year and generally would be responsible for giving advice on policies related to the OASDI and SSI programs.

Compensation of members would be set at a rate equal to 25 percent of the rate for level III of the Executive Schedule (in addition, on meeting days compensation would be equivalent to that of the daily rate of level III of the Executive Schedule). Other benefits (except for health benefits) would not accrue. The Board would be required to appoint a staff director (paid at a rate equivalent to a rate for the Senior Executive Service) and would be authorized to hire necessary staff. The Board would be exempt from the provisions of the Federal Advisory Committee Act.

Specific functions of the Board would include:

- analyzing the nation's retirement and disability systems and making recommendations with respect to how the OASDI program and SSI program, supported by other public and private systems, can most effectively assure economic security;
- studying and making recommendations relating to the coordination of programs that provide health security with the OASDI and SSI programs and with other public and private systems;
- making recommendations to the President and to the

Congress with respect to policies that will ensure the solvency of the OASDI program, both in the **short-term** and long-term;

- making recommendations to the President of candidates to consider in selecting nominees for the position of Commissioner and Deputy Commissioner;
- reviewing and assessing the quality of service that the Administration provides to the public;
- reviewing and making recommendations with respect to policies and regulations regarding the OASDI and SSI programs;
- increasing public understanding of the Social Security system;
- in consultation with the Commissioner, reviewing the development and implementation of a long-range research and program evaluation plan for the Administration;
- reviewing and assessing any major studies of Social Security that may come to the attention of the Board; and
- conducting such other reviews and assessments as the Board determines to be appropriate.

Conference Agreement

The conference agreement generally follows the Senate amendment, except that Advisory Board members would serve fixed terms, meet at least four times a year (four members, not more than three from the same political party, would constitute a quorum), and serve without compensation, except that, while serving on business of the Board away from their homes **or** regular places of business, members 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 employed intermittently.

Specific functions of the Board include:

- analyzing the nation's retirement and disability systems and making recommendations with respect to how the OASDI program and SSI program, supported by other public and private systems, can most effectively assure economic security;
- studying and making recommendations relating to the coordination of programs that provide health security with the OASDI and SSI programs and with other public and private systems;
- making recommendations to the President and to the Congress with respect to policies that will ensure the solvency of the OASDI program, both in the short-term and the long term;
- making recommendations with respect to the quality of

service that the Administration provides to the public;
--making recommendations with respect to policies and regulations regarding the OASDI and SSI programs;
--increasing public understanding of the social security system;
--making recommendations with respect to **a** long-range **research** and program evaluation plan for the Administration;
--reviewing and assessing any **major** studies of social security that may come to the attention of the Board; and
--making recommendations with respect to such other matters **as** the Board determines to be appropriate.

In general, it is expected that the scope of the Advisory Board would be broadly focused, as indicated by its statutory mandate. This would be in contrast to the focus of recent Advisory Councils, which have tended to focus on specific aspects of the program. While the Advisory Board is required to review and assess the quality of service to the public provided by the Administration, the conferees expect that the performance of this or any other duty shall not serve as a **basis** for the Advisory Board to become involved in the day-to-day operation or management of the agency. Moreover, the conferees do not see the Board's role in evaluating **SSA's** policies and regulations as extending to the **Board any** special status with respect to the requirements and procedures related to the Administrative Procedures Act.

While the Board will appoint a staff director **and** hire required clerical support personnel, any additional **staff** required by the Board will **be** provided by the Commissioner of Social Security, who will detail employees to the Board, as agreed by the Commissioner and the Board. It is the intention of the conferees that the Board's staff director **and clerical** support staff not fall under the cap imposed by the conference agreement on positions that may be exempted from the competitive service at SSA.

To carry out its duties, the Advisory Board must have **access** to the records of the Social Security Administration. Therefore, it is expected that SSA will furnish **information** requested by the Advisory Board that, in the Board's judgement, is required for the performance of its duties.

The conferees believe that it is important to emphasize that the Board is advisory in nature, and that its members will meet on a part-time basis rather than serve as **a standing body**. It is expected that the Commissioner will consider the advice of the Board when formulating agency policy. The conferees anticipate that the Board will be effective in enhancing public confidence in the Social Security system. They believe that the Board's independent status and bipartisan membership make

it especially well-suited for this important task.

4) *Executive Director*

Present Law

No provision.

House Bill

An Executive Director would be appointed by the Board to **serve** as the agency's chief operating officer for a 4-year term. The individual would be permitted to serve up to one additional year until a successor had taken office (at the request of the chairperson of the Board). The Board would be permitted to appoint the Executive Director for additional terms. An Executive Director could be removed from office before completion of his or her term only for cause found by the Board. Compensation would be set at the rate provided in level II of the Executive Schedule.

The Executive Director would:

- be the chief operating officer responsible for administration;
- maintain an efficient and effective administrative structure;
- implement the long-term plans of the Board;
- report annually to the Board on the program costs of OASDI and SSI; make annual budgetary recommendations for the administrative costs of the agency and defend such recommendations before the board;
- advise the Board and Congress of effects on administration of proposed legislative changes;
- serve as Secretary of the Board of Trustees (for OASDI);
- report to the Board in December of each year, for transmittal to Congress, on administrative endeavors and accomplishments; and
- carry out any additional duties assigned by the Board.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision).

c. *Deputy Commissioner of Social Security*

Present Law

Under current SSA practice, there are six deputy commissioners (for operations; programs; **finance**, assessment and management; policy and external affairs; systems; and human resources). None of these is a statutory position. In **addition**, a non-statutory Principal Deputy Commissioner is designated to serve as Acting Commissioner in the absence of the Commissioner.

House Bill

A Deputy Director of Social Security would be appointed by, and serve at the pleasure of, the Executive Director.

The Deputy Director would perform such duties **and exercise** such powers **as** are assigned by the Executive Director, **and** serve **as** Acting Executive Director during the absence or disability of the Executive Director. The Deputy Director would also serve as Acting Executive Director in the event of a vacancy in the office of Executive Director unless the Board designates another official to fill the post. He or she would be compensated at the rate provided in level III of the Executive Schedule.

Senate Amendment

A Deputy Commissioner would be appointed by the President, with the advice and consent of the Senate, for a 4-year term coincident with the term of the Commissioner or until appointment of a qualified successor.

The Deputy Commissioner would perform such duties and exercise such powers **as** are assigned by the Commissioner, and serve **as** Acting Commissioner during the absence or disability of the Commissioner (or vacancy of the office) unless the President designates someone else. He or she would be compensated at the rate provided for level II of the Executive Schedule. In addition, the Deputy Commissioner would serve **as** the Secretary of the Board of Trustees of the OASDI Trust Funds.

Conference Agreement

The conference agreement follows the Senate amendment, except that the Deputy Commissioner would serve a six-year, rather than a four-year, term. The Deputy Commissioner's term would coincide with that of the Commissioner.

d. General Counsel

Present Law

SSA receives legal services from the Office of General Counsel of HHS through a component headed by a Chief Counsel for Social Security.

House Bill

A General Counsel would be appointed by **and serve** at the pleasure of the Board **as SSA's** principal legal officer. He or she would be compensated at the rate provided in level IV of the Executive Schedule.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision). The conferees anticipate that the agency officers will include a General Counsel.

e. *Inspector General*

Present Law

The Inspector General of HHS is responsible for oversight of SSA.

House Bill

An Office of Inspector General would **be created** within SSA, to be headed by an Inspector General appointed in accordance with the Inspector General Act of 1978. He or she would be compensated at the rate provided in level IV of the Executive Schedule.

Senate Amendment

The Inspector General Act of 1978 would **be amended to** authorize establishment, under that act, of an Inspector General of SSA.

Conference Agreement

The conference agreement follows the Senate amendment, with an amendment providing that the Inspector General would be compensated at the rate provided in level IV of the Executive Schedule.

In addition, the conference agreement provides the Commissioner of the independent agency with authority to appoint an interim Inspector General to serve for up to 60 days. If the Commissioner does not make this appointment, the Inspector General of HHS may, if requested by the Commissioner, serve as **SSA's** Inspector General (while continuing to serve as the Inspector General of HHS) until **an** Inspector General is appointed for the independent agency.

The bill does not establish in the Administration any positions other than the Commissioner, Deputy Commissioner, Inspector General and Chief Financial Officer. The conferees believe that it is preferable to give the Commissioner the authority to determine the most efficient administrative organization for an independent SSA. However, the conferees believe that an essential element in any administrative organization for SSA is the position of Chief Actuary. While such a position is not mandated legislatively, it is expected that SSA will continue to **have a** Chief Actuary, and that the Chief Actuary will remain available to consult with the Chairman of the Senate Committee on Finance and the Chairman of the House Ways and Means Committee.

The conferees wish to emphasize the very important role of

the Office of the Actuary in assessing the **financial** condition of the Social Security trust funds and in developing estimates of the financial effects of potential legislative and administrative changes in the Social Security program. The Office of the Actuary has a unique role within the agency in that it serves both the Administration and the Congress. While the conferees expect that the Chief Actuary will report to the Commissioner, this office often must work with the committees of jurisdiction in the development of legislation.

Beginning with the appointment of the first Chief Actuary in 1936, the tradition **was** for a close and confidential working relationship between the individual who held **that** office and the committees of jurisdiction in the Congress, a relationship which the Committees value highly. It is important to emphasize that both the Senate Committee on Finance **and** the House Committee on Ways and Means rely on their ability to seek estimates on a confidential basis from the Chief Actuary, especially when developing new legislation. Thus, the independence of the Office of the Chief Actuary with respect to providing assistance to the Congress is vital in maintaining a trusting and useful relationship.

The conferees believe that it is important for the Office of the Chief Actuary to receive adequate staffing and support from the agency. In this regard, the conferees are concerned that fewer actuarial studies and notes have been published in recent years and that various informal reports and actuarial memoranda that were available in the past are no longer circulated. The conferees consider independent analyses by the Office of the Chief Actuary to be consistent with the general role and responsibilities of the actuarial profession, and in the past have found these analyses to be very helpful in understanding the factors underlying estimates and trends in the Social Security program.

With respect to adequate staffing, the conferees wish to note that it is essential that the strength of the Office of the Actuary be maintained. The conferees strongly urge that the actuarial staff at SSA be enhanced on an ongoing basis. Toward that end, the conferees believe that, in formulating a comprehensive workforce plan, the Commissioner of Social Security should carefully evaluate the needs of the Office of the Actuary and consider the need for additional Senior Executive Service positions in this office.

Although the conferees **have** not legislatively established a position of Chief Actuary in the independent agency, the conferees recognize the important role of the Office of the Chief Actuary and expect that in the independent SSA the office will be permitted to function with a high degree of independence and professionalism.

f. Chief Financial Officer

Present Law

No provision.

House Bill

No provision.

Senate Amendment

A Chief Financial Officer would be appointed by the Commissioner in accordance with amendments to Title 31 of the U.S. Code made by the Chief Financial Officers Act of 1990.

Conference Agreement

The conference agreement follows the Senate Amendment.

g. Beneficiary Ombudsman

Present Law

No formal position of this nature exists within SSA.

House Bill

An Office of Beneficiary Ombudsman, headed by a beneficiary ombudsman appointed by the Board, would be created within SSA. The term of office would be 5 years, except for the first ombudsman whose term would end September 30, 2000. The ombudsman would be permitted to serve up to one additional year until a successor had taken office (at the request of the chairperson of the Board), and could be appointed for additional terms. The ombudsman could be removed from office before completion of his or her term only for cause found **by** the Board. Compensation would be set at the rate provided in level V of the Executive Schedule.

The beneficiary ombudsman would:

- represent the interests and concerns of program beneficiaries within **SSA's** decision-making process;
- review **SSA's** policies and procedures for possible adverse effects on beneficiaries;
- recommend within **SSA's** decision-making process changes in policies which have caused problems for beneficiaries;
- help resolve problems for individual beneficiaries in unusual or difficult circumstances, as determined by the Administration; and
- represent the views of beneficiaries within **SSA's** decision-making process in the design of forms and issuance of instructions.

The Board would assure that the Office of Beneficiary Ombudsman is sufficiently staffed in regional offices, program centers, and the central office.

The annual report of the Board would include a description of the activities of the beneficiary ombudsman.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision).

h. Office of Chief Administrative Law Judge

Present Law

The Social Security Act requires SSA to conduct hearings to consider appeals of SSA decisions by beneficiaries and applicants for benefits. These hearings **are** conducted by administrative law judges (**ALJs**). Although not required by law, the agency follows the procedures of the Administrative Procedures Act (**APA**) with respect to the appointment of **ALJs** and the conduct of hearings. The **ALJs are** located organizationally within the Office of Hearings and Appeals, headed by an associate commissioner who reports to the deputy commissioner for programs.

House Bill

An Office of Chief Administrative **Law Judge, headed by a** chief ALJ appointed by the Board, would **be created** within SSA to administer the affairs of **SSA's ALJs** in a manner so **as** to ensure that hearings and other business **are** conducted by the **ALJs** in accordance with applicable law and regulations. The chief ALJ would report directly to the **Board**.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision).

i. *Interim Authority of the Commissioner*

Present Law

No provision.

House Bill

The President would be required to nominate appointments to the Board not later than April 1, 1995. If all members of the Board are not in office by October 1, 1995, the person then serving as Commissioner of Social Security would continue to serve as head of SSA within HHS, and serve as the head of the newly-established SSA, assuming the powers and duties of the Board and Executive Director.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill by providing that the existing Commissioner of Social Security in the Department of HHS would continue to serve in that post until a Commissioner is nominated by the President pursuant to this statute and is confirmed by the Senate. Nomination by the President must occur within 60 days of enactment. Upon confirmation by the Senate (whether before or after the general effective date of this statute), the President's nominee would assume the position of Commissioner of Social Security.

In the event that, as of March 31, 1995, the President has not nominated an individual for appointment to the Office of Commissioner of Social Security, the individual serving as Commissioner of Social Security in the Department of Health and Human Services shall become the Acting Commissioner of Social Security in the independent SSA.

j. Personnel; Budgetary Matters; Facilities and Procurement; Seal of Office

1) Appointment of Employees by the Commissioner

Present Law

No provision.

House Bill

The Board would appoint additional officers and employees **as** it deems necessary (with compensation fixed in accordance with title 5 of the U.S. Code, except **as** otherwise provided by law) , and could procure services of experts **and consultants**.

Senate Amendment

Identical provision.

Conference Agreement

The conference agreement follows the House bill **and** the Senate amendment.

2) *Allotment of Senior Executive Service (SES)
Employees*

Present Law

No provision.

House Bill

The Director of the Office of Personnel Management (OPM) would be required to give SSA an allotment of Senior Executive Service (SES) positions that exceeds the number authorized for SSA immediately before enactment of this Act to the extent a larger number is specified in a comprehensive work plan developed by the Board. The total number of such positions could not be reduced at any time below the number SSA held immediately before enactment of this Act.

Senate Amendment

The Senate amendment includes the same provision, except that the number of SES positions allotted to SSA must be "substantially" greater than the number allotted to SSA **before** enactment of this Act.

Conference Agreement

The conference agreement follows the Senate amendment, with an amendment requiring the Director of OPM to inform the Committee on Ways and Means and the Committee on Finance of the number of SES positions allotted to SSA within 60 days of the transmittal of the comprehensive work plan to the Director of OPM.

In agreeing to this provision, the conferees wish to note that, at present, the number of SES positions in SSA is low in proportion to the agency's responsibilities and the size of the agency's staff. The conferees expect that **SSA's** allotment will increase as an independent agency, commensurate with the agency's increased stature and responsibilities.

3) *Executive Level Positions*

Present Law

No provision.

House Bill

In addition to the 8 Executive Schedule positions established by this Act, SSA also would be authorized 6 positions at level IV and 6 positions at level V of the Executive Schedule.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision).

4) *Positions Exempted From the Competitive Service*

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The number of positions which may be excepted from the competitive service because of their confidential or **policy-**determining character could not exceed the equivalent of 10 full-time positions.

Conference Agreement

The conference agreement generally follows the Senate amendment, except that the limit would be set at 20 and would apply only to non-career Senior Executive Service (**SES**) and schedule C positions. The four SSA positions authorized by this statute -- Commissioner, Deputy Commissioner, Inspector General, and Chief Financial Officer -- would not be counted toward the limit, nor would the staff hired by the Social Security Advisory Board.

5) *Workforce Plan; Biennial Appropriation*

Present Law

No provision.

House Bill

Appropriation requests for SSA staffing and personnel would be based upon a comprehensive workforce plan, established and revised from time to time by the Board.

Senate Amendment

The Senate amendment includes a similar provision, except that the plan would be established by the Commissioner and appropriations would be authorized to be made on a biennial basis.

Conference Agreement

The conference agreement follows the Senate amendment.

6) *Contingency Funds*

Present Law

No provision.

House Bill

No provision.

Senate Amendment

Appropriated contingency funds would be apportioned upon the occurrence of the stipulated contingency, as determined by the Commissioner and reported to the Congress.

Conference Agreement

The conference agreement follows the House bill (i.e., no provision).

7) *Seal of Office*

Present Law

No provision.

House Bill

The Board would create a Seal of Office for SSA, and judicial notice would be taken of it.

Senate Amendment

The Commissioner would create a Seal of Office for SSA, and judicial notice would be taken of it.

Conference Agreement

The conference agreement follows the Senate amendment.

k. *Transfers and Transitional Rules*

1) *Transfers of Functions and Staff*

Present Law

No provision.

House Bill

In consultation with the Secretary of **HHS**, the Board would determine appropriate allocations of personnel and assets be transferred from HHS to SSA. In addition, there would be transferred such number of **ALJs** as are necessary to carry out the functions transferred by this Act (as determined by the Board in consultation with the Secretary).

Senate Amendment

All functions, assets and personnel related to the administration of Social Security programs would be transferred from HHS to SSA. Transfers include all personnel employed in connection with the functions transferred to SSA and the assets, liabilities, contracts, property, records and unexpended balance of appropriations, authorizations, allocations, or other funds employed, held, or used in connection with these functions.

Conference Agreement

Under the conference agreement generally follows the Senate amendment, with an amendment providing that the Commissioner and the Secretary will enter into a written interagency transfer arrangement identifying the personnel and resources to be transferred to SSA pursuant to this provision. The Commissioner and the Secretary will also identify support functions which are to be transferred -- i.e., payroll, legal, and audit functions.

Under the conference agreement, SSA will continue to perform its current functions in administering the Medicare and Medicaid programs, including the adjudication of Medicare appeals, until such time as the Secretary and the Commissioner agree to a different arrangement. While the Secretary will maintain the ultimate authority for appeal decisions, **SSA's ALJ** corps will conduct appeal hearings until such time as the Secretary and the Commissioner agree to separate the functions.

The conferees urge the Secretary and the Commissioner to make a joint examination of the most appropriate methodology which could be used to determine the costs to be borne by the Medicare trust funds for Medicare-related functions performed

by SSA. The conferees request that the Secretary and the Commissioner report their joint findings to the Committee on Ways and Means and Committee on Finance within 36 months.

2) *Terminate 6 Executive Level IV and V Positions*

Present Law

No provision.

House Bill

The Secretary of HHS shall terminate 6 positions in the Department of HHS placed in level IV and 6 positions placed in level V of the Executive Schedule other than positions required by law.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows Senate amendment (i.e., no provision).

3) *Employees Performing SSA Work on Date of Transfer*

Present Law

No provision.

House Bill

No provision.

Senate Amendment

HHS employees who are employed on the date of enactment of this Act, solely in connection with functions transferred by this title to SSA, and who are so employed on the day before the date SSA is established as an independent agency, shall be transferred from HHS to SSA.

HHS employees who are not employed on the date of the enactment of this Act in connection with functions transferred to SSA, but who are so employed on the day before SSA is established as an independent agency, may be transferred from HHS to SSA by the Commissioner, after consulting with the Secretary of HHS, if the Commissioner determines such transfers to be appropriate

Conference Agreement

The conference agreement follows the House bill (i.e., no provision).

4) *Funds Transferred*

Present Law

No provision.

House Bill

Funds available to **any** official or component of HHS whose **functions are** transferred to the Commission& of Social **Security** or the independent SSA may, with the approval of the Director of the Office of Management and Budget, be **used to** pay **compensation** of any officers appointed during the **transition** until funds for that purpose **are** otherwise available.

Senate Amendment

Same as House provision.

Conference Agreement

The conference agreement follows the House bill and Senate amendment.

5) *Transfer of Existing Orders, Determinations, Contracts, etc.*

Present Law

No provision.

House Bill

All orders, determinations, rules, regulations, collective bargaining agreements, recognitions of labor organizations, certificates, licenses, and privileges in effect under the authority of the Secretary of HHS at the time of the transition would continue under the independent agency until their expiration or modification by the Board in accordance with law. Further, the change would not alter any pending proceeding before the Secretary, nor any suit nor penalty, except that such proceedings would continue before the Board.

Senate Amendment

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All orders, rules, regulations, determinations, contracts, collective bargaining agreements (including ongoing negotiations), recognitions of labor organizations, certificates, licenses and privileges in effect under the authority of the Secretary of HHS at the time of the transition would continue under the authority of the independent SSA until modified or terminated by the Commissioner. Suits and penalties commenced prior to enactment would also continue. Collective bargaining agreements would remain in effect until the date of termination specified in such agreements.

Conference Agreement

The conference agreement follows the Senate amendment.

6) *Employee Protections; Transfer of **Employees***

Present Law

No provision.

House Bill

Transfer to the independent **agency would not cause any** full-time personnel (except special government employees) or part-time personnel holding permanent positions to be separated or reduced in grade or compensation for one year after such transfer.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with technical modifications. In addition, the provision stipulates that transferred personnel who were not SSA employees immediately prior to March 31, 1995, would not be subject to directed reassignment to a duty station outside their commuting area for one year after such date, except that such personnel residing in the Baltimore, Maryland, or Washington, D.C., commuting area would not be subject to directed reassignment to duty stations in the Washington, D.C. or Baltimore, Maryland, commuting areas, respectively, for six months after such date. The conferees expect that in implementing this provision, SSA will develop a definition of "commuting **area**" no later than March 31, 1994.

In establishing these protections, the conferees are seeking to insure that **SSA's** transition to independent status does not adversely affect any worker's employment, **pay, or** grade. The conferees also want to protect employees who are transferred as **a** result of this Act from HHS to SSA, and their families, from having to relocate immediately. The conferees intend these protections to extend only to personnel **actions** and transfers stemming from the transition of SSA to its new status as an independent agency. They should not **be** interpreted as preventing SSA from taking personnel **actions** unrelated to this transition that affect employees' jobs, **pay, or grade.**

1. *Transition Director*

Present Law

No provision.

House Bill

No provision.

Senate Amendment

SSA's transition to independent status would be led by a Transition Director, who would be selected on the basis of experience and knowledge of the operation of the Federal Government. Within **30** days after enactment, the President would be required to appoint the Transition Director, who would be compensated at the rate provided for level IV of the Executive Schedule.

Before the Commissioner of the independent SSA has been appointed, the Transition Director would be required to consult regularly with the Director of the Office of Management and Budget. Upon such appointment, the Transition Director would work under the direction of the Commissioner of SSA.

Within 120 days of enactment, the Transition Director and the Commissioner of Social Security would be required to report to the Congress on the status of the transition and on any significant internal restructuring or management improvements that are proposed to be undertaken.

Conference Agreement

The conference agreement follows the House bill (i.e., no provision).

m. Advisory Council

Present Law

An advisory council is appointed by the Secretary of HHS every four years for the purpose of reviewing the status of the Social Security and Medicare programs.

House Bill

No provision.

Senate Amendment

There would be no quadrennial advisory councils for Social Security, although quadrennial councils would continue to be convened for Medicare.

Conference Agreement

The conference agreement follows the Senate amendment, except that the provision does not authorize quadrennial advisory councils for Medicare. Also, the Advisory Council appointed in 1994 would be authorized to complete its work. The conferees expect that the Congress will consider authorizing quadrennial advisory councils for Medicare in future legislation.

n. Annual Report

Present Law

The Secretary of HHS is required to make an annual report to Congress on the administration of the functions with which the Secretary is charged under the Social Security Act (including OASDI and SSI).

House Bill

No provision.

Senate Amendment

The requirement for an annual report with respect to OASDI and SSI would be eliminated.

Conference Agreement

The conference agreement follows the Senate amendment, with a technical amendment modifying provisions of existing law which require the inclusion of information in **SSA's** annual report so that this information will be provided to Congress separately.

The conferees do not intend this provision to override any statutory requirements that SSA provide information to Congress. Rather, reports that are mandated by law will continue to be provided. Furthermore, in the absence of the annual report, the conferees expect that SSA will include in its annual statistical supplement basic information similar to that currently included in the annual report on: (1) the OASI, DI, and SSI programs, (2) the structure of SSA, including numbers of local offices, regional offices, and teleservice centers; (3) the size and distribution of SSA staff; (4) pending workloads at each level of the disability application and appeals process; and (5) representative payees for Social Security and SSI beneficiaries.

0. *Data Exchange*

Present Law

Within the current Department of Health and Human Services, programs administered by the Social Security Administration, the Health Care Financing Administration, the Administration for Children and Families, and other programs may disclose information from their respective systems of records to assist the administration of various HHS programs.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The provision would continue existing data exchanges between HHS and SSA, by requiring the Secretary to disclose to the Commissioner, and the Commissioner to the Secretary, any record or information requested in writing by the other for the purpose of administering any program, if the same type of information was disclosed to SSA or HHS, respectively, before the date of enactment.

Until March 31, **1995**, such exchanges may continue to be carried out without need to publish new routine uses under the Privacy Act, and without need for computer matching agreements. Beginning March 31, 1996, additional data exchanges and computer matching agreements shall be made in compliance with the routine uses provision under the Privacy Act.

p. Effective Date

Present Law

No provision.

House Bill

In general, the provision would take effect October 1, 1995.

Senate Amendment

In general, the provision would take effect 180 days after enactment.

Conference Agreement.

In general, the provision would take effect March 31, 1995. The Secretary and the Commissioner would be required to develop an arrangement for the transfer on March **31**, 1995, of SSA personnel, and resources to the independent agency. They would be required to submit this plan to the Committee on Ways and Means and the Committee on Finance no later than January 1, 1995. No later than February 15, 1995, the General Accounting Office would be required to issue a report to the Committees evaluating this plan.

The conferees expect this plan to be sufficiently detailed that Congress and the GAO can evaluate whether the decisions made by the Secretary and the Commissioner reflect a division of staff and resources that is equitable from the perspective of both agencies. The plan should include the number or portion of staff from each division within the Office of the Secretary that will be transferred to SSA and the method by which those staff will be designated.

In addition, to ensure that the Congress is fully informed of the progress of the transition, the conferees expect GAO to monitor the transition closely and to report frequently to the Committee on Ways and Means and the Committee on Finance on an informal basis. To facilitate **GAO's** role in the transition, the conferees expect that all participants will furnish the Comptroller General with such information as he determines is necessary to apprise the Committees of the progress of the transition.

Further, the conferees require that, no later than November 1, 1994, the Secretary and the Commissioner report directly to the Committee on Ways and Means and the Committee on Finance on their progress in developing the required joint plan.

2. *Restrict Disability Insurance and Supplemental Security Income Disability Payments to Substance Abusers*
(Sec. 201 of the House bill, **secs. 301-305** of the Senate amendment, and sec. **201** of the conference agreement)

- a. *Require that **All DI Beneficiaries Receive Payment Through a Representative Payee***

Present Law

Supplemental Security Income (**SSI**) recipients whose alcoholism or drug addiction is a contributing factor material to their disability are required to receive payments through a representative payee, who has responsibility for managing their finances. There is no parallel requirement for the Disability Insurance (**DI**) program.

House Bill

DI beneficiaries whose drug addiction or alcoholism is a contributing factor material to their disability would be required to receive payment through a representative payee. Thus, for both DI and SSI, it would be deemed in the best interest of the individual to be paid through a representative payee if alcoholism or drug addiction is a contributing factor material to the determination of disability. Further, the requirement that payment be certified to an alternative representative payee is modified by specifying that this occur, "if the interest of the disabled individual would be served thereby."

The provision would become effective 180 days after enactment for both current and prospective DI beneficiaries.

Senate Amendment

DI beneficiaries whose disabilities are based in whole or in part on a medical determination that the individual is a drug addict or alcoholic would be required to receive payments through a representative payee.

Conference Agreement

The conference agreement follows the House bill with an amendment providing that, for individuals determined eligible for DI benefits beginning 180 days after enactment, the requirement for a representative payee would become effective with respect to their first benefit check. Notification that the individual is subject to this requirement because alcoholism or drug addiction is a contributing factor material to his or her disability would be included in **SSA's** award notice informing the individual of entitlement to benefits.

For DI beneficiaries on the rolls, this requirement would become effective the month following the month in which SSA provides notification that alcoholism or drug addiction is a contributing factor material to the individual's disability and that, as a consequence, the individual is required to receive payment through a representative payee.

An exception to these rules would apply in cases where SSA has difficulty locating a suitable representative payee for a DI beneficiary who is on the rolls prior to the effective date of the amendment. In such situations, direct payment to the individual could be made for up to 90 days.

The conferees recognize that requiring SSA to identify those DI beneficiaries on the rolls whose alcoholism or drug addiction is material to their disability is a costly and labor-intensive task. Finding appropriate representative payees for these individuals will also present an enormous challenge to the agency. The conferees are establishing these requirements in spite of their difficulty because of the high priority they place on halting the use of DI and SSI funds to support disabling addictions. They expect that SSA will implement this requirement in stages, giving first priority to newly-adjudicated cases and individuals with primary diagnoses of alcoholism or drug addiction. The conferees place a high priority on accomplishing this task and expect that SSA will make every effort to identify during the 180 days following enactment DI beneficiaries on the rolls who are required to have representative payees and to find suitable representative payees for these beneficiaries as soon as possible.

b. *Studies*

Present Law

No provision.

House Bill

The Secretary of Health and Human Services would be required to conduct a study of (a) the cost, feasibility, and equity of requiring all DI and SSI beneficiaries who suffer from alcoholism or drug addiction (including those whose addiction did not contribute materially to the determination of disability) to have a representative payee, (b) the feasibility of, and appropriate timetable for, providing benefits through non-cash means (e.g., vouchers, debit cards, electronic benefit transfer systems), (c) the extent to which child recipients are afflicted by drug addiction or alcoholism and ways of addressing such affliction, including the feasibility of requiring treatment, and (d) the extent to which children's representative payees are afflicted by drug addiction or alcoholism, and methods to identify these afflicted individuals and to ensure that benefits continue to be provided to beneficiaries appropriately.

Not later than April 1, 1995, the Secretary shall transmit to the Committee on Ways and Means and the Committee on Finance a report on the findings and recommendations of the study.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the study of providing non-cash benefits to alcoholics and drug addicts would focus on issues of cost and equity as well as feasibility and would not include a timetable for implementation. Also, the due date for the study would be December 31, 1995.

c. *Preference For Organizations as Representative Payees and Expansion of Qualified Organizations*

Present Law

The law is silent with regard to assigning an order of preference for the appointment of representative payees. SSA regulations give preference to family members and friends over organizations in both the DI and SSI programs. If the representative payee is determined to have misused any benefits, the Secretary must certify payment to an alternative payee or to the individual.

Community-based nonprofit social service agencies in existence on October 1, 1988, and serving as representative payees for five or more recipients are allowed to collect a monthly fee for their services the fee is collected from the DI or SSI payment, and cannot exceed the lesser of ten percent of the benefit or \$25 per month. The authority for qualified organizations to charge a fee for representative payee services expired July 1, 1994.

House Bill

In selecting a representative payee for an individual whose alcoholism or drug addiction is a contributing factor material to his or her disability, preference would be given to qualified organizations, unless the Secretary determines that selection of such an agency would not be appropriate.

Further, the requirement that qualified organizations have been in existence on October 1, 1988, to receive a fee for representative payee services would be repealed, and the list of qualified organizations would be expanded to include:

- (1) community-based, nonprofit social services agencies;
- (2) State or local agencies whose mission is to carry out income maintenance, social service, or health care-related services; and
- (3) State or local government agencies with fiduciary responsibilities (or a designee of such an agency if the Secretary deems it appropriate).

The authority for qualified organizations to charge a fee for representative payee services (which expired July 1, 1994) would be reestablished and made permanent, and the monthly fee for services that qualified representative payees of drug addicts and alcoholics receive would be set at ten percent of the monthly benefit.

Senate Amendment

Any benefits payable to DI and SSI beneficiaries (including retroactive benefits) based in whole or in part on alcoholism or drug addiction would be payable only pursuant to a certification of such payment to a qualified organization acting as representative payee for the individual. A qualified organization would be further defined to include an agency or instrumentality of a State or a political subdivision of a State.

Conference Agreement

The conference agreement follows the House bill, with an amendment that provides an exception to the preference for organizations to serve as representative payees for drug addicts and alcoholics to allow SSA to appoint a family member as representative payee if appointing a family member would be appropriate. However, the conferees intend that in cases where the alcoholic or drug addict is abusive to family members or in cases where family members turn over benefits to the alcoholic or drug addict, a family member would not be found to be an appropriate representative payee. In addition, the conferees believe that there are no circumstances under which bartenders should be permitted to serve as representative payees for the customers they serve.

The fee that organizational representative payees would be permitted to charge drug addicts and alcoholics would be the lesser of 10 percent of the monthly benefit or \$50, indexed to the Consumer Price Index. In addition, the authority for qualified organizations to charge a fee for representative payee services would be made retroactive to July 1, 1994; and the ceiling on fees for organizational representative payees of OASDI and SSI beneficiaries who are not alcoholics or drug addicts -- currently \$25 -- would be indexed to the CPI.

d. *Treatment Requirement*

Present Law

SSI recipients whose alcoholism or drug addiction is a contributing factor material to their disability are required to undergo treatment, when available, at approved facilities. They must also comply with the terms of their treatment program and comply with monitoring and testing provided by the Secretary. There are no parallel requirements for the **DI** program.

House Bill

DI beneficiaries whose drug addiction or alcoholism is a contributing factor material to their disability and who are determined eligible for benefits at least 180 days after enactment would be required to undergo treatment, when available, at approved facilities; to comply with the terms of such treatment programs; and to comply with monitoring and testing provided by the Secretary.

In addition, DI beneficiaries on the rolls with a primary diagnosis of alcoholism or drug addiction would be subject to these requirements.

Senate Amendment

DI and SSI beneficiaries whose disability is based in whole or in part on drug addiction or alcoholism would be required to undergo treatment, when available, at approved facilities; to allow their treatment to be monitored; and to comply with monitoring and testing provided by the Secretary.

Conference Agreement

The conference agreement generally follows the House bill with respect to new DI beneficiaries. With respect to DI beneficiaries on the rolls as of the effective date of this provision, treatment would be required, if available, for all individuals whose alcoholism or drug addiction is a contributing factor material to their disability.

For individuals determined eligible for DI benefits following the effective date of this provision, the requirement to undergo treatment, if available, would apply beginning with the first month that they receive a benefit check. Notification that the individual is subject to this requirement because alcoholism or drug addiction is a contributing factor material to his or her disability would be included in **SSA's** award notice informing the individual of entitlement to benefits.

For DI beneficiaries on the rolls, the treatment requirement would become effective the month following the month in which SSA provides notification that alcoholism or drug addiction is a contributing factor material to the individual's disability and that, as a consequence, he **or she** is required to undergo treatment, if available, as a condition of eligibility.

e. *Appropriate Treatment and Standards for Compliance*

Present Law

Under the SSI program, alcoholics and drug addicts must undergo **"any"** treatment which may be appropriate for their condition at an institution or facility approved by the Secretary (so long as such treatment is available)." There is no parallel requirement in the DI program.

House Bill

DI and SSI recipients whose alcoholism or drug addiction is a contributing factor material to their disability would be required to undergo any medical or psychological treatment that is appropriate for the individual's addiction and for the stage of the individual's rehabilitation, at an approved facility.

The Secretary, in consultation with drug and alcohol treatment professionals, would be required to issue regulations further defining appropriate treatment and compliance, and to establish guidelines for evaluating compliance, including measures of the progress expected of participants.

Senate Amendment

Similar provision, but excludes the requirement that the Secretary issue regulations defining compliance with treatment.

Conference Agreement

The conference agreement follows the House bill, except that the requirement to undergo **"any"** medical or psychological treatment" would be replaced with a requirement to undergo "appropriate substance abuse treatment." This change is intended to assure that SSA continues to treat organizations such as Alcoholics Anonymous as qualified treatment providers.

The conferees anticipate that, in addition to issuing regulations, SSA will develop specific guidelines for assessing compliance. These guidelines should be consistent with the thrust of the regulations. However, the conferees expect that the guidelines will be altered from time to time, based on improved medical understanding of addiction.

f. *Benefit Suspensions for Noncompliance With Treatment*

Present Law

SSI law requires disabled alcoholics and drug addicts to participate in treatment, if available, as a condition of eligibility. It does not, however, specify the timing and duration of benefit suspensions for failure to comply with this requirement. There is no parallel requirement for the DI program.

House Bill

Benefits would be suspended for DI and SSI disability beneficiaries who fail to undergo or comply with required treatment for drug addiction or alcoholism. (Medicare benefits would continue during the period of DI suspension, as would Medicaid benefits for suspended SSI recipients). To qualify for benefit reinstatement, DI and SSI recipients would have to demonstrate compliance with treatment for progressively longer periods -- two months, three months, and six months for the first, second, third (and subsequent) instances of noncompliance, respectively. An individual's DI or SSI benefits would be terminated after he or she was suspended for 12 consecutive months. As under current law, terminated individuals could reapply for benefits.

Senate Amendment

The individual must demonstrate in such manner as the Secretary requires, including at a continuing disability review not later than 1 year after the determination of disability, that the individual is complying with the terms and conditions of treatment. If the Secretary finds that an individual is not complying, the Secretary, in lieu of termination, may suspend benefits until compliance is reestablished, including compliance with any additional requirements the Secretary determines necessary.

Conference Agreement

The conference agreement follows the House bill, except that suspensions would become effective the month following notification by SSA of the noncompliance and resulting suspension, rather than the month of noncompliance. (An individual may be determined as failing to comply for a month only if treatment is available for the month.)

9* **Referral and Monitoring Activities and Report on Testing**

Present Law

The Secretary of **HHS** must provide for the monitoring and **testing** of all SSI recipients whose alcoholism or drug addiction is a contributing **factor** material to their disability- There is no parallel requirement for the DI program.

House Bill

The Secretary would be required to establish a referral and monitoring agency for each State. These agencies would identify appropriate placements for DI and SSI recipients who are drug addicts and alcoholics, refer them to such treatment, monitor compliance, and report failures to comply to the Secretary. The Secretary would also be required to provide for the testing of DI beneficiaries, as is currently required under the SSI program.

The Secretary would be required to submit annual reports to Congress on required testing and referral and monitoring activities for DI beneficiaries, as is currently required in the SSI program. These reports would indicate the number and percentage of DI and SSI substance abusers who did not receive regular testing during the year.

Senate Amendment

Within **1** year of enactment, the Secretary of HHS would be required to provide for the establishment of referral and monitoring agencies for each State, as well as for the testing of DI beneficiaries, as is currently required under the SSI program.

Conference Agreement

The conference agreement follows the House bill with minor drafting modifications and with an amendment replacing the requirement for annual reports with a one-time report, due December 31, 1996. Thereafter, annual reports on testing and referral and monitoring activities would no longer be required under the SSI program.

In requiring SSA to provide drug testing, the conferees intend that this authority be used as a tool for assessing compliance with treatment in those instances where a test is likely to yield important information. This provision should not be interpreted as requiring random drug or alcohol testing of all DI and SSI beneficiaries who are disabled by alcoholism

or drug addiction.

h. 36-Month Limit

Present Law

No provision.

House Bill

DI and SSI benefits (including retroactive benefits) for individuals whose drug addiction or alcoholism is a contributing factor material to their disability would be terminated after 36 months of entitlement. Once terminated, the individual would not be entitled to any future benefits if alcoholism or drug addiction were a contributing factor material to the disability termination. For those beneficiaries on the rolls 180 days after enactment of this provision, the first month ending after 180 days after enactment would be treated as the first month of entitlement for the purpose of determining their 36-month period of entitlement.

Senate Amendment

In no event would an individual be entitled to benefits for more than a total of 36 months (excluding periods of suspension) unless upon the termination of the 36th month the individual furnishes evidence that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

Conference Agreement

SSI recipients whose alcoholism or drug addiction is a contributing factor material to **SSA's** determination that they are disabled would be terminated from the rolls after receiving 36 months of benefits unless they are disabled for some reason other than alcoholism or drug addiction. The 36-month limit would be applied to DI substance abusers beginning when treatment becomes available. DI substance abusers would be terminated after receiving benefits in treatment for 36 months, unless they are disabled for some reason other than substance abuse. The conferees expect that SSA will notify DI and SSI beneficiaries well in advance of the 36-month termination that benefits will be ceased, unless the individual provides evidence that he or she is disabled independent of alcoholism or drug addiction.

For SSI recipients determined eligible for benefits after 180 days after enactment, the 36-month limit would begin to toll with the first month for which the individual receives a benefit check. Notification that the individual is subject to

the **36-month** limit because alcoholism or drug addiction is a contributing factor material to his or her disability would be included in **SSA's** award notice informing the individual of eligibility for benefits. For SSI recipients on the rolls, the limit would also begin to toll 180 days after enactment; and SSA would be required to notify all affected individuals prior to this date that they are subject to this limit because alcoholism or drug addiction is a contributing factor material to their disability.

For DI beneficiaries (both current and newly-entitled individuals), the limit would begin when treatment becomes available, at which time SSA would be required to notify the individual that he or she is subject to the limit.

For both groups, only those months for which an individual receives a benefit would be counted toward the 36-month period. (Periods of benefit suspension would be excluded.) An individual whose benefits are terminated as a result of the **36-month** limit may not receive benefits for any following month if, in such following month, alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled.

Medicare and Medicaid would be continued beyond the 36-month period so long as the terminated individual continues to be disabled, as would benefits for dependents of terminated DI beneficiaries (see "**i**").

The provision would sunset the **36-month** limit, effective October 1, 2004.

i. *Dependents Benefits After 12-Month and 36-Month
Termination*

Present Law

Dependents are entitled to DI benefits **only so** long as the worker on whose wage record benefits are paid is so entitled.

House Bill

Dependents' benefits would be continued for two years after the worker on whose record benefits are paid is terminated from the DI rolls.

Senate Amendment

No provision.

Conference Agreement

Dependents' benefits would be continued so long as the worker on whose record benefits are paid continues to be disabled.

5 *Proration of Retroactive Lump-Sum Benefits*

Present Law

No provision.

House Bill

Retroactive lump-sum DI and SSI disability benefits for individuals whose alcoholism or drug abuse is a contributing factor material to their disability would be prorated and paid gradually. Each monthly payment would be limited to 200 percent of the normal benefit amount.

Senate Amendment

Retroactive lump-sum benefits for individuals whose disabilities are related in whole or in part to alcoholism or drug addiction would be paid to a representative payee, who would be charged with managing the individual's finances.

Conference Agreement

The conference agreement follows the House bill, with amendments that:

- 1) create an exception for individuals who are at high risk of homelessness because they incurred debts related to housing while awaiting their eligibility decision. The exception would be limited to the amount of the debt;
- 2) provide that, when a beneficiary dies without having received the full amount of his or her retroactive benefits in prorated payments, the unpaid amount would be treated as an underpayment; and
- 3) provide that, when retroactive benefits are owed to an individual whose entitlement ceases due to 12 months of suspension or the 36-month limit, prorated payments would continue through a representative payee until all retroactive benefits are paid.

The conferees are establishing the first exception to help insure that the restrictions being imposed on lump-sum payments will not result in an increased level of homelessness. They expect representative payees to use any amounts so excepted for the sole purpose of repaying housing-related debts.

The second and third exceptions recognize that, once an

individual has been determined eligible for DI or SSI benefits, subsequent events -- such as failure to comply with required treatment, the imposition of the 36-month limit, or the individual's death -- do not negate his or her previous eligibility and resulting right to past-due benefits.

k. Illegal Activity *and* SGA

Present Law

No provision.

House Bill

In determining whether an individual is **engaging in** substantial gainful activity, the Secretary must **consider** services performed or earnings derived from such **services** without regard to the legality of such services.

Senate Amendment

Any proceeds derived from criminal activity undertaken to support substance abuse would be treated as evidence of the individual's ability to engage in substantial gainful activity.

Conference Agreement

The conference agreement follows the House bill.

1. *Demonstration* Projects

Present Law

No provision.

House Bill

The Secretary of **HHS** would be required to develop and carry out demonstration projects designed to explore innovative referral, monitoring, and treatment approaches for drug addicts and alcoholics who are subject to a treatment requirement. A report to the Committee on Ways and Means and Committee on Finance would be due no later than December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with an amendment authorizing the Secretary to include individuals who are not DI or SSI beneficiaries in the projects, to the extent that this is necessary to determine the most effective referral, monitoring, and treatment approaches for DI and SSI beneficiaries. The conferees expect that the Department of Health and Human Service (Substance Abuse and Mental Health Services Administration) and the Social Security Commissioner will coordinate their efforts with respect to such projects.

m. Effective Date

In general, the provision would take effect 180 days after enactment.

3. Issuance of Physical Documents in the **Form** of Bonds, Notes, or Certificates to the Social Security Trust Funds (Sec. 202 of the House bill and sec. **301** of the conference agreement)

Present Law

In general, section **201(d)** of the Social Security Act requires the Secretary of the Treasury to invest annual surpluses of the Social Security Trust Funds in **interest-bearing** obligations of the U.S. government. Under current Treasury practice, these holdings are recorded as entries on a ledger. No physical documents are required to be issued to the Trust Funds evidencing these obligations.

House Bill

The provision would require that each obligation issued for purchase by the Social Security Trust Funds be evidenced by a physical document in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury. The physical document would state the principal amount, date of maturity, and interest rate of the obligation. It would also state on its face that: "...**the** obligation shall be incontestable in the hands of the Trust Fund to which it is issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest."

In addition, interest on such obligations would be paid to the Trust Funds with paper checks drawn on the general fund.

Effective date. --The provision would apply with respect to obligations issued, and payments made, after 60 days after the date of enactment. No later than 60 days after enactment, the Secretary of the Treasury would **be** required to issue to the Social Security Trust Funds physical documents in the form of bonds, notes, or certificates of indebtedness for all outstanding Social Security Trust Fund obligations.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would apply with respect to obligations issued, and payments made, after 60 days after the date of enactment. No later than 60 days after enactment, the

Secretary of the Treasury would be required to issue to the Social Security Trust Funds physical documents in the form of bonds, notes, or certificates of indebtedness for all outstanding Social Security Trust Fund obligations.

4. *GAO Study Regarding Telephone Access to Local Offices of the Social Security Administration*
(Sec. 203 of the House bill and sec. 302 of the conference agreement) .

Present Law

The Omnibus Budget Reconciliation Act of 1990 (P.L. **101-508**), requires SSA to: (a) maintain telephone access to local offices at the level generally available as of September 30, 1989, and (b) relist the numbers of affected offices in local telephone directories. P.L. 101-508 also required the General Accounting Office to report to Congress on the level of public telephone access to local offices following enactment of these requirements.

In September 1991, the GAO reported that SSA had generally complied with the requirement that it relist local office telephone numbers. It also reported that general inquiry lines to the offices to which the provisions of P.L. 101-508 apply had decreased by 30 percent, or 766 lines, below the level that existed on September 30, 1989.

House Bill

The provision would add the following sentence to the current statutory requirement that SSA maintain public access to its local offices at the level generally available on September 30, 1989: **"In** carrying out the requirements of the preceding sentence, the Secretary shall reestablish and maintain in service at least the same number of telephone lines to each such local office as was in place as of such date, including telephone sets for connections to such **lines."**

In addition, the General Accounting Office would be required to make an independent determination of the number of telephone lines to each SSA local office which are in place as of **90** days after enactment and to report its findings to the House Committee on Ways and Means and the Senate Committee on Finance no later than 150 days after enactment.

SSA would be required to maintain its toll-free service at a level at least equal to that in effect on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The provision would require the General Accounting Office

to assess **SSA's** use of innovative technology (including attendant call and voice mail) to increase public telephone access to local Social Security offices (including a separate assessment of the impact of such technology on offices to which public access was curtailed on October 1, 1989.) The conferees expect that, as part of this assessment, GAO will evaluate the telephone access demonstration projects using attendant call and voice mail that SSA has indicated that it is about to begin. A report to the House Committee on Ways and Means and the Senate Committee on Finance would be due no later than January **31**, 1996.

Effective date. --Upon enactment.

5. Expansion of State Option to Exclude Service of Election Officials or Election Workers from Coverage (Sec. 204 of the House bill and sec. 303 of the conference agreement)

Present Law

Election workers who earn less than \$100 per year are subject to three Social Security exclusions: (a) at the option of a State, they may be excluded from the State's voluntary coverage agreement with the Secretary of Health and Human Services (HHS); (b) they are excluded from the requirement that State and local workers hired after March 31, 1986, pay the hospital insurance portion of the Social Security tax (1.45 percent); and (c) they are excluded from the requirement in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) that State and local workers who are neither covered by a State or local retirement system nor by a voluntary agreement pay the full Social Security tax (7.65 percent).

House Bill

These three exclusions would be modified to apply to election workers with annual earnings of up to \$1,000, rather than the current \$100; and the new exempt amount would be indexed for increases in wages in the economy.

Effective date. --The provision would apply to services performed on or after January 1, 1995. Modifications of State voluntary agreements to reflect the higher exclusion for election workers would be effective with respect to services performed in and after the calendar year in which the modification is mailed or delivered by other means to the Secretary.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill except that there would be no adjustments in the threshold for wage increases before January 1, 2000.

Effective date. --The provision would apply to services performed on or after January 1, 1995. Modifications of State voluntary agreements to reflect the higher exclusion for election workers would be effective with respect to services performed in and after the calendar year in which the modification is mailed or delivered by other means to the Secretary.

6. Use of Social Security Numbers By States and Local Governments and Federal District Courts for Jury Selection Purposes
(Sec. 205 of House bill and sec. 304 of the conference agreement)

Present Law

The Privacy Act of 1974 prohibits States from requiring individuals to provide Social Security numbers for identification purposes unless the State was doing so prior to January 1, 1975, or the State is specifically permitted to do so under Federal law. The Social Security Act currently authorizes States to use the Social Security number in administration of any tax, general public assistance and driver's license or motor vehicle registration law within its jurisdiction. Other Federal statutes authorize the State use of the Social Security number for other purposes.

Currently, courts utilize jury source lists within their jurisdiction to select jurors. Source lists (most commonly made up of lists of licensed drivers and registered voters) are usually computer tapes merged by the courts to form one pool--or master list--from which jurors are selected.

States which are permitted under current law to collect Social Security numbers for purposes such as driver's licenses and voter registration are not allowed to use those Social Security numbers for other purposes such as refining jury selection master lists to identify and eliminate duplicate names, unless the court was using the Social Security number for that purpose before the Privacy Act took effect.

Current law likewise prevents State and Federal Courts from using the Social Security number to run the merged list against computerized lists of convicted felons in order to eliminate these individuals from jury pools.

House Bill

States and Federal District Courts would be permitted to use Social Security numbers which have already been collected for purposes permitted under current law to eliminate duplicate names and names of convicted felons from jury source lists. Any Federal law enacted prior to enactment of this provision which is inconsistent with the above policy would be null, void and of no effect.

Effective date. --The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective **date**.--The provision would be effective upon enactment.

7. Authorization for **All** States to *Extend Coverage To State and Local Police Officers and Firefighters Under Existing Coverage Agreements*
(Sec. 206 of the House bill and sec. 305 of the conference agreement)

Present Law

In general, employees of State and local governments who participate in a public retirement system can be brought under Social Security by means of voluntary agreements entered into by the States with the Secretary of Health and Human Services.

However, the State option to obtain Social Security coverage for police officers and firefighters who are under a public retirement system applies only in 24 States that are named in the Social Security Act. (An additional option applies with respect to firefighters only: any State may obtain coverage for them if the governor certifies that it would improve the overall benefit protection of firefighters in the coverage group and a referendum is held among the group under authorization of the State.) The Act also provides that, in the 24 named States, Social Security coverage can be obtained only after a State-sponsored referendum.

House Bill

The provision would extend to all States the option to provide police officers and firefighters who participate in a public retirement system with Social Security coverage under their voluntary agreements with the Secretary of HHS. The existing requirement for a referendum held under the authority of the State would continue to apply.

Effective date. --The provision would apply with respect to modifications filed by States after enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would apply with respect to modifications filed by States after enactment.

8. *Limited Exemption For Canadian Ministers From Certain Self-Employment Tax Liability*
(Sec. 207 of the House bill and sec. 306 of the conference agreement)

Present Law

Section 233(c)(1) of the Social Security Act authorizes the President to enter into "totalization agreements" with foreign countries to coordinate entitlement to Social Security benefits in the U.S. with pension benefits in those foreign countries. The law requires that international agreements concluded pursuant to that section provide for the elimination of dual coverage of work under the Social Security systems of the United States and another country.

Article V(7) of the totalization agreement between the United States and Canada provides that individuals considered self-employed by the United States who are American citizens but are residents of Canada are covered only under the Canadian Pension Plan.

Under the Social Security Act, an individual who is duly ordained, commissioned, or licensed minister of a church or a member of a religious order is generally considered **self-**employed for Social Security payroll tax purposes and subject to SECA taxes.

The Canadian social insurance program treats ministers as employees of the church rather than self-employed.

Prior to the 1984 totalization agreement with Canada, duly ordained and licensed ministers who were American citizens, but residents of Canada, were required to pay SECA taxes to the United States and Social Security taxes to Canada.

In some cases, ministers who were American citizens, ut residents of Canada, failed to file tax returns or pay SECA tax believing that they were not required to do so because they were paying into the Canadian Pension Plan as resident of Canada. The Internal Revenue Service has assessed taxes and penalties against those ministers who failed to file a return and pay the required taxes prior to the 1984 agreement.

House Bill

The provision would exempt ministers who failed to pay SECA taxes in the United States on earnings from services performed in Canada for a period before the 1984 totalization agreement between the United States and Canada went into effect, and who were required to pay social insurance taxes in Canada on such earnings, from the payment of such taxes or

related penalties, owed to the United States.

The ministers' Social Security earnings records would not be credited for years in which the SECA tax was not paid.

Effective date. --The provision would be effective for individuals who meet the requirements of the statute and who file a certificate with the Internal Revenue Service within 180 days after the IRS issues regulations implementing this provision. The certificate shall be effective for taxable years **1979** through 1984.

The Social Security benefit for current Social Security beneficiaries who file certificates under this provision, would be recomputed for months following approval of the certificate of exemption.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective for individuals who meet the requirements of the statute and who file a certificate with the Internal Revenue Service within 180 days after the IRS issues regulations implementing this provision. The certificate shall be effective for taxable years 1979 through 1984.

The Social Security benefit for current Social Security beneficiaries who file certificates under this provision would be recomputed for months following approval of the certificate of exemption.

9. *Exclusion of Totalization Benefits from the Application of the Windfall Elimination Provision*
(Sec. 208 of the House bill and sec. 307 of the conference agreement)

Present Law

The President is authorized to enter into "**totalization agreements**" with foreign countries. If an individual has worked under Social Security systems in both the U.S. and a foreign country with which the U.S. has such an agreement, but has not worked long enough to qualify for a benefit, a totalization agreement allows the individual's coverage under both systems to be combined, or "**totalized**," in order for one country (or both) to pay a benefit. Benefits paid under a totalization agreement are generally prorated to take account of the fact that the person did not work for an entire career under the system that is paying benefits.

The windfall elimination provision (WEP) is applied to the computation of Social Security benefits for workers who are eligible for both Social Security and a pension from work not covered by Social Security. Under the WEP, a different benefit formula yielding a lower amount is used to calculate the worker's Social Security benefit.

With respect to individuals who have worked under Social Security systems in both the United States and a foreign country with which the United States has a totalization agreement, the WEP applies: 1) in the computation of some U.S. totalization benefits, and 2) in the computation of regular U.S. Social Security benefits if the individual receives a foreign totalization benefit.

House Bill

The provision would disregard the windfall elimination provision in computing any U.S. totalization benefit, and in computing the amount of a regular U.S. benefit of an individual who (1) receives a foreign totalization benefit based in part on U.S. employment and (2) does not receive any other pension which is based on non-covered employment.

Effective date. --The provision would be effective with respect to benefits payable for months after January, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective with respect to benefits payable for months after December, 1994.

10. *Exclusion of Military Reservists from Application of the Government Pension Offset and the Windfall Elimination Provisions*
(Sec. 209 of the House bill and sec. 308 of the conference agreement)

Present Law

The Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) are intended to reduce Social Security benefits payable to an individual who qualifies for both a Social Security benefit and a pension based on employment not covered by Social Security.

The WEP reduces a worker's Social Security retirement or disability benefit in cases where the worker is receiving both a Social Security benefit and a pension based on employment not covered by Social Security. The **WEP** is designed to eliminate the windfall resulting from the weighted Social Security benefit formula which is intended to replace a higher proportion of wages for low-earning workers than for **high-earning** workers.

Active military service became covered under Social Security in 1957. Inactive duty by reservists (such as weekend drills) became covered under Social Security in 1988. A pension based on either type of service (active or inactive), if performed before **1957**, does not trigger the WEP. The only military pension which triggers the **WEP** is a pension based on inactive duty after 1956 and before 1988.

Under the GPO, spouse's and **widow(er)'s** benefits received by an individual based on his or her spouse's Social **Security-**covered work are reduced by two-thirds of the amount of any government pension to which the individual is entitled based on his or her own work in a government job not covered under Social Security.

House Bill

An individual's receipt of a pension based wholly on service performed as a member of a uniformed service, whether on active or inactive duty and whether performed prior to 1988 or not, would not trigger application of the GPO and WEP to the individual's Social Security benefits.

Effective date. --The provision would be effective with respect to benefits payable for months after January, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective with respect to benefits payable for months after December, 1994.

11. *Repeal of the Facility-of-Payment Provision*
(Sec. 210 of the House bill and sec. 309 of the conference agreement)

Present Law

As a general rule; when an individual receiving benefits as the dependent of a worker has a deduction in his or her benefits -- for example, due to his or her own earnings exceeding the earnings test exempt amount -- and the Maximum Family Benefit rule applies, the withheld benefits are redistributed and paid to other dependents. (The Maximum Family Benefit, or MFB, is a limit on the total amount of benefits which can be paid on a worker's record to the worker and his or her dependents.)

However, if all of the dependents are living in the same household, the affected individual's benefit check is not actually withheld; instead, the individual receives a notice from the Social Security Administration accompanying the benefit check. This notice explains that the beneficiary is subject to a benefit deduction and should not actually receive the benefit check. However, the benefit is being paid with the understanding that it is for the use and benefit of the other dependent beneficiaries. This procedure is known as the facility-of-payment provision.

In cases where all the dependent beneficiaries are not residing in the same household, the facility-of-payment provision does not apply and the withheld benefits are redistributed and paid directly to the remaining dependents. .

House Bill

The facility-of-payment provision would be repealed. As a result, a beneficiary who is subject to a deduction would have his or her benefits withheld, and the withheld amount would be redistributed and paid directly to the other dependents.

Effective date. --The provision would be effective for benefits payable for months after December, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective for benefits payable for months after December, 1995.

12. *Maximum Family Benefits in Guarantee Cases*
(Sec. 211 of the House bill and sec. 310 of the conference agreement)

Present Law

A guarantee is provided for workers who receive disability benefits, then stop receiving disability benefits, and subsequently become reentitled to benefits due to death, retirement or disability. This "**subsequent** entitlement guarantee" provides that the basic benefit amount (the Primary Insurance Amount, or **PIA**) of a worker who becomes reentitled to benefits or dies (thereby entitling his or her survivors) cannot be less than the **PIA** in effect in the last month of the worker's prior entitlement to disability benefits.

Due to a drafting error in the 1977 Social Security Amendments, the guarantee does not extend to the Maximum Family Benefit (**MFB**) payable on the worker's record, which is determined based upon the **PIA**. (The **MFB** is a limit on the total amount of benefits which may be paid on a worker's record to the worker and his or her dependents.) As a result, the **MFB** which is payable when the worker becomes reentitled to benefits or dies may be less than the **MFB** payable in the last month of the worker's prior entitlement to disability benefits.

House Bill

The provision would make a conforming change in the Maximum Family Benefit, so that the guaranteed **PIA** would be the basis for calculating the guaranteed Maximum Family Benefit.

Effective date. --The provision would be effective for the **MFB** of workers who become reentitled to benefits or die (after previously having been entitled) after January, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective for the **MFB** of workers who become reentitled to benefits or die (after previously having been entitled) after December, 1995.

11. *Repeal of the Facility-of -Payment Provision*
(Sec. 210 of the House bill and sec. 309 of the conference agreement)

Present Law

As a general rule, when an individual receiving benefits as the dependent of a worker has a deduction in his or her benefits -- for example, due to his or her own earnings exceeding the earnings test exempt amount -- and the Maximum Family Benefit rule applies, the withheld benefits are redistributed and paid to other dependents. (The Maximum Family Benefit, or MFB, is a limit on the total amount of benefits which can be paid on a worker's record to the worker and his or her dependents.)

However, if all of the dependents are living in the same household, the affected individual's benefit check is not actually withheld; instead, the individual receives a notice from the Social Security Administration accompanying the benefit check. This notice explains that the beneficiary is subject to a benefit deduction and should not actually receive the benefit check. However, the benefit is being paid with the understanding that it is for the use and benefit of the other dependent beneficiaries. This procedure is known as the facility-of-payment provision.

In cases where all the dependent beneficiaries are not residing in the same household, the facility-of-payment provision does not apply and the withheld benefits are redistributed and paid directly to the remaining dependents.

House Bill

The facility-of-payment provision would be repealed. As a result, a beneficiary who is subject to a deduction would have his or her benefits withheld, and the withheld amount would be redistributed and paid directly to the other dependents.

Effective date. --The provision would be effective for benefits payable for months after December, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective for benefits payable for months after December, 1995.

12. *Maximum Family Benefits in Guarantee Cases*
(Sec. 211 of the House bill and sec. 310 of the conference agreement)

Present Law

A guarantee is provided for workers who receive disability benefits, then stop receiving disability benefits, and subsequently become reentitled to benefits due to death, retirement or disability. This "subsequent entitlement guarantee" provides that the basic benefit amount (the Primary Insurance Amount, or **PIA**) of a worker who becomes reentitled to benefits or dies (thereby entitling his or her survivors) cannot be less than the **PIA** in effect in the last month of the worker's prior entitlement to disability benefits.

Due to a drafting error in the 1977 Social Security Amendments, the guarantee does not extend to the Maximum Family Benefit (**MFB**) payable on the worker's record, which is determined based upon the **PIA**. (The **MFB** is a limit on the total amount of benefits which may be paid on a worker's record to the worker and his or her dependents.) As a result, the **MFB** which is payable when the worker becomes reentitled to benefits or dies may be less than the **MFB** payable in the last month of the worker's prior entitlement to disability benefits.

House Bill

The provision would make a conforming change in the Maximum Family Benefit, so that the guaranteed **PIA** would be the basis for calculating the guaranteed Maximum Family Benefit.

Effective date. --The provision would be effective for the **MFB** of workers who become reentitled to benefits or die (after previously having been entitled) after January, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective for the **MFB** of workers who become reentitled to benefits or die (after previously having been entitled) after December, 1995.

13. *Authorization for Disclosure of Social Security Administration Information for Purposes of Public or Private **Epidemiological** and Similar Research*
(Sec. 212 of the House bill and sec. 311 of the conference agreement)

Present Law

Current law prohibits Federal agencies from releasing personal information contained in an individual file without the written consent of the individual.

Prior to the 1989 Supreme Court decision *United States Department of Justice v. Reporters Committee for Freedom of the Press* (Reporters Committee), the Social Security Administration (**SSA**) would permit disclosure of personally identifiable information to epidemiological researchers believing that it was permitted to do so under the Freedom of Information Act (**FOIA**). Disclosure of personal information is permitted under FOIA when the public interest served by the disclosure outweighs the privacy interest served by withholding and information.

In the Reporters Committee decision, the Supreme Court restricted disclosures of personally identifiable information under FOIA, ruling that disclosure of personal information serves the public interest only when the requested information gives the public insight into the Federal government's performance of its statutory duties.

As a result of the Reporters Committee decision, SSA has discontinued the practice of disclosing information from its files to epidemiological researchers.

Epidemiological research examines specific risk factors (such as exposure to chemical agents or specific medical treatments) that may cause disease by measuring the effect of these factors on a known population.

House Bill

The provision would require SSA, under certain circumstances, to disclose limited personally identifiable information for epidemiological research purposes only, and it would permit the Secretary of the Treasury to provide such information to SSA for purposes of complying with such requirement.

Under the provision, SSA would be required to comply with requests for information showing whether an individual is alive or deceased. The requester would be required to meet two conditions:

(1) the information would be used for epidemiological or similar research which the Secretary determined showed a reasonable promise of contributing to a national health interest; and

(2) the requester agrees to reimburse the Secretary for providing such information and agree to comply with limitations on safeguarding and rerelease or redisclosure of such information, as specified by the Secretary. The Secretary would not be required to comply with a request for information if doing so would constitute a violation of a contract entered into with a State for the provision by the State of death information.

The Secretary of the Treasury would be permitted to provide such information to SSA for purposes of complying with such a requirement.

Effective date. --The provision would apply to requests for information made after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would apply to requests for information made after the date of enactment.

14. *Misuse of Symbols, **Emblems** or Names in Reference to Social Security Administration, Department of Health and Human **Services**, or Department of Treasury*
(Sec. 213 of the House bill and sec. 312 of the conference agreement)

Present Law

In 1988, Congress enacted a provision prohibiting the use of words, letters, symbols and emblems of the Social Security Administration (**SSA**) and the Health Care Financing Administration (**HCFA**) in a manner that the user knows or should know would convey the false impression that such an item was approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration or the Department of Health and Human Services, or that the user has some connection with, or authorization from, these agencies.

The law permits the Secretary of Health and Human Service (**HHS**) to impose civil monetary penalties not to exceed \$5,000 per violation or, in the case of a broadcast or telecast, \$25,000 per violation. The total amount of penalties which may be imposed is limited to \$100,000 per year.

Amounts collected by the Secretary are deposited as miscellaneous receipts of the Treasury of the United States.

There is no provision in present law prohibiting the use of titles, symbols, emblems, and names of the Department of the Treasury (and its subsidiary agencies) in connection with advertisements, mailings, solicitations, or other business activities.

House Bill

The provision would amend current law to:

- (a) eliminate the annual cap on penalties;
- (b) also prohibit the use of words and letters of the Department of Health and Human Services, Supplemental Security Income Program, or Medicaid, and the symbols or emblems of the Department of Health and Human Services;
- (c) define a "**violation**," with regard to mailings, as each individual piece of mail in a mass mailing;
- (d) Further prohibit the use of names, letters or emblems of SSA, HCFA, or HHS in a manner that reasonably could be interpreted to convey a relationship with these agencies;
- (e) exempt from the prohibition the use by any State agency or instrumentality of a State, or political subdivision of any words, letters, symbols, or emblems which identify an agency or instrumentality of the State or political subdivision;

(f) repeal the present law **requirement** that the Department of Health and Human Services obtain a formal declination from the Department of Justice (DOJ) before pursuing a civil monetary penalty case under this provision;

(g) provide that penalties collected by the Secretary for violations of this provision would be deposited in the Old-Age and Survivors Insurance, Health Insurance or Supplementary Medical Insurance Trust Funds as applicable;

(h) stipulate that no person may reproduce, reprint, or distribute for a fee any form, application, or other publication of the Social Security Administration unless such person has obtained specific written authorization for such activity in accordance with regulations prescribed by the Secretary;

(i) provide that any determination of whether there is a violation of this provision shall be made without regard to a disclaimer;

(j) require the Commissioner of Social Security and the HHS Secretary to issue three reports to the Committee on Ways and Means and the Committee on Finance on the operation of section 1140 as applicable. The report would specify: (1) the number of complaints of violations of section **1140** received by the Social Security Administration or the Department of Health and Human Services during the period covering the report; (2) the number of cases in which a notice of violation of section 1140 was sent by the Social Security Administration or the Department of Health and Human Services during the period covering the report requesting that an individual cease activities in violation of this section; (3) the number of cases in which a civil monetary penalty was formally proposed in a demand letter during the period covering the report by the Social Security Administration or the Department of Health and Human Services; (4) the total amount of civil monetary penalties assessed under this section during the period covered by the report by the Social Security Administration or the Department of Health and Human Services; (5) the number of requests for hearings filed during the period covering the report pursuant to subsection (c) (1) of this section and section **1128A(c)** (2) by the Social Security Administration or the Department of Health and Human Services; (6) the disposition during the period covering the report of hearings filed pursuant to sections **1140(c) (1)** and **1128A(c) (2)**, and (7) the total amount of civil monetary penalties collected under this section and deposited into the Federal Old-Age and Survivors Insurance, Health Insurance and Supplementary Medical Insurance Trust Funds, as applicable, during the period covering the report. The reports would be due December 1, 1995, December 1, 1997, and December 1, 1999;

(k) specify that the provisions in section 1140 may be enforced by the Office of Inspector General of the Social Security Administration or the Office of Inspector General of the Department of Health and Human Services. The provisions

for Social Security and the Department of Health and Human Services would be effective for violations occurring after March 31, 1995.

The provision would prohibit the use in advertisements, solicitations, and other business activities of words, abbreviations, titles, letters, symbols, or emblems associated with the Department of the Treasury (and services, bureaus, offices or subdivisions of the Department, including the Internal Revenue Service) in a manner which could reasonably be interpreted as conveying a connection with or approval by the Department of the Treasury.

The bill would establish civil penalty of not more than \$5,000 per violation (or not more than \$25,000 in the case of a broadcast or telecast). In addition, the bill would establish a criminal penalty of not more than \$10,000 (or not more than \$50,000 in the case of a broadcast or telecast) or imprisonment of not more than one year, or both, in any case in which the prohibition is knowingly violated. Any determination of whether there is a violation would be made without regard to the use of a disclaimer of affiliation with the Federal Government. The Secretary of the Treasury would be required to provide to the Committee on Ways and Means and the Committee on Finance, no later than May 1, 1996, a report on enforcement activities relating to the implementation of the provision.

Effective date. --The provisions would apply with respect to violations occurring after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provisions would apply with respect to violations occurring after the date of enactment.

15. *Increased Penalties for Unauthorized Disclosure of Social Security Information*
(Sec. 214 of the House bill and sec. 313 of the conference agreement)

Present Law

Each year, the Social Security Administration (**SSA**) receives and maintains earnings information, including the names and addresses of employers, on over **130** million working Americans in its computer system. Employers are required to file annually with the Social Security Administration copies of their workers' W-2 statements. The statements contain the worker's Social Security numbers and the amount of wages the workers received during the year. In addition, each SSA file contains an individual's birth certificate information, such as date of birth, father's name and mother's maiden name. For those receiving Social Security benefits, the file contains a current address and monthly benefit amounts.

The Social Security Act includes provisions which prohibit the unauthorized disclosure of information contained in Social Security Administration files. The Act provides that any person who violates these provisions and makes an unauthorized disclosure can be found guilty of a misdemeanor and, upon conviction, punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both.

House Bill

The provision stipulates that unauthorized disclosure of information and fraudulent attempts to obtain personal information under the Social Security Act would be a felony. Each occurrence of a violation would be punishable by a fine not exceeding \$10,000 or by imprisonment not exceeding five years, or both.

Effective date. --The provision would apply to violations occurring on or after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would apply to violations occurring on or after the date of enactment.

16. *Increase in Authorized Period for Extension of Time to **File** Annual Earnings Report*
(Sec. 215 of the House bill and sec. 314 of the conference agreement)

Present Law

In general, individuals under age 70 who receive Social Security retirement or survivors benefits must file an annual report of their earnings with the Social Security Administration for any taxable year in which their earnings or wages exceed the annual exempt amount of earnings under the Social Security earnings test. These reports are due to be filed by the same date as Federal income tax returns, the fifteenth day of the fourth month after the close of the taxable year (normally April 15). Individuals may be granted a reasonable extension of time for filing an earnings report if there is a valid reason for delay, but not more than 3 months. An extension of time for filing an income tax return may be granted for up to 4 months.

House Bill

The time for which an extension could be granted for filing an earnings report would be increased to 4 months.

Effective date. --The provision would be effective with respect to reports of earnings for taxable years ending on or after December 31, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective with respect to reports of earnings for taxable years ending on or after December 31, 1994.

17. *Extension-of Disability Insurance Program Demonstration Project Authority*
(Sec. 216 of the House bill and sec. 315 of the conference agreement)

Present Law

Section 505(a) of the Social Security Disability Insurance Amendments of 1980 (P.L. **96-265**), as extended by the Omnibus Budget Reconciliation Act of 1989 (P.L. **101-508**), authorizes the Secretary of Health and Human Services to waive compliance with the benefit requirements of titles II and **XVIII** for purposes of conducting work incentive demonstration projects to encourage disabled beneficiaries to return to work. The authority to waive compliance applies to projects initiated prior to June 10, 1993. A final report is due no later than October 1, 1993.

House Bill

The Secretary's authority to initiate disability work incentive demonstration projects that waive compliance with benefit provision (as provided in P.L. 96-265) would be extended through June 9, 1996. A final report would be due no later than October 1, 1996.

Effective date. --The provisions would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provisions would be effective upon enactment.

18. *Cross-Matching of Social Security Account Number Information and Employer Identification Number Maintained by the Department of Agriculture*
(Sec. 217 of the House bill and sec. 316 of the conference agreement)

Present Law

The Department of Agriculture is allowed to collect and maintain a list of names, Social Security numbers and employer identifications numbers of the **owners** and officers of retail grocery stores which redeem food stamps. The list is used to keep track of grocery store operators who have been sanctioned for violations under the Food Stamp Act.

House Bill

The provision would permit the Secretary of Agriculture to share the list of names and identifying numbers with other Federal agencies which otherwise have access to Social Security account numbers for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for investigating violations of other Federal laws, or enforcement of such laws. The Secretary of Agriculture must restrict access to Social Security account numbers obtained pursuant to this provision to officers and employees of United States whose duties or responsibilities require access for such purposes.

Effective date. --The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective upon enactment.

19. *Certain Transfers to Railroad Retirement Account Made Permanent*
(Sec. 218 of **the House bill and sec.** 317 of the conference agreement)

Present Law

A portion of the railroad retirement tier 2 benefits are included in gross income of recipients (similar to the treatment accorded recipients of private pensions) for Federal income tax purposes. The proceeds from the income taxation of railroad tier 2 benefits received prior to October 1, 1992, have been transferred from the General Fund of the Treasury to the railroad retirement account. Proceeds from the income taxation of benefits received after September 30, 1992, remain in the General Fund.

House Bill

The transfer of proceeds from the income taxation of railroad retirement tier 2 benefits from the General Fund of the Treasury to the railroad retirement account would be made permanent.

Effective date. --The provision would be effective for income taxes on benefits received after September 30, 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective for income taxes on benefits received after September 30, 1992.

20. *Authorization for Use of Social Security Account Numbers by Department of Labor in Administration of Federal Workers' Compensation Laws*
(Sec. 219 of the House bill and sec. 318 of the conference agreement)

Present Law

The Privacy Act of 1974 prohibits a Federal agency from using the Social Security number as an identification number unless it is specifically permitted by statute. There is no specific statutory authorization to permit the Department of Labor to use the Social Security number as an identification number.

House Bill

The provision would amend section 205 of the Social Security Act to permit the Department of Labor to use the Social Security number as the claim identification number for workers' compensation claims.

Effective date. --The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would be effective upon enactment.

21. Coverage under FICA of Federal **Employees** Transferred Temporarily to International Organizations (Sec. 220 of the House bill and sec. 319 of the conference agreement)

Present Law

Federal employees participating in the Civil Service Retirement System are entitled to retain retirement coverage rights and benefits when they are temporarily loaned by a Federal agency to an international organization.

The definition of employment in the Social Security Act prohibits Federal employees participating in the Federal Employees Retirement System (**FERS**) or the Foreign Service Pension System (**FSPS**) (which in general provide Federal employees hired on or after January 1, 1984, with both Social Security coverage and a supplemental government pension) from continuing to contribute to Social Security if they transfer to international organizations.

House Bill

The provision would amend section 210 of the Social Security Act and section 3121 of the Internal Revenue Code of 1986 to cover, in certain cases, service performed in the employ of an international organization pursuant to a transfer from a Federal agency under the definition of employment. Under this provision, the employing agency would be responsible for reporting the employee's wages and for paying the employer's share of FICA. The employee would be responsible for paying the employee's share.

Effective date. --The provision would apply with respect to service performed after the calendar quarter following the calendar quarter of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --The provision would apply with respect to service performed after the calendar quarter following the calendar quarter of enactment.

22. *Extension of the FICA Tax Exemption and Certain Tax Rules to Individuals who Enter the United States under a VISA Issued under Section 101 of the Immigration and Nationality Act*
(Sec. 221 of the House bill and sec. 320 of the conference agreement)

Present Law

The Mutual Educational and Cultural Exchange Act of 1961 (P.L. 87-256) established section **101(a)(15)(J)** of the Immigration and Nationality Act under which so-called **J** visas are authorized to be issued for a limited period of time to aliens who are bona fide students, scholars, trainees, teachers, professors, research assistants, specialists, or leaders in a field of specialized knowledge or skill.

The 1961 Act also provided that wages paid to individuals who enter the country on a **J** visa would be exempt from FICA, FUTA, and Railroad Retirement Act taxes. In addition, employers who hire **J** visa holders are not required to receive certification from the Department of Labor that an insufficient number of U.S. workers are available to meet their needs.

The Immigration Act of 1990 added section **101(a)(15)(Q)**, which provides for the issuance of a visa to "**an** alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed **15** months) to the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers."

The Internal Revenue Code presently does not exempt wages paid to individuals who enter the U.S. under Q visas from FICA, FUTA, or Railroad Act taxes.

House Bill

The provision amends the Internal Revenue Code to exclude wages paid to aliens holding Q visas from FICA, FUTA, and Railroad Retirement Act taxes, and, for income tax purposes, treats their income in the same manner as income received by aliens holding visas issued pursuant to section **101(a)(15)(J)**.

Effective date. --The provision would take effect with the calendar quarter following the calendar quarter of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date.--The provision would take effect with the calendar quarter following the calendar quarter of enactment.

23. Study *Rising Cost of Disability Insurance Benefits*
(Sec. 222 of the House bill)

Present Law

In their 1993 and 1994 annual reports to Congress, the Social Security Board of Trustees reported that, under intermediate economic assumptions, the Disability Insurance Trust Fund would become insolvent during 1995. To address this problem, the Trustees recommended a reallocation of the Social Security payroll tax rate from the OASI Trust Fund to the DI Trust Fund.

In addition, to the reallocation, the Board recommended that a significant research effort be undertaken to establish whether higher-than-expected DI program costs are a temporary trend or longer-term phenomenon.

House Bill

The Secretary of Health and Human Services would be required to conduct a comprehensive study of the reasons for rising costs in the Disability Insurance program. The study would determine the relative importance of: (a) increased numbers of applications for benefits, (b) higher rates of benefit allowances, and (c) decreased rates of benefit terminations in increasing DI program costs. It would also identify, to the extent possible, underlying social, economic, demographic, programmatic, and other trends responsible for changes in DI applications, allowances, and terminations. No later than December 31, 1994, the Secretary would be required to issue a report to the House Committee on Ways and Means and the Senate Committee on Finance summarizing the results of the study and making any recommendations for legislative changes which the Secretary determines appropriate. The study would be due no later than December 31, 1994.

Effective date. --Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision).

- 24. Commission on Childhood Disability
(Sec. 223 of House bill and sec. 202 of the conference agreement)

Present Law

No provision.

House Bill

The Secretary would be directed to appoint a Commission on the Evaluation of Disability in Children, consisting of not less than 9 but not more than 15 **members** including recognized experts in relevant fields of medicine; recognized experts in psychology, education and rehabilitation, law, administration of disability programs; social insurance; and other experts determined appropriate by the Secretary.

The Commission would conduct a study, in consultation with the National Academy of Sciences, on the effect of the current Supplemental Security Income definition of disability, as it applies to children under the age of 18 and their receipt of services, including the effect of using an alternative definition.

--- The study shall include issues of (1) whether the need by families for assistance in meeting the high costs of medical care for children with serious physical or mental impairments might appropriately be met through expansion of Federal health assistance programs; (2) the feasibility of providing benefits to children through non-cash means, including vouchers, debit cards, and electronic benefits transfer systems; (3) the extent to which SSA can involve private organizations in an effort to increase the provision of social services, education, and vocational instruction with the aim of promoting independence and the ability to engage in substantial gainful activity; (4) the feasibility of providing retroactive SSI benefits pursuant to the **Zebley** decision on a prorated basis or by means of a packaged trust; (5) methods to increase the extent to which benefits are used in the effort to assist the child achieve independence and engage in substantial gainful activity; and (6) such other issues as the Secretary determines appropriate.

The Commission would submit a report on the results of this study, together with any recommendations, to the Committees on Finance and Ways and Means, no later than November 30, 1995.

Effective date. --Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill, but broadens the study to include: **(1)** the desirability and methods of increasing-the extent to which benefits are **used** in the effort to assist disabled children in achieving independence and engaging in substantial gainful activity, and **(2)** the effects of the current program on disabled children and their families.

The conferees expect that the Commission, in conducting its study, will hold public hearings to hear the views and perspectives of all parties who are interested in or concerned about the SSI childhood disability program, including parents of children who receive benefits, educators, and representatives of non-profit organizations-serving children with physical and mental disabilities.

Effective date. --Upon enactment.

25. *Disregard of Deemed Income and Resources of Ineligible Spouse in Determining Continued Eligibility under Section 1619*
(Sec. 224 of House bill)

Present Law

Under section 1619(a) of the Social Security Act, SSI benefits continue for those working and earning above the substantial gainful activity level, which is currently \$500 per month, as long as there is no medical improvement in the disabling condition. Benefits decline at a rate of \$1 for each additional \$2 earned after disregarding the first \$65 of earned income and the first \$20 of unearned income. In general, the point at which a recipient, who has at least \$20 in monthly unearned income, would be ineligible for cash SSI benefits in a month would be the sum of \$85 plus twice the sum of the Federal benefit and State supplement, if any. For 1994, the "breakeven point" for an individual is \$977 per month without a State supplement. For States with a supplement, the breakeven point increases by \$2 for every \$1 in State supplement.

Under section 1619 (b), SSI recipients can continue on Medicaid even if their earnings cause their income to exceed the breakeven point and they no longer receive cash SSI benefits. In 209(b) States, this does not apply. However, in most States, Medicaid continues as long as the SSI recipient: (1) continues to be blind or disabled; (2) except for earnings, continues to meet all of the eligibility requirements; (3) is seriously inhibited from continuing work by termination of eligibility of Medicaid; and (4) has earnings insufficient to provide a reasonable equivalent to cash SSI benefits, Medicaid, and publicly funded attendant care that would have been available if he or she did not have earnings.

In making determinations on the fourth criterion above, SSA compares the individual's gross earnings to a "threshold" amount. The threshold amount is the sum of the break even level for gross earnings of cash benefits for an individual with no other income living in his or her own household plus the average Medicaid expenditures for disabled SSI cash recipients for the State of residence. If the recipient's gross earnings exceeds the threshold, an individualized threshold is calculated which considers the person's actual Medicaid use, State supplement rate, and publicly-funded attendant care. In other words, under the fourth criterion, Medicaid eligibility continues until the individual's earnings reach a higher plateau which takes into account the person's ability to afford medical care, as well as his or her normal living expenses.

An eligible spouse's income and resources are deemed to

include the income and resources of his or her ineligible spouse with whom he or she lives. In some cases, SSI recipients who are working and are eligible for Medicaid under **section 1619(b)** may become ineligible for Medicaid because they marry a person who has sufficient income to render the SSI recipient ineligible for Medicaid. In other cases, the SSI recipient's ineligible spouse might receive additional income which makes the SSI recipient ineligible for Medicaid under the deeming rules.

House Bill

In determining an individual's eligibility for Medicaid pursuant to section 1619(b), there would be disregarded (in addition to amounts disregarded under current law): **(1)** the net income of the individual's ineligible spouse to the extent the spouse's net income does not exceed twice the threshold amount determined for the individual, and **(2)** the ineligible spouse's resources up to the State's spousal impoverishment resource amount (as defined in section **1924(f)(2)** of the Social Security Act).

Effective date. --October 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (*i.e.*, no provision).

26. **Plans for Achieving Self-Support Not Disapproved
Within 60 Days to be Deemed Approved**
(Sec. 225 of House bill)

Present Law

Under a plan for achieving self-support (PASS) certain income and resources are not taken into account in determining eligibility for or the amount of SSI benefits. **An** approved PASS allows a person who is blind or disabled to set aside the income and resources needed to achieve a work goal. The funds set aside can be used to pay for education, vocational training, or starting a business. The recipient must have a feasible work goal, a specific savings and spending plan, and must provide for a clearly identifiable accounting for the funds which are set aside. The individual must then follow the plan and negotiate revisions as needed.

SSA regulations provide the basic rules for a PASS. Under these rules, the individually designed plan can be for an initial period of at most 18 months, but an **18-month** extension can be obtained. For participants engaged in lengthy education or training programs, an additional U-month extension can be obtained. All plans must be approved by SSA before the income and resource exclusions can be excluded. If the recipient attains his or her goal, fails to follow the plan, or time expires, the income and resource exclusions are again countable.

House Bill

A plan for achieving self-support (PASS) would be deemed to be approved if SSA has not acted upon a recipient's application within 60 days and shall be deemed to be approved until 6 months after subsequent disapproval.

Effective date. --January 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision), but the conferees request that the General Accounting Office conduct a study of the PASS program and procedures since little information is available at this time. The study should include, to the extent available, data for the last five years that show the number and characteristics of individuals who have applied for a plan, the number and characteristics of those whose plans have been

approved, the kinds of plans that have been approved and their duration, the success of individuals in fulfilling their plans, and the extent to which individuals who have completed a PASS have become economically self-sufficient. The GAO should also study whether improvements can or should be made in the PASS program or in the process used to approve proposed plans. Findings and recommendations should be reported to the Committees on Finance and Ways and Means.

27. *Temporary Authority to Approve a Limited Number of Plans for Achieving Self-Support that Include Housing Goals (Sec. 226 of the House **bill**)*

Present Law

A PASS allows an SSI recipient to shelter income and resources from limits if the funds are set aside to help him or her achieve a work goal. Funds may be set aside for education, vocational training, or starting a business.

House Bill

Plans for achieving self-support would be expanded to include housing goals in addition to the current work goals under a **42-month** demonstration.

A report on activities under this authority would be due within **12** months after the end of the S-year period that begins on January 1, 1995.

Effective date. --January **1, 1995**.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision).

28. *Regulations Regarding Completion of PASS*
(Sec. 227 of the House bill and sec. 203 of the conference agreement)

Present Law

Under current plan for achieving self-support (PASS) regulations, an SSI recipient with a PASS may be eligible for its income and resource exclusions for 18 months, followed by two possible extensions of 18 and 12 months, respectively. An individual involved in a lengthy education program, could receive a PASS for up to 4 years.

House Bill

SSA would be required to take into account the difficulty of achieving self-support based on individual needs in determining the time limit on a PASS.

Effective date. --January 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a clarification instructing SSA to take into account the length of time the individual will need to reach the individual's employment goal within such reasonable period as the Secretary establishes, and other factors as are determined by the Secretary to be appropriate.

Effective date. --January 1, 1995.

29. *Treatment of Certain Grant, Scholarship, or Fellowship
Income*
(Sec. 228 of the House bill)

Present Law

Grant, scholarship, and fellowship income are treated as unearned income. The portion of this kind of income that is received for use in paying the cost of tuition and fees at any educational institution is excluded from income.

House Bill

Grant, scholarship, and fellowship income would be treated as earned income without regard to the purpose of its use.

Effective date. --Applies to eligibility determinations for any month beginning after the second month following the month of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment (i.e., no provision).

30. **SSI Eligibility for Students Temporarily Abroad**
(Sec. 229 of the House bill **and sec.** 204 of the conference agreement)

Present Law

A recipient who is outside the United States for a full calendar month or more and who is not a child living outside the United States with a parent in the military service, is **not** eligible for **SSI** benefits for such month or months. A person who has been outside the United States for **30** consecutive **days** or more is not considered to be back until he or she has spent 30 consecutive days, in the United States. After an absence of 30 consecutive days, SSI eligibility may resume effective with the day following the 30th day of continuous presence in the United States, if the individual continues to meet all other eligibility criteria.

House Bill

SSI recipients who travel outside the United States would be exempt from the calendar month and **30-day** time limit if the absence is (1) temporary, and (2) for the purpose of conducting studies as part of an educational program that is designed to prepare the individual for gainful employment, and is sponsored by a school, college, or university in the United States.

Effective date. --January 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with an amendment limiting eligibility to a period not to exceed one year and only if the program is not available to the individual in the United States. Because of the difficulty faced by the Social Security Administration in administering the **SSI** program while recipients are outside the United States, the conferees intend that this provision will be used sparingly. An example of a qualifying educational program under this provision would be intensive study programs that lead to fluency in a foreign language through immersion in the cultural and social milieu of a country where the language is spoken. Less intensive programs, which are generally available in the United States, would not qualify.

Effective date. --January 1, 1995.

31. *Disregard of Cost-of-Living Increases for Continued Eligibility for Work Incentives*
(Sec. 230 of the House **bill and sec.** 205 of the conference agreement)

Present Law

Under section 504 of the Unemployment Compensation Amendments of 1976 (**P.L. 94-566**), State Medicaid plans **are** required to provide medical assistance to an individual **if** he or she: (1) simultaneously received both Social Security **and** SSI in some month after April 1977; (2) is currently eligible for and receiving OASDI benefits; (3) is currently ineligible for SSI; and (4) receives income that would qualify him or her for SSI after deducting all OASDI cost-of-living adjustment increases received since the last month in which he or she **was** eligible for both OASDI and SSI. The provision is intended to protect the individual against the loss of Medicaid coverage in many States because of **a** cost-of-living increase in Social Security benefits. The provision does not explicitly apply to beneficiaries who have Medicaid eligibility under section 1619(b) of the Social Security Act.

House Bill

This provision amends section 1619(b) of the Social Security Act to explicitly extend to SSI beneficiaries receiving Medicaid under section 1619(b) protection against the loss of Medicaid coverage because of a cost-of-living increase in their Social Security benefits.

Effective date. --Applies to eligibility determinations for months after December, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

Effective date. --Applies to eligibility determinations for months after December, 1994.

32. *Expansion of the Authority of-the Social Security Administration to Prevent, Detect, and Terminate Fraudulent Claims for OASDI and **SSI** Benefits*
(Sec. 231 of the House bill, sec. 306 of the Senate amendment, and sec. 206 of the conference agreement)

- a.** *Prevention of fraud in the SSI program by translators of foreign languages*

Present Law

No provision.

House Bill

A translation into English by a third party of a statement made in a foreign language by an applicant for or recipient of SSI benefits shall not be regarded as reliable unless the third **party**, under penalty of perjury, (1) certifies that the translation is accurate, and (2) discloses the nature and scope of the relationship between the third part and the applicant or recipient.

Effective date.--October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with technical changes, and is expanded to apply to fraud under the OASDI programs.

Effective date.--October 1, 1994.

b. *Civil monetary penalties in SSI and OASDI cases involving fraud*

Present Law

Federal law provides broad authority for imposing civil penalties against persons who submit fraudulent claims to the Government. There are two applicable Federal statutes. The Civil False Claims Act (**CFCA**) requires the Government to use the normal judicial process, whereby the Department of Justice initiates a civil action in Federal Court to impose a penalty. The Program Fraud Civil Remedies Act (**PFCRA**) authorizes an administrative process under which Federal agencies may impose penalties. These statutes are intended to address fraud from a Government-wide perspective, and the process of imposing penalties can be complex and time-consuming. Further, the PFCRA is restricted to initial applications for benefits, in some circumstances, which limits its usefulness for SSI and OASDI purposes.

House Bill

The same authority to impose civil penalties as the Secretary of HHS now has under sections **1128A** of the Social Security Act involving false claims in the Medicare and Medicaid programs would be provided for the SSI program. SSA would have direct authority, after approval by the Department of Justice, to impose civil penalties when an individual or entity has been involved in submitting or causing to be submitted any statement that the individual knows or should know is false or misleading, or knows or should know omits a material fact. Each offense involving the SSI program would be subject to a penalty of not more than \$5,000 and an assessment, in lieu of damages, of not more than twice the amount of benefits paid as a result of such statement or representation. In addition, medical providers or physicians who commit such offenses with respect to the SSI program could be subject to exclusion from participation in the Medicare and Medicaid programs. The process would be similar to that used under section **1128A** with respect to false claims in the Medicare and Medicaid programs. SSA would initiate and investigate cases, refer proposed actions to the Department of Justice for review before proceeding, and adjudicate and impose penalties, assessments, or exclusions. As with section **1128A**, any person adversely affected by a determination could obtain a review of such determination in the United States Court of Appeals.

Effective date. --October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with technical changes, and is expanded to apply to fraud under the OASDI programs.

Effective **date.--October** 1, 1994.

c. SSI' Fraud Considered a Felony

Present Law

SSI fraud is punishable by a fine of no more than \$1,000 or a prison term of no more than one year, a misdemeanor.

House Bill

SSI fraud would be punishable by a fine as determined under the general criminal fine statutes, by a prison term of not more than five years, or both. This provision conforms the specific crime of SSI fraud to the criminal sanctions currently available for Social Security Disability Insurance fraud.

Effective date. --October 1, 1994.

Senate Amendment

Same as House bill.

In addition, title II is amended to provide that **any** person or other entity who is convicted of a violation involving the provision of false statements or representations, if the violation is committed in the role as, or application to become, a representative payee on behalf of another individual, shall be guilty of a felony and be subject to the same penalties as apply to SSI. In any case in which a court determines that a violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of funds be made to the individual for whom such person or entity was the representative payee.

An individual or entity convicted of a felony under the representative payee requirements of title XVI may not be certified as a payee under title II.

In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under section 208 or section 1632 of the Social Security Act (relating to fraud), the Secretary may exclude such person or entity from participation in any program under title II, V, XVI, XVIII, XIX, and XX of the Social Security Act, and any other Federal program as provided by law.

Conference Agreement

The conference agreement follows the House bill with an amendment prohibiting persons convicted of SSI fraud from serving as representative payees under title XVI.

-- *Effective date.* --The amendments apply to conduct occurring on or after October 1, **1994**.

- d. *Authority to Redetermine Eligibility in Disability Cases if Fraud is Involved And to Terminate Benefits If There is Insufficient Reliable Evidence of Disability*

Present Law

SSA is only permitted to terminate SSI benefits under well-defined conditions, unless **the benefits were obtained** fraudulently. The statute provides no guidance on the use of this authority.

House Bill

An individual's eligibility for SSI disability benefits shall be immediately redetermined, disregarding any unreliable evidence of disability, if there is reason to believe that fraud was involved in the application for benefits, unless a U.S. Attorney or equivalent State prosecutor certifies, in writing, that to do so would create a substantial risk of jeopardizing any current or anticipated criminal proceeding.

Effective date. --October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with technical amendments and is also expanded to apply to fraud in the OASDI programs.

Effective date. --October 1, 1994.

- e. *Availability of Recipient Identifying Information
From the Inspector General, Social Security
Administration*

Present Law

There is no current statutory requirement for the OIG to provide SSI recipient identifying information obtained during a criminal investigation to SSA for administrative action. such identifying information is transmitted to SSA at such time as the OIG believes it appropriate and often not until the conclusion of a criminal investigation or a Federal or State criminal prosecutorial process. Consequently, SSI benefits continue to be paid during an active investigation or prosecution based on those benefits having been obtained through fraud.

House Bill

The SSA Inspector General would be required to disclose to SSA recipient identifying information as soon as he has reason to believe that any individual, or group of individuals, have secured SSI benefits in a fraudulent manner. This requirement would not apply if a U.S. Attorney or State prosecutor who has jurisdiction to file a criminal action against any of the parties involved certifies that disclosure of SSI recipient information by the IG would jeopardize the criminal prosecution of the individual who is subject of the investigation.

Effective date.--October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with technical amendments and is also expanded to apply to fraud under the OASDI programs.

Effective date.--October 1, 1994.

f. *Authority To Use Available Pre-admission **Immigrant**
and Refugee Medical Information*

Present Law

No provision.

House Bill

SSA would be required to request medical information from the Immigration and Naturalization Service or the Centers for Disease Control which they may have with respect to any **alien** who has applied for SSI benefits to the extent the information is relevant to determining eligibility.

Effective date.--October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with technical amendments.

Effective date. --October 1, 1994.

g. *Annual Reports on Reviews of SSI Cases*

Present Law

No provision.

House Bill

SSA would be required to annually report to the Committee on Ways and Means and the Committee on Finance on the extent to which it has exercised its authority to review SSI cases and the extent to which the cases reviewed were those that involved a high likelihood or probability of fraud.

Effective date.--October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill and is also expanded to apply to fraud under the OASDI programs.

Effective date.--Upon enactment.

h. *Effective Date*

Present Law

No provision.

House Bill

In general, these provisions would take effect on October 1, 1994. The provisions dealing with civil monetary penalties in SSI cases involving fraud, with the treatment of SSI fraud as a felony, and with annual reports of reviews of SSI cases would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

In general, these provisions would take effect on October 1, 1994. The provision dealing with the annual reports of reviews of SSI and OASDI cases would be effective upon enactment.

33. *Disability Review Required for SSI Recipients **Who** are 18 Years of Age .*
(Sec. 232 of the House bill and sec. 207 of the conference agreement)

Present Law

Under current law, all disabled Social Security beneficiaries are required to undergo periodic reviews to determine whether they continue to be disabled. There is no comparable provision in the SSI program.

A needy child under the age of 18 years old who has an impairment of comparable severity with that of an adult may be considered disabled and eligible for SSI benefits. To be found disabled, a child must have a medically determinable impairment that substantially reduces his or her ability to independently, appropriately, and effectively engage in age-appropriate activities. This impairment must be expected to result in death or to last for a continuous period of at least 12 months.

Under the adult disability determination process, individuals whose impairments do not "**meet** or equal" the listings of impairments in regulations are subjected to an assessment of residual functional capacity. SSA determines whether adults are able to do their past work or whether they are able to do any substantial gainful work. If they cannot do either one, they are disabled.

Under the disability determination process for children, individuals whose impairments do not "**meet** or equal" the listings of impairments in regulations are subjected to an individualized functional assessment. This assessment examines whether the children can engage in age-appropriate activities effectively. If it is found that the children's impairments are of comparable severity to an adult's, without assessing past work or ability to do substantial **gainful work**, the children are disabled.

House Bill

SSA would be required to re-evaluate under adult disability criteria the eligibility of children receiving SSI after they reach 18 years old and before they are 19 years old.

Effective date. --Applies to recipients attaining the age of 18 years old in or after the ninth month following the month of enactment.

Senate Amendment

No provision.

Conference Agreement .

The conference agreement follows the House bill with an amendment requiring SSA to conduct **CDRs** for a minimum of **one-third** of the children reaching age 18 in each of fiscal years 1996, 1997, and 1998. SSA will be required to report to Congress **no later than October** 1, 1998 on the activities conducted under this requirement.

Effective date. --October 1, 1995.

34. *Continuing Disability Reviews*
(Sec. 233 of the House bill and sec. 208 of the conference agreement)

Present Law

Title II of the Social Security Act requires the Secretary of Health and Human Services to conduct periodic continuing disability reviews (**CDRs**) of disabled beneficiaries. For those beneficiaries whose impairments are not permanent, **CDRs** must generally be performed every three years. Beneficiaries with permanent disabilities receive **CDRs** at such times as the Secretary determines appropriate.

CDRs are funded as part of the Social Security Administration's administrative budget, which is subject to annual appropriations.

House Bill

The provision would require the Secretary to conduct periodic continuing disability reviews on SSI recipients in the same manner as such reviews are currently required for DI beneficiaries.

Effective date.--October 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with an amendment requiring SSA to conduct **CDRs** for a minimum of 100,000 SSI recipients per year for 3 years. SSA will be required to report to Congress no later than October 1, 1998.

Effective date.--October 1, 1995.

35. *Technical and Clerical Amendments*
(Sec. 234 of the House bill and sec. 321 of the conference agreement)

Present Law

Title II of the Social Security contains a number of typographical errors, erroneous references, circular cross references, inconsistent margination, incorrect punctuation, and references to outdated versions of the Internal Revenue Code. In addition, present law includes certain inconsistent statutory provisions.

House Bill

Technical changes would be made to correct inconsistencies in provisions relating to fees for claimant representatives, rounding procedures for indexing certain program amounts, and deemed average total wages, among others. These corrections would not change the meaning of any section of the Social Security Act.

Effective date.--In general, the provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with an amendment to the attorney fee provision.

Effective date.--In general, the provision would be effective upon enactment.

36. *Exemption from Adjustment in Pass-Along Requirements*
(Sec. 209 of the conference agreement)

Present Law

Section 1618 of the Social Security Act requires that States making supplementary payments to Supplemental Security Income recipients "pass along" cost-of-living increases in the Federal benefit. There are two options for the States in meeting the "pass **along**" requirement: (1) the aggregate spending level option, under which States may make supplementary payments in the current **12-month** period that are no less, in the aggregate, than were made in the previous **12-month** period; or (2) the individual payment level option, under which a State may maintain the supplementary payment levels that were in effect for categories of individual recipients in March 1983.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

For the purpose of determining under the "aggregate spending level **option**," whether a State's expenditures for supplementary payments during a **12-month** period are not less than its expenditures for such payments in the preceding **12-month** period, retroactive SSI payments made to children qualifying under the Zeblev court decision may, pursuant to a State's one-time option, be excluded from the computation of the State's expenditures.

Effective date. --The provision would be effective with respect to increases in the level of SSI benefits whether occurring upon, before, and after the date of enactment.