SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

AND RELATED AMENDMENTS

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

REPORTS, BILLS,
DEBATES, AND ACT

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

PREFACE

This 2 volume compilation contains historical documents pertaining to P.L. 98-460, Social Security Disability Benefits Reform Act of 1984, and related disability amendments.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

Pertinent documents include:

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

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

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SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

MARCH 14, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 3755]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3755) to amend title II of the Social Security Act to provide for reform in the disability determination process, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

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SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

I. Purpose and Scope

The committee's bill also amends Title II of the Social Security Act to provide for necessary reforms in the administration of the social security disability insurance program. The disability insurance program has attracted substantial Congressional attention over the last two years, primarily because of the numbers of beneficiaries whose benefits have been terminated. The review of current beneficiaries that has produced these terminations was mandated by Congress, but was accelerated in pace in March, 1981. There has been no suggestion that those receiving disability benefits should never be examined again, but the committee believes that the process over the last several years has resulted in erroneous termination of benefits for at least some people.

Therefore, the committee's bill addresses three major areas where reform appears to be most critically needed: in the standards for determining eligibility for disability benefits, both for new applicants and more particularly for current beneficiaries being reviewed; in the structure of the administrative process itself; and in the way in which the Social Security Adminstration makes disability policy, both on its own initiative and in conjunction with rulings of the Federal courts. There are in addition several miscellaneous provisions concerning payments to vocational rehabilitation agencies, publication of policies concerning consultative medical examinations, and establishment of new positions for social security staff attorneys.

The overall purpose of the bill is, first, to clarifly statutory guidelines for the determination process to insure that no beneficiary loses eligibility for benefits as a result of careless or arbitrary decision-making by the Federal government. Second, the bill is intended to provide a more humane and understandable application and appeal process for disability applicants and beneficiaries appealing termination of their benefits. Finally, the bill seeks to standardize the Social Security Administration's policy-making procedures through the notice and comment procedures of the Administrative Procedures Act, and to make those procedures conform with the standard practices of Federal law, through aquiescence in Federal Court of Appeals rulings.

The committee is deeply concerned about the erosion of public faith and confidence in the social security disability programs, and in the agency as part of the Federal government, that has occurred as a result of the changes in policies over the last several years. The guidelines established in this bill appear to the committee to be the best way to restore confidence in the program. The committee believes it is crucial to continued public support for the social security program as a whole for the public to understand that the program will be administered according to the law rather than by constantly shifting and possibly arbitrary policies.

II. Summary of Provisions

Standards of Disability

Standard of review for terminations of disability benefits (medical improvement)

Section 101 of the bill requires the continuation of benefits for those individuals whose conditions have not medically improved to the point of ability to perform SGA, with the following exceptions:

(a) benefits may be terminated if new evidence shows the beneficiary has benefited from advances in medical therapy or technology or from any vocational therapy to the point of ability to perform SGA; and

(b) benefits may be terminated if new evidence (including new diagnostic or evaluation techniques not available or used at the original determination) shows the impairment or impairments to be less severe than originally thought.

Section 101 also provides for termination of benefits whether or not the impairment has improved if the person is currently working at the substantial gainful activity (SGA) level, or if the prior determination of entitlement to benefits was either clearly erroneous at the time it was made, or was fraudulently obtained. SSA would be authorized to secure additional medical evidence to reconstruct initial decisions in cases where there is no medical evidence supporting the initial decision.

Study on evalution of pain

Section 102 requires the Secretary, in conjunction with the National Academy of Sciences, to conduct a study concerning the questions of using subjective evidence of pain in determining whether a person is under a disability, and the state of the art of preventing, reducing or coping with pain. A report is to be submitted to the Committee on Ways and Means and the Senate Committee on Finance by April 1, 1985.

Multiple impairments

Section 103 provides that in determinations of disability, the Secretary must consider the combined effect of all of an individual's impairments whether or not each or any impairment would alone be severe enough to qualify the person for benefits.

Disability Determination Process

Temporary moratorium on mental improvement reviews

Section 201 provides for a temporary delay on reviews of all mental impairment disabilities until the listings for mental impairments have been revised in consultation with the Advisory Council, and are published in final form in regulations. Regulations must be published no later than 9 months after the date of enactment. The delay also would be imposed on review of all CDI mental impairment cases after June 7, 1983.

Face-to-face evidentiary hearing

Section 202 provides for the implementation, no later than January 1, 1985, of face-to-face evidentiary interviews at the State agency level for medical termination cases. Under this provision, the State agency would send the beneficiary a preliminary notice of an unfavorable decision and the claimant would have 30 days in which to request a face-to-face meeting before a formal determination is made. The reconsideration level would be abolished for all initial CDI decisions completed after January 1, 1985.

Section 205 also requires the Secretary to initiate demonstration projects with respect to face-to-face evidentiary meetings at the initial level of State agency determination for new applicants and report to the Congress by April 1, 1984, and projects begun no later than July 1, 1984.

Payments of benefits during appeal

Section 203 provides on a permanent basis for the continuation of benefits during appeal in all CDI cases through the decision of the Administrative Law Judge. Where the ALJ's decision is adverse to the beneficiary, such benefit payments would be subject to recoupment as under present law. The provision also requires the Secretary to report to Congress on the impact of the provision by July 1, 1986.

Qualifications of medical professionals

Section 204 provides that no determination that a person is not under a disability be made with respect to mental impairments until a psychiatrist or psychologist employed by the State agency has completed the medical portion of the case review as well as the assessment of residual functional capacity.

Consultative examinations

Section 205 provides that regulations be promulgated regarding consultative examinations.

Miscellaneous Provisions

Application of uniform standards for disability determinations

Section 301 provides that the notice and comment provisions of Section 553 of the Administrative Procedures Act would apply to benefit programs under Title II. The provision leaves in place the existing exceptions in Section 553 of the APA referring to the issuance of interpretive rulings, as well as purely administrative procedures.

SSA compliance with certain Federal court decisions

Section 302 requires SSA to either apply the decisions of circuit courts of appeal to at least all beneficiaries residing within States within the circuit, or appeal the decision to the Supreme Court. This provision applies to circuit court opinions issued after the date of enactment as well as to those opinions which the Secretary still has the opportunity to appeal to the Supreme Court as of the date of enactment.

Payment from trust funds for costs of rehabilitation services

Section 303 repeals the requirement in those cases where there is a medical recovery that a disabled beneficiary must perform 9 months of SGA to qualify the vocational rehabilitation provider for reimbursement. In addition, payment for services to VR providers would be authorized for beneficiaries who without good cause refuse to continue to accept services or fail to cooperate with the rehabilitation process.

Advisory Council on Medical Aspects of Disability

Section 304 creates an Advisory Council on Medical Aspects of Disability composed of independent medical and vocational experts to provide advice and recommendations to the Secretary on disability standards, policies and procedures. The Council would include 10 members to be appointed by the Secretary (with the Commissioner of Social Security an ex officio member) and must include at least one psychiatrist, one rehabilitation psychologist and one medical social worker.

The Council would be authorized to periodically convene a larger representative group to assure the input of appropriate professional and consumer organizations, and would also be authorized to set up temporary short-term task forces to examine some specialized issues.

Section 304 further provides that the Council must be appointed no later than 60 days after the enactment (to assure the timely participation of the Council in the review of the mental impairment listings) and would expire on December 31, 1985.

Staff attorneys

Section 305 requires the Secretary of HHS to establish higher grade attorney positions to enable staff attorneys to achieve qualifying experience necessary to be appointed to ALJ positions.

Effective Date

Except as otherwise provided, these provisions will apply only with respect to cases involving disability deteminations pending in HHS or in court on or after the date of enactment.

Supplement Security Income (SSI) Disability Changes

The bill would make the same changes in the SSI disability program as the bill makes in the Social Security Disability Insurance program. In addition, the bill would extend for two and one-half years, through June 30, 1986, the temporary authority in section 1619 of the Social Security Act that provides for the continuation of SSI benefits and/or Medicaid for disabled recipients who are able to work in spite of their impairments. As related to the SSI disability program, the Advisory Council on Disability would also be required to consider alternative approaches to the use of work evaluation in determining eligibility for SSI disability benefits and to reexamine the definition of a successful rehabilitation of an SSI recipient to include the ability of the severely disabled to work in a sheltered environment and live independently.

III. Explanation of Provisions

A. Standards of disability (secs. 101–103 of the bill)

1. Overview

Sections 101–103 of the bill are designed to clarify the criteria that must be used in evaluating whether new applicants or current beneficiaries are disabled. The criteria laid out in present law are few, and brief:

(1) Disability is defined in Section 223(d)(1) of the Social Security Act as the inability to engage in any substantial gainful activity by reason of a medically determinable impairment which can be expected to result in death or to last at least 12 months;

(2) A second sentence added in 1967 expanded on this definition with respect to the type of work an individual must be unable to perform, i.e., not only his previous work but, considering his age, education and work experience, any work existing in the national economy, regardless of the existence of any specific job he might actually be hired for.

The committee does not intend to alter the current definition, which embodies the intent of Congress that only those who are verifiably unable to work are to be found eligible for disability benefits. However, it must be recognized that determining inability to work in each individual case must ultimately rest to some degree on the subjective judgment of the examiner.

In response to this inherent subjectivity, the disability determination process has developed into an elaborate system of checks and balances designed to prevent individual judgment from outweighing national policies defining who is totally disabled. The initial decision is made according to the submitted clinical findings, a deliberate paper decision that avoids as much as possible the personal influence of either the claimant or of his physician. The examiner's decision is then subject to several different kinds of reviews, through the quality assurance system and through a multilayered appeals system, in an attempt to ensure as much objectivity as possible in an inherently subjective decision.

The process each examiner follows in making disability decisions at the State agency level is known as the "sequential evaluation" process. After checking to see whether the claimant is currently working at the substantial gainful activity (SGA) level, the examiner next must determine whether the individual has a severe impairment; if he does not, the process goes no further.

SSA has been criticized for using the severe/non-severe test at this stage of the process as a way to terminate benefits, or deny initial applications without fully evaluating the person's real ability to work. This criticism has been particularly strong in the case of multiple impairments, because the regulations require that where the person has several impairments, of which none are severe, no disability can be found.

At this step and later on in the process, current policy is to take subjective evidence of pain into account only if objective medical data, such as laboratory tests and documented case history, show a specific impairment that can reasonably be concluded to be causing the pain. This policy is an attempt to ensure that a finding of dis-

ability is based only on "medically determinable" impairments, as required by the statutory definition, and to reduce the level of subjectivity inherent in the disability determination.

After finding that the person has a severe impairment, the examiner must determine whether that impairment matches the listings of disabling impairments or if, in combination with other less severe conditions, the total impairment equals the severity level in the listings (the "meets or equals" test). If it does not, the examiner must assess the person's "residual functional capacity"— ability to do either his past work or any other work in the national economy. SSA evaluates work capacity in a variety of ways, using all available evidence of work or productive activity in sheltered workshops, home settings and competitive work environments.

This evaluation is difficult to make for beneficiaries who have been receiving benefits for some time, particularly for those with mental impairments, whose illness may allow certain types of activity with limited circumstances, but possible not under the day to day pressure of a real job. SSA has been particularly criticized for not giving sufficient weight to the longitudinal medical and work history of mentally impaired claimants.

In summary, SSA's current policies for interpreting the definition of disability place a heavy emphasis on objective evidence to support a finding of disability. The sequential evaluation is designed to create a series of clear decisions for the examiner, particularly as to the severity of the impairment, which are to be made based only on verifiable clinical data, so that the subjectivity of the decision can be kept to a minimum.

While this process allows tighter control over the number of people allowed benefits, and therefore over program costs, it can result in denial of benefits for people who cannot be expected to work in view of their total condition. The definition of disability clearly states that benefits are to be paid to those who are unable to work because of severe impairment, not merely to those who meet a certain impairment level and incidentally are unable to work. The current procedures thus represent a compromise between complete evaluation of every individual's particular circumstances, on one hand, and, on the other, a completely objective "screen" of characteristics which must be satisfied in order to find a person disabled.

The committee wishes to reaffirm that the purpose of the disability insurance program is to provide benefits only for those who are unable to work. It is therefore completely appropriate for the Social Security Administration to periodically review beneficiaries who are not deemed to be permanently disabled, in order to ensure that the law is being carried out.

However, the committee is concerned that the consideration of eligibility for disability benefits be conducted using criteria that clearly reflect the intent of Congress that all those who are unable to work receive benefits. It is of particular concern that the Social Security Administration has been criticized for basing terminations of benefits solely and erroneously on the judgment that the person's medical impairment is "slight," according to very strict criteria, and is therefore not disabling, without making any further evaluation of the person's ability to work.

The committee believes that in the interests of reasonable administrative flexibility and efficiency, a determination that a person is not disabled may be based on a judgment that the person has no impairment, or that the impairment or combination of impairments are slight enough to warrant a presumption that the person's work ability is not seriously affected. The current "sequential evaluation process" allows such a determination, and the committee does not wish to eliminate or seriously impair use of that process. However, the committee notes that the Secretary has already planned to re-evaluate the current criteria for non-severe impairments, and urges that all due consideration be given to revising those criteria to reflect the real impact of impairments upon the ability to work.

It is also assumed that the length of time the beneficiary has been on the benefit rolls will be taken into account in assessing the person's residual functional capacity. The committee is concerned that the periodic review of beneficiaries who are over age 50, and who have been on the benefit rolls for some period of time, may result in termination of benefits for many in that age group who realistically cannot be expected to re-enter the work force given their age and length of time in receipt of benefits. Therefore, the committee directs the Secretary to re-evaluate the consideration given in the determination process for such beneficiaries to past relevant work, in order to ensure that older beneficiaries who have been receiving benefits for several years are carefully reviewed for realistic ability to work.

The committee is also concerned that the evaluation of the person's ability to work be made in a context that accurately reflects the capacity to work in a normal, competitive environment. Such an evaluation does not necessarily require a full "work evaluation" by a vocational expert in each case, although such evaluations are desirable and should be used wherever feasible where the additional information provided by such evaluations would be helpful in deciding close cases. The committee particularly urges that such evaluations should be used if at all possible in cases of mental impairment, where necessary to aid in determining eligibility in "borderline" cases, at the point in the sequential evaluation process where such evaluations would normally be done under current policy.

It is also important in such cases to evaluate the person's entire work history, rather than to examine only recent evidence of work activity, in order to determine whether the person can really engage in substantial gainful activity. The committee emphasizes that in any evaluation of work activity, the presence of work in a sheltered setting or workshop cannot in and of itself be used as conclusive evidence of ability to work at the substantial gainful activity level. Such work may be used in conjunction with other evidence that the beneficiary or claimant is not disabled, but benefits should not be denied simply because of sheltered work experience.

The committee emphasizes that the foregoing discussion does not constitute any change in the current definition of disability, but rather is a clarification of the intent of Congress that disability benefits should be granted to those who are unable to work because of a medically determinable impairment. Sections 101 and 103 of the bill provide statutory standards for determining disability: sec-

tion 101 establishes specific criteria for re-examination of current beneficiaries, while section 103 establishes criteria for multiple impairment cases both on initial application and on re-examination. Section 102 mandates a study and recommendations on the possible use of subjective evidence of pain in determinations of disability, with a view toward establishing standards in this area through legislation after consideration of the report. Taken together, these new statutory standards will provide much needed clarification of the law and of Congressional intent.

The committee also wishes to emphasize that the social security disability insurance program is a Federal social insurance program, fully funded by the disability insurance trust fund (including State and Federal administrative costs), and administered by the Social Security Administration. While disability determinations are made by State disability agencies under voluntary agreements with the Department of Health and Human Services, policies for making these evaluations are and must be established at the Federal level, for implementation on a nationwide basis.

The committee is aware of the actions several States have taken in response to conflicting interpretations of the applicable provisions of law relating to the termination of benefits—actions which, in effect, represent a failure to comply with certain policies issued by SSA. While such actions must be regarded as questionable, the current confusion that has given rise to them is understandable and creates a compelling need for congressional clarification. We believe the relevant issues would be resolved by this bill and that, as a result, the basis for any such actions would be eliminated.

The committee bill makes clear what the law is with regard to certain areas of contention such as the standard for medical improvement. With respect to the area that is not so clarified, i.e., the use of subjective evidence of pain in disability determinations, the intent of Congress is clear: upon receipt of information adequate to form a reasonable basis for legislating, Congress will enact a specific policy concerning pain; until that time, no change in policy by the Social Security Administration is mandated by this bill.

2. Standard of review for terminations of disability benefits (sec. 101 of the bill)

Section 101 of the bill provides for the first time in the social security statute a specific standard that must be met before a disability beneficiary can be found to be not disabled. SSA has always scheduled a certain percentage of disability beneficiaries for re-examination to determine whether they are still disabled. The statute contains no guidelines for appropriate criteria to govern these re-examinations, other than the definition of disability.

From 1969 to 1976, SSA's policy, established originally by an administrative law judge in one hearing, was to not terminate benefits for anyone whose condition had not improved since the initial determination of eligibility. This policy wass reversed in 1976 in internal SSA directives. Shortly thereafter, the Supreme Court, in *Matthews v. Eldridge,* agreed with the agency that the burden of proving continuing eligibility for benefits was on the beneficiary.

However, possible as a result of the pre-1975, a decreasing number of people seemed to be leaving the benefit rolls to return

to work in the 1970's—the rate of benefit terminations due to recovery or return to work fell from 32 percent per thousand beneficiaries in 1967 to 16 persons per thousand in 1975. As a result, Congressional interest was expressed, beginning in 1978, in requiring SSA to look at people who had been receiving benefits for a long time to see if they were still eligible. SSA's standard procedures for re-examining only a small number of beneficiaries seemed to be inadequate in light of the declining number of benefit terminations for return to work.

The 1980 Social Security Disability Amendments made a number of significant changes in disability program operations. Responding to the need for more effective management of the program, the legislation required a dramatic increase in the amount of management review and oversight of the program, with the objective of tightening central Federal control over State agency and ALJ decisions, and re-invigorating ongoing review of current beneficiaries. Of particular concern in connection with Section 901 of the bill was the provision requiring review at least once every three years of all beneficiaries not permanently disabled, beginning in January, 1982.

However, the Department of Health and Human Services moved up the date of implementation of this provision, and accelerated the rate of review of current beneficiaries beyond the schedule required in the 1980 Amendments. Beginning in March 1981, SSA began sending out about three times the normal number of CDI cases: about 160,000 were done in FY 1981, 496,771 in FY 1982, and 640,000 were budgeted for FY 1983 prior to the Secretary's new initiative to slow down the review process announced in June, 1983.

The rate of terminations in these CDI cases at the initial level currently is about 45 percent, which is very close to the rate for reexaminations done in previous years. However, the types of cases being examined in the accelerated CDI process are different from the relative few cases SSA used to designate for re-examination because they had great potential for medical recovery.

The new caseload consists in large part of beneficiaries who were not scheduled for re-examination before, and who in many cases were found disabled several years ago, during and after the inauguration of the SSI program, when the decision criteria may have been less precise than those being used today. The magnitude of the CDI initiatives has meant that a very large number of the cases SSA considers were wrongly allowed (either by the original State examiner or by an ALJ overturning the State agency) are being re-examined for the first time since the policy change on medical improvement in 1976.

These re-evaluations are based on current standards and medical criteria which are in many cases more clear-cut and exact than the standards on which benefits were initially based, and reflect improvements in medical technology and treatment. Moreover, the overall "adjudicative climate" has been generally more rigorous than in earlier years, so that re-examined beneficiaries, now being looked at as if they are new applicants, will have more rigorous standards applied than in their initial determination. For example, beneficiaries who originally were allowed benefits because their combination of impairments roughly approximated the level re-

quired by the medical listings ("equals the listings"), are now more likely to be evaluated according to whether their impairment matches the medical criteria ("meets the listings"), which are themselves different from the criteria in 1970.

It has been alleged that the agency, particularly in mental impairment cases, has focused too heavily on the severity of the medical condition without making an adequate evaluation of the beneficiary's ability to work, with the result that benefits have been terminated for many people who cannot function in a work environment. These policies seem to have been in effect well before the inauguration of the accelerated review in 1981, but the combination of an apparently more restrictive policy and reviews of large numbers of beneficiaries have resulted in widespread complaints about SSA's procedures.

These policies have come under severe criticism in Federal courts, particularly in the Ninth Circuit Court of Appeals which has ruled twice that SSA must demonstrate either medical improvement or (in the later ruling) clear and specific error in the original award, in order to terminate disability benefits. Similar "medical improvement" standards have been declared in other circuit courts as well, and an increasing number of State governors have declared those judgements to be binding on ALJ's and State adjudicators in opposition to Federal policy guidelines.

In summary, the re-examination of large numbers of current disability beneficiaries has resulted in termination of benefits for many beneficiaries whose medical condition has not changed substantially since they were allowed benefits. Medical impairments are being closely examined to determine whether they meet today's standards—if the impairment is now judged to be not severe, the person's benefits are terminated, whether or not the impairment is any different from when the person was first allowed. The primary issue therefore is whether a person's benefits should be terminated because standards of disability have changed since the individual was first allowed benefits, so that he is judged able to work under current criteria even though his medical condition has not improved.

The committee recognizes that the problems with the current review have arisen, at least in part, because the criteria for termination of benefits as a result of review were left unstated in the law. SSA has therefore had wide discretion to apply whatever standards it deemed appropriate—and since the standards of the current program apparently are stricter than those in the past, applying today's standards has meant eliminating benefits for many more beneficiaries than was anticipated when the 1980 Amendments were enacted.

Therefore, section 101 of the bill establishes a clear "medical improvement" standard that creates a category of beneficiaries who, because their medical conditions have not improved, are presumed to be unable to work and who therefore must continue to receive benefits. This standard contains several important exceptions which would allow termination of benefits even where the beneficiary's medical condition has not improved: where the beneficiary is performing substantial gainful activity, where medical or rehabilitation techniques allow the person to work despite his un-

changed condition, where the original decision was in error, or was fraudulent, or where new or improved diagnostic techniques or evaluations reveal that the impairment is less disabling than originally thought.

The committee believes these exceptions address several legitimate concerns: that benefits which were improperly allowed originally should not be continued; and that the documented effects of medical or vocational therapy on an individual's ability to perform SGA, and the result of a reassessment of the severity of an individual's impairment based on the application of new or improved diagnostic or evaluative techniques need to be taken fully into account in making continuing disability determinations. The committee emphasizes, however, that the application of these exceptions is contingent on the satisfaction of specified requirements relating to documentation, the acquisition of appropriate medical and vocational evidence and the use of specified techniques or procedures. Thus, with respect to the effect of medical or vocational therapy on an individual's ability to perform SGA, the exception would be applicable only if it is demonstrated, on the basis of new medical evidence and a new assessment of the individual's residual functional capacity (RFC), that the individual has been the recipient of services which reflect advances in medical therapy or technology (or the recipient of any vocational therapy) which has had the effect of restoring the individual's ability to engage in SGA.

Similarly rigorous requirements must be satisfied with respect to the use of the exception relating to the results obtained from the application of new or improved diagnostic or evaluative techniques which may disclose that the individual's impairment is less disabling than originally thought at the time of the prior determination (for example, the individual has the ability to do his previous work, that is, usual work or other past work). The committee recognizes that there may be some cases in which the prior decision that the individual was disabled was based, in part, on an assessment of residual functional capacity that was either improperly or inadequately documented. While it might be argued that in such cases a finding of clear error ought to be made, it is not intended that the standard of "clearly erroneous" be loosely applied to encompass inadequate development of a case. Moreover, the cases involved here do not represent "erroneous determinations"; rather, they reflect decisions properly made in accordance with the state of the art at the time the decisions were made and in accordance with the administrative procedures in place at that time. The fact is, however, that changing methodologies and advances in medical and vocational diagnostic and evaluative techniques have given rise to improved methods for documenting and evaluating medical evidence, RFC, and vocational factors. Where such methods, properly used, permit the development of more accurate, objective and valid results, they should not be ignored.

The committee intends that where SSA uses new or improved evaluation techniques to determine and document an individual's ability or inability to work, and where this new determination shows that an individual is not as disabled as initially considered (for example, the individual can do his previous work), such evidence may serve as the basis for a finding under this section that

the individual is not disabled within the meaning of Title II of the Social Security Act.

The committee expects that this exception will be carefully applied and that any determinations made in accordance with this provision will be fully documented, accurate and consistent with objective medical and vocational findings. Since these cases may involve individuals who have been receiving disability benefits in good faith, the committee re-emphasizes here that it expects the Secretary to re-evaluate the consideration given in the continuing disability process to factors such as age and duration in benefit status. Nonetheless, when appropriately and responsibly applied, this exception is available to assure the equitable attainment of the objectives of the program.

The committee is aware that in some cases adjudicated in prior years all the medical information relevant to the initial decision may not still be in the beneficiary's file and that such a situation would preclude the possibility of making an objective finding with respect to a change in the severity of the beneficiary's impairment. In such cases, SSA would be authorized to secure such medical information as may be necessary to fully reconstruct the medical records and data that were utilized in making the initial decision. The committee emphasizes, however, that the inability to reconstruct such records and data cannot serve, in and of itself, as a basis for a determination that there has been medical improvement. Such a conclusion may be reached only if the records applicable to the initial decision have been fully reconstructed and the prior and current medical evidence discloses that there has in fact been medical improvement.

3. Study concerning evaluation of pain (sec. 102 of the bill)

The social security statute currently provides no guidance on the use of allegations of pain by the claimant in the disability determination process. Because the definition of disability states that inability to work must be "by reason of a medically determinable impairment", the Social Security Administration has allowed allegations of pain to be used only if a specific physical impairment exists to which the pain can be reasonably attributed.

However, many claimants allege disability primarily or substantially as a result of disabling pain that cannot be specifically attributed to a physical condition. Because the law itself is not explicit, allowance decisions at the ALJ and Federal court levels have not infrequently depended heavily on this kind of subjective evidence. Almost every circuit court of appeals has ruled at some point over the last ten years that eligibility should be based on subjective evidence of pain, at least in cases where it corroborated by testimony of other witnesses.

The committee is concerned that a fragmented standard is now in effect for using subjective evidence of pain, depending on whether the beneficary has pursued his claim through the ALJ or district court level. While it may well be the case that pain in and of itself, regardless of its cause, can result in inability to work, there is apparently still no way to verify the existence of such pain through objective medical testing.

The committee is therefore reluctant at this time to allow determinations of disability to be based on such subjective criteria. There is plainly a critical need for a clear legislative policy, to be applied to all cases on a nationwide basis; it is not appropriate for the Federal courts to establish policy on such an issue simply because the statute is insufficiently specific. However, the committee cannot, at this time, mandate such a policy, simply because there is not enough information about the impact this kind of change would have on the types of cases that would be allowed and on the costs to the disability program.

Therefore, section 102 of the bill requires the Secretary in conjunction with the National Academy of Sciences, to conduct a study on the question of using subjective evidence of pain in determining disability, and on the question of the state of the art of preventing, reducing or coping with pain, and to report to the Congress by April 1, 1985 on the results of the study. It is anticipated that at that time, Congress will be able to develop a satisfactory statutory standard.

The committee also directs the Secretary to conduct such studies as are necessary to obtain complete information and statistics on both the fiscal costs and administrative feasibility of eliminating the 5-month waiting period for disability benefits for persons diagnosed by their physicians as terminally ill with less than 12 months to live. The results of such studies shall be presented to the Congress no later than October 1, 1984.

4. Multiple impairments (sec. 103 of the bill)

Under current law, the first step in the sequential evaluation process through which the disability determination is made is to determine whether the applicant has a severe impairment. If SSA determines that a claimant's impairment is not severe, the consideration of the claim ends at that point. In cases where a person has several impairments, none of which meet the standard for "severe", he is judged not disabled, without any further evaluation of the cumulative impact of his impairments on his ability to work.

The committee believes that this does not represent a realistic policy with respect to persons with several impairments which may in many cases interact and effectively eliminate the person's ability to work. While it is clear that the determination of disability must be based on the existence of a medically determinable impairment, there are plainly many cases where the total effect of a number of different conditions can safely be characterized as disabling, even if each by itself would not be. Section 103 of the bill therefore requires that in determining whether an individual's physical or mental impairment or impairments are so severe as to be disabling, SSA must consider the combined effect of all the individual's impairments without regard to whether any individual impairment considered separately would be considered severe.

B. Disability determination process (secs. 201–205 of the bill)

1. Moratorium on mental impairment reviews (sec. 201 of the bill)

Serious questions have been raised by Federal courts, professionals in the fields of psychiatry and vocational counseling and the General Accounting Office about the adequacy of SSA's Listing of Mental Impairments and the appropriateness of SSA's current methods for assessing residual functional capacity and predicting ability to work in individuals with mental impairments. While the validity of all these criticisms may be subject to some debate, it is clear that in many cases individuals have been improperly denied benefits. Moreover, the Secretary has determined that a full scale re-evaluation of the Listings and current procedures is necessary and, on her own motion, has imposed a moratorium on reviews of mental impairment cases classified as functional psychotic disorders. However, the moratorium imposed by the Secretary does not include all mental impairment cases that will be affected by changes in the listings and procedures, does not provide a precise timetable for the review and resolution of the pertinent issues and does not stipulate how the results of these changes are to be subsequently implemented.

The committee agrees that a moratorium of the kind imposed by the Secretary is warranted. However, the committee is concerned about the need to establish clear guidelines with respect to the review process, the timeframe for conducting the re-evaluation and procedures for the disposition of cases, including new applications and prior CDI's in the categories affected by the moratorium. The purpose of section 201 is to provide these guidelines.

Under section 201 a temporary delay would be imposed on reviews of all mental impairment cases until the Secretary revises the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments." The revised listings and procedures for assessment of residual functional capacity are to be designed so as to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive environment. Regulations establishing such reviewed criteria and listings are to be published no later than 9 months after the enactment. Moreover, the Secretary is required to conduct this re-evaluation and to prepare the appropriate regulations in consultation with the Advisory Council on Medical Aspects of Disability (created under section 304 of the bill).

This delay of reviews would apply to all CDIs of mental impairment cases upon which a timely appeal was pending on or after June 7, 1983 or on which no initial decision has been rendered as of the date of enactment, unless the individual is engaged in substantial gainful activity or fraud is involved.

Initial cases denied during the moratorium period are to be reviewed by the Secretary as soon as feasible after the new criteria are established, and those with mental impairments who were denied benefits or had their benefits terminated between March 1, 1981 and the date of enactment will have their cases reopened as of the most recent prior determination if they reapply within one

year. Benefits would be paid as of the date of reapplication but the individual's insured status would thus be protected.

The committee is cognizant of the fact that revision of the listings in the mental impairment area could potentially result in an increase in the cost of the disability program. For that reason, the committee intends to monitor closely the cost effects of these revisions and directs the Secretary to report to the Committee on Ways and Means and the Senate Committee on Finance on the cost effects of any proposed changes in the listings 30 days in advance of the implementation of the regulations.

2. Face-to-face hearings in State disability determination agencies (sec. 202 of the bill)

Decisions as to whether or not an individual is disabled are made by 54 State disability agencies under agreements with SSA. These decisions may be appealed. Currently a disability claim or a CDI may go through five or more decision levels:

(1) The initial decision by the State agency, which if adverse can be appealed to

(2) the reconsideration level, also conducted by the State agency, which if adverse can be appealed to

(3) the Federal administrative law judge hearing, followed by, if adverse,

(4) an appeals council review; and finally

(5) if all prior decisions are adverse, the claimant can file an appeal in the Federal court system.

Under present law, the Federal Administrative Law Judge (ALJ) is the first level at which the disabled individual meets face-to-face with a decisionmaker. Initial interviews are conducted in SSA district or branch offices (of which there are about 1300) when the individual first applies or is first called in for a CDI, but no decisions are rendered there.

Even though no decisions are rendered in the social security district office, the committee recognizes the importance of the initial interview a CDI beneficiary or new applicant receives there. The district office has traditionally played a major role in assuring a full explanation of the program, of the individual's rights, the procedures involved, and in providing assistance to the individual in pursuing his or her claim.

P.L. 97-455 mandated that by January 1, 1984, individuals whose benefits are terminated due to a medical review (CDI) must be given the opportunity to have a face-to-face evidentiary hearing at the reconsideration level conducted either by the Secretary or the State agency. Although it may be necessary for logistical reasons for the Secretary to implement this provision in many areas of the country through the use of SSA hearings officers, the committee would encourage the Secretary to offer State agencies the option to conduct these face-to-face hearings. Since, under the provisions of the committee's bills, this reconsideration hearing would be only a temporary transitional procedure which would be phased out as the State agencies implement a face-to-face interview at the initial State agency decision level, State agencies could acquire valuable experience in conducting the transitional reconsideration hearing.

There is virtually unanimous agreement about the desirability of providing for a face-to-face meeting between the disability beneficiary and the administrative decisionmaker. The committee believes that such a meeting at the initial stage in the adjudicative process would permit State agency disability examiners to better assess the individual's residual functional capacity and assure that all relevant medical and vocational information has been obtained. Moreover, an interview at the initial State agency level, rather than at some later stage, would both simplify and expedite the decisionmaking process.

Consequently, section 202 provides for the implementation, no later than January 1, 1985, of face-to-face evidentiary interviews by all State disability agencies at the initial decision level for all medical termination cases. Under this provision, the State agency would send the beneficiary a preliminary notice of an unfavorable decision and the claimant would have 30 days in which to request a face-to-face meeting before a formal determination is made. The present reconsideration level would be abolished upon implementation of the State interviews. The committee emphasizes that where it is possible it would prefer that this provision be implemented earlier than January 1, 1985, and that where this occurs the transitional reconsideration hearings would be terminated.

The committee also endorses the concept of instituting face-to-face hearings at the initial, State level, and of abolishing the reconsideration level, for initial claims as well as CDI review cases. However, it is recognized that this procedure would be a complicated and major change for the program necessitating further study and preparatory administrative planning. As a result, section 905 also requires the Secretary to initiate demonstration projects with respect to face-to-face evidentiary meetings at the initial level of State agency determinations for new applicants and requires the Secretary to report to the Congress by April 1, 1985, on these projects. These projects must be conducted in a minimum of five States with the participating States to be selected no later than January 1, 1984. Where the projects are initiated, the reconsideration level would be eliminated.

The committee emphasizes that, where feasible, these demonstration projects should be implemented prior to the dates in the bill and notes that some States have expressed a strong interest in testing out this procedure. Since the committee is concerned that there be a full and cooperative effort made to implement and carry out all phases of a face-to-face interview in initial cases, the committee believes it would be appropriate to use these particular States in the demonstration projects.

3. Payment of benefits during appeal (sec. 203 of the bill)

P.L. 97-455, passed by Congress in December 1982, included a provision to allow beneficiaries whose benefits had been ceased because of a medical review of their eligibility to elect to continue receiving benefits until an ALJ has rendered a decision on the case. If the case is denied, then the benefits, except for Medicare, are subject to recoupment (subject to the hardship waiver standards already in law). This provision, however, was adopted on a temporary basis only—until further consideration could be given to the CDI

issue in the 98th Congress. Thus, under present law, no extended payment can be made after June 1984 and the provision applies only to cessations occurring before October 1, 1983. For cessations after that date the program will revert to prior law which provided benefits for the month of cessation and two additional months. Since January approximately 113,000 individuals have elected to continue benefit payments during appeal.

Section 203 provides on a permanent basis for the continuation of benefits during appeal in all CDI cases through the decision of the Administrative Law Judge. Where the ALJ's decision is adverse to the beneficiary, such benefit payments would be subject to recoupment as under present law. The Secretary also must report to the committee on Ways and Means and the Committee on Finance by July 1, 1986, on the impact of this provision on expenditures from the social security and Medicare trust funds and the rate of appeals to ALJs. The committee believes, based on the experience under the present temporary provision, that providing for continuation of payments during appeal helps considerably to ease the severe financial and emotional hardships that would otherwise be suffered by disabled persons.

In addition, it is recognized that beneficiaries may be reluctant to elect to receive continued benefit payments for fear of not being able to repay the benefits provided if the decision of the Administrative Law Judge is unfavorable. The committee intends that at the time beneficiaries are given the opportunity to make this election they be informed that, in the event of an unfavorable determination, they might be eligible for a waiver or for a long-term repayment plan. The committee further intends that the Secretary take into account individual circumstances in making a determination as to whether or not to waive the overpayment.

4. Qualifications of medical professionals (sec. 204 of the bill)

A shortage of qualified medical personnel has been a chronic problem in the social security disability program. Knowledgeable medical consultation is necessary for accurate decisions, and particular concerns have been raised that in the area of mental impairments a general medical knowledge is often not sufficient for a full evaluation of an individual's claim. The committee notes that through the encouragement of the Social Security Administration almost all State agencies now have staff psychiatrists available.

Section 204 requires that where there is an unfavorable decision in a mental impairment case, a qualified psychiatrist or psychologist must complete the medical portion and the residual functional capacity assessment of the determination. The committee believes that this requirement will help assure an accurate determination of the individual's capacity for substantial gainful activity.

The committee would also encourage the Social Security Administration to urge States to secure qualified specialists in other areas of impairments and to examine methods (such as referrals to nearby States or to the SSA central office) for providing consultation with specialists where that would be helpful but is not locally available. The committee notes that requiring States to hire physicians in all specialties would be costly and in some States impossible. Nonetheless, the committee believes efforts should be made, to

the extent feasible, to provide disability examiners with the expert consultation of specialists wherever that would be helpful in making an accurate decision.

In this and other areas the committee notes that efforts to gather every piece of evidence must be balanced against the time and resources required to do so. If the disability judgment takes too long or becomes too fraught with complicated procedures for gathering evidence it would be criticized on those grounds. Indeed, some courts have interposed time limits on how long the agency can spend in reaching a decision. Given the already substantial administrative costs of the program and the constraints imposed by individual States on securing additional personnel, the availability of resources is also a real consideration since imposing requirements for which there are not adequate resources generally causes additional disruption of the program—the opposite effect from that intended.

Nevertheless, concerns have been expressed that in an effort to process cases in an expeditious manner, procedures have been followed by SSA which inhibit the full development of medical and other evidence and which made it more difficult for disabled claimants fully to state their case.

The committee emphasizes the need to examine all relevant evidence in making a disability determination and the need to actively seek and pay particular attention to evidence from treating physicians, especially in chronic illnesses. SSA and State agency personnel share an obligation to assist the claimant in understanding the process and securing necessary medical data. The committee, therefore, requests that the Secretary report to the Congress on the current use of home visits by agency personnel and on whether there are other instances where a home visit would not now occur but which might be constructive in providing the agency with full information on a claimant.

Similarly, the committee is concerned that hearings locations (and face-to-face interview locations) be accessible to beneficiaries. Such offices should be located in buildings fully accessible to the handicapped; funding for medical evidence and travel should be provided, and the Social Security Administration should re-examine the current requirement that a beneficiary must travel at least 75 miles in order to qualify for travel reimbursement as this standard may be inappropriate in many locations in this country.

5. Regulatory standards for consultative examinations (sec. 205 of the bill)

Consultative examinations are medical examinations purchased by the agency from physicans outside the agency to secure medical information necessary to make a determination or to check conflicting evidence. Many concerns have been raised about the improper or generally unsupervised use of CE's and SSA has taken several steps to tighten up procedures in this area and particularly to restrict the use of doctors providing CE's on a volume basis (volume providers).

The committee is pleased to note that efforts are being made to provide more direction in the use of consultative examinations and would encourage SSA to redouble its efforts to secure reasonable

fee structures for consultative examinations so that dependency on volume providers can be reduced. The committee also believes, however, that concerns about the use of consultative examinations would be lessened if policies now in effect with respect to consultative examinations (or any subsequent policies that may be developed in this area) were embodied in regulations. Section 205, therefore, requires that the Secretary promulgate such policies in regulations. Since the purpose of this provision is only to assure that the policies are published in regulations there is no intent or implication that any new claims or pending cases involving consultative examinations be delayed until the regulations are published. On the contrary, it is the committee's intent that such cases will continue to be processed and adjudicated as under present law.

The committee also notes that questions have been raised about SSA's application of the trial work provision of present law. In order to eliminate any possible misunderstanding or confusion about the intent of this provision, the committee reaffirms that recency of work and sustained work over several consecutive months is necessary for an individual to meet trial work conditions.

C. Miscellaneous provisions (secs. 301–305 of the bill)

1. Uniform standards for disability determinations (sec. 301 of the bill)

Section 553 of the Administration Procedure Act of 1946 established basic requirements for informal rulemaking, the process by which most regulations today are promulgated. This section requires general notice of proposed rulemaking to be published in the *Federal Register*, and an opportunity for public comment during a period of at least thirty days prior to the effective date of the rule. There are general exceptions to these requirements for interpretative rules, statements of policy, and rules of agency procedure, organization or practice, and where the agency for good cause finds the notice and comment procedures impractical or contrary to the public interest.

Social security benefits are not covered under Section 553 by virtue of an exception in Section 553(a)(2): "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." This exception was part of the original APA, which was enacted at a time when there were very few Federal benefit programs: the social security disability and Medicare programs did not exist, and requirements for old age and survivor benefits were fairly explicit in the statute. In 1971 then-Secretary of HEW (now HHS) Elliot Richardson issued a statement placing all HEW programs voluntarily under the APA rule-making requirements.

However, SSA has continued to issue, as do other agencies such as the Internal Revenue Service, other policy statements, notably Social Security Rulings and the disability claims manuals (POMS), which are supposed to contain only clarification and interpretation of the policy contained in regulations. In addition, it has been alleged that real operating policy often develops as a result of State disability examiner reaction to return of specific allowance decisions deemed incorrect by SSA's Federal quality assurance review-

ers. None of these sources of policy are open to public notice or comment.

The Bellmon Report on the hearings and appeals process, mandated by the 1980 Disability Amendments, found wide discrepancies in standards applied by the administrative law judges who are bound by the statute and regulations, as opposed to those applied by the State agencies who are bound by the POMS. This discrepancy may be a major reason for the high reversal rate of State agency denials at the ALJ level (standing at around 55 percent currently). As a result of this report, and the even higher reversal rate for CDI cases, there has been considerable pressure for uniform criteria at all levels of adjudication. SSA's response to this pressure was to begin incorporating the POMS into Social Security Rulings, which by regulation (20CFR 422.8) are to be relied upon as precedents in cases where the facts are essentially similar by ALJ's as well as State agencies.

The original exception for social security to Section 553 notice and comment requirements appears to have been more an accident of history than deliberate Congressional intent concerning all social security programs. When the APA was enacted, the disability program did not yet exist, and there were as yet very few social security beneficiaries of any sort.

Elimination of the APA exception for benefits has been recommended by the American Bar Association, and such a change has been incorporated in H.R. 2327, currently under consideration by the Judiciary Committee (a similar provision was previously approved by the Senate). There appears to be widespread agreement concerning eliminating just the exemption in 553(a)(2) for public benefits. There appear to be considerably greater complications in any changes to section 553(b)(A) which allows interpretive statements to be issued without public notice and comments. The Judiciary bill provision for limiting the exemption in 553(b)(A) for interpretive rules has been the subject of extensive debate for some time, and the bill retains the good cause exception in 553(b)(B).

The committee believes that it is appropriate for changes in policies that affect whether or not people receive disability benefits to be published in regulations allowing for public participation in the process. The policy decisions that must be made concerning disability determinations are far more complex than most policies in the old age and survivor programs, for one major reason: the determination of ability to work is an inherently difficult eligibility decision, while eligibility for retirement benefits depends on factors of age, quarters of coverage, and current earnings that are relatively easily determined.

However, the agency should also have sufficient flexibility to respond to changes in conditions quickly, and to issue administrative guidance to State agencies on a timely basis. There is clearly an appropriate role for issuance of informal policy clarification through rulings or other informal vehicles, and the committee has no wish to deprive the Social Security Administration of this ability.

Therefore, section 301 of the bill requires that the notice and comment provisions concerning issuance of regulations of section 553(a)(2) of the Administrative Procedures Act be applied to benefit

programs under Title II. The provision does not affect the application of the exception in section 553 allowing informal policy clarifications to be issued through non-regulatory statements.

The committee emphasizes that the intent of the provision is to provide uniform standards for decision-making at all levels of the disability determination process, through the normal channels of rule-making that allow some degree of public participation in the process. In order to allow SSA some degree of flexibility in administering the extremely complex disability program, the bill allows the current practice of issuing Social Security Rulings to continue. However, it cannot be too strongly emphasized that the intent of the provision in eliminating the first exception is that all policy that substantially affects the determination of eligibility must be the same for all levels—State agency through administrative law judge—and must be issued through regulations.

This provision does not address directly the problem of informal policy direction given to State agencies through the quality assurance process. It may be difficult to prevent returns of cases to the State agency from having an effect on overall adjudicative policy, particularly as the agency begins to review sixty-five percent of all favorable decisions. However, the committee intends Section 301 of this bill to produce uniform policy at all levels arrived at through processes open to public scrutiny. It is therefore expected that the Social Security Administration will take all steps necessary to limit the influence of quality assurance systems on day to day operations and policy of State agencies.

The committee is also aware of the grey area that exists between issues clearly having substantial policy impact that plainly belong in regulations, and issues clearly minor, administrative or merely clarifying that plainly belong in informal policy statements. It will be necessary, therefore, for the committee to closely monitor. SSA's activities with respect to this provision to assure that misunderstandings do not arise and that the desired ends are achieved. All administrative law relies heavily on the presumption that agencies will perform their duties in good faith, and the committee is, to a certain degree, relying on the expectation of good faith efforts by the agency to promulgate uniform standards through the regulatory process. If after some period of experience, it is found that this section has not had the desired effect of producing uniforms standards, further measures will be considered.

2. SSA compliance with certain Federal court decisions (sec. 302 of the bill)

Under the Federal judicial system, decisions by a circuit Court of Appeals are considered the "law of the circuit," and constitute binding case law to be followed by all district courts in that circuit. In general, if two circuits rule differently on a particular issue, the Supreme Court will review the issue to settle the dispute. The application of Supreme Court decisions to executive branch policies is virtually undisputed: if a particular policy is found unconstitutional, or contrary to the statute, that decision is binding on the agency. The appropriate application of circuit and district court decisions to agency policies is not as clear-cut.

Claimants for benefits under the Social Security Act may appeal State agency denials through several layers of administrative appeal, up through the appeals council. A claimant who wishes to continue to pursue appeal may next turn to the Federal district court with jurisdiction over his or her claim. The district court reviews the record as compiled by the agency to determine whether substantial evidence existed for the agency's decision. The district court's review is not a trial de novo, but rather is limited to a consideration of the pleadings and the transcript of the proceedings at the ALJ hearing. If the district court finds substantial evidence existed to support the agency's decision to deny benefits, a claimant may appeal the decision to the circuit court with jurisdiction, and ultimately petition the Supreme Court for certiorari.

Appeals of the agency's determinations to the Federal district courts are occurring with much greater frequency in recent years, imposing a workload burden on some district courts. Between 1955 and 1970, the total number of disability appeals filed with the Federal district courts was about 10,000 cases. In 1982 alone, nearly 13,000 disabliity cases were appealed to the district courts. The large increase in Federal court litigation on social security matters may be partly responsible for the present tension between SSA and the lower Federal courts.

Most disability cases decided in the Federal courts have little value as precedent for SSA decisions, since most reversals of agency determinations rest on the lack of substantial evidence for the agency's position. However, in many instances the court's opinion sets forth a statutory interpretation contrary to that of the agency, in the traditional manner in which Federal courts establish a rule of law, which is intended to be binding on the agency in later cases concerning the same issue. Circuit courts of appeals decisions in such cases have been issued with increasing frequency in recent years, with the clear expectation of the court that SSA would abide by its interpretation as would normally be the case with rulings having precedent as law within the circuit.

The Social Security Administration does not follow U.S. Courts of appeals decisions with which it disagrees, either nationwide or within the circuit of the ruling. While the agency does obey the court's ruling in the particular case being adjudicated, the interpretation of law from the court is not considered binding by the agency either for State disability agency operations or for Federal social security offices.

Moreover, the agency frequently does not appeal district court or circuit court opinions with which it disagrees. This practice ensures that the Supreme Court will not have the opportunity to review the issue and render a decision with which the agency would be compelled to comply. Social security ALJ's are not able to follow court of appeals decisions as precedent if the Supreme Court does not make a ruling or if the agency does not incorporate the circuit court's decision in social security rulings or regulations, which is most often the case in decisions SSA disagrees with.

SSA has been criticized for this policy, both by outside experts and Federal judges, on the grounds that it undermines the structure of Federal law, and in essence allows SSA to overrule the legal judgment of the Federal courts by administrative inaction.

SSA defends its policy on the grounds that a Federal benefits program should be administered uniformly on a national basis. It should be noted that in a brief before the Supreme Court in *Califano* v. *Yamasaki* (1979) the brief for petitioner Secretary Califano stated the following:

> When a statutory or constitutional issue is decided adversely to the Secretary in the course of judicial review obtained by an individual claimant, the Secretary will either appeal or abide by the unfavorable ruling. Repetitious litigation will thus not be necessary in order to establish a general legal principle applicable beyond the confines of a particular case. *Stare decisis* will impel the Secretary to follow statutory or constitutional decisions within the jurisdiction of the courts having rendered them.

This statement is in marked contrast to the repeated instances brought to the committee's attention of SSA's non-acquiescence policy, summed up in the following statement from the Associate Commissioner for Hearings and Appeals issued to Social Security ALJ's in January, 1982:

> The Federal courts do not run SSA's programs, and [SSA's adjudicators] are responsible for applying the Secretary's policies and guidelines regardless of court decisions below the level of the Supreme Court. (Social Security memorandum to its Administrative Law Judges)

Since 1978, there have arisen numerous cases in which circuit courts of appeals have ruled on issues where the Title II or XVI statute is unspecific or silent, most notably the issues of use of allegations of pain in disability determinations, and of whether a beneficiary whose condition has not medically improved can be found not disabled. Every circuit court of appeals in the country with the exception of the D.C. circuit has ruled that subjective evidence of pain must be allowed in finding claimants eligible for benefits. Several circuits, including the Ninth Circuit in two separate opinions, have ruled that SSA must show that a beneficiary has medically improved before ruling him no longer disabled. In all of these cases, SSA has not applied the court interpretation of the statute beyond the litigated case, and has not pursued an appeal to the Supreme Court.

The committee is concerned about the result of this non-acquiescence policy for claimants, the courts and SSA. First, while it is clearly of utmost importance that a Federal program be administered according to uniform, Federal standards, it is not clear that SSA's non-acquiscence policy substantially achieves that end. In fact, under the current policy, distinctions exist *within* circuits between policies applied to those claimants who pursue their claims to the appeals court level, and those who cannot. Such a difference will be particulary significant in those circuits where a class action suit applying to several thousand claimants is successful.

The committee is most concerned about the impact of this policy on beneficiaries and claimants, and on their relationship to the social security program. If a circuit court rules on a given issue such as medical improvement, it is a foregone conclusion that sub-

sequent appeals to that court on that issue will be successful. By refusing to apply the circuit court ruling, SSA forces beneficiaries and applicants to re-litigate the same issue over and over again in the circuit, even though the agency is certain to lose each case.

The committee can find no reason grounded in sensible public policy to force beneficiaries to sue in order to obtain what has been declared by the Federal court as justice in a particular area. Such a policy creates a wholly undesirable distinction between those beneficiaries with the resources and fortitude to pursue their claims, and those who accept the government's original denial in good faith or because they lack the means to appeal their case. The strength of the social security program has always rested on the public perception that the agency's mission is to provide benefits to all those entitled to them, without undue delay or bureaucratic barriers. The increasingly adversarial character of the process for becoming eligible for disability benefits, and especially for retaining eligibility, does immeasurable harm to the public's trust in the social security program and in government as a whole.

The committee is also concerned about the increasing number and intensity of confrontations between the agency and the courts as SSA refuses to apply circuit court opinions. The Ninth Circuit court recently characterized the Secretary's defense of her non-acquiescence policy as "far from persuasive." The opinion goes on to state:

> . . . other circuits that have considered the question have already rejected the Secretary's argument that a Federal agency can legitimately ignore Federal appeals court precedents. See, e.g., Jones & Laughlin Steel Corp. v. Marshall, 636 F.2d 32, 33 (3d Cir. 1980); ITT World Communications v. FCC, 635 F.2d 32, 43 (2d Cir. 1980); Ithaca College v. NLRB, 623 F.2d 224, 228–29 (2d Cir.), cert. denied, 449 U.S. 975 (1980); Mary Thompson Hospital, Inc. v. NLRB, 621 F.2d 858, 864 (7th Cir. 1980); Allegheny General Hospital v. NLRB, 608 F.2d 965, 970 (3d Cir. 1979). Moreover, the cases cited by the Secretary to support her position appear to be inapposite. In short, our review of the relevant case law indicates that there is little chance that the Secretary will succeed in her argument that non-acquiescence is a legitimate policy, or, to put it more precisely, that she will persuade us that there is a strong probability that the plaintiffs would ultimately prevail on this fundamental issue.

While the issue of the constitutionality of the non-acquiscence policy may be in doubt, the undesirable consequences of escalating hostility between the Federal courts and the agency are clear. The committee sees no compelling reason why the Social Security Administration's interpretation of the statute, particularly in issues where the definitions are not specific or are completely silent on the issue, should be automatically considered superior to that of the Federal court.

SSA's reasons for the current policy appear to be based largely on the desire for consistent national administration of the program. It is also clear that Federal courts may frequently hand

down decisions expanding agency policies in directions the agency and Congress may not wish applied on a national or regional basis. Since the guiding principle for Federal courts is the Constitution and the law, policy considerations such as cost constraints may play less of a role than they appropriately do in Congressional deliberations

In such instances, however, the committee strongly believes that Congress' judgment as to the appropriate policy should prevail. If the Federal circuit courts hand down decisions that appear detrimental to the purposes or operation of the program, either the Supreme Court should be given the opportunity to make a determination that remedies the situation, or Congress may well have to clarify the law. In such cases, Congress might reasonably expect the agency to propose appropriate remedial legislation. Short of legislative changes, however, the committee sees no reason to allow SSA to ignore the law as determined in each circuit by the highest Federal court simply because the administrators view the Federal court's decision as mistaken.

Therefore, Section 302 of the bill requires the Social Security Administration to either apply the decisions of circuit courts of appeal to at least all beneficiaries residing within States within the circuit, or appeal the decision to the Supreme Court. This provision applies to circuit court opinions issued after the date of enactment as well as to those opinions which the Secretary still has the opportunity to appeal to the Supreme Court as of the date of enactment.

3. Payment from trust funds for costs of rehabilitation services (sec. 303 of the bill)

Prior to P.L. 97-35 (1981 Reconciliation Act), up to 1.5% of the total amount of disability benefits could be transferred from the trust funds for payment of vocational rehabilitation services for SSDI beneficiaries. In FY 1980 the amount transferred was $110 million (the amounts transferred generally were well below the 1.5% ceiling). An additional $50 million in general revenue funds were expended for SSI disability recipients. A benefit cost study completed by the Social Security Administration found that in 1975 between $1.39 and $2.72 savings accrued to the social security trust fund for every $1.00 spent in this program.

P.L. 96-265 (the 1980 Disability Amendments) included a provision that DI and SSI benefits could continue even after medical recovery until the individual completed a vocational rehabilitation program in which he was participating provided he had not been expected to recover when he entered the program and provided the program would increase the possibility of the individual permanently leaving the rolls.

P.L. 97-35 abolished the general DI trust fund program and further provided the State VR agencies could be reimbursed only for the costs of services to beneficiaries that result in the beneficiary's performance of SGA (substantial gainful activity) for a continuous period of at least 9 months. Trust fund expenditures for FY 1982 were about $2 million and have remained under $10 million each year since.

Section 303 provides assurance to vocational rehabilitation service providers that they will be reimbursed for services rendered to

participants in the medical recovery program (Sec. 301 of P.L. 96-265) be removing the restriction added by P.L. 97-35 that reimbursement could occur only where the beneficiary had performed nine months of SGA and by adding a provision that reimbursement will occur where the beneficiary without good cause refuses to accept or fails to cooperate with services in such a way as to preclude successful rehabilitation.

The committee is concerned that provision of vocational rehabilitation services to social security beneficiaries be improved. Therefore, it directs the Advisory Council on Medical Aspects of Disability to examine the whole area of the availability of vocational rehabilitation services for social security disability beneficiaries with particular attention to the following issues: How to assure that beneficiaries are referred for services in the most expeditious manner; whether the Secretary should contract directly with public and private non-profit providers of services, including rehabilitation facilities; how to provide adequate incentives for State and non-profit organizations to participate in programs available to social security beneficiaries; and what types of services should be provided to people whose SSDI benefits are terminated as a result of a continuing disability investigation and how best to provide such services.

The committee also reaffirms the congressional intent that payment for eligible vocational rehabilitation services, based on reasonable estimates, be made to service providers in advance.

4. Advisory Council on Medical Aspects of Disability (sec. 304 of the bill)

At a time when several major aspects of the social security disability program are to be re-evaluated and potentially revised in the light of advances in medical and vocational diagnostic and therapeutic techniques, the committee believes it is desirable to assure that the Secretary has ready access to the advice and recommendations of medical and vocational professionals. Thus, the bill creates a temporary Advisory Council (which would expire on December 31, 1985) consisting of medical, psychological and vocational experts to provide the necessary advice and recommendations to the Secretary on disability standards, policies and procedures. To assure the input of appropriate professional and consumer organizations, the Council would be authorized to periodically convene a larger representative group and to set up temporary short-term task forces to examine particular specialized issues. Under the bill, the Council's recommendations to the Secretary would be communicated to the Congress in SSA's currently required annual report to the Congress on the status of the disability program.

Of most immediate concern to the committee is the participation of the council in the required review of the mental impairment listings. The bill provides that the Council must be appointed within 60 days after enactment to assure the timely participation of the Council in this review.

The committee believes that the Council can also productively contribute to the re-examination of a number of other critical issues in the program. Section 304, for example, specifically directs the Council to examine and provide recommendations with respect

to the question of requiring the involvement of appropriate medical specialists services; i.e., how best to assure their availability and effective delivery to disabled persons. Moreover, it is expected that the Council will participate in the assessment of possible policy changes affecting medical aspects of the program, particularly any changes that might be considered with respect to the evaluation of pain. Because the Advisory Council will be considering issues concerning the delivery of vocational rehabilitation services, work evaluation and appropriate procedures and criteria for such services and activities, it is expected that among those chosen to be included on the council will be those with expertise in administering State and private non-profit vocational rehabilitation programs.

5. Qualifying experience for appointment of certain staff attorneys to administrative law judge positions (sec. 305 of the bill)

To qualify for an ALJ appointment, one must be an attorney with at least seven years of experience participating in formal cases at regulatory agencies, or in the preparation and trial of cases in courts of record, or in certain other legal work described in announcement. At least two of those years must be in the field of administrative law or in certain activities regarding hearings or the trial of court cases. At lease one year of qualifying experience must have been at the GS–14 level in the Federal service, or at a comparable level of difficulty and responsibility in other employment. The highest grade available for staff attorneys who assist social security ALJs is the GS–12 level. Social security ALJ appointments carry a lifetime tenure at a GS–15 level.

The committee shares the concerns repeatedly expressed by OPM and SSA about the difficulty of finding qualified candidates for social security ALJ positions. Staff attorneys who work with social security ALJs are readily familiar with the social security program and with adequate training represent a potential pool of candidates for ALJ positions.

Section 305 requires the Secretary to establish a sufficient number of attorney advisor positions at GS–13 or GS–14 levels to ensure adequate career advancement opportunity for attorneys employed by SSA, and to assign duties and responsibilities to enable individuals in these positions to achieve qualifying experience for an ALJ appointment. The committee notes that the Committee on Post Office and Civil Service has expressed support for this amendment.

D. SSI provisions

1. Extension of the section 1619 program for the SSI disabled who perform substantial gainful activity despite severe medical impairment (sec. 306 of the bill)

Section 306 extends for two and one-half years, through June 30, 1986, the temporary authority contained in section 1619 of the Social Security Act that provides for the continuation of SSI benefits and/or Medicaid for disabled recipients who are able to work despite the continuation of their impairments.

Section 306 also requires the dissemination of information about the section 1619 program to the disabled and staff of various agencies and organizations.

Prior to mid 1985, HHS would compile information on the characteristics of section 1619 recipients including health services usage, impairments, and other information intended to be used in making recommendations regarding the continuation and/or needed modification in section 1619.

Section 1619 was enacted as part of the Disability Amendments of 1980 and was intended to lessen the work disincentives for SSI disabled recipients who, under prior law, risked the loss of SSI and Medicaid when they increase their work effort and earnings in spite of the continuation of their disability.

Section 1619(a) of the SSI law provides that an individual who loses eligibility for SSI because he or she works and demonstrates the ability to perform SGA, but who continues to have a disabling impairment, may become eligible for special SSI benefits until their countable income reaches the SSI income disregard "breakeven point". People who receive the special SSI benefits continue to be eligible for Medicaid on the same basis as regular SSI recipients.

Under section 1619(b), an individual can continue to be eligible for Medicaid even if their earnings have taken them past the SSI income disregard "breakeven point." This special eligibility status, under which the individual is considered a blind or disabled individual receiving SSI benefits for purposes of Medicaid eligibility, applies as long as the individual: (1) continues to be blind or have a disabling impairment; (2) except for earnings, continues to meet all the other requirements for SSI eligibility; (3) would be seriously inhibited from continuing to work by the termination of eligibility for Medicaid services; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the benefits (SSI, State supplementary payments, and Medicaid) which would be available if he or she did not have those earnings.

Section 1619 was enacted to be effective for three years with the expectation that information would be gathered regarding the characteristics of those who benefit from section 1619 and the impact of such a program on reducing the work disincentives for the disabled under the SSI disability program. The most recent information available to the Committee from the Social Security Administration shows that in December 1982, 287 SSI recipients were receiving benefits under the provisions of Section 1619(a) and 5,600 former SSI recipients were retaining eligibility for Medicaid under section 1619(b). Approximately one-half of section 1619 recipients are under age 30 compared to only 16 percent of all SSI disabled adult recipients.

The Administration has agreed to an extension of section 1619 with the understanding that more complete data will be collected and available by mid 1985 for further evaluation of the program. The Administration has agreed to collect data regarding the characteristics of the individuals benefiting from these provisions, the effects on work effort, and, in the case of continued Medicaid coverage, the types of health care services utilized and their costs. Some of the specific areas that should be studied are: the types of impairments of the affected individuals; the types of income available to

these individuals—earned and unearned; the movement of individuals from one eligibility status to another; the kinds of health services used and the offsets to costs due to employer-related health insurance and other third-party resources. It is recognized that the collection and analysis of these data require the participation and cooperation of the Social Security administration for matters involving eligibility, characteristics, and work incentives; the Health Care Financing Administration for matters relating to Medicaid costs and utilization; and the State agencies administering the Medicaid programs for providing Medicaid data in their files; and the Committee expects such cooperation.

This provision to continue the section 1619 program, also directs the Secretary of Health and Human Services and the Secretary of the Department of Education to develop and disseminate information and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of section 1619. At Committee hearings held in California and Washington, D.C. and from reports from the disabled and rehabilitation and social services agencies, the Committee found a lack of awareness or knowledge of the section 1619 program.

As stated in testimony at the hearings, "Getting information out to the disabled community is no simple task. It requires the best effort of the Social Security Administration and the cooperative efforts of disability organizations, rehabilitation agencies, and other groups concerned with disability." However, as was also stated in hearings by a disabled individual, who did not utilize the option available under section 1619 because the District office staff of the Social Security Administration did not inform her about section 1619. " In order for SSI recipients like me to use these work incentive options, we need to be aware of how they can help us attain our employment goals without jeopardizing our health and wellbeing."

The provision provides that the Social Security Administration would be responsible for training programs for their staff in the District offices. The Social Security Administration would also be responsible for making a concerted effort to inform SSI disability applicants and recipients about the provisions of Section 1619. The amendment also mandates that the Department of Education, intended to be carried out primarily through the Rehabilitation Services Administration, to also be involved in getting information out to the State Vocational Rehabilitation agencies. In addition, working with and through such agencies, the information is also to be made available to the other public and private rehabilitation and social service agencies in the States and to the various organizations of and representing the disabled.

The section 1619 program is intended to be a tool which can be used by those agencies and organizations responsible for enabling the disabled to improve their capabilities to increase their level of self support, to live independently or to work in a sheltered environment. Therefore, the Committee is concerned that unless there is a greatly increased effort to get information out to a broad range of individuals and organizations that many disabled individuals will not be made aware of this attempt by Congress to eliminate

the work disincentives for those disabled who are able to work in spite of their impairment.

In a related matter, the Committee is concerned that the Administration is counting toward the "trial work period" any month in which the disabled is earning over $75 a month in a sheltered workshop. The Committee feels that the trial work period is to be used to, in effect, test the individuals ability to be eventually employed in a sheltered work shop should not be counted toward the "trial work period" months.

At the hearing held by the Subcommittee on Public Assistance and Unemployment Compensation regarding the extension of the section 1619 program, the following case examples were presented as to the impact of the section 1619 program:

> In order for this committee to realize the impact of section 1619, a description of two cases should provide you with information that will, hopefully, assist in your decision. The first is a 26 year old woman who is a quadriplegic and requires an attendant to assist with her personal care and home care needs such as bathing, dressing, grooming, cooking, shopping and other needs. Vocational rehabilitation helped her complete a college program, providing funds for training and for attendant care. After graduating from college, she obtained full time employment as a computer operator with earnings of $650 a month. Although she briefly received attendant care under a State medical program, she eventually was told she must either quit working or lose her eligibility. Since she was unable to pay this herself, she decided to quit working.
>
> The second case is a personal friend on SSI who has overcome great barriers with his disability. He is a quadriplegic who has no use of his legs, right arm and limited mobility with his left arm. He obtained his Bachelor's degree in 1975 with assistance from the Vocational Rehabilitation Program. He then moved to Minnesota to continue with graduate school. Since no Medicaid Title 19 was available to assist with Attendant Care costs, he was forced into institutional care. In 1978, he was able to move out into the community of Minnesota due to the Attendant Care Program funded through the Federal and State Governments.
>
> While finishing his education, he began full time work for a Rehabilitation Center, but after the nine month Trial Work Period, he would lose SSI status and, therefore, eligibility for Medicaid Title XIX and Social Services Title XX which paid for his Attendant Care. Ultimately, he had to quit an excellent position at the conclusion of his Trial Work Period or be forced to return to a life of dependency and institutional care. The cost of such care far exceeds the cost of continuing to live independently in the community with partial benefits.
>
> Passage of the 1980 Social Security Disability Amendment, which included the provisions in Section 1619, changed the picture dramatically for these two individuals.

In 1981, my friend was able to obtain employment at another Rehabilitation Center in Minneapolis. He has retained Medicaid Title XIX and Social Services Title XX, and receives some SSI payments which make it possible to pay the additional expenses of living independently.

Today, he holds a new position with a private non-profit consulting firm that provides technical assistance on disability awareness to corporations and businesses in the private sector. The firm sponsors seminars that show supervisors and management how to work and communicate with disabled employees, thus, creating increased employment opportunities for persons with disabilities.

If SSI Special Benefits Amendment (Section 1619) is not continued, he will again be forced to quit his job in order to avoid institutional care, since he cannot afford the cost of attendant services without public assistance while engaged in employment.

2. SSI disability program work evaluation and rehabilitation study

Section 307 would require the Advisory Council on the Medical Aspects of Disability to also study the following issues related to the SSI Disability program:

Consideration of alternative approaches to the use of work evaluation related to determination of eligibility for SSI disability benefit including: criteria for referral to work evaluation; relationship to rehabilitation potential and training; and appropriateness of providing stipends during extended work evaluation; and

Reexamining the definition of a successful rehabilitation of an SSI disabled recipient to include the ability of the severely disabled to work in a sheltered environment and live independently.

Work evaluation for purpose of the study would include determining an individual's: work activity capabilities; work activity limitations; rehabilitation potential; ability of the mentally impaired to cope with a competitive work environment; and needed modifications in the work setting to enable the individual to work.

Section 307 of the bill would require the Advisory Council on the Medical Aspects of Disability to consider alternative approaches to the use of work evaluation related to the SSI disability program. Such consideration by the Council should include examining proposals presented to the Committee on Ways and Means by various individuals and organizations with expertise in the area of work evaluation and rehabilitation.

The SSI program for the disabled grew out of the formerly State administered program for the disabled and was not an offshoot of the Social Security Disability Insurance program. Under the pre-SSI program the definition of disability was set by each State under some rather general Federal statutory and regulatory language.

While there is a common definition for disability for the Disability Insurance program and the SSI program, there are a number of very significant differences between the two programs and the

characteristics of the recipients of disability insurance and SSI disability recipients. These differences are critical when evaluating an individual's potential for employment and when determining the approach which should be taken both in determining eligibility for disability benefits and the approach to rehabilitation activities for such recipients. In addition, it needs to be recognized that Congress has defined a unique function for the SSI disability under the section 1619 program by providing ongoing income support and medical services under Medicaid for those disabled who have disabling impairments but who wish to have some level of employment in spite of their impairment.

The following chart compares some selected characteristics of the two programs and of the recipients of benefits under the two programs.

COMPARISON OF SELECTED CHARACTERISTICS OF THE SSI DISABILITY PROGRAM AND THE SOCIAL SECURITY DISABILITY PROGRAM AND A COMPARISON OF SELECTED CHARACTERISTICS OF RECIPIENTS OF DISABILITY AND SSI DISABILITY BENEFITS

Social Security Disability Insurance	SSI Disability Program
A. NON-DISABILITY BASIS FOR ELIGIBILITY	
A. Disability Insurance provides benefits for workers who are "insured for disability" and their dependents.	A. Eligibility for and the amount of SSI benefits for a disabled or blind individual is not related to whether the individual has earned social security coverage or to the level of an individual's previous earnings. Cash assistance for the disabled and blind under SSI is provided only to those who, in addition to meeting the disability criteria, have income and resources low enough to meet the eligibility standards. While approximately 34 percent of the disabled receiving SSI disability benefits also receive DI benefits, only one-third of those or 12 percent are DI recipients on the basis of their own work history.
B. IMPACT OF EARNINGS BY RECIPIENTS ON AMOUNTS OF BENEFITS	
B. Earnings by DI recipients below the SGA earnings test level does not reduce the amount of DI benefits paid to the recipient.	B. SSI recipients have a $1 reduction in SSI benefits for every $2 in earnings in excess of $65 a month ($85 a month if no other income).
C. MAJOR DISABLING DIAGNOSIS	
C. Approximately 12 percent of the DI recipients are eligible of the basis of mental impairments; circulatory disorders account for 29 percent of the disabling impairment; and skeletal-muscular impairments account for 19 percent.	C. Approximately 40 percent of the SSI disabled are eligible on the basis of mental impairments. Approximately 20 percent are on the basis of circulatory disorders.

COMPARISON OF SELECTED CHARACTERISTICS OF THE SSI DISABILITY PROGRAM AND THE SOCIAL SECURITY DISABILITY PROGRAM AND A COMPARISON OF SELECTED CHARACTERISTICS OF RECIPIENTS OF DISABILITY AND SSI DISABILITY BENEFITS—CONTINUED

Social Security Disability Insurance	SSI Disability Program
D. AGE OF RECIPIENTS	
D. 7. percent are under age 30 and 66 percent of the DI population in ages 50 through 64 years of age.	D. 24 percent are under age 30 of the SSI disabled population ages 18–64 and 66 percent are ages 50–64 of the SSI disabled population ages 18–64.
E. SEX OF RECIPIENTS	
E. 70 percent male and 30 percent female.	E. 40 percent male and 60 percent female.

At the August 3rd hearing of the Subcommittee on Public Assistance and Unemployment Compensation, testimony was presented on behalf of the State of Michigan's Interagency Task Force on Disability by the Director of the Michigan Department of Mental Health. The Michigan Task Force, which consists of professional staff from the State Disability Determination Service, the State vocational rehabilitation service agency, the State department of Mental Health, Department of Social Services and other state agencies made recommendations based on a broad view of the role of Federal and state government's responsibilities as related to the disabled. In describing the proposed Michigan model, as to the recommended use to be made of work evaluation, the Task Force representative contended that long term cost savings will accrue to the Federal government and to States through the use of work evaluations and vocational rehabilitation in selected cases.

The testimony stated that:

> The relationship between multiple impairments and work ability or the relationship between residual capacity and work ability should be reliably documented. This documentation should involve the application of accepted techniques by a trained counselor who can become personally familiar with the claimant. This vocational documentation should become a part of the objective information which is reviewed in deciding whether disability benefits should be awarded. In this way, and only in this way, can ALJ's and disability examiners render uniform, reliable decisions based on objective assessments of a whole person—including equally-weighted medical and functional documentation

In directing the Advisory council to consider alternative approaches to work evaluation, section 307 defines work evaluation as follows:

> For purposes of this section, "work evaluation" includes (with respect to any individual) a determination of (a) such individual's (b) the work activities or types of work activity for which such individual's skills are insufficient or inadequate, (c) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated, (d) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and (e) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

The reason that such an approach is recommended, especially as related to the SSI program, is that most SSI applicants have had a very tenuous or non-existent connection to the work force. Therefore, if work evaluation is used only to determine eligibility for income assistance, the result could be to deny the individual the opportunity to gain access to those rehabilitation services which can enable an individual to lessen his or her dependency. On the other hand, if work evaluation is not used to accurately gauge, to the extent possible, the individual's limitations on being able to work at a substantially gainful wage level then the individual may be denied that financial assistance to which he or she is entitled and which is reflective of his or her very limited capacity to be self-sufficient.

This approach to work evaluation is illustrated in the following excerpt from the State of Michigan testimony:

> In the model, I propose all individuals who pass through the screening criteria would be determined "presumptively disabled" and would be granted SSI benefits for up to six months, during which time additional vocational information would be acquired. These presumptive beneficiaries would be referred to state Vocational Rehabilitation agencies for a work evaluation to determine their potential for either gainful employment or for the development of skills needed for successful sheltered employment.
>
> Results for work evaluations would be transmitted to examiners within the State DDS to be used in their final determinations of disability. If, based on comprehensive work evaluations, the claimant is found capable of SGA, the DDS would deny the individual as non-disabled. If the person is found to have no potential for SGA, and it is determined that further efforts at rehabilitation would not be effective (due to impairment), the case would be approved for SSI and SSDI benefits. In such cases, involvement in a sheltered workshop on an ongoing basis might be appropriate, with benefit levels reduced by the amount of sheltered workshop income. Finally, if the person is found to be potentially employable, SSI benefits would be granted during the person's progression (through rehabilitation) to more independent work settings. This latter possibility, involving training and rehabilitation, would vary

in length depending on individual competencies. At all points in a work rehabilitation plan, disability benefits would be reduced by the amount of income earned, case management responsibility would be vested in the rehabilitation agency (with DDS diarying claimant progress).

The amendment suggests the evaluation of the concept of "stipends" to be provided to those in the work evaluation process. The purpose here is to recognize that those individuals with such borderline ability to be self supporting must have a subsistence level of income while in an extended work evaluation.

Section 307 also requires the Advisory Council to examine the criteria for assessing whether a recipient of SSI disability benefits will benefit from rehabilitation services. Specifically, the amendment provides that such an examination will consider whether such criteria should include not only whether an individual will be able to engage in substantial gainful activity but also whether such services can be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

Unlike the Disability Insurance program, earned income below the Substantial Gainful Activity earnings test of $300 a month received by SSI disability recipients does result in a savings to the SSI program. SSI benefits are reduced $1 for every $2 of earnings after the initial disregard of the first $85 a month for individuals with no other income. Therefore, rehabilitation services and training will have a savings to the SSI program even if the earnings of an SSI disability recipient does not reach the SGA earnings test of $300 a month.

In addition, at the income level provided under the SSI program even an additional small increment of income from sheltered employment can make a significant difference between marginal subsistence and some degree of independence, improved quality of life, and self-esteem which such earnings can provide.

3. SSI conforming amendments

Included in the bill as reported by the Committee are provisions to make generally the same changes in the SSI statute (Title XVI of the Social Security Act) as are made in the Disability Insurance program under Title II of the Social Security Act. The provisions also ensure applicability to the SSI Disability program of certain temporary provisions in Title IX affecting the Disability Insurance program. These include, for example, making applicable to the SSI program required studies related to pain and the moratorium in the reviews of the mentally impaired.

E. Effective date (sec. 308 of the bill)

Except as otherwise provided, these provisions of the bill would apply with respect to cases involving only disability determinations pending in HHS or in court on or after the date of enactment.

IV. Cost Estimates; Vote of the Committee and Other Matters to be Discussed Under the Rules of the House

In compliance with clause (2)(l)(2)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the bill was approved by voice vote.

In compliance with clause (2)(l)(3)(A) of rule IX, the Committee reports that the need for legislation to provide for necessary reforms in the administration of the disability insurance program has been confirmed by oversight hearings conducted by the Committee's Subcommittee on Social Security.

In compliance with clause (2)(l)(3)(D) of rule XI, the Committee states that no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

In compliance with clause (2)(l)(4) of rule XI, the Committee estimates that enactment of the bill will not create inflationary pressures on the national economy.

In compliance with clause (2)(l)(3)(B) of rule XI, the Committee states that discussion of budgetary authority is contained in the report of the Congressional Budget Office.

In compliance with clause 7(a) of rule XI, relative to the budget effect of the bill, the Committee states that it agrees with the estimates of the Congressional Budget Office.

A. Cost estimates prepared by Congressional Budget Office

In compliance with clause (2)(l)(3)(C) of rule XI, the Committee states that the Congressional Budget Office has examined the bill, as reported by the Committee, and has submitted the following statement.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., March 14, 1984.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the provisions of H.R. 3755, the Social Security Disability Benefits Reform Act of 1984, as ordered reported by the Committee on Ways and Means on March 14, 1984. We have not received a recent copy of this bill. On the advice of your staff, however, we have prepared the attached cost estimate assuming the provisions in this bill are identical to those in Title IX of H.R. 4170, as ordered reported by the Committee on March 1, 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3755.

2. Bill title: Social Security Disability Benefits Reform Act of 1984.

3. Bill status: As ordered reported by the White House Ways and Means Committee on March 14, 1984.

4. Bill purpose: To amend Title II of the Social Security Act to provide for reform of the disability determination process.

5. Estimated cost to the Federal Government: The following table shows the estimated costs of this bill to the federal government. These estimates assume an enactment date of May 1, 1984. The estimate was prepared without a draft of the bill, but it is assumed that the provisions will be identical to those in Title IX of H.R. 4170, as ordered reported by the Committee on Ways and Means. March 1, 1984.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 3755

[By fiscal year, in millions of dollars]

Budget function	1984	1985	1986	1987	1988	1989
Function 550:[1]						
Budget authority	3	10	11	7	8	9
Estimated outlays	3	10	11	7	8	9
Function 570:						
Budget authority	1	28	28	20	19	9
Estimated outlays	7	73	86	83	77	59
Function 650:						
Budget authority	−1	−15	−35	−55	−75	−105
Estimated outlays	46	238	268	268	271	195
Function 600:[1]						
Budget authority	1	7	10	11	13	14
Estimated outlays	1	7	10	11	13	14
Total costs of savings:						
Budget authority	4	30	14	−17	−35	−73
Estimated outlays	57	328	375	369	369	277

[1] Funding for entitlements that requires further appropriations action.

Basis for estimate

This bill would change the disability process for those individuals who undergo continuing disability reviews (CDR's) and for those who apply for Disability Insurance (DI) and Supplemental Security Income (SSI) benefits. Historically, continuing disability reviews have been performed on medical diaried cases—those cases which the Social Security Administration (SSA) evaluates as having some chance of medical improvement within a specific length of time. In 1981, SSA began an intensified process of periodically reviewing all cases on the rolls not considered permanently disabled.

It is difficult to project the costs of the provisions in this bill for several reasons. First, there are little data available on the characteristics of the people who have been terminated from the DI rolls as a result of the continuing disability investigations. Second, the Administration has recently changed some of its policies regarding the review process, and it is unknown how these changes will affect the number of terminations from the program. Finally, the language of the provisions allows for various interpretations which would affect costs. This estimate is based on the interpretations of the bill provided by Committee staff.

This cost estimate assumes that 110,000 medical diary reviews would be performed annually. The number of periodic reviews is

assumed to decline from less than 300,000 in 1984 to 120,000 in 1989, as the percentage of beneficiaries already reviewed increases. Approximately 45 percent of the medical diary reviews are estimated to result in initial terminations of benefit payments, but CBO estimates about 57 percent of these beneficiaries would have their benefits restored after appeals are reviewed. For periodic reviews, the percentage of initial terminations is projected to decline from 40 percent in 1984 to 20 percent in 1989. About 55 percent of those initially terminated from the rolls in periodic reviews are estimated to have their benefits restored in the appeal process.

There are also costs to the Medicare program which would result from a larger number of recipients continuing to receive DI benefits because most DI beneficiaries also receive assistance from the Medicare program in either the Hospital Insurance (HI) or Supplemental Medical Insurance (SMI) components of that program. Estimates of these costs are based on the average number of disabled beneficiaries receiving HI and SMI and the average benefit payments for these programs. There are also costs to the Medicaid program because SSI beneficiaries generally receive Medicaid.

Table 2 displays CBO's outlay estimates by section of the bill. Following the table is a description of the methodology used for the estimates of the outlays for each section listed in Table 2.

Termination of benefits based on medical improvement

This provision would require SSA, with some exceptions, to provide "substantial evidence" that a beneficiary's disability has medically improved before SSA can terminate benefits as a result of a CDR. The bill does not specify what substantial evidence would be. Currently SSA is not required to prove medical improvement before terminating benefits.

This provision would affect those individuals who would not have medically improved since their last evaluation but whose benefits would be terminated under current law and regulations. Of those projected to lose benefits at the initial stage under current law, it is estimated that approximately 20 percent would not show medical improvement. However, of those 20 percent initially denied benefits under current law, it is projected that 85 percent would appeal and 75 percent of those who appeal would be continued on the rolls. Therefore, under current law, about 64 percent of the people losing benefits initially and whose disabilities have not improved would ultimately be continued on the DI rolls. Costs for this provision result from the continuation of benefits for the remaining 36 percent, who under current law, would not appeal the decision to end their benefits or who would not win their appeal and would be consequently dropped from the rolls. In 1985, the first full year this provision would be in effect, it is estimated that 6,400 people would be retained on the rolls as a result of this provision. The additional number of beneficiaries receiving DI as a result of this provision would fall to 2,000 by 1989 as CBO's estimate of the number of CDR's performed declines. The costs, including administrative expenses are estimated to rise from $22 million in 1984 to $133 million in 1989. This estimate, on the advice of staff of the Committee on Ways and Means, is assumed to be applied only to prospective cases. In SSI, only concurrent cases—those receiving both DI and

SSI—would be affected because no CDR's are planned for SSI only cases.

Multiple impairments

This provision would require SSA to consider whether the combination of the applicant's disabilities is severe enough to keep the individual from working at the "significant gainful activity" level in the case where no one impairment is considered severe enough to warrant benefit payments. The SSA estimates that about 500 additional cases per year would be added to the rolls as a result of this provision. This would increase DI costs by a range of less than $500,000 in 1984 to $15 million in 1989. In SSI, about 150 cases would be added initially, increasing SSI costs by a negligible amount in 1984 and by $3 million in 1989.

Face-to-face evidentiary hearings for reviews

This provision would require SSA to provide for face-to-face evidentiary hearings at the initial determination level for those terminated as a result of CDR's after January 1, 1985. There are no benefit increases shown for this provision. Under current law, beginning in 1984, face-to-face evidentiary hearings will occur at the first level of appeal. It is possible that more people will be retained on the rolls by allowing evidentiary hearings one step earlier. However, it is equally possible that fewer people will choose to appeal their decisions further because of the opportunity to present their cases at the initial level. Assuming that there is no change in the number of people who ultimately lose benefits, there would be no cost associated with this provision. However, there would be added administrative costs at the initial level due to a higher workload, although these costs would be offset somewhat by administrative savings because of fewer projected reconsiderations. The estimate of administrative costs assumes that each review takes 22 hours and that there would be some additional expenditures required for office space and travel.

Continued payment during appeal

This provision would provide for continued payment of disability benefits through the Administrative Law Judge (ALJ) level of appeal for those individuals who appeal SSA's decisions to end their benefits as a result of CDR's. The estimated costs, including administrative costs, are $25 million in 1984, $149 million in 1985, and declining to $31 million in 1989. The costs arise as a result of extra benefits paid to those who ultimately lose their appeal but do not repay the interim benefits as required under this provision. The estimate assumes that seven months of additional benefits are paid to each individual and that 15 percent of those who are finally terminated repay the extra benefits. This repayment is expected to occur in the year after the benefits are paid.

Medical personnel qualifications

This provision would require that a psychologist for a psychiatrist complete a medical evaluation of a claimant before the individual can be denied benefits. The SSA expects that about 1,000 individuals will be added to the rolls annually as a result of this

change in procedure. DI costs would range from $7 million in 1985 to $27 million in 1989, while SSI costs would total $7 million by 1989.

Vocational rehabilitation

This provision changes the regulations concerning benefit payments for individuals participating in vocational rehabilitation programs. The SSA estimates that about 300 individuals per year would be affected by this change. DI costs would range from negligible in 1984 to $8 million in 1989. SSI costs would be insignificant.

Compliance with court orders

This provision requires SSA to apply the decisions of the circuit courts of appeal to all beneficiaries residing within states within the circuit, until or unless the decision is overruled by the Supreme Court. This provision could substantially increase costs but these effects cannot be estimated since they would depend on the outcome of future court decisions.

Extension of section 1619a and 1619b

Sections 1619a and 1619b provide SSI and Medicaid benefits to disabled individuals who work and who would not otherwise be eligible for benefits because their earnings exceed the "substantial gainful activity" level. These sections, which expired on December 31, 1983, are extended by these amendments through June 30, 1986. Section 1619a is estimated to add 575 persons to the SSI rolls in 1984 and 950 by 1986. Section 1619b is estimated to add 8,300 persons to the Medicaid rolls in 1984 and 10,500 by 1986.

6. Estimated cost to State and local government: A number of the provisions of this bill would increase expenditures of state and local governments. The estimated net impact of the bill on state and local expenditures is less than $5 million a year.

The changes in SSI would increase state and local government costs because virtually all states supplement federal SSI benefits. By making more persons eligible for SSI benefits, state costs would increase. States are also affected by the added outlays in Medicaid because states finance a portion of the program. The current state financing share is 46 percent.

There could be some offsets to these added SSI and Medicaid costs to the extent that persons made eligible for DI and SSI by the bill might otherwise be eligible for general assistance or health care financed fully by states and localities. These potential offsets are not included in the cost estimate.

7. Estimate comparison: The Social Security Administration's latest estimate (January 13, 1984 and February 6, 1984) for this bill shows combined costs of about $6 billion over the six year period from 1984–1989. The SSA has higher estimates for the sections regarding medical improvement and for continued payment of benefits through the appeals process. The major differences arise because SSA assumes that a greater number of CDR's will be done each year, because the provision on medical improvements is assumed to be applied retroactively and because they assume a large increase in the number of appeals to the ALJ level, which would greatly increase administrative costs. CBO has followed the Com-

mittee's intent that the medical improvement provision be applied only prospectively.

8. Previous CBO estimate: None.

9. Estimate prepared by: Stephen Chaikind, Kelly Lukins, and Janice Peskin.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

B. Administration estimates

The Office of the Actuary, Social Security Administration, has estimated the impact of the bill on the disability trust fund over a 75-year period. Under II-B economic assumptions, the disability trust fund remains in actuarial balance. The following tables summarize the Administration's long-range and short-range estimates.

ESTIMATED COST OF THE SOCIAL SECURITY DISABILITY PROVISIONS, FISCAL YEAR 1984-88

[In millions]

Provision	Fiscal year—					Total, 1984-88
	1984	1985	1986	1987	1988	
OASDI benefit payments	$60	$390	$580	$650	$730	$2,410
OASDI administrative expenses	25	105	130	126	131	517
Medicare	25	45	65	80	95	310
Medical	13	21	21	15	20	90
SSI	3	2	9	19	23	50
Total	120	563	805	890	999	3,377

Note:—These estimates were made by the Office of the Actuary, Social Security Administration, based on the alternative II-B assumptions of the 1983 Trustees' Reports as revised in November 1983.

Source: Social Security Administration, Office of the Actuary, January 1984.

ESTIMATED LONG-RANGE FINANCIAL IMPACT OF THE SOCIAL SECURITY DISABILITY PROVISIONS

Bill section	Provision	Change in long-range OASDI actuarial balance (as percent of taxable payroll)
901	Standard of review for terminations of disability benefits	(1)
902	Study concerning evaluation of pain	(1)
903	Guidelines for disability determinations:	
	Multiple impairments	(1)
	Noncompetitive work	(1)
	Work evaluation in mental impairment cases [2]	(1)
904	Moratorium and revised criteria for mental impairment cases	(3)
905	Review procedure governing disability determinations affecting continued entitlement to disability benefits; demonstration projects relating to review of denials of disability benefit applications	(1)
906	Continuation of benefits through ALJ decisions	−0.01
907	Qualifications of medical professional evaluating mental impairments	(1)
908	Regulatory standards for consultative examinations	(1)
909	Administrative procedure and uniform standards	(1)
910	Compliance with certain court orders	(1)

ESTIMATED LONG-RANGE FINANCIAL IMPACT OF THE SOCIAL SECURITY DISABILITY PROVISIONS—Continued

Bill section	Provision	Change in long-range OASDI actuarial balance (as percent of taxable payroll)
911	Revision of vocational rehabilitation criteria	(1)
912	Advisory Council on Medical Aspects of Disability	(1)
913	Qualifying experience for appointment of certain staff attorneys to ALJ positions	(1)
	Total[4]	−.02

[1] Change in long-range OASDI actuarial balance is less than 0.005 percent of taxable payroll.
[2] Report language urges full "work evaluation" by a vocational expert in "borderline" mental impairment cases
[3] The financial effect of this provision is attributed to the Secretary's initiative of June 7, 1983 for revising the criteria for evaluating mental impairment cases illustrative estimates of the change in the long-range OASDI actuarial balance for this revision are −0.03, −0.07, and −0.15 percent of taxable payroll based on the assumption that 10 percent, 25 percent of 50 percent of current mental impairment denials would be allowed (slightly higher percentages are assumed for current CDI terminations). At this time it is not known what provisions would be made to these criteria.
[4] Total includes the effect of interaction among sections

Note: The estimates in this table are based on the alternative II–B assumptions of the 1983 Trustees Report

Source: Social Security Administration, Office of the Actuary, Sept. 19, 1983

V. Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

* * * * * * *

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

(b)(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of

fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. *Reviews of disability determinations on which decisions relating to continued entitlement to benefits are based shall be governed by the provisions of section 221(d)(2).* The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

[(2) In any case where—

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

[(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

[(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B) in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).]

(2) Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to matters relating to benefits under this title. With respect to matters to which rulemaking requirements under the proceeding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provisions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State

agency or the Secretary, including any hearing before an administrative law judge.

* * * * * * *

OTHER DEFINITIONS

SEC. 216. For the purposes of this title—

Spouse; Surviving Spouse

(a) * * *

* * * * * * *

Disability; Period of Disability

(i)(1) Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), 2(C), (3), (4), (5), and (6) of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) * * *

* * * * * * *

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in section 216(l)), or (ii) the month preceding (I) the termination month (as defined in section 223(a)(1)), or, if earlier (II) the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section. *A period of disability may be determined to end on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence described in paragraph (1), (2), or (3) of section 223(f). Nothing in the preceding sentence shall be construed to require a determination that a period of disability continues if evidence on the record at the*

time any prior determination of such period of disability was made, or new evidence which relates to such determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subparagraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subparagraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination.

* * * * * * *

DISABILITY DETERMINATIONS

SEC. 221. (a)(1) * * *

* * * * * * *

(d) [Any] *(a) Except in cases to which paragraph (2) applies, any* individual dissatisfied with any determination under subsection (a), (b), (c), or (g) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(2)(A) In any case where—

(i) an individual is a recipient of disability insurance benefits, child's, widow's, or widower's insurance benefits based on disability, mother's or father's insurance benefits based on the disability of the mother's or father's child who has attained age 16, or benefits under title XVIII based on disability, and

(ii) the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Secretary in a case to which subsection (g) applies) to have ceased, not to have existed, or to no longer be disabling,

such individual shall be entitled to notice and oportunity for review as provided in this paragraph.

(B)(i) Any determination referred to in subparagraph (A)(A)(ii)—

(I) which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for a decision of the Secretary with regard to the individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or otherwise changed, and

(II) which is in whole or in part unfavorable to such individual,

shall remain pending until after the notice and opportunity for review provided in this subparagraph.

(ii) Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (including the right to make a personal appearance as provided in this subparagraph), the right to submit additional evidence prior to or during such review as provided in this

clause, and that, if such review is not requested, the individual will not be entitled to a hearing on such determination and such determination will be the disability determination upon which the final decision of the Secretary on entitlement will be based. Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsection (g) applies) of such determination, including the right of such individual to make a personal appearance, and may submit additional evidence for purposes of such review prior to or during such review. Any such request must be filed within 30 days after notice of the pending determination is received by the individual making such request. Any review carried out by a State agency under this subparagraph shall be made in accordance with the pertinent provisions of this title and regulations thereunder.

(iii) A review under this subparagraph shall include a review of evidence and medical history in the record at the time such disability determination is pending, shall examine any new medical evidence submitted or obtained for purposes of the review, and shall afford the individual requesting the review the opportunity to make a personal appearance with respect to the case at a place which is reasonably accessible to such individual.

(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination, as so affirmed or modified, as the disability determination under section (a), (c), (g), or (h) (as applicable).

(C) Any disability determination described in subparagraph (A)(ii) which is issued by the State agency (or the Secretary) and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the determination, the reason or reasons upon which the determination is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with the disability determination referred to in subparagraph (C) shall be entitled to a hearing thereon to the same extent as is provided in section 205(b) with respect to decisions of the Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearings as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b)

with respect to matters other than the determination referred to in subparagraph (A)(ii).

(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly appointed in accordance with section 3105 of title 5, United States Code.

* * * * * * *

[(i)] *(h)*(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Secretary (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Secretary determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this title.

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

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

(i) A determination under subsection (a), (c), (g), or (h) that an individual is not under a disability by reason of a mental impairment shall be made only if, before its issuance by the State (or the Secretary), a qualified psychiatrist or psychologist who is employed by the State agency or the Secretary (or whose services are contracted for by the state agency or the Secretary) has completed the medical portion of the case review, including any applicable residual functional capacity assessment.

(j) The Secretary shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 533(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

REHABILITATION SERVICES

Referral for Rehabilitation Services

SEC. 222. (a) * * *

* * * * * * *

Costs of Rehabilitation Services from Trust Funds

(d)(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 223,

(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

(C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 202(f) prior to attaining 60,

to the end that savings accrue to the Trust Funds as a result of rehabilitating such individuals [into substantial gainful activity], there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal such sums as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individual (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), [which result in their performance of substantial gainful activity which lasts for a continuous period of nine months] *(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful*

activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of such individuals to substantial gainful activity, *the determination that an individual, without good cause, refused to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,* and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.

* * * * * * *

DISABILITY INSURANCE BENEFIT PAYMENTS

Disability Insurance Benefits

SEC. 223. (a)(1) * * *

* * * * * * *

Definition of Disability

(d)(1) * * *
(2) For purposes of paragraph (1)(A)
(A) * * *

* * * * * * *

(C) In determining whether an individuals physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.

* * * * * * *

Standard of Review for Termination of Disability Benefits

(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that—

(A) the individual is now able to engage in substantial gainful activity, or

(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower a surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regula-

tions prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and (in a case to which clause (ii) does not apply) a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that—

(i) the individual is now able to engage in substantial gainful activity, or

(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

(B) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that the requirements of clause (i) or (ii) of subparagraph (A) are met; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decison that he or she was under a disability or continued to be under a disability, and that therefore—

(A) the individual is able to engage in substantial gainful activity, or

(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging activity.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if evidenced on the record at the time any prior determination of such entitlement to disability was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subsection shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subsection, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or fa-

ther's insurance benefit based on the disability of the mother's or father's child who has attained age 16.

Continued Payment of Disability Benefits During Appeal

(g)(1) In any case where—

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

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

(C) as timely request [for a hearing under section 221(d), or for an administrative review prior to such hearing] *for review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)* is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, [and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)], *the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits, to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,* continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, *or* (ii) the month preceding the month in which no such request for [a hearing or an administrative review] *review or a hearing* is pending [, or (ii) June 1984].

* * * * * * *

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

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

(B) prior to December 7, 1983.] *which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.*

[EFFECTIVE AFTER DECEMBER 31, 1984]

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

(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for [a hearing under section 221(d), or for an administrative review prior to such hearing,] review under secion 221(d)(2)(B) or for a hearing under section 221(d)(2)(D), and

(B) prior to December 7, 1983.

* * * * * * *

COMPLIANCE WITH COURT OF APPEALS DECISION

Sec. 234. (a) Except as provided in subsection (b), if, in any decision in a case to which the Department of Health and Human Services or an officer or employee thereof is a party, a United States court of appeals—

(1) interprets a provision of this title or of any regulation prescribed under this title, and

(2) requires such Department or such officer or employee to apply or carry out the provision in a manner which varies from the manner in which the provision is generally applied or carried out in the circuit involved,

the Secretary shall acquiesce in the decision and apply the enterpretation with respect to all individuals and circumstances covered by the provision in the circuit until a different result is reached by a ruling by the Supreme Court of the United States on the issue involved or by a subsequently enacted provision of Federal law.

(b) Acquiescence shall not be required under subsection (a) during the pendency of any direct appeal of the case by the Secretary under section 1252 of title 28, United States Code, or any request for review of the case by the Secretary under section 1254 of such title if such direct appeal or request for review is filed during the period of time allowed for such filing. If the Supreme Court finds that the requirements for the direct appeal under such section 1252 have not been met or denies a request for review under such section 1254, the Secretary shall resume acquiescence in the decision of the court of appeals in accordance with subsection (a) from the date of such finding or denial.

* * * * * * *

TITLE VII—ADMINISTRATION

* * * * * * *

SEC. 704. The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this Act. *Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II and the program of benefits for the blind and disabled under title XVI (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommenda-*

tions provided to the Secretary by the Advisory Council on Medical Aspects of Disability, with respect to disability standards, policies, and procedures, during the preceding year). In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.

* * * * * * *

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

* * * * * * *

PART A—DETERMINATION OF BENEFITS

* * * * * * *

MEANING OF TERMS

AGED, BLIND, OR DISABLED INDIVIDUAL

SEC. 1614. (a)(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

(G) In determining whether an individual's physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.

* * * * * * *

(5) A recipient of benefits based on disability under this title may be determined not be to entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(A) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that the individual is now able to engage in substantial gainful activity; or

(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that the individual is now able to engage in substantial gainful activity, or

(ii) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that he or she is now able to engage in substantial gainful activity; or

(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity.

Nothing in this paragraph shall be construed to require a determination that a recipient of benefits under this title based on disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual (unless he or she is eligible to receive benefits under section 1619) is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior determination of disability nothing in this paragraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this paragraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior determination.

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REHABILITATION SERVICES FOR BLIND AND DISABLED INDIVIDUALS

SEC. 1615. (a) * * *

* * * * * * *

(d) The Secretary is authorized to reimburse to the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) [if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months] *(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months, (2) in cases where such individuals are determined to be no longer entitled to benefits under this title because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude*

their successful rehabilitation. The determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1).

* * * * * * *

BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 1619. (a) * * *

* * * * * * *

(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.

* * * * * * *

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES

Payment of Benefits

SEC. 1631. (a)(1) * * *

* * * * * * *

(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this title,

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

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after

such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1).

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.

* * * * * * *

Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a) *(b)(2),* (d), (e), and (f) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

* * * * * * *

ADMINISTRATION

SEC. 1633. (a) * * *

* * * * * * *

(c) Section 234 shall apply with respect to decisions of United States courts of appeals involving interpretations of provisions of this title or of regulations prescribed under this title (and requiring action with respect to such provisions) in the same manner and to the same extent as it applies with respect to decisions involving interpretations of provisions of title II or of regulations prescribed thereunder (and requiring action with respect to such provisions).

* * * * * * *

PUBLIC LAW 97-455

AN ACT To amend Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Vigin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes.

* * * * * * *

[SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.

[(a) IN GENERAL.—Section 205(b) of the Social Security Act is amended

[(1) by inserting "(1)" after "(b)"; and

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

["(2) In any case where—

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

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

["(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits.

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).".

[(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary Health and Human Services may specify, but in any event not later than January 1, 1984.

[SEC. 5. CONDUCTS OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

[The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

[(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place

of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

[(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so establishd, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsideration.]

* * * * * * *

SECTION 201 OF THE SOCIAL SECURITY DISABILITY AMENDMENTS OF 1980

BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 201. (a) * * *

* * * * * * *

(d) The amendments made by subsections (a) and (b) shall become effective on January 1, 1981, but [shall remain in effect only for a period of three years after such effective date.] *shall remain in effect only through June 30, 1986.*

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Union Calendar No. 352

98TH CONGRESS
2D SESSION

H. R. 3755

[Report No. 98–618]

To amend title II of the Social Security Act to provide for reform in the disability determination process.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1983

Mr. PICKLE introduced the following bill; which was referred to the Committee on Ways and Means

MARCH 14, 1984

Additional sponsors: Mr. SHANNON, Mr. JACOBS, Mr. MATSUI, Mr. ANTHONY, Mr. ROYBAL, Mr. WRIGHT, Mr. CONTE, Mr. SHUMWAY, Mr. SYNAR, Mr. OBERSTAR, Mr. VENTO, Mr. SISISKY, Mr. CLARKE, Mr. MCKAY, Mr. MOLLOHAN, Mr. RAHALL, Ms. OAKAR, Mr. FORD of Tennessee, Mr. PEPPER, Mr. HAMMERSCHMIDT, Mr. FRANK, Mr. WISE, Mr. RINALDO, Mr. SKELTON, Mr. DAVIS, Mr. OLIN, Mr. JEFFORDS, Mr. FORSYTHE, Ms. SNOWE, Mr. REGULA, Mr. BONKER, Mr. BOUCHER, Mr. BROYHILL, Mr. BIAGGI, Mr. HAWKINS, Mr. MCNULTY, Mr. EVANS of Illinois, Mr. SENSENBRENNER, Mr. SMITH of New Jersey, Mr. SIKORSKI, Mr. NEAL, Mr. ERDREICH, Mr. RICHARDSON, Mr. SHELBY, Mr. MRAZEK, Mr. DOWNEY of New York, Mr. DURBIN, Mr. SLATTERY, Mr. DYSON, Mr. MCCLOSKEY, Mr. YATES, Mr. LUKEN, Mr. OWENS, Mr. MARLENEE, Mr. ROSE, Mrs. JOHNSON, Mr. LEVIN of Michigan, Ms. MIKULSKI, Mr. BRITT, and Mr. BARNES

MARCH 14, 1984

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on August 3, 1983]

A BILL

To amend title II of the Social Security Act to provide for reform in the disability determination process.

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

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. *This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".*

TABLE OF CONTENTS

TITLE I—STANDARDS OF DISABILITY

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

SEC. 101. (a) Section 223 of the Social Security Act is amended by inserting after subsection (e) the following new subsection:

"Standard of Review for Termination of Disability Benefits

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that—

"(A) the individual is now able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to pre-

clude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii) does not apply) a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that—

"(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(B) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that the require-

ments of clause (i) or (ii) of subparagraph (A) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to disability benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly errone-

ous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subsection shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subsection, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "A period of disability may be determined to end on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence described in paragraph (1), (2), or (3) of section 223(f). Nothing in the preceding sentence shall be construed to require a determination that a period of disability continues if evidence on the record at the time any prior determination of such period of disability was made, or new evidence

which relates to such determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulentty obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subparagraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subparagraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination.".

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not be to entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that the individual is now able to engage in substantial gainful activity, or

"(ii) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that he or she is now able to engage in substantial gainful activity; or

"(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity.

Nothing in this paragraph shall be construed to require a determination that a recipient of benefits under this title based on disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual (unless he or she is eligible to receive benefits under section 1619) is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior determination of disability nothing in this paragraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this paragraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior determination.".

STUDY CONCERNING EVALUATION OF PAIN

SEC. 102. (a) The Secretary of Health and Human Services shall, in conjunction with the National Academy of Sciences, conduct a study of the issues concerning (1) the use of subjective evidence of pain, including statements of the individual alleging such pain as to the intensity and persistence of such pain and corroborating evidence provided by treating physi cians, family, neighbors, or behavioral indicia, in determining under section 221 or title XVI of the Social Security Act

whether an individual is under a disability, and (2) the state of the art of preventing, reducing, or coping with pain.

(b) The Secretary shall submit the results of the study under subsection (a), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than April 1, 1985.

MULTIPLE IMPAIRMENTS

SEC. 103. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physicial or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful ac-

tivity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

TITLE II—DISABILITY DETERMINATION PROCESS

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 201. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than nine months after the date of the enactment of this Act.

(b) The Secretary shall make the revisions pursuant to subsection (a) in consultation with the Advisory Council on the Medical Aspects of Disability (established by section 304

of this Act), and shall take the advice and recommendations of such Council fully into account in making such revisions.

(c)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(h) of the Social Security Act (as redesignated by section 204(1) of this Act) , or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (d)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity.

(d)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, or judicial review of a decision rendered in any continuing eligibility review to which subsection (c)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not

under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

REVIEW PROCEDURE GOVERNING DISABILITY DETERMINATIONS AFFECTING CONTINUED ENTITLEMENT TO DISABILITY BENEFITS; DEMONSTRATION PROJECTS RELATING TO REVIEW OF OTHER DISABILITY DETERMINATIONS

SEC. 202. (a)(1) Section 221(d) of the Social Security Act is amended—

(A) by striking out "Any" and inserting in lieu thereof "(1) Except in cases to which paragraph (2) applies, any"; and

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

"(2)(A) In any case where—

"(i) an individual is a recipient of disability insurance benefits, child's, widow's, or widower's insurance benefits based on disability, mother's or father's insurance benefits based on the disability of the mother's or father's child who has attained age 16, or benefits under title XVIII based on disability, and

"(ii) the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Secretary in a case to which subsection (g) applies) to have ceased, not to have existed, or to no longer be disabling,

such individual shall be entitled to notice and opportunity for review as provided in this paragraph.

"(B)(i) Any determination referred to in subparagraph (A)(ii)—

"(I) which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for a decision of the Secretary with regard to the individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or otherwise changed), and

"(II) which is in whole or in part unfavorable to such individual,

shall remain pending until after the notice and opportunity for review provided in this subparagraph.

"(ii) Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (including the right to make a personal appearance as provided in this subparagraph), the right to submit additional evidence prior to or during such review as provided in this clause, and that, if such review is not requested, the individual will not be entitled to a hearing on such determination and such determination will be the disability determination upon which the final decision of the Secretary on entitlement will be based. Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsection (g) applies) of such de-

termination, including the right of such individual to make a personal appearance, and may submit additional evidence for purposes of such review prior to or during such review. Any such request must be filed within 30 days after notice of the pending determination is received by the individual making such request. Any review carried out by a State agency under this subparagraph shall be made in accordance with the pertinent provisions of this title and regulations thereunder.

"(iii) A review under this subparagraph shall include a review of evidence and medical history in the record at the time such disability determination is pending, shall examine any new medical evidence submitted or obtained for purposes of the review, and shall afford the individual requesting the review the opportunity to make a personal appearance with respect to the case at a place which is reasonably accessible to such individual.

"(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination, as so affirmed or modified, as the disability determination under subsection (a), (c), (g), or (h) (as applicable).

"(C) Any disability determination described in subparagraph (A)(ii) which is issued by the State agency (or the

Secretary) and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the determination, the reason or reasons upon which the determination is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

"(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with the disability determination referred to in subparagraph (C) shall be entitled to a hearing thereon to the same extent as is provided in section 205(b) with respect to decisions of the Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b) with respect to matters other than the determination referred to in subparagraph (A)(ii).

"(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly ap-

pointed in accordance with section 3105 of title 5, United States Code.".

(2) Section 205(b)(1) of such Act is amended by inserting after the fourth sentence the following new sentence: "Reviews of disability determinations on which decisions relating to continued entitlement to benefits are based shall be governed by the provisions of section 221(d)(2).".

(b)(1) Section 205(b) of such Act (as amended by subsection (a)(2)) is further amended—

(A) by striking out "(1)" after "(b)"; and

(B) by striking out paragraph (2).

(2) Section 4 of Public Law 97–455 (relating to evidentiary hearings in reconsiderations of disability benefit terminations) (96 Stat. 2499) and section 5 of such Act (relating t conduct of face-to-face reconsiderations in disability cases) (96 Stat. 2500) are repealed.

(c) Section 223(g) of the Social Security Act (as amended by section 203(a) of this Act) is further amended—

(1) in paragraph (1)(C), by striking out "for a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "for review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)";

(2) in paragraph (1)(ii), by striking out "a hearing or an administrative review" and inserting in lieu thereof "review or a hearing"; and

(3) in paragraph (3), by striking out "a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)".

(d) The amendments made by this section shall apply with respect to determinations (referred to in section 221(d)(2)(A)(ii) of the Social Security Act (as amended by this section)), and determinations under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, which are issued after December 31, 1984.

(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement as demonstration projects the amendments made by this section with respect to all disability determinations under subsections (a), (c), (g), and (h) of section 221 of the Social Security Act, and with respect to all disability determinations under title XVI of such Act in the same manner and to the same extent as is provided in such amendments with respect to determinations referred to in section 221(d)(2)(A)(ii) of such Act (as amended by this section).

Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than April 1, 1985.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 203. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,";

(B) in clause (i), by inserting "or" after "hearing,"; and

(C) by striking out ", or (iii) June 1984".

(2) Section 223(g)(3) of such Act is amended by striking out "which are made" and all that follows down through the end thereof and inserting in lieu thereof the following: "which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

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

"(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which

(under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

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

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.".

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of

this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 204. Section 221 of the Social Security Act is amended—

(1) by redesignating subsection (i) as subsection (h); and

(2) by adding at the end thereof the following new subsection:

"(i) A determination under subsection (a), (c), (g), or (h) that an individual is not under a disability by reason of a mental impairment shall be made only if, before its issuance

by the State (or the Secretary), a qualified psychiatrist or psychologist who is employed by the State agency or the Secretary (or whose services are contracted for by the State agency or the Secretary) has completed the medical portion of the case review, including any applicable residual functional capacity assessment.".

REGULATORY STANDARDS FOR CONSULTATIVE EXAMINATIONS

SEC. 205. Section 221 of the Social Security Act (as amended by section 204 of this Act) is further amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements

of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

TITLE III—MISCELLANEOUS PROVISIONS

ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS

SEC. 301. (a) Section 205(b) of the Social Security Act (as amended by sections 202(a)(2) and 202(b)(1) of this Act) is further amended—

(1) by inserting "(1)" after "(b)"; and

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

"(2) Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to matters relating to benefits under this title. With respect to matters to which rulemaking requirements under the preceding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provisions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State agency or the Secretary, including any hearing before an administrative law judge.".

(b) Section 1631(d)(1) of such Act is amended by inserting "(b)(2)," after "(a),".

COMPLIANCE WITH COURT OF APPEALS DECISIONS

SEC. 302. (a) Title II of the Social Security Act is amended by adding at the end the following new section:

"COMPLIANCE WITH COURT OF APPEALS DECISIONS

"SEC. 234. (a) Except as provided in subsection (b), if, in any decision in a case to which the Department of Health and Human Services or an officer or employee thereof is a party, a United States court of appeals—

"(1) interprets a provision of this title or of any regulation prescribed under this title, and

"(2) requires such Department or such officer or employee to apply or carry out the provision in a manner which varies from the manner in which the provision is generally applied or carried out in the circuit involved,

the Secretary shall acquiesce in the decision and apply the interpretation with respect to all individuals and circumstances covered by the provision in the circuit until a different result is reached by a ruling by the Supreme Court of the United States on the issue involved or by a subsequently enacted provision of Federal law.

"(b) Acquiescence shall not be required under subsection (a) during the pendency of any direct appeal of the case by the Secretary under section 1252 of title 28, United States Code, or any request for review of the case by the Secretary

under section 1254 of such title if such direct appeal or request for review is filed during the period of time allowed for such filing. If the Supreme Court finds that the requirements for the direct appeal under such section 1252 have not been met or denies a request for review under such section 1254, the Secretary shall resume acquiescence in the decision of the court of appeals in accordance with subsection (a) from the date of such finding or denial.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) Section 234 shall apply with respect to decisions of United States courts of appeals involving interpretations of provisions of this title or of regulations prescribed under this title (and requiring action with respect to such provisions) in the same manner and to the same extent as it applies with respect to decisions involving interpretations of provisions of title II or of regulations prescribed thereunder (and requiring action with respect to such provisions).".

(c) The amendments made by subsections (a) and (b) of this section shall not apply with respect to a decision by a United States court of appeals in any case if the period allowed for filing the direct appeal or request for review of the case with the Supreme Court of the United States expired before the date of the enactment of this Act.

PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 303. (a) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(1) by striking out "into substantial gainful activity"; and

(2) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(b) The second sentence of section 222(d)(1) of such Act is amended by inserting after "substantial gainful activity" the following: ", the determination that an individual, without good cause, refused to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

(c) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months, (2) in cases where such individuals are determined to be no longer entitled to benefits under this title because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to accept vocational

rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(d) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) of the Social Security Act (or who are determined to be no longer entitled to benefits under title XVI of such Act because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling), or who refuse to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

ADVISORY COUNCIL ON MEDICAL ASPECTS OF DISABILITY

SEC. 304. (a) There is hereby established in the Department of Health and Human Services an Advisory Council on the Medical Aspects of Disability (hereafter in this section referred to as the "Council").

(b)(1) The Council shall consist of—

(A) 10 members appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act from among independent medical and vocational experts, including at least one psychiatrist, one reha-

bilitation psychologist, and one medical social worker; and

(B) the Commissioner of Social Security ex officio.

The Secretary shall from time to time appoint one of the members to serve as Chairman. The Council shall meet as often as the Secretary deems necessary, but not less often than twice each year.

(2) Members of the Council appointed under paragraph (1)(A) shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such members, while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be paid at rates fixed by the Secretary, but not exceeding $100 for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Council; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(3) The Council may engage such technical assistance from individuals skilled in medical and other aspects of disability as may be necessary to carry out its functions. The Secretary shall make available to the Council such secretari-

al, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out its functions.

(c) It shall be the function of the Council to provide advice and recommendations to the Secretary of Health and Human Services on disability standards, policies, and procedures under titles II and XVI of the Social Security Act, including advice and recommendations with respect to—

(1) the revisions to be made by the Secretary, under section 201(a) of this Act, in the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments"; and

(2) the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved.

The Council shall also have the functions and responsibilities (with respect to work evaluations in the case of applicants for and recipients of benefits based on disability under title XVI) which are set forth in section 307 of this Act.

(d) Whenever the Council deems it necessary or desirable to obtain assistance in order to perform its functions under this section, the Council may—

(1) call together larger groups of experts, including representatives of appropriate professional and consumer organizations, in order to obtain a broad expression of views on the issues involved; and

(2) establish temporary short-term task forces of experts to consider and comment upon specialized issues.

(e)(1) Any advice and recommendations provided by the Council to the Secretary of Health and Human Services shall be included in the ensuing annual report made by the Secretary to Congress under section 704 of the Social Security Act.

(2) Section 704 of the Social Security Act is amended by inserting after the first sentence the following new sentence: "Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II and the program of benefits for the blind and disabled under title XVI (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommendations provided to the Secretary by the Advisory Council on the Medical Aspects of Disability, with respect to

disability standards, policies, and procedures, during the preceding year).".

(f) The Council shall cease to exist at the close of December 31, 1985.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 305. (a)(1) The Secretary of Health and Human Services shall, within 180 days after the date of the enactment of this Act, establish a sufficient number of attorney adviser positions at grades GS–13 and GS–14 in the Department of Health and Human Services to ensure adequate opportunity for career advancement for attorneys employed by the Social Security Administration in the process of adjudicating claims under section 205(b), 221(d), or 1631(c) of the Social Security Act. In assigning duties and responsibilities to such a position, the Secretary shall assign duties and responsibilities to enable an individual serving in such a position to achieve qualifying experience for appointment by the Secretary for the position of administrative law judge under section 3105 of title 5, United States Code.

(b) The Secretary of Health and Human Services shall—

(1) within 90 days after the date of the enactment of this Act, submit an interim report to the Committee

on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the Secretary's progress in meeting the requirements of subsection (a), and

(2) within 180 days after the date of the enactment of this Act, submit a final report to such committees setting forth specifically the manner and extent to which the Secretary has complied wiih the requirements of subsection (a).

SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 306. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1986".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services

shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.".

ADDITIONAL FUNCTIONS OF ADVISORY COUNCIL; WORK EVALUATIONS IN CASE OF APPLICANTS FOR AND RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME BENEFITS BASED ON DISABILITY

SEC. 307. The functions and responsibilities of the Advisory Council on the Medical Aspects of Disability (established by section 304 of this Act) shall include—

(1) a consideration of alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at

the same time he or she is referred to the appropriate State agency for a disability determination;

(2) an examination of the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(3) a review of the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations, in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(4) an examination of possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's

functioning so that he or she will be able to live independently or work in a sheltered environment.

For purposes of this section, "work evaluation" includes (with respect to any individual) a determination of (A) such individual's skills, (B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate, (C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated, (D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and (E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

EFFECTIVE DATE

SEC. 308. Except as otherwise provided in this title, the amendments made by this title shall apply only with respect to cases involving disability determinations pending in the Department of Health and Human Services or in court on the date of the enactment of this Act, or initiated on or after such date.

Amend the title so as to read: "A bill to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process.".

Union Calendar No. 352

98TH CONGRESS
2D SESSION

H. R. 3755

[Report No. 98–618]

A BILL

To amend title II of the Social Security Act to provide for reform in the disability determination process.

MARCH 14, 1984

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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PAGE

PROVIDING FOR CONSIDERATION OF H.R. 3755, SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 466 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 466

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3755) to amend title II of the Social Security Act to provide for reform in the disability determination process, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of sections 311(a), 401(b)(1), and 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be considered as having been read for amendment under the five-minute rule. No amendment to the bill shall be in order except the amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the bill, said substitute shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of sections 311(a) and 401(b)(1) of the Congressional Budget Act of 1974 are hereby waived. No amendment to said substitute shall be in order. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MOAKLEY) is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes, for the purposes of debate only to the gentleman from Tennessee (Mr. QUILLEN), pending which I yield myself such time as I may consume.

(Mr. MOAKLEY asked and was given permission to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, House Resolution 466 provides for the consideration of H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

This is a modified closed rule making in order only the amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the bill. No amendment to the amendment in the nature of a substitute is in order and the substitute shall be considered as having been read.

Under the provisions of the rule, points of order against consideration of the bill for failure to comply with three sections of the Congressional Budget Act of 1974 are waived. In addition, two sections of the Budget Act are waived against consideration of the amendment in the nature of a substitute. Finally, the rule provides one motion to recommit with or without instructions.

House Resolution 466 waives section 311(a) of the Budget Act against consideration of the bill and the committee amendment in the nature of a substitute. Section 311(a) prohibits consideration of any measure containing new spending authority in excess of the appropriate levels in the most current budget resolution. The waiver is necessary because both the bill and the amendment in the nature of a substitute would provide new entitlement authority by modifying the standards of review for the payment of disability insurance benefits. If enacted, this new entitlement authority would cause the existing ceiling in House Concurrent Resolution 91, the first concurrent resolution on the budget for fiscal year 1984, to be breached. Moreover, although House Concurrent Resolution 91 exempts from points of order legislation which exceeds the overall spending ceiling if the reporting committee is within its section 302(a) allocation of new spending authority, both the bill and substitute would cause the Committee on Ways and Means to exceed its 302(a) allocation.

The rule also waives section 01(b)(1) of the Budget Act against onsideration of the bill and the mendment in the nature of a substiute. Section 401(b)(1) prohibits the onsideration of a measure with new ntitlement authority which is to ecome effective before October 1 of he calendar year in which the bill is eported. This waiver is necessary beause the bill and the substitute both xtend certain supplemental security ıcome disability benefits as of the ate of enactment. While the social seurity disability program is exempt rom the provisions of the Budget Act, he SSI program is not.

Finally, Mr. Speaker, points of order nder section 402(a) of the Budget Act re waived. This section requires that n authorization be reported by May 5 preceding the fiscal year in which it ; to be effective. The waiver is necesary because section 304 of the bill authorizes expenditures for an advisory ouncil on the medical aspects on disbility which is to become effective nmediately upon enactment.

Mr. Speaker, over the past year and half as my colleagues are aware here has been something of a crisis in he social security disability program. n 1980 a law was passed which was deigned to provide better oversight for he disability program. Unfortunately, here has been an unintended result. Thousands of individuals have had enefits discontinued as a result of a eview process which in my opinion as been unfair to disability recipints.

Mr. Speaker, H.R. 3755 is designed o deal with the problems that have een encountered in the review proc:ss for social security disability. H.R. 755 would make several changes in he standards for determining disabil:y which would apply prospectively, n order to reduce the cost of the bill, o individual whose benefits were terminated prior to the date of enactment would be automatically reinstated.

For those beneficiaries reviewed fter the date of enactment, however, he Social Security Administration ould have to demonstrate a medical nprovement in the condition of these ıdividuals. In addition, the bill allows hose who appeal termination of benefits to continue receiving benefits until final decision is reached by an adinistrative law judge. These benefits ould be subject to repayment if the ıitial termination decision was pheld.

The bill also provides for a tempoary moratorium on the reviews of ıentally impaired beneficiaries and or a face-to-face review process. Finaly, H.R. 3755 requires the Social Secuity Administration to obey or appeal ederal circuit court decisions with repect to the review process.

Mr. Speaker, H.R. 3755 is a very imortant bill to thousands of Amerians. The rule provided for the bill llows the House to deal with this very important matter quickly. I urge my colleagues to support the rule so that we may proceed to the consideration of H.R. 3755, the Social Security Disability Benefits Reform Act of 1984.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may use.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. Mr. Speaker, I urge a vote for this rule and a vote for this bill.

This bill is necessary to put a halt to the abuse and indignity that the Social Security Administration has inflicted on American citizens who are disabled and in need of help from their Government.

What has been happening to these people is a disgrace. I will not speculate about what has been going on in other Members' districts, but in my district we have people who are thrown off the disability rolls who are permanently and totally disabled for any gainful work. They come to my office in tears with their dignity in tatters and their confidence shattered.

I am talking about truly disabled people who need our help. They go to their doctors and they have statements that they remain totally and permanently disabled. But then they go to a social security doctor, and the social security doctor looks at them, gives them sometimes only minutes, and then the doctor tells them they are able to go back to work.

These people are being treated like cattle and it is a disgraceful situation. And as long as I am a Member of Congress I will take up for these people and I will champion their rights.

Nobody is arguing that we should not take every care to be certain that those who receive disability benefits deserve them. The review process was undertaken in an effort to be sure that funds remain available to all those who need them, and are not bled dry by those who do not need them.

The review process is not the problem. The problem is, once again, a bureaucratic one—the rules, regulations and guidelines that were issued to implement a necessary procedure. It is bureaucratic mistakes that we correct in this bill.

Now, I want to say that I commend the distinguished chairman of the Social Security Subcommittee, the gentleman from Texas (Mr. PICKLE), and the other members of the subcommittee. They have done the right thing and they have a good bill. This bill was reported by the full committee in September of last year. It has been delayed because it was included as a title to the tax bill which has not yet been brought to the House floor. But because time is running out for these people, it is imperative that we pass this legislation now.

Let us pass this bill so that these fine disabled people can at least continue to receive their benefits they need so desperately. Let us in Congress force the Social Security Administration to be fair and decent to the people who depend on us to represent them.

□ 1240

Mr. MOAKLEY. Mr. Speaker, I yield 5 minutes to the distinguished chairman of the Subcommittee on Social Security of the Committee on Ways and Means, the Honorable gentleman from Texas, Mr. JAKE PICKLE.

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Speaker, I want to thank the gentleman from Massachusetts for yielding me this time. I certainly want to thank the chairman of the committee, the gentleman from Florida (Mr. PEPPER), and the gentleman from Tennessee (Mr. QUILLEN) for bringing this rule.

Mr. Speaker, I rise in support of the rule. H.R. 3755, is of vital importance to the social security disability insurance system. We must take immediate action to restore order to the procedures used in conducting disability reviews of people on the social security disability rolls.

In the past 3 years nearly half a million beneficiaries have been notified that they were no longer qualified to remain on the disability rolls. This represents nearly 20 percent of the people on the disability rolls when this process began. I am sure every Member has had pleas for help from disabled constituents back home.

The problem is not the disability reviews themselves. Review of the disability rolls on a periodic basis is necessary and good. These recent reviews have, in fact, removed from the rolls many people who can work and who no longer meet the definition of disability in social security law.

The problem is rather the guidelines and procedures under which these reviews are performed. These harsh procedures have worked great hardship both on those who benefit from, and those who must administer this program.

These disabled people have been forced to appeal to retain their benefits and over 160,000 have been reinstated. Indeed, nearly two-thirds of those who appeal their cases are reinstated. Although they are reinstated, they can hardly be described as successful, because the process of appeal is lengthy, stressful, and often expensive. Thousands of those who are reinstated have endured substantial hardship.

Because of this mass of litigation, the Federal courts have held on numerous occasions that revised procedures must be used in conducting these reviews. Today 20 States are operating this national disability program under court-ordered guidelines which SSA opposes and has refused to apply to the other States.

In addition, the Governors in nine States have declared their own moratorium on the processing of disability terminations under the SSA guidelines.

The botton line is that today the program is operating in a state of administrative uncertainty and chaos.

This bill does not attempt to liberalize the disability program. It provides revised rules and procedures to restore order and humanity to the process for conducting these reviews.

It achieves this goal by implementing several reforms. The key provisions are the medical improvements standard for terminations, the face-to-face evidentiary hearing, the payment of benefits during appeal, and the application of uniform procedural standards for disability determinations under the Administrative Procedures Act.

This bill is strongly supported by a wide variety of disability advocacy groups. It has the support of the State agency administrators and it closely parallels solutions recommended by the National Governors' Conference.

There is a cost to this legislation: CBO estimates approximately $300 million per year in the first 3 years, with an expenditure of $57 million in 1984. But, this is a worthwhile expenditure, and it does not endanger the social security trust funds. The Office of the Actuary at the Social Security Administration, has, in estimating the impact of the bill on the disability trust fund, determined that the fund will remain in actuarial balance.

I would remind Members that there will be a terrible cost if we do not pass this bill. The money we save will be money from the pockets of people on our disability rolls today; people in every State and terrritory who have been declared totally disabled and whose conditions have not improved. This is the cost I urge you to keep in mind as we consider the rule today, and as we consider the bill on Tuesday.

Mr. MOAKLEY. Mr. Speaker, I yield 5 minutes to my distinguished colleague, the gentleman from Massachusetts (Mr. SHANNON), a member of the Subcommittee on Social Security, who has helped the Committee on Rules get the bill to the position it finds itself in now.

Mr. SHANNON. Mr. Speaker, I want to thank my colleague, the gentleman from Massachusetts, for yielding and for his leadership in the Rules Committee in bringing this rule to the floor of the House.

I want to thank the chairman of the subcommittee, the gentleman from Texas, for the great leadership he has given on this issue, in particular, and on the social security issue in general over the last couple of years.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. SHANNON. I would be happy to yield.

Mr. PICKLE. The gentleman ought not to be immodest at this point. He is a coauthor of this legislation and has taken a very strong initiative in bringing it to fruition, so we compliment the gentleman from Massachusetts.

Mr. SHANNON. Mr. Speaker, I thank the gentleman very much.

This legislation contains urgently needed reforms designed to address the ongoing crisis in the social security disability insurance review program.

I urge the House to approve this rule so that we can advance this legislation as soon as is possible.

The flaws in the current program have been documented over and over again in congressional hearings, in the media and in the neighborhoods and homes of America. Almost half a million disabled Americans have had their lives seriously disrupted by the disability review process over the past 3 years.

While the idea of reviewing beneficiaries to insure they are still entitled to benefits is a sound one, in hundreds of thousands of cases the current review process has failed to accurately determine the ability to work and disabled workers have been wrongly removed from the rolls. Of those beneficiaries who have chosen to appeal a decision to terminate their benefits, almost two-thirds, or roughly 160,000 disabled workers had their benefits restored.

While there has been some disagreement on how best to address this national crisis, few would deny that a serious problem does exist.

This legislation is a balanced compromise response to this crisis. It neither liberalizes the disability program nor repeals the provision in current law requiring reviews of disability beneficiaries.

The intent of this legislation is to improve and clarify the standards and procedures used in assessing an individual's ability to work.

During the months in which the Social Security Subcommittee and the full Ways and Means Committee worked on this legislation, a number of concerns were raised about the cost of the bill and some of its provisions. In several instances, the bill was modified in response to the concerns.

When the bill was voted on last year by the full Ways and Means Committee, it received strong bipartisan support. I hope that it will receive similar support when it reaches the House floor.

While there is a cost to this legislation, there will be costs if we fail to adopt it as well. There will be administrative costs, because thousands of disabled workers will continue to be wrongly terminated and will have no option but to flood the appeals process. There will be costs because the SSDI program will remain in total chaos, with many States being ordered by the courts to use guidelines which differ from social security policy.

□ 1250

Most importantly, there will be the continued human cost of lost dignity, ruined lives, and shattered confidence among the disabled.

As Members of the House well know, it was the intention of the Ways and Means Committee that this legislation would be taken up on the House floor last fall. Regretfully, that did not happen.

But if this bill was needed then it is urgently needed now. The temporary halt in terminations ordered by Secretary Heckler last year was ended in February and cases are now being processed. The provision contiuning benefit payment during an appeal of a termination expired last December, so individuals who are terminated in the coming weeks will not have protection during the appeal unless we act now.

Meanwhile, the entire disability program is in chaos with 20 States operating under court ordered guidelines which differ from the Social Security Administrations national, guidelines, and with some 9 other States having chosen on their own to halt terminations until changes are made.

These problems will continue to escalate until Congress acts favorably on H.R. 3755. I would urge the approval of this rule so that we can advance this legislation as soon as it is possible.

This is not just responsibility; it is a moral responsibility to make sure that the disabled people of this country are adequately taken care of.

I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Connecticut (Mr. MORRISON).

(Mr. MORRISON of Connecticut asked and was given permission to revise and extend his remarks.)

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the gentleman from Massachusetts for yielding and I want to commend the Committee on Ways and Means and the Committee on Rules for expediting the consideration of this matter here in the House.

I would like to extend special thanks and congratulations to the gentleman from Texas (Mr. PICKLE) and the gentleman from Massachusetts (Mr. SHANNON) for their work on this important legislation.

This legislation is urgently needed to correct a cruel injustice in the way we administer the social security disability insurance program. Since March 1981, over 470,000 people have received initial notices that their benefits would be terminated; of these, 190,000 have been removed from the rolls. Yet, 160,000 have been restored on appeal and 120,000 cases are pending hearing. Nearly 24 percent of recipients whose benefits were initially terminated are mentally disabled, although this category constitutes only 11 percent of SSDI recipients.

Three cases from my congressional district dramatically illustrate the need for protective legislation. An un-

married 30-year-old man with no relatives in the vicinity was receiving SSDI because he was suffering from severe heart disease. His benefits were terminated. Benefits were restored after appeal to the administrative law judge level but the young man died the following day. There was no doubt in the minds of anyone familiar with the case that the stress caused by this wholly unnecessary ordeal contributed to his death.

A construction worker and his daughter met with me to explain their case. After the man, suffering from cancer, had his benefits cut off he sent his appeal documents to the ALJ office. After having finally reviewed his file—without requiring a hearing—the ALJ ruled to restore benefits. Although my staff and I did everything we could to expedite the process, the man was without benefits for 8 months. He died 3 days after his first check arrived.

In 1971 a man was granted benefits for a disabling combination of psychological and physical illness. He was dumped from the rolls in 1982 and has been caught in the appeals process since then. He has a wife and four children. I have seen his most recent medical evaluation documents. He is diagnosed as suffering from primary degenerative dementia with severe somatic involvement.

Certainly it is important that the social security system and the disability program weed out those individuals who are not eligible. But we ought not to do that by denying to those people who are disabled their rightful and deserved benefits.

This legislation gets at that problem correctly. It improves, specifies, and refines the methods and the standards by which disabilities will be determined, especially in one particularly vulnerable area, mental illness. It improves the process so that the truly disabled will continue to receive their benefits and not be terminated wrongfully.

For these individuals for whom it is most difficult to effectively pursue the appellant process this bill insures that they will not be subjected to that process wrongfully.

This is important legislation for the protection of disabled people. We ought to act quickly on this legislation.

I hope that the rule passes easily and that the legislation is passed so that it can be moved forward.

I thank the gentleman for yielding.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri (Mr. SKELTON).

Mr. SKELTON. Mr. Speaker, I will not belabor the point because the previous speakers have already covered this very, very adequately.

However, I do wish to commend the Ways and Means Committee and the subcommittee that brought this out because this helps correct a serious tragedy that we have in our Nation today.

Corrective legislation, as has been pointed out, should have taken place last year. But unfortunately it did not. This does now allow for the proper appeals system to go forward in these disability cases for people to receive justice as they should receive it, and that due process of law come to pass without hardship on the people being cut off wrongfully.

I again commend the committee and I urge the passage of this rule.

Mr. QUILLEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PICKLE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 340, nays 40, not voting 53, as follows:

[Roll No. 54]

YEAS—340

Ackerman
Addabbo
Akaka
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Aspin
AuCoin
Bateman
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Bethune
Bevill
Biaggi
Boehlert
Boggs
Bonior
Bonker
Borski
Boucher
Boxer
Britt
Brooks
Brown (CA)
Broyhill
Bryant
Burton (CA)
Byron
Campbell
Carney
Carper
Carr
Chandler
Chappell
Chappie
Clarke
Clay
Clinger
Coelho
Coleman (MO)
Coleman (TX)
Conable
Conte
Cooper
Corcoran
Coughlin
Courter
Coyne
D'Amours
Darden
Daschle
Davis
Dellums
Derrick
DeWine
Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Downey
Duncan
Durbin
Dwyer
Dyson
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Erlenborn
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fiedler
Fields
Flippo
Florio
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frost
Fuqua
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Harkin
Harrison
Hatcher
Hawkins
Hayes
Hefner
Hertel
Hightower
Hillis
Holt
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kogovsek
Kolter
Kostmayer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin
Levine
Levitas
Lewis (FL)
Lipinski
Livingston
Lloyd
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
MacKay
Marlenee
Martin (IL)
Martin (NC)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McNulty
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ottinger
Owens
Oxley
Panetta
Parris
Pashayan
Patman
Patterson
Pease
Penny
Petri
Pickle
Price
Pritchard
Pursell
Quillen
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Roth
Roukema
Rowland
Roybal
Russo
Sabo
Sawyer
Schulze
Schumer
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shuster
Sikorski
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stark
Stenholm
Stokes
Stratton
Studds
Sundquist
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitehurst
Whittaker
Whitten
Williams (MT)
Williams (OH)
Wirth
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

NAYS—40

Anderson
Badham
Bartlett
Bilirakis
Bliley
Brown (CO)
Burton (IN)
Coats
Craig
Crane, Daniel
Crane, Philip
Daniel
Dannemeyer
Daub
Dickinson
Frenzel
Gramm
Gregg
Hiler
Hopkins
Hunter
Kramer
Lewis (CA)
Lungren
Mack
McCain
McCandless
Moore
Moorhead
Nielson
Perkins
Porter
Schaefer
Shaw
Shumway
Smith, Denny
Stangeland
Stump
Thomas (CA)
Walker

NOT VOTING—53

Albosta
Alexander
Barnard
Barnes
Boland
Boner
Bosco
Breaux
Broomfield
Cheney
Collins
Conyers
Crockett
de la Garza
Dreier
Dymally
Evans (IA)
Fish
Foglietta
Forsythe
Fowler
Hance
Hansen (ID)
Hansen (UT)
Hartnett
Heftel
Horton
Ireland
Jones (OK)
Madigan
Markey
Marriott
Mica
Minish
Mitchell
O'Brien
Ortiz
Packard
Paul

Pepper	Schneider	Whitley
Rostenkowski	Schroeder	Wilson
Rudd	Siljander	Winn
Savage	Simon	Wright
Scheuer	Valentine	

□ 1310

Mr. HUNTER changed his vote from "yea" to "nay."

Mr. SKEEN changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

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PAGE

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

The SPEAKER pro tempore. Pursuant to House Resolution 466, and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3755.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3755) to amend title II of the Social Security Act to provide for reform in the disability determination process, with Mr. WISE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Illinois (Mr. ROSTENKOWSKI) will be recognized for 30 minutes and the gen-

tleman from New York (Mr. CONABLE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today to present for the House's consideration H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. My remarks will be brief, as many Members wish to speak in support of this badly needed legislation. I would only say that this legislation is critical to the continued functioning of the social security disability insurance program. The massive number of beneficiaries who have lost their benefits over the last 3 years even though they are truly disabled and unable to work, has led to a national outcry for reform. Governors of many States are refusing to administer this program; Federal courts in every circuit have ruled the administration's current standards cruel, inequitable, and contrary to law. This chaotic situation must be brought to an end, and this bill is the only way to restore order to this program.

H.R. 3755 has been forged over the last 18 months under the leadership and close guidance of JAKE PICKLE, chairman of the Social Security Subcommittee. Chairman PICKLE will discuss the bill in detail, and I want to thank him now for the hard work he and his subcommittee have done in developing this legislation.

I would also like to point out that the gentleman from Massachusetts (Mr. SHANNON) has worked very hard in behalf of this legislation and has been a persistent campaigner for it.

Mr. Chairman, this bill is fair, reasonable and even-handed. It does not release SSA from the obligation to review beneficiaries—it simply establishes clear, fair standards under which that review must take place. This legislation is desperately needed, and has widespread support across the country from disabled citizens and their State governments. I urge its approval.

Mr. CONABLE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. CONABLE asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Chairman, I support H.R. 3755, the Social Security Disability Benefits Reform Act of 1984, which is the result of bipartisan efforts by members of the Social Security Subcommittee.

It was a difficult bill to craft. It has imperfections. I believe it is generally responsive to the problems which surfaced after Public Law 96-265 was enacted in 1980 during the Carter administration.

In order to explain this bill and why it comes up at this time, I think it would be a good idea to put it in historical context.

In October 1972 Congress enacted title XVI of the Social Security Act, the supplemental security income program, converting to Federal rolls those aged, blind and disabled recipients of State administered payments which were based on need.

The conversion became effective in January 1974, and among other things, State recipients were grandfathered into the Federal program. Specifically, this guaranteed that those disabled and blind recipients of State aid would be redetermined under State criteria, not under the more stringent requirements of the social security disability insurance program (title II), which would apply to new applicants.

Late in 1973—responding to concerns that States were loading their disability rolls with general assistance recipients who failed to meet the State disability criteria in 1972—Congress enacted rollback legislation requiring the Social Security Administration to reevaluate, under Federal criteria, those recipients who were first paid disability benefits by the State after June 30, 1972.

In other words, at that point, we were victimized to some extent by State manipulation of the law which resulted in the inclusion of some unqualified beneficiaries under our Federal system.

The impact of the rollback legislation and of the many new applications under title XVI combined to generate overwhelming workloads for the State agencies which administer the disability determination process.

As a result, the Social Security Administration fell far behind in regularly scheduled investigations of those already on the disability rolls.

Further, the new SSI program exerted a subtle but real pressure to pay benefits to needy applicants. Since the standards for title XVI were the same standards used for title II, title II was affected equally.

In 1980, the General Accounting Office reported that as many as 1 in 5 beneficiaries of title II were ineligible under a strict interpretation of the Federal disability criteria. This was not entirely surprising.

It confirmed earlier administration studies. Periodic investigations of continuing disability cases were deemed essential to the integrity of the program and it was estimated that these continuing disability investigations, or CDI's, would save $2 billion annually for the then endangered disability insurance trust funds.

As a result, Public Law 96-265, the disability insurance amendments of 1980, was enacted during the Carter administration.

□ 1250

The new law required, among other things, that SSA review disability cases, excluding the permanently disabled, at least once every 3 years.

The gentleman from Texas (Mr. PICKLE) was instrumental in developing this provision.

The intent of the legislation was meritorious, especially in light of the GAO report, but the results were not what the drafters intended. Not only were ineligible beneficiaries terminated, but some eligible beneficiaries were taken from the rolls, as well. Many, especially those with mental impairments, suffered duress and the economic hardship of interrupted benefits.

Both Congress and the administration have taken remedial steps. Late in 1982 we approved Public Law 97-455, which, on an interim basis, provided for the continuation of benefits during an appeal of an adverse decision. And on June 7, 1983, Secretary Heckler, our former colleague, responded with initiatives designed to alleviate the situation, especially the reviews of those with mental impairments.

H.R. 3755 represents the next step. It makes permanent the provision to pay benefits during an appeal, pending the decision of an administrative law judge as to the continuance of a disability. The bill also establishes clearly a national medical improvement standard and places the burden of proof on the Secretary.

Is it true reform? Well, I certainly will acknowledge that it represents some backing off from our previous view that there were a great many people on the disability rolls who did not belong there. It does establish standards which, of course, will put additional pressure on the Social Security Administration, to which we already have assigned major additional tasks like SSI and black lung. Without giving the agency additional personnel to administer these programs, clearly we are going to see social security overburdened again and we are going to see a growth in the number of people on the disability rolls at additional cost to the taxpayer and additional pressure on the social security budget.

I think it is inevitable that we are going to have some degree of swinging back and forth of this pendulum.

I must say, Mr. Chairman, we are a long ways from final reform, and much more work is going to have to be done. We are going to have to be vigilant, and insure that a lot of unqualified people are not going onto the rolls. That clearly is not only disadvantageous to the taxpayers but to the other beneficiaries who have a valid claim under the law.

Such reforms as federalizing the system may lie ahead for us. I must say that many conservatives who favored the State administration of this program have come to the conclusion that federalizing it will be more likely to produce uniformity of decisionmaking and greater equity for both taxpayers and claimants.

Other reforms might include eliminating the appeals council and its review practice or creating some kind of a disability or social security court, or establishing medical improvement standards beyond those that are involved in this particular bill.

The administration, which initially worked with the subcommittee to develop the medical improvement standard that Mr. PICKLE has in his bill, now opposes it. I understand some of their concerns. For example, this standard would leave on the rolls some who would not qualify as new applicants.

I am persuaded, however, that those who have come to rely on monthly benefits over the years of benign program neglect do at least deserve due process. Further, I see no other prompt resolution of the chaos created by disparate district and circuit court decisions regarding medical improvement.

You see, similar cases come up in different courts and get different treatment. And thus we have a chaotic situation as to a national standard.

I encourage the administration to come full circle, to take another look at this bill and work with our colleagues in the other body to perfect those administrative features which, in the Social Security Administration's judgment, will be difficult to implement. Frankly, there are going to be problems with this bill, and we should not only provide continuing review of the functioning of this program, but we should encourage the administration, if it does not like the way this bill expresses reform, to go to the Senate and try to develop something better so that we will have an appropriate administration of the program. That would be far preferable, I believe, imply to opposing this bill.

It is appropriate for the administration to work with Congress to resolve those problems. The executive branch, in retrospect, implemented the reviews in ways which were painfully slow to recognize and to respond to the problems which surfaced with respect to some clearly disabled people.

I wish I could assure you this would be the last chapter in the story. The story is not fiction. I expect we will deal with it again when the issue of cost comes up, because the diverse estimates prepared by the Congressional Budget Office and the Social Security Administration in some instances reflect speculation only on the impact of the changes we are enacting.

For instance, the Social Security Administration says over 5 years this will cost $3.4 billion. CBO says it will cost 5 billion. That is a rather wide range.

The bill requires the Social Security Administration to conduct studies, to report to Congress on several issues, such as the consideration of subjective pain in the disability evaluation process, which eventually must be debated.

For the present, I feel that H.R. 3755 is a reasonable response to the problems identified in the disability determination process. It is not the final answer. I will support the Social Security Disability Benefits Reform Act of 1984 when the time comes for a vote, and I urge my colleagues to do so also.

The CHAIRMAN. The gentleman from New York (Mr. CONABLE) has consumed 11 minutes.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 4 minutes to the gentleman from Texas (Mr. PICKLE).

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Chairman, I thank the gentleman for yielding me this time, and I ask unanimous consent to revise and extend my remarks.

I rise today in support of H.R. 3755 because our social security disability program is in a state of total chaos.

Twenty States are administering this national program under Federal court order.

Nine other States have dropped out on their own.

In the past 3 years nearly half a million disabled beneficiaries have been notified that their benefits will end. Far too often this notice has been sent in error, and corrected only at the beneficiary's expense.

I could speak today of horror story after horror story, but I will not because I am sure that every Member has heard the desperate pleas from disabled constituents back home.

Let me assure the Members that we who serve on the Social Security Subcommittee have heard those pleas from the disabled, and from the Governors, and from those who must administer this program in the States. And for over a year now we have carefully drafted legislation to bring order to the growing chaos.

We have listened to every concerned party, and have produced legislation supported by Members on both sides of the aisle. Legislation supported by our States. Legislation in keeping with Federal court guidelines. And legislation which is supported by every disability group I know of.

This bill does not attempt to liberalize the disability program. It does restore order and humanity to the disability review process. It does so by requiring four key changes: First, a medical improvement standard for terminations; second, a face-to-face evidentiary hearing at the initial review level; third, the payment of benefits through appeal, that is, to the ALJ level; and fourth, the application of uniform procedural standards for disability determinations.

On each desk, on both sides, there is a printed outline of this bill showing section by section in essence what it does, and I invite the Members to get a copy so that they be more familiar with the bill.

These are reasonable and responsible changes. Arrived at while working in cooperation with the administration. As a result when the Committee on Ways and Means first reported this bill last fall it did so without opposition from the administration.

This spring, during the budget process, the administration suddenly announced that it could not support any disability legislation.

First, they argued that the bill was too expensive.

There is a cost to this legislation. CBO estimates approximately $350 million per year in the first 3 years. But, this is a worthwhile expenditure, and it does not endanger the social security trust funds. The Office of the Actuary has determined that the fund will remain in actuarial balance.

I remind the Members that there will be a terrible cost if we do not pass this bill. The money we save will be money from the pockets of people on our disability rolls today; people in every State and territory who have been declared totally disabled and whose conditions have not improved. This is the cost I urge you to keep in mind as you vote on this bill.

Second, we were told that the administration's internal reforms offered last June would solve the problem. If this were true, we would not be facing a crisis today. For over 3 years this problem has only grown worse. Congress must provide leadership, not wait for bureaucratic action.

Finally, just last Saturday, the administration leaked word to the press of a possible 18-month moratorium on any further disability terminations. This proposal confirms, beyond a doubt, that the reforms offered by the administration in the past are not working. If they were, such a lengthy suspension of these reviews would be uncalled for.

The proposed moratorium also belies the administration's budgetary objections. If it is too expensive to keep a few more people on the rolls, it must surely be even more expensive to keep everybody on the rolls.

But most importantly, a moratorium solves nothing. it only makes the problem worse.

It allows those who should be terminated to go on drawing benefits while leaving the truly disabled in a state of continued uncertainty.

Finally, we must question the wisdom of letting the administration choose whether or not to enforce our laws. If the Secretary can suspend one provision of the law today, why not some other provision tomorrow? Why not just suspend the whole disability program?

Congress must not endorse this move toward lawlessness. The disabled, like all Americans, have a right to the prompt adjudication of their claims in accordance with the law.

In conclusion let me say again, that in response to the growing crisis our

subcommittee has worked on this legislation for over a year. We have worked openly with every interested party in an effort to craft the best possible bill. We have achieved broad support and have overcome every substantive objection. The time for study has passed. Now we must act. Legislation now is only answer to this problem.

□ 1300

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Kentucky.

(Mr. PERKINS asked and was given permission to revise and extend his remarks.)

Mr. PERKINS. I thank the gentleman for yielding.

Mr. Chairman, first let me compliment the distinguished gentleman from Texas for bringing the bill to the floor. All of us know it is a tremendous improvement, but in the case of many severely disabled persons, medical improvement, although clearly demonstrated, may not bring that person to the point that he can engage in any gainful activity. Yet, the legislative guidelines in this bill would seem to provide places for cutting such an individual off the rolls.

I would like to ask the gentleman if he could clarify that for me.

The CHAIRMAN. The time of the gentleman from Texas (Mr. PICKLE) has expired.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from Kentucky (Mr. PERKINS).

Mr. PERKINS. I wold just like to ask the gentleman from Texas if the chairman of the subcommittee could be more specific with respect to the intent of the term "medical improvement"; if that would cut the individual off when he was unable to work.

I yield to the gentleman from Texas for his response.

Mr. PICKLE. No. We are simply trying to say there ought to be a standard determined whether the man or woman is able to work. We are saying in effect that if there has not been medical improvement, you cannot terminate that individual from the rolls.

Now, there are provisions in there that if there has been medical advances in medical therapy or medical science, or if the original finding of disability was in error, or if it was by fraud, then that person could be removed.

In essence, we are trying to say for the first time there is a medical standard, and you cannot remove that person unless it can be shown that there has not been medical improvement.

Mr. PERKINS. Mr. Chairman, I appreciate the time given me by the distinguished chairman of the Social Security Subcommittee, the gentleman from Texas (Mr. PICKLE). I appreciate even more his efforts to redress the mistake made by Congress initially in the broad authority given to review social security disability cases in the passage of H.R. 3236 in 1980.

As we know, that process of review was seized upon by the present administration to throw off of the rolls hundreds of thousands of disabled persons since 1981.

Much of this activity, I believe, has been generated by the public belief that there are many undeserving persons receiving disability benefits. This public perception, in my judgment, has come about by the national debate surrounding the Federal budget and by highly publicized incidences of individuals receiving benefits to which they were not entitled. In the process of reducing the cost of the disability benefits program, we have made a lot of families suffer.

Since 1981, 160,000 of the disabled that were notified they were being terminated have been restored to benefits in the legal review process, either by hearings before administrative law judges or by appeals to the courts. At least 120,000 are yet to be processed and 190,000 have been removed. Of the 190,000 that have been removed, we have no way of knowing how many were unjustly removed.

Throughout the many years that I have been in Congress, I have periodically visited every community in my district and have talked to thousands of people and visited thousands of families. It has been my experience that disabled persons, almost without exception, who can find and who can perform work are most anxious to do so.

What I feel we have accomplished in our efforts to reform the disability benefits program is to place insurmountable burdens upon the disabled in establishing benefits and to maintain those rights.

Maybe I fear this more intensely than some of my colleagues because I do represent a large rural and mining area. Because of the isolation of most of the communities in counties that I am privileged to represent, health, medical, and nutrition services have been inadequate or nonexistent for decades. This means that household, farm, and mining injuries often result in aggravated and lifelong disabilities. Just as this isolation has made prompt treatment and rehabilitation difficult, it makes establishing a claim more difficult. For this reason, I believe that the people in rural areas such as I represent are more harshly treated by the administrative procedures required to establish and maintain rights to benefits.

Let me cite to you a few of the cases from my area which involve disability benefit recipients who were notified since 1981 that they were being terminated:

One man has rheumatic heart disease, involving both the aortic and mitral valves. Both of these valves have been surgically replaced. His heart rhythm continues to be that of atrial fibrillation. He has been denied education training because there is no employment potential for such a totally disabled person. He is now in the hospital, having suffered another heart attack in February.

This man suffered a disabling heart attack in 1977, followed thereafter by open heart surgery. He is physically unable to complete a simple stress test lasting 10 minutes.

A number of doctors know this man to be progressively becoming more disabled because of a lung disease. This cancer patient requires constant supervision and medical attention. He lacks the strength and mobility to seek any type of employment.

This woman's disability is based upon a multitude of disabling disorders: respiratory, nervous condition, severe arthritic changes, and inner ear difficulty which causes frequent vertigo.

This man suffered severe physical irremedial injuries, making it impossible for him to work in his trade as a plumber. The Social Security Administration has acknowledged that he is physically unable to pursue his plumbing work or any other career. Because he is only 33 years old, however, his benefits have been terminated.

This man suffered a spinal injury in 1972, totally disabling him. His condition has remained the same since he first became entitled to benefits.

This man suffers a multiple disc disease of the spine and has almost no use of his right hand; is unable to stand for more than an hour at a time.

Doctors have concluded that this man is permanently and totally disabled because of numerous medical problems, the most significant being emphysema, cronic peptic ulcer, coal workers' pneumoconiosis chronic obstructive pulmonary disease, and chronic bilateral otitis media.

This 46-year-old man has chronic low back pain, peptic ulcer, arteriosclerotic heart disease, degenerative disk disease, lumbosacral joint cervical syndrome.

Yes, I commend my colleague, the gentleman from Texas (Mr. PICKLE) and the committee for their efforts to redress some of the injuries occasioned by the harsh administration of this program, but I do not believe that it goes far enough in making it possible for the disabled to secure their rightful benefits. It excludes from remedial treatment that large group of persons who have suffered the most during the last 3 years. This caused me to vote against the rule precluding amendments, for I had hoped to broaden the scope of the bill, to provide a remedy for all of those who had been caught in the administration's dragnet. The measure before us is limited to those reviews issued after December 31, 1984. This will be of absolutely no benefit to thousands of deserving individuals who have been unjustly re-

moved from the rolls—many of them, even though having been restored, have suffered greatly.

My amendment would have made the provisions of this bill which remedy the abuses in the disability review system applicable to all cases decided during this administration. Unfortunately, under the rule, my amendment cannot be offered. It is yet possible that the Senate will perfect this measure by making its provisions applicable to all those who have been aggrieved.

The text of my amendment had I been able to offer it follows:

AMENDMENT TO H.R. 3755, AS REPORTED OFFERED BY MR. PERKINS

On page 20, lines 14 and 15, strike out "which are issued after December 31, 1984," and insert in lieu thereof the following: which are issued on or after January 1, 1981. Any determination that an individual is not under a disability which was made by a State agency (or the Secretary of Health and Human Services) under or in accordance with title II or XVI of the Social Security Act on or after January 1, 1981, and before the date of the enactment of this Act shall be redetermined by such State agency (or the Secretary) as soon as possible after the date of the enactment of this Act, applying section 221(d)(2) of the Social Security Act as amended by this section.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. PERKINS) has expired.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. SHANNON).

Mr. SHANNON. I thank the gentleman for yielding me this time.

Mr. Chairman, by approving this bill, we can go a long way toward putting an end to the abuse and the indignity that is now being inflicted on disabled Americans across this country.

It has been 3 years since we first began hearing of the tragic and destructive results of the reviews of the disabled, 3 years in which half a million disabled Americans have had their lives seriously disrupted.

The bill we are considering today is urgently needed for hundreds of thousands of disabled workers like Damien Ivanof, who was terminated from the rolls even though he suffers from epileptic seizures, which make it impossible for him to work and for Judy Fitzery, who lost her benefits even though damage to her spine leaves her in excruciating pain much of the time. These two people were among the first disabled workers to be wrongly terminated from the rolls. They found out firsthand how flawed the standards of procedures now being used by SSA are, and they committed themselves to working to fix a good system that had gone awry.

It has been through the courage and persistence of people like them and other disabled people in Massachusetts and across the country, that Members of Congress on both sides of the aisle have come to know just how destructive and unfair the implementation of these reviews has been.

The desperate and urgent call for reforms is now supported by every disability organization across the country, by labor and elderly organizations, by the Governors, and by key Members of Congress.

The legislation before us today is the result of months of work by the Social Security Subcommittee and the Ways and Means Committee under the leadership of Chairman PICKLE and Chairman ROSTENKOWSKI. It is a carefully crafted compromise bill which received strong bipartisan support in the committee.

I regret to say that there are some people who remain opposed to these reforms.

After 3 years of human tragedies, the time to act has come.

This crisis will not be solved by posturing.

It will not be solved by playing politics with the lives of the disabled.

It will not be solved by calling for more studies.

It will not be solved by starting and halting and starting again moratoriums on the reviews of the disabled almost at random.

It will not be solved by trying to reduce the deficit by throwing disabled workers out into the streets.

This crisis will end only after we have acted to correct and to clarify the standards and procedures used by the Social Security Administration in determining ability to work.

The disabled workers who have come from Massachusetts for this floor debate are committed to a fair and just disability program. I share that commitment, and I urge all of my colleagues to support this vital legislation.

This is not just a political responsibility we have, it is a moral responsibility to the disabled people of this country.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. PEPPER).

Mr. PEPPER. Mr. Chairman, I believe the sad story of what the Government of the United States, under the direction of this administration, has done to the disabled people of this country covered by the disability program since mid-1980, is the cruelest, most sordid story in the history of our country.

In about mid-1980, the Congress, in an honest desire to get off the rolls of the disabled those who were not deserving of being there, authorized an examination of those rolls every 3 years. The administration immediately took advantage of that authority of Congress. They determined not only to carry out the suggestion of Congress that they see who might be properly removed, they determined to purge the rolls of the disabled of this country.

As a matter of fact, they arbitrarily, before there had been any physical examinations of these disabled people, they resolved that they were going to get rid of about 30 percent of the people that were on the rolls.

Mr. Chairman, who were those people that were on the rolls? They were people put there by disability commissions or committees of the several States of this country. They were not usurpers; they were not transgressors; they were there by the law of the several States from which they came. They had been adjudicated by a competent tribunal of a State as being disabled and unable to do any meaningful work for a least a year from the date they were allowed to become a part of those on the disabled program.

□ 1310

So what did the administration do? They proceeded in many cases without any examination, going entirely on paper facts or paper evidence. They began to disgorge the rolls of the disabled of this country until, at the present time, they have taken off 470,000 people. Those are not figures; those are human beings.

In many instances those people had no ability to work, no capacity to earn, no adequate income to sustain themselves, and in desperation many of them have taken their own lives.

Finally, we know that from the country there came a remonstrance that we could not ignore, and Congress then began to take a hand in this matter. I want to pay great tribute and commendation to the distinguished gentleman from Texas, Mr. PICKLE, for taking the lead in this matter and determining that these people are going to have some kind of fair protection against that kind of cruel treatment on the part of the Government of their country.

Now, Mr. Chairman, not only have 470,000 been taken off of the rolls, but they have so worded the regulations in respect to new entry to those rolls that there has been a very sad decrease in the number of people becoming eligible for this program.

For example, in 1980 there were 883,000 people who were awarded eligibility for this program. They get, incidentally, an average of a little over $400 a month if the are found to be eligible for this service. That was in 1980, 883,000. But under the stringency of these regulations promulgated by the same Government institutions that kicked 470,000 off of the rolls, they have reduced the rolls from 883,000 in 1980 to 680,000 in 1983.

Mr. PICKLE. Mr. Chairman, will the gentleman yield?

Mr. PEPPER. I yield to the gentleman from Texas.

Mr. PICKLE. I thank the gentleman for yielding.

Mr. Chairman, I appreciate the gentleman's reference to me and our subcommittee, but I want to say that no man in America has shown greater care or concern for the elderly or for the disabled than the gentleman in the well. His help and his concern

about this legislation has been invaluable to us and we thank the gentleman.

Mr. PEPPER. I am very grateful to my distinguished friend, the gentleman from Texas.

The CHAIRMAN. The time of the gentleman from Florida (Mr. PEPPER) has expired.

Mr. PICKLE. Mr. Chairman, I yield 1 additional minute to the gentleman from Florida.

Mr. PEPPER. I thank the gentleman for yielding me this additional time.

So, my colleagues, this bill that is before the House now provides some additional protection. These people cannot be kicked off of the rolls until an administrative law judge has heard their case and determined upon the evidence whether they are entitled to stay on there or not.

Not only that, my friends, but I want to say one other thing. We have had hearings before our Committee on Aging where we were told by two administrative law judges that if a judge in his record showed that he had reversed at least half of the cases that were appealed to him, they began to circulate the rumor around, "Well, you know, we have too many of these judges. We do not need all these judges that we have. We can save money by getting rid of some of these judges." Nothing these two judges said was anything more than an attempt to intimidate those judges, because two-thirds of the cases that were appealed were reversed by the judges.

So I ask my colleagues to support this legislation and help these helpless people.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. PEPPER. I yield to the gentleman from Minnesota.

(Mr. VENTO asked and was given permission to revise and extend his remarks.)

Mr. VENTO. Mr. Chairman, it has now been about 2 years since we learned of the serious problems surrounding the Reagan administration's continuing disability reviews being conducted on behalf of the Social Security Administration. We are all too familiar with the terrible stories of literally thousands of physically and mentally impaired individuals who had their disability benefits summarily cut off. In their zeal to cut Government spending, the Reagan administration apparently threw commonsense out the window in 1981. The social security disability insurance program today, as a consequence, is in complete chaos as numerous States have sued the Social Security Administration over its disability review guidelines or have acted on their own initiative to impose moratoriums on further disability reviews until fair and legal guidelines are adopted. In March 1982, I introduced H.R. 5684 in the 97th Congress because it was apparent that the Reagan administration was not going to follow a commonsense approach. Many of the provisions in the legislation before us today are similar. It is unfortunate that the Congress did not react more timely but rather thought mistakenly that the Reagan administration would respond to the courts and the overwhelming sentiment of the Congress. The administration has at every turn frustrated orderly resolution of the disability review process and that persists today with their opposition to this measure H.R. 3755. In my own State of Minnesota, it took a Federal court order from Judge Earl Larson to reinstate the disability benefits of some 14,000 mentally impaired persons who had their benefits cut off. Federal judges in other jurisdictions have taken similar actions in an effort to convince the administration to come to its senses and to obey the law.

I ask Secretary Heckler now and those in and out of the current administration who are responsible for this bureaucratic nightmare; would it not have been easier and would it not have been right for you to have admitted that these problems existed and to have worked with Members of this House who have been working for years to solve these problems? Instead, the administration demonstrated faint acceptance of the problems which were apparent and later announced that it would not support any legislation to restore order and fairness to the disability review process. Mr. Speaker, I commend Mr. PICKLE and Mr. SHANNON for their leadership in writing this legislation and for insuring that it reached the House today. I am pleased to be a cosponsor of this measure. I am sure that they will agree with me when I say that the time to pass H.R. 3755 is long overdue.

Mr. CORRADA. Mr. Chairman, will the gentleman yield?

Mr. PEPPER. I yield to the gentleman from Puerto Rico.

(Mr. CORRADA asked and was given permission to revise and extend his remarks.)

Mr. CORRADA. Mr. Chairman, the Social Security Disability Benefits Reform Act of 1984 (H.R. 3755), makes important and necessary changes in the Social Security disability program.

The most important change included in this bill is the establishment of a specific statutory standard to be followed by the agencies when reviewing social security disability cases.

According to this new standard, benefits could only be terminated when the beneficiary has experienced medical improvement in his or her condition of such nature as to make him or her able to perform substantial gainful activity.

If this standard is properly implemented, only those who are really able to work will be terminated from the disability rolls. I am concerned about the large amount of disability pension benefits which are terminated in an unfair manner. These large number of reviews are bringing great worries and uncertainty to social security beneficiaries.

Another important change is the provision for a face-to-face evidentiary hearing at the initial determination level.

This will provide the beneficiaries with the opportunity to state their cases personally before an agency officer. Under current law, beneficiaries are only given the opportunity to a face-to-face hearing when they come before an administrative law judge. This happens after the beneficiaries have received two prior decisions against them at the initial and reconsideration level. This bill also includes a section which makes permanent a temporary protection previously enacted by Congress allowing beneficiaries whose benefits had been ceased to elect to continue receiving benefits until an administrative law judge renders a decision on their case. This provision is of great importance since it will eliminate the hardships suffered by thousands of beneficiaries whose benefits have been wrongly terminated.

On behalf of my fellow American citizens residing in Puerto Rico, I urge all my colleagues to support H.R. 3755 and to vote for it.

Mr. CONABLE. Mr. Chairman, I now yield 2 minutes to the gentleman from Ohio (Mr. GRADISON), a valued member of the committee.

Mr. GRADISON. I thank the gentleman for yielding this time to me.

Mr. Chairman, I support H.R. 3755 and I compliment my subcommittee chairman, the gentleman from Texas, for his perseverance in getting a reform measure to the floor.

H.R. 3755 makes necessary reforms in the administration of the social security disability program. Many of these reforms were initiated administratively by the Secretary of Health and Human Services in June 1983 and molded into statutory form by the Social Security Subcommittee last summer. I am hopeful these initiatives will make significant strides toward reestablishing the integrity of the disability program and ending beneficiary trauma.

Perhaps most importantly, the bill attempts to establish a uniform guideline for determining when a person's disability status should be continued. In particular, a person could only be terminated from the rolls if medical improvement is found.

However, it is not completely clear how the medical improvement standard will be implemented. The report language reads that if the person has improved enough to do their old job, then they could be terminated from the rolls. But despite extensive consideration by the subcommittee, the statutory language is vague. The resulting ambiguity between report and statutory language could allow either con-

inued disability or termination status or persons who can do their old jobs. If people capable of working at their ld jobs are allowed to collect benefits, hen Congress will have taken disabil-ty policy for a full pendulum swing: rom the lax standards of the 1970's, o harsh administration begun with he 1980 disability amendments, and ack again to the standards that are oo lax. The only fair place for the endulum to rest is in the middle, here only those who deserve to re-eive benefits, and all those deserving, o receive benefits.

This bill may be our last chance to chieve uniform standards of disabil-y determination throughout the tate-Federal system of disability ad-udication. If it fails to create fair and onsistent guidelines, then our next tep might need to be to federalize the dministration of the program.

Mr. CONABLE. Mr. Chairman, I ow yield 2 minutes to the distin-uished gentleman from Massachu-etts (Mr. CONTE).

(Mr. CONTE asked and was given ermission to revise and extend his re-iarks.)

Mr. CONTE. I thank the gentleman or yielding this time to me.

Mr. Chairman, as one of the original osponsors of H.R. 3755, I rise in rong support of this legislation. I lso want to thank some of the leaders bringing this bill to the floor: the entleman from Texas (Mr. PICKLE), he gentleman from Massachusetts Mr. SHANNON), the gentleman from ew York (Mr. CONABLE), the gentle-an from Ohio (Mr. GRADISON), and he members of the Ways and Means ommittee for their efforts in bring-g this bill to the floor today.

We face a crisis in the social security isability program. Since the so-called ntinuing disability reviews began in larch 1981, 470,000 recipients have ad their benefits terminated. By De-mber of last year, 160,000 of those eneficiaries had been restored to the lls on appeal, and 120,000 appeals e still pending.

On top of that, Federal district and rcuit courts have ordered the Social ecurity Administration to reopen ad-rse decisions in over 100,000 cases. wenty-six States have stopped fol-wing Federal disability regulations order of their Governors or Federal urts, and many States are refusing terminate the benefits of any dis-lity recipient. It is ridiculous to gue—as some have—that further re-rms are not necessary.

The issue in this program is one of lance: How do we in Congress bal-ce the competing needs of taxpay-s, who do not want their money ing to people who are not disabled, th the sick in our Nation, those who nnot speak for themselves? We took important first step in December of 82, by enacting temporary reform gislation.

Today, that "balance" is missing. hat we need now is a voice of reason to get it back. H.R. 3755 is that voice of reason. We have already heard the provisions of that bill, and there is no need to repeat them, but I can safely say that it addresses the problems created by Federal court concerns over lack of a medical improvement standard, and the State concerns on terminations of benefits prior to a face-to-face appeal.

This bill, most importantly, answers the concerns of disability recipients. The committee bill gives them some help; but more importantly, it gives them some hope. It is time now for the entire House to work together toward the important goal of fairness in the disability program. It would not be an easy task, for nothing worth winning is easily gained. But H.R. 3755 responds to the needs of the disabled. What greater task than that? What nobler challenge for which to work?

Mr. CONABLE. Mr. Chairman, I now yield 1 minute to the gentleman from Ohio (Mr. REGULA).

□ 1320

Mr. REGULA. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, today, I rise in support of H.R. 3755, the social security disability amendments, and I would like to encourage my colleagues to do the same.

Over the last 2½ years there have been many problems which have plagued the social security disability insurance (SSDI) program and its recipients.

In 1979, the General Accounting Office (GAO), a nonpartisan agency, conducted an investigation which they believed showed 20 percent of those persons receiving social security disability insurance were not "truely" disabled and, therefore, under the statutes, not actually eligible for those benefits.

In response to the GAO report which stated the SSDI program was being misused, Congress enacted the Social Security Disability Amendments of 1980. One major provision of these amendments mandated that the Social Security Administration (SSA), beginning in 1981, review the status of everyone on the social security disability rolls who was not classified as permanently disabled.

These amendments, passed under the previous administration, caused unjust and inhumane financial, emotional, and physical hardships which can never be amended. Because the casework was so overwhelming, major errors of termination were made.

Nationally, through December 1983: Approximately 475,000 people have been notified that they could lose their benefits; 190,000 of them lost their benefits after exhausting appeals; 160,000 were restored on appeal; 150,000 are still pending; and in the State of Ohio alone we had, as of December 1982, 120,260 workers on the disability insurance rolls—4.6 percent of national cases.

During fiscal year 1983 the CDR rate in Ohio was 10,477 continuances and 7,894 cessations; roughly 43 percent of the decisions. For the first 3 months of fiscal year 1984—October 1, 1983 through January 27, 1984—there were 968 continuances under the CDR and 127 cessations under CDR—for approximately 11.6 percent.

Even though a number of these erroneous terminations have been overturned, the corrections were not easy to come by—the national average processing time of the initial application for reconsideration during February 1984 was 38.1 days. On top of that delay, the workload for the already overburdened appellate courts was further increased. The average national processing time for ALJ hearings in fiscal year 1983 was 184 days. Some of those terminated recipients had to wait as long as a year before they were able to receive a hearing before an administrative law judge (ALJ).

During the interim, many of these people lost their homes and cars and suffered a serious deterioration in their health due to stress and the loss of their medicare insurance coverage.

The level of reinstatement reinforced the realization of the necessity to reexamine the disability review process and make immediate changes where and when they were needed.

The current administration took many good steps to accomplish this task. In May 1982, the SSA undertook administrative reforms to ameliorate the CDR process and respond to congressional and State criticism. SSA expanded the definition of "permanently disabled" which resulted in 125,000 more persons being exempted from the 3-year CDR process, bringing the total of those exempted to more than 800,000 or 27 percent of the SSDI roll.

In October 1982, SSA initiated face-to-face interviews at the start of every review which, it is estimated, exempted an additional 3 to 5 percent of the cases from further action.

On June 7, 1983, Secretary Heckler announced a series to further reform of this review process. It was estimated that these reforms would result in an additional 200,000 recipients—during the next 2 years—being exempted permanently from having their eligibility questioned. Those individuals included those aged 55 and over—reduced from age 59—with muscular, lung or circulatory disorders, and the mentally handicapped—IQ 70 or lower—who suffer from at least one other disability.

The Secretary also eliminated the computer profile used to determine who will be first in the continuing disability investigation. Instead of processing a CDR on a categorical basis such as age or the amount of benefit received, the CDR would be conducted on a random sampling to eliminate any bias which may have occurred.

With these and other steps this administration took to correct bias and the inhumane reviewing of disability cases, we were well on our way to creating a good system for the disabled of our country.

However, this was not enough. Many of the problems which are, at the moment, inherent in this program, must be alleviated with legislation and not administratively. For that reason, I, along with many of my colleagues on both sides of the aisle, became an original cosponsor of H.R. 3755.

This legislation, which enjoys bipartisan cosponsorship, will insure that the disabled will receive a fair and adequate review process. It insures that they will not be rejected from the social security disability rolls because they have many "minor" disabilities which in and of themselves are not classified as an eligible disability. Now, these disabilities will be taken as a total. A realistic view of the person will be used to determine his or her eligibility. Other areas which this bill addresses are pain, medical improvement, face-to-face hearings, benefits on appeal, uniform standards, and nonacquiescence.

I am pleased we have finally been able to bring this legislation to the floor for action. It has been delayed too long and I hope all my colleagues will vote in favor of H.R. 3755.

Mr. PICKLE. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. ROYBAL), chairman of the Select Committee on Aging.

Mr. ROYBAL. Mr. Chairman, I rise in support of H.R. 3755, the Social Security Disability Amendments of 1984. These reforms establish fair and more equitable guidelines for determining whether a person should continue to receive disability benefits. I commend the two gentlemen from Texas, Mr. PICKLE and Mr. ARCHER, for shaping legislation which is acceptable to almost all who have been concerned with this issue. The gentleman from Massachussetts, Mr. SHANNON, the gentleman from Tennessee, Mr. FORD, and other Members of the Ways and Means Committee are also to be complimented for their efforts.

During the last year almost every member of the Select Committee on Aging participated in at least one of our seven disability hearings. These hearings concentrated on how the Federal courts and the States have reacted to the stringent policies forced on State disability agencies by the Federal Government. Last October 20, I inserted into the RECORD the first comprehensive list of the effects of these court orders and State actions. Since that time, the rebellion among the States and the tone of court orders have grown stronger, as hundreds of thousands continue to suffer unjustly.

Over the last 2 years there have been a series of administrative and legislative changes. All of them have proven to be inadequate. It is clear that the only way to reestablish some national uniformity in the disability process is to enact legislation which establishes a fair process which will be upheld by the courts and supported by the Governors. This legislation before us mandates such a review process.

Although I preferred the bill as originally conceived by Chairman PICKLE, and would have added other strengthening amendments, I recommend H.R. 3755 to my colleagues as an adequate response to most of the major concerns expressed in our hearings. I am pleased that 23 of the 60 cosponsors of the bill are members of the Aging Committee.

I also commend the Nation's Governors and courts for acting courageously and correctly to halt further reviews pending national reforms. The strong actions of the States and courts should impress upon the other body the need to enact each of the major provisions of the House bill. Failure to do so will not produce the measure of fairness required by the courts and advocated by the National Governors' Association. Therefore, I urge the passage of this bill and urge also that our conferees insist on all of the House provisions

Although I support these disability reforms, I wish we were doing more. I am disappointed that the reapplication and reinstatement rights of all previously terminated beneficiaries are not better protected. Although the bill does protect beneficiaries during future reviews, it does little to redress the past injustices which have been well documented by the media and congressional hearings. In addition, the moratorium on reviews should include those with physical impairments.

We have also missed an opportunity to give the Secretary of HHS more administrative flexibility to carry out the reviews than currently exists under the automatic 3-year review requirement. We should also delete the separate, more severe definition of disability established for disabled widow(er)s. To encourage return to paid employment, we should provide better vocational rehabilitation and eliminate the work disincentives which keep some disabled persons on the disability rolls. In addition, there are stronger ways to assure the independence of administrative law judges than are contained in this legislation.

I also have three comments to direct to those who are concerned with the alleged costs of this bill. First, even with these amendments, the review process will have reduced benefit payments by approximately $2.12 billion by the end of fiscal year 1985. This is almost 10 times the $218 million in benefit savings projected when the Congress created the review process in 1980. Second, nothing can be more costly than the current chaotic situation in which a growing number of States are refusing to conduct any reviews while the courts are ordering a reopening of previous decisions. Third, the original baseline assumptions upon which the social security actuaries made their cost projections were predicated on the unrealistic assumption that there will be additional reductions in the total number of disability beneficiaries. In fact, in last year's trustee's report, the actuaries project there will be fewer people receiving disability benefits in the year 2000 than there were in 1980 despite the growth in the U.S. population. It is unfortunate that the policy choices of last spring's financing amendments and of the current disability provisions are predicated on the assumption that simply maintaining current beneficiary levels shows up as an increase in benefit costs.

Mr. Chairman, I conclude these remarks with a summary of the status of the disability review process among the States. Currently, 33 States have either court-ordered or self-imposed moratoria on further terminations or have otherwise significantly altered the determination process.

Seventeen Governors or other State officials have imposed a moratorium on terminations pending congressional action. In addition, two State legislatures are in the process of legislating a moratorium on the terminations and two others have implemented their own revised guidelines for assessing cardiovascular diseases.

In the last 4 months there have been three major Federal court orders which require the Social Security Administration to reopen previous decisions and to make a new finding based on a medical improvement standard. In Colorado, the Trujillo against Heckler order is retroactive to December 1980. In North Carolina, the Hyatt against Heckler order is retroactive to March 1981. In nine Western States, the Lopez against Heckler order is retroactive to 1981. Nationwide, the courts have ordered SSA to use a medical improvement standard and to retroactively reinstate benefits to over 100,000 beneficiaries pending review under this standard. The administrative costs for implementing these court orders exceeds $100 million, and since the courts require retroactive reinstatement of the former beneficiaries, any marginal benefit savings will be more than offset by the administative costs of the initial termination and reinstatement actions.

Currently, there are approximately 43,000 disability cases pending in district court, and the backlog is growing at the rate of 2,000 a month. To date, the administration has yet to win a single decision which affirms their policy of failing to use a medical improvement standard.

Mr. PICKLE. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. STARK).

(Mr. STARK asked and was given permission to revise and extend his remarks.)

Mr. STARK. Mr. Chairman, I take this opportunity to congratulate the chairman of the subcommittee for an excellent bill.

Mr. Chairman, like the knock at the door in the middle of the night, the continuing disability investigation system has struck fear in the hearts of millions of truly vulnerable Americans. H.R. 3755 seeks to end this reign of terror and instead bring sense and sensitivity back into the system. The reforms contained in this bill will end the quest for blood money and yet still weed out those who would seek to cheat the system.

Equally important, I would urge my colleagues to support H.R. 3755 so that severely disabled SSI recipients, despite their impairments, will be able to work under the special benefits program.

The special benefits program, known as section 1619 benefits, expired December 31, 1983. While the administration has continued the program for 1 year under its demonstration authority, this is obviously not an adequate solution. This bill will extend the program through June 30, 1986. In this way new, severely impaired SSI recipients will be able to seek employment and those on the program will not have to live in fear of being reinstitutionalized or forced to stay at home because they cannot afford their attendant care without assistance.

To use the words of one quadraplegic who testified before the Public Assistance Subcommittee, "For God's sake, let us keep working. I don't believe that, on our own, we can eliminate a $200 billion deficit, but I do believe that by allowing us to support ourselves, we can help in our own way."

Mr. CONABLE. Mr. Chairman, I now yield 2 minutes to the gentleman from Arkansas (Mr. HAMMERSCHMIDT).

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in support of H.R. 3755, the Social Security Disability Benefits Reform Act.

Massive administrative confusion and personal tragedy have resulted from the implementation of the 1980 Amendments to the Social Security Act which were signed into law by President Carter. Since March 1983, when the continuing disability reviews began, 470,000 beneficiaries have been terminated. By December 1983, 160,000 were restored on appeal, 120,000 appeals were still pending. Moreover, the Federal courts have ordered the Social Security Administration (SSA) to reopen the adverse decisions in over 100,000 cases.

It would be difficult to imagine any Member who has not heard from dozens of constituents who have been dropped from the rolls with only cursory reviews and despite the fact that they had not experienced any improvement in their health. For many, the loss of disability insurance benefits resulted in mortgage defaults, bankruptcies, and other serious financial hardships. The loss of medicare caused many people's health to further deteriorate. In response to these hardships, emergency legislation was passed at the close of the 97th Congress which (among other things) continued financial and medical benefits through the administrative law judge decision. This temporary solution was designed to give Congress time to pass comprehensive legislation. On December 7, this emergency provision expired. Comprehensive reform should not be further delayed.

The seriousness of the problems with the disability program is clearly evidenced by the fact that 30 States have actually stopped following Federal guidelines by order of their Governors or Federal courts. Although the administration in late January notified eight Governors that they had 2 weeks to resume full processing of reviews, none of them has done so. Currently there are approximately 43,000 social security disability cases pending in Federal district court, with the backlog growing at a rate of 2,000 a month. At this rate, the court system alone will spend over $200 million by 1988 just to hear these cases. Although I respect the administration's efforts to improve the program, I cannot accept its conclusion that, "administrative and legislative reforms already accomplished make further reforms unnecessary."

The administration's major opposition to H.R. 3755 is its requirement that SSA return to its previous use of a medical improvement standard. This provision accounts for two-thirds of the bill's 5 year projected cost of up to $6 billion.

As I see it, these cost estimates are excessive for three reasons. First, the Congressional Budget Office estimates the cost of H.R. 3755 to be $1.5 billion for the first 5 years. Second, SSA's $6 billion figure assumes that Federal courts would order retroactive use of a medical improvement standard only if the legislation passes. However, at least 16 States are currently under a court ordered medical improvement standard which applies to previous decisions. Even without the bill, the administration has failed to win a single court case on the medical improvement standard. Third, SSA's $6 billion figure assumes that the Governors will rescind their moratoria and begin processing cases under the current rules. The evidence to date does not support that conclusion. Many Governors have indicated that they will simply turn the entire administrative function back to the Federal Government rather than resume processing under current rules. This is likely to increase Federal administrative costs by over $100 million per year.

It is Congress responsibility to return fairness and uniformity to this vital Federal program. I believe the termination of benefits to long-term disabled people, many of whom are elderly and veterans, who were properly adjudicated under the medical improvement standard put into the law in 1967, is a violation of due process. I hope we can pass this bill with overwhelming numbers, assuring swift and earnest consideration in the Senate.

Mr. CONABLE. Mr. Chairman, I yield 1 minute to the gentleman from Nebraska (Mr. DAUB).

Mr. DAUB. Mr. Chairman, I rise today in strong support of H.R. 3755, the Social Security Disability Benefits Reform Act. I am pleased to see the House acting on legislation to reform the disability determination process and the disability reviews. I am aware of the hardships the disability review program has caused some of my constituents and since coming to Congress, I have continued to work to resolve these concerns. I believe the legislation before us today is an important step in dealing with what has now become a confusing and unworkable program.

The social security disability insurance program was established over 25 years ago to provide benefits for workers and dependents unable to work due to a disabling condition.

The absence of an adequate review process in the seventies however prompted Congress in 1980 to enact disability amendments which mandated that the Social Security Administration review all nonpermanently disabled beneficiaries once every 3 years, beginning no later than 1982. It was President Carter and HEW Secretary Joseph Califano who asked for the weeding out of those who were abusing the system so that benefits for those truly deserving could be protected.

This abuse was emphasized in a report published by GAO in 1981 which indicated that as many as 584,000 individuals or about 20 percent of all workers receiving disability benefits did not meet the eligibility requirements. Incorrect payments were estimated at $2 billion annually. A later report estimated that 30 percent were not entitled to benefits costing as much as $4 billion a year in benefits to people who were not disabled.

In light of these alarming statistics the review process began in March 1981. A number of criticisms immediately surfaced because of incorrect removals from the disability rolls and the removal of some even though their medical condition had not improved during the course of their eligibility for disability benefits.

In 1982 I joined Congressman PICKLE in support of H.R. 6181 to address the problems of the disability system. This legislation would have strengthened the reconsideration process and provided more uniformity in the decisionmaking at all levels of adjudication.

In December of the same year, I again joined my distinguished colleague in support of interim amendments to provide a continuation of disability benefits through the appeals process. This legislation allowed persons terminated before October 1983 to choose to continue to receive benefits while they appealed. Benefits were paid until the final hearing. However, if the case was decided adversely, the recipient was required to repay the benefits he or she had received. While this was only a temporary extension, many believed it should have been permanent considering that the average length of time between filing an appeal and the ALJ decision is 180 days. This is a long period of time without benefits for the majority of beneficiaries whose appeal is successful.

I continued my support for this provision when the House extended it until December 7, 1983. Unfortunately, this provision has since expired and without further legislation the last payment date will be May 3, 1984.

All of us have heard from State officials administering this program, expressing the seriousness of the problems associated with the disability program. A major problem is that various States are administering the program differently either due to State initiated action or as a result of a court decision.

H.R. 3755, legislation that has received strong bipartisan support, is a comprehensive bill addressing a number of concerns with the administration of the disability program.

I want to commend Representative PICKLE and the members of his committee for their sensitivity and hard work on this issue.

One of the key components of H.R. 3755 is the imposition of a medical improvement standard which would be the criterion used to determine whether benefits could be denied. Without some type of medical improvement standard, the patchwork of laws that now exists with 24 States and 3 territories following various circuit court and State initiated actions will continue to make the program unwieldy.

There are a number of other important measures in H.R. 3755 that are desperately needed including extending permanently the authority to continue payment of benefits during the appeals process, requiring face to face evidentiary hearings at the initial decision level and providing a delay on reviews of all mental impairment disabilities.

I am well aware of the necessary provisions included in H.R. 3755. I also recognize the concerns my colleague Congressman ARCHER has expressed on this bill including the bill's total cost and the additional administration burdens that may be placed on the Social Security Administration. I hope all of my colleagues will keep these concerns in mind.

The disability program is an important one. We must eliminate the abuse from the system in order to insure benefits to the truly disabled. Yet, equally important, we must insure that those who are truly disabled do not undergo undue hardship to eliminate the abuse. These do not have to be conflicting goals.

I urge the immediate passage and implementation of H.R. 3755.

The CHAIRMAN. The Chair wishes to announce that the gentleman from New York (Mr. CONABLE) has 11 minutes remaining, and the gentleman from Illinois (Mr. ROSTENKOWSKI) has 11 minutes remaining.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. JENKINS).

(Mr. JENKINS asked and was given permission to revise and extend his remarks.)

Mr. JENKINS. Mr. Chairman, I rise in strong support of this disability bill. All across this country, cries for relief have been heard from disabled people who have lost their benefits, even though they cannot work and have no way of living without those benefits. These people are not shirkers, they are not cheats or deadbeats looking for an easy public handout. These people have paid into social security all their working lives and all they ask is the protection they have worked and paid for. H.R. 3755 gives them this protection in a fair and sensible way.

Mr. Chairman, we cannot leave this Congress holding our heads up if we fail to enact this legislation. We must send out a clear message: We will not tolerate arrogant administrative actions that destroy the lives of countless disabled people simply in order to save dollars. This administration wants to stop this bill by announcing a lengthy moratorium. Such a move will only leave disabled citizens vulnerable to the arbitrary and capricious whims of those who wish to cut costs by forcing the disabled to choose between starvation and suicide when their benefits are cut off. This is unacceptable—we must pass this bill, the Senate must act, and the President must sign it into law. We can do no less for these least fortunate of our citizens.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. DOWNEY).

(Mr. DOWNEY of New York asked and was given permission to revise and extend his remarks.)

Mr. DOWNEY of New York. Mr. Chairman, if there is further evidence that this administration is out of touch with reality, it is their continued opposition to this bill. Those of us who have been watching this debate have not heard one Member of Congress come before this body and say this is not a vital and necessary piece of legislation. And it is. Anyone who has dealt with this program, from local officials to State officials to national officials, knows that the way this program has been administered over the last 2½ years is a crime, and it needs to be changed.

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This system is broken. This bill will help correct it. It is long overdue. Any Member of Congress who has sat in his or her office and listened to the people who have come before us who are disabled knows that this legislation is long overdue.

I congratulate the gentleman from Texas (Mr. PICKLE) and the chairman of the Ways and Means Committee for giving us the opportunity to vote on this.

Mr. Chairman, I wish to state my strong support for the Social Security Disability Reform Act, H.R. 3755. We often hear that, "If it ain't broke, don't fix it." Well, Mr. Chairman, that is just the problem: The social security disability system is broken. And the administration and those opposed to this legislation refuse to acknowledge the fact. But to the administrators at the State and local level, to Governors, administrative law judges, and Federal district court judges, the evidence is plain. The system is not working the way Congress intended.

An administrative law judge from Evansville, Ind., referred to "the overzealous reaction and meat-ax approach of social security officials to the well-intentioned and well-advised mandate of Congress to review the disability rolls."

A few months ago, Judge Jack Weinstein, chief judge of the Southern District of New York, wrote in his decision in favor of those who had been wrongfully terminated:

> This case raises difficult issues respecting protection of the rights of claimants by the bureaucracy charged with dispensing social security disability and supplemental security income benefits. Courts assume that professionals such as doctors, lawyers, and managers responsible for important government institutions will enforce the law with scrupulous impartiality and concern for the rights of their clients—here those claiming disability. That presumption of legality has been rebutted by evidence of denial of the rights of disabled persons acquiesced in by the professionals charged with assisting them. The result was particularly tragic in the instant case because of its devastating effect on thousands of mentally ill persons whose very disability prevented them from effectively confronting the system.

Faced with this situation, what can we Members of Congress do? We can wait, I suppose, for the officials charged with administering this program to figure out that something is wrong. But we have been waiting for several years, and still nothing is done. This weekend, we heard rumors of an impending change of policy at the Social Security Administration. Rumors are not enough. What we can do—what we must do—is act to force a more humane, compassionate, and rational process on the administrators of this program.

Of all the changes proposed by H.R. 3755, the medical improvement standard is the most critical. There is much evidence to show that there has been no standard used in terminating cases in the past 3½ years. According to the Social Security Administration's own figures, about 35 percent of the people reviewed from 1978 to 1982 were terminated although there was no improvement in their medical condition from the time when they were first placed on disability. As New York State Attorney General Robert Abrams has testified, without a clear improvement in the medical condition of the beneficiary, which would allow him or her to return to work, there should not be a termination.

The Social Security Administration used such a standard until 1976. When new regulations were issued in 1980, the Social Security Administration interpreted them in such a way to put the burden of proof of continued disability on the beneficiary. For those under review, they had to prove once again that they were disabled. A medical improvement standard would mean that there would be an objective measurement that would remove the burden of proof from the beneficiary.

H.R. 3755 would also change the policy with regard to multiple impairments. Presently, if a person suffers from more than one disability, each disability is evaluated on its own, in isolation from the others. The review process does not take into account the cumulative effect of the impairments. This "Alice in Wonderland" process, in which the whole is much less than the sum of its parts, has resulted in many severely disabled people being removed from the rolls.

Now, you may say these are all administrative problems. We do not need a law to fix them. I wish that were true. We have waited a long time for the administrators to even admit that the problem exists. Those terminated unfairly from the disability rolls have had to wait far too long.

I cannot help but return to Judge Weinstein's ruling. It is precisely those people who, because of their disabilities, are least able to deal with this unjust system who have lost the protection of a fairly administered law. We in this House must restore fairness and humanity to a social security system run amok.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. MATSUI).

Mr. MATSUI. Mr. Chairman, I would like to first of all commend the gentleman from Texas (Mr. PICKLE) for the great job that he has done on getting this legislation through and, of course, the full committee chairman, the gentleman from Illinois (Mr. ROSTENKOWSKI) and the gentleman from New York (Mr. CONABLE) for their understanding and humaneness in making sure that this legislation now has reached the floor of the House.

I would also like to reiterate the comments made by my colleague on the Ways and Means Committee, the gentleman from New York (Mr. DOWNEY), that the reason that we are here today is because, in my opinion, the very strident interpretation of the Reagan administration of the Disability Act Amendments of 1980. We have seen hundreds of thousands of citizens throughout the United States lose their disability payments and be in a position where they are unable to afford to live and care for themselves while their cases are going under appeal.

This legislation will take some small step to make sure that while the appeal is going on, these people will be in a position to at least receive their benefits, and second, there will have to be a showing of some improvements before the benefits may be cut.

I urge support of this bill.

Mr. CONABLE. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey (Mr. SMITH).

(Mr. SMITH of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. SMITH of New Jersey. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise today in strong support of the legislation before us, the Social Security Disability Benefits Reform Act of 1984.

I would like to take this opportunity to commend Chairman PICKLE for his leadership in crafting this bill and bringing it to the floor today. I am proud to be an original cosponsor of this legislation.

Mr. Chairman, as a direct result of the 1980 Carter disability insurance amendments, the Social Security Administration initiated an aggressive program of reviewing those on the social security disability rolls.

Within a very short period of time, however, Members of Congress became aware of the many problems, the horror stories, and the sheer misery imposed on disabled Americans caused by mandated continuing disability investigations (CDI's).

Mr. Chairman, I have been deeply troubled by the slipshod and often callous manner in which truly disabled persons have been mistakenly—some would say deliberately—cut off from their disability benefits. In my New Jersey district, my caseworkers and I have handled well over 500 disability terminations. Time and time again we have found the review process to be less than fair, thorough, or compassionate.

I am happy to say that our intercession has helped to facilitate the reversal of many of those who were terminated, but such intervention by their Congressman should have not been necessary.

I often feel that for every person expundged from the disability rolls who calls me, there must be several who do not. Their reasons are many. Perhaps they believe any appeal would be futile and the appeals process not only appears intimidating, drawn out, and frightful; it is.

Mr. Chairman, between October 1982 and June 1983, SSA made decisions on 365,000 people on the disability rolls. Of that number, 278,000 or 76 percent have been left untouched or returned to the rolls after a lengthy appeals process.

Significantly, of the 116,000 people who opted to go through the review process after initial termination, an unbelievably high 70,000 people, or 60 percent, had their benefits restored. But let me remind my colleagues that these restorations occurred only after a very trying, traumatic, lengthy process.

I would point out to my colleagues that approximately 50 percent of those terminated do not initiate a reconsideration. There are no hard facts or data on what becomes of these people. One finding by the GAO indicates that in the cases of 100 people terminated only 7 were able to obtain full-time jobs.

It seems to be that it is not too difficult to understand why so few apparently do not find jobs. Most, I would suggest, are just too sick or fragile. To some employers such an employee might be regarded as a potential liability—too much of a risk. I would ask my colleagues, how many employers in your district do you know who would hire a person who has just been excised from the disability rolls?

With these experiences in mind, Mr. Chairman, I committed myself over 2 years ago to the reform of the CDI process. In the 97th Congress I cosponsored one of the earliest efforts to adjust the CDI program and thus mitigate some of the misery imposed upon disabled Americans. My colleagues may recall that at the very end of the 97th Congress, we did adopt provisions of this legislation—Public Law 97-455—which extended benefit payments to those in the review process, and also slowed down the rate of the CDI's.

I would remind my colleagues that efforts to reform CDI's have been truly bipartisan. Similarly, there is more than enough blame to go around as to who caused the problem. As a matter of fact, last November I appeared before the Rules Committee to request that my amendment to H.R. 4170 be made in order. The language of that amendment actually went beyond the provisions of H.R. 3755 and would have imposed a moratorium on all—I repeat all—continuing disability reviews. Unfortunately, my amendment was defeated 8 to 5 by the Rules Committee with all four Republicans voting for it and all but one Member from the other side of the aisle voting against it.

Following that action in the Rules Committee, Mr. Chairman, I redrafted the amendment and in November of

1983, I introduced legislation, H.R. 4563, the Disability Beneficiaries Protection Act. Simply put, H.R. 4563 would place a nationwide moratorium on all disability review proceedings until the entire program could be clarified, standardized, and adequately refurbished insuring humane and just treatment for disabled Americans across the Nation. At that time, H.R. 3755 was part of the all-inclusive tax package and I was concerned that that legislation, H.R. 4170, would move too slowly, inadequately answering the urgent call for help from the thousands of disabled Americans anxiously awaiting legislative reform.

The bill I introduced has since gained several cosponsors and furthered the disability reform effort, perhaps acting as a catalyst for the separation and advancement of H.R. 3755. I am encouraged by the fact that the revisions my bill anticipated are incorporated in H.R. 3755, and as an original consponsor of this legislation, I am pleased that the bill's most important provisions have been left unamended through the legislative process—the provisions of H.R. 3755 to:

First, continue benefit payments through the review of an administrative law judge;

Second, to require the SSA to clearly demonstrate medical improvement before terminating an individual;

Third, to establish face-to-face meeting at the reconsideration level;

Fourth, to permit consideration of the impact of multiple impairments;

Fifth, to place a temporary moratorium on all reviews of persons disabled by mental impairments;

Sixth, to require SSA to publish relative CDI rulings and incorporate comments before initiating final changes; and

Seventh, to require SSA to adhere to or appeal Federal court of appeals rulings.

All are all very important changes which are crucial to restoring fairness in the disability program.

Mr. Chairman, there is no question that in the past months the disability program has even further regressed and is in a present state of anarchy and turmoil. At least 21 States have refused either in whole or in part to administer the disability review process in the manner prescribed by the Department of Health and Human Services.

In at least 25 States, Federal courts have struck down the social security guidelines, the result of which has been an erosion of public faith and confidence in the entire program. In my own State of New Jersey, the DDD—Division of Disability Determinations—has terminated its adherence to social security regulations for two legal reasons: First, a moratorium prescribed by Governor Kean; and second, a direct order issued by the Third Federal District Court of Appeals.

While I am pleased that these entities have acted to protect disabled residents in New Jersey, I know that they should not have been necessary, and I fear for those disabled Americans who do not reside in a State which has been shielded by either a court order, a moratorium issued by its Governor, or by both. Mr. Chairman, in its present form the CDI process has proven to be discriminatory, contradictory, careless, and arbitrary, in desperate need of reform.

Mr. Chairman, H.R. 3755 and the CDI program have been the object of study by several congressional committees including the Aging Committee, on which I sit. The bill has received bipartisan support, and many National, State, and local disability protection organizations, as well as the NGA, have all endorsed H.R. 3755. This bill provides a comprehensive, long-term approach to the disability review program.

Mr. Chairman, as you know, the overall purpose of the bill is, first, to clarify statutory guidelines for the determination process to insure that no beneficiary loses eligibility for benefits as a result of careless or arbitrary decisionmaking by the Federal Government. Second, the bill is intended to provide a more humane and understandable application and appeal process for disability applicants and beneficiaries appealing termination of their benefits. Finally, the bill seeks to standardize the Social Security Administration's policymaking procedures through the notice and comment procedures of the Administrative Procedures Act, and to make those procedures conform with the standard practices of Federal law, through acquiescence in Federal Court of Appeals rulings.

H.R. 3755 is a good bill. It is not a panacea, but no proposal ever is. It is a reasonable effort. I strongly urge adoption of this legislation.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio (Ms. OAKAR).

(Ms. OAKAR asked and was given permission to revise and extend her remarks.)

Ms. OAKAR. Mr. Chairman, I want to commend Chairman ROSTENKOWSKI and Chairman PICKLE for their superb work on this bill.

Mr. Chairman, I think it is an indication of the callous disregard that the administration has for the disabled and those in need, and in many instances the elderly, when they oppose this legislation that has been worked on by both sides of the aisle in terms of the committee.

I want to just cite one classic example. I know some people are afraid toi talk about examples of people who have been discriminated against by the administration; but I had a call recently some months ago from an individual who told me he was going to commit suicide, because while the administrative law judge had ruled in favor of this man's disability claim, the administration decided to appeal.

I called the Social Security Administration. I said, "Why, on what basis did you decide to appeal?"

And they indicated to me something they will not admit today, that it was based on the quota of that law judge.

Mr. Chairman, that is why the administrative law judges have filed suit against the administration.

Therefore, I rise in support of H.R. 3755, the Social Security Disability Benefits Reform Act of 1984, because Congress needs to act immediately to regain the American people's confidence in the disability program. Since 1980, an accelerated review process of disability cases has caused total chaos within States which must process the cases and severe anxiety and financial loss for the families that must remain in limbo for a final decision to be rendered. I am certain that most Members in this Chamber can list the horror stories of constituents who never lived through the final decision stage.

States that felt overburdened with the process and uncommitted to the policy have taken the disability program into their own hands, imposing moratoriums and slowdowns. My own State of Ohio imposed a 150-day moratorium on social security disability review cases last year. The Governor vowed that he would continue in this way until Congress or the administration took steps to coordinate the disability review process.

For the disability program to meet the expectations of its framers and the people who are to be protected by it, some unity must be incorporated through legislation setting guidelines. H.R. 3755 will protect individuals on the rolls who are disabled from being terminated by mandating a 9-month moratorium on reviews of the mentally impaired, making permanent cash benefits awards through completion of the ALJ appeal, requiring face-to-face interviews at the State DDS, and narrowing the criteria for terminating a disability benefit.

Quite frankly, we should not have to legislate changes to the system. However, our hands have been tied by an administration unwilling to compromise. In my opinion, Congressman PICKLE's bill accomplishes some significant goals. Unity will return to the social security disability system. I encourage every Member in this body to vote in support of H.R. 3755 and end the mistreatment to our most vulnerable citizens. Thank you.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from Arkansas (Mr. ANTHONY).

(Mr. ANTHONY asked and was given permission to revise and extend his remarks.)

Mr. ANTHONY. Mr. Chairman, I yield to my colleague, the gentleman from Arkansas (Mr. ALEXANDER).

Mr. ALEXANDER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support for the Social Security Disability Benefits Reform Act of 1984 (H.R. 3755). In my district, the confusion and disruption the Social Security Administration has caused disabled persons has reached a crisis level. Since 1981, the disability caseload of my three district offices has tripled. The arbitrary denial of benefits to persons who otherwise qualified for them has unleashed havoc in the lives of thousands of Americans who should have been able to expect fair and compassionate treatment from their Government.

This is a perfect example of this administration's going too far with its meat ax approach to the management of social programs.

Mr. Chairman, I daresay there is not a Member of the House of Representatives who has not been inundated by inquiries from his district about social security disability benefits. There is not a one of us who has not heard horror stories about the abrupt termination of benefits by the Social Security Administration under this administration's interpretation of exisiting law—an interpretation which, in every sense of the word, has been unduly strict.

One man, the father of a child with cerebral palsy, had recently undergone heart bypass surgery and was receiving 14 different medications; his disability benefits were cut off by the Social Security Administration in the middle of this misfortune. His entire community—aided, I am proud to say, by my own district staff—went to work to make sure that he had groceries.

Another man—the recipient of benefits since 1975, was cut off under the new administration guidelines in 1981. Although he suffered from both heart damage and liver cancer, it was not until June of 1983 that we were able to help him restore his eligibility. That he survived in the meantime was something of a miracle.

Another of my constituents was not so lucky. Suffering from cancer, he was summarily cut off from benefits in 1982 under the new guidelines. Although we immediately began to assist him through the complicated and confusing appeals process, he died in the meantime—without benefits. In 1984, 2 years later, his case is still "pending" before the Social Security Administration.

In many cases of this sort—cases of beloved and helpless grandparents and of hard-pressed fathers and mothers still responsible for the care of children—my office and the other congressional offices across this land have been able to assist in the restoration of benefits. But it is a flood-tide of suffering, and no cost-accountant's explanation can excuse the redtape and harsh and bureaucratic judgments that we are forced to deal with on a daily basis.

It is a situation characterized by a constituent of mine, Harold Jenks of Jonesboro, Ark., as "a disgrace and a shame." Mr. Jenks is a long-time friend of mine—and, indeed, of all of us in this country. He is a decorated Air Force veteran of World War II, wounded in the service of his country and retired now after many years of distinguished service in the Federal Government.

Mr. Jenks knows the social contract between Government and the people from both sides. He has served as chairman of a district Social Security Study Committee for me, and he knows how the system should work. He is appalled by what has happened to so many SSDI beneficiaries. "Some of these folks who were cut off were disabled to the naked eye," he observes. "It passes belief that they could be removed from the lists without somebody at least looking at them and talking to them. I hate to say it, but appears to be inescapable to conclude that the people running this administration have a complete lack of compassion—an inhuman attitude."

The present machinery for dealing with the continuing eligibility of disability beneficiaries—coupled with the administration's rigid and inexplicable attitude—has made it clear that we in Congress must pass a reform bill. We are faced with an emergency of unexpected proportions—a crisis of misery.

It has long been evident that the administration's guidelines for cutting off benefits were in conflict with Federal court orders which require States to make different determinations for continuing eligibility. At the present time, 29 States are refusing to abide by SSA guidelines, either by order of the State government or by that of the Federal courts. Many millions of people are trapped in this unnecessary snafu; it is incumbent upon us to restore both order and compassion to the system for administering disability benefits.

The Social Security Disability Benefits Reform Act of 1984 (H.R. 3755) is intended to do just this. The bill represents the needs of both mercy and efficiency, but essentially it is about justice.

At the present time, disability benefit cutoffs are relatively arbitrary. While the beneficiary may appeal for reconsideration, the process is time consuming and, in the meantime, the cutoff is in effect. Even though a reasonable number of the claimants are successful in their lengthy appeals, they must bear both the burden of proof and the burden of misery.

The provisions of H.R. 3755 are designed to streamline the reconsideration process in the interests of fairness.

The bill would first of all establish a specific statutory standard, which prohibits termination of benefits unless an explicit improvement in the beneficiary's condition or a definite irregularity in the disability claim can be demonstrated;

The bill provides for a moratorium on mental impairment reviews until the Social Security Administration can revise its criteria for disability claims on this basis; it also mandates that a psychiatrist or psychologist review any case where benefits are to be terminated for a person with mental impairment.

In cases where SSDI benefits are to be terminated due to medical improvement, the bill requires that face-to-face interviews be provided by State agencies responsible for disability determinations. This provision would end the cruel practice of termination at a distance.

The bill provides that disability determinations be based on the total range of impairments suffered by the beneficiary, not on improvement of isolated impairments where others persist.

Crucially for the recipient threatened with cutoff, the bill specifies that beneficiaries must be permitted to continue to receive SSDI payments while appealing a termination decision. The payments would continue until a decision is rendered by an administrative law judge.

The bill would extend, through June 30, 1986, as existing temporary program that allows the continuation of SSI and/or medicaid benefits for certain disabled persons who are working but who continue to suffer from disabling impairments.

Among its other provisions, the bill requires that SSDI regulations be standardized under the Administrative Procedure Act; that the Social Security Administration follow generally applicable principles of decision by circuit courts of appeal; that an advisory council on medical aspects of disability be created; and that the changes mandated for the SSDI program apply as well to the supplemental security income system, which provides monthly cash benefits to needy persons who are aged, blind, or disabled. This is a reform bill of commendable magnitude.

It is an overdue effort to restore justice to our national priorities, but it is more than that. It is an emergency measure to prevent needless cruelty and pointless suffering. This bill says that the Federal Government will no longer permit confusion and callousness and redtape to govern the administration of social security disability benefits. It says that the Government of the United States of America is the friend of the people of this Nation, not their adversary. It says that we will continue to respect the social contract which is the social security system in America.

I wholeheartedly urge the adoption of this measure.

(Mr. ALEXANDER asked and was given permission to revise and extend his remarks.)

Mr. ANTHONY. Mr. Chairman, unfortunately, the situation in Arkansas is in a sorry mess, so sorry, in fact, that the Governor, Governor Clinton, was compelled out of frustration and compassion for the affected individuals to issue an executive order for a moratorium on review. This legislation will help correct that situation.

Lawyers and ALJ's are faced with a situation where SSA refused to follow stere decisis. As my colleague, the gentleman from Ohio, said, our LJ's in Arkansas are intimidated, they are harassed and they are threatened to follow the quota system, 55 percent on the approval rate. They were forced to join in this lawsuit to get some protection. They are forced to follow secret rulings.

This piece of legislation, H.R. 3755, will help solve it.

We are here today because hundreds of horror stories have made their way to our offices over the past 2 years as the Reagan administration has tried to comply with a congressional mandate to remove ineligible recipients from the disability program. Unfortunately, there is a great deal of evidence that in their haste to remove those who should not be on the disability rolls, and to provide a certain level of cost-savings in the program, the administration has used a meat-ax approach and slashed checks to many persons actually disabled who deserve support under the program.

Disability reform gained momentum in the mid-1970's because of the increasing cost of the program. Most people concluded that the growth of the program was due to large numbers of ineligible persons on the rolls. The solution was to rid the rolls of those who were not truly disabled and provide incentives to beneficiaries to return to work.

Responding to the need for more effective management of the program, Congress passed legislation in 1980 that required an increase in the amount of management review and oversight of the program. Among the changes required at that time were Federal review of beneficiaries not permanently disabled at least once every 3 years; a report on the wide variations in administrative law judge decisions; and directions to the Secretary of Health and Human Services to prescribe regulations for state agency determination procedures.

The pendulum has now swung the other way. The concern in Congress now is over the standards and methods being used to examine beneficiaries and terminate their benefits, and the attempts by the Social Security Administration to exert more control over the ALJ's and their decisionmaking standards. The massive and swift review of cases by the Social Security Administration has caused serious emotional, physical, and financial harm to thousands of disabled Americans, and left the ALJ's feeling forced into making decisions that are favorable to the Social Security Administration.

No Member of Congress condones the receipt of disability benefits by those who are not disabled. What we are working on in Congress is a program that is fair, compassionate, and just. The Ways and Means Committee has reported out legislation to provide for the needed reforms in the administration of the program. I urge a favorable vote on H.R. 3755.

Mr. CONABLE. Mr. Chairman, I yield 1 minute to the gentleman from Ohio (Mr. DEWINE).

Mr. DEWINE. Mr. Chairman, I rise in support of H.R. 3755. There is a very serious need for this kind of reform in the disability program. I listened last week to the stories of people from my district whose lives were shaken to the very foundations when they were taken off the disability rolls for months, sometimes years, only to be told in the end what they know, that they were in fact disabled. My colleague from Ohio (Mr. WILLIAMS) and I heard this testimony in the course of field hearings of the Select Committee on Aging which we conducted last week in Ohio.

We heard from Frederick Stires of Ashville who said he had to sell his home after being taken off the disability rolls despite the fact that his condition had not changed at all since several episodes of surgery and frequent physical therapy. Mr. Stires' case became even more of a nightmare after the Social Security Administration lost his file. It took a year to find it. My office finally found it in a Social Security office in Chicago. In the end he was found in fact to be disabled and eligible for disability benefits.

The point is that there are real people out there who have suffered a great deal. The decision in 1980 to review disability cases was well intentioned but it is very evident there are serious problems in the way the law is written and administered.

H.R. 3755 addresses the main problems we have been finding in this law. I urge you to pass it today.

Mr. CONABLE. Mr. Chairman, I yield 2 minutes to the gentleman from Kentucky (Mr. ROGERS).

Mr. ROGERS. Mr. Chairman, I support this legislation, and urge my colleagues to do likewise. Yes, this is a costly piece of legislation—but I believe the uncounted horror stories which all of us have encountered in our casework missing out of this Carter administration procedures require that we take action now to return fairness to this Federal program, which so many disabled people depend on.

In my own congressional district I have had people in wheelchairs who are unable to walk across the room unassisted, removed from the social security disability rolls, and I know most of you have had similar cases in your districts. I believe that the hardship imposed on the disabled in these instances could easily have been avoided if face-to-face meetings had been a part of the initial review process.

This legislation provides for the implementation of face-to-face interviews. I believe this is one of the most important provisions of the bill, because we are dealing with people here, and I believe it is mandatory for anyone conducting a medical review to observe the person they are reviewing. I do not believe it is possible to accurately assess a person's medical condition by reviewing a lot of doctor's and hospital's reports.

This lack of face-to-face meeting was one of the reasons why so many cases have been overturned on appeal. Since 1981 when the disability reviews began, 470,000 beneficiaries have been terminated, and by December 1983, 160,000 were restored on appeal, and 120,000 are still pending. It is impossible to guess how many of these cases would not have gotten through an initial review if the agency people conducting the program had met with the beneficiaries. It is also impossible to determine how much needless anguish and suffering was caused, not to mention the waste of taxpayers' dollars.

During the past year I have cosponsored two bills which would require the continued payment of disability benefits during the appeals process, and I am especially pleased that this measure extends permanently authority for a beneficiary to elect to continue receiving disability benefits during the appeal of a medical review. The enactment of this bill will insure continued benefits for those whose payments are scheduled to terminate on May 3, 1984.

It is our responsibility to make sure that the truly disabled do not unfairly lose their benefits—and I believe this bill will meet that responsibility. I urge my colleagues on both sides of the aisle to support this much-needed reform.

□ 1340

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. FOWLER).

(Mr. FOWLER asked and was given permission to revise and extend his remarks.)

Mr. FOWLER. Mr. Chairman, this past Friday, the Ways and Means Subcommittee on Social Security held a public hearing in Atlanta on the status of the social security continuing disability reviews. We saw there, as we see all over the country, that we are facing a national problem of crisis proportions. Congress and the administration should act today to insure that the disability program does not fall into a state of total disarray.

The Reagan administration has seized on the 1980 legislative reforms—enacted by Congress to make sure that disability benefits were provided only to those persons eligible to receive

them—as a way to cut social spending, regardless of the consequences for disabled persons and their families. The effects of the administration's overzealous and callous implementation of these reforms have been devastating and we can no longer allow this injustice to continue. The human costs are too great.

Under Reagan administration policy, many States find themselves in a position where they have to choose between complying with a Federal mandate or following their own good consciences as to what is fair and equitable for their citizens. But this is a national program and we must work together to achieve uniformity and to end the unnecessary suffering and intimidation that many disabled Americans face when trying to secure the benefits to which they are undeniably entitled.

H.R. 3755, the Disability Reform Act of 1984, is needed to restore order to continuing disability reviews and to restore public faith and confidence in the program. It is our duty to assure beneficiaries that, should their cases be reviewed, the process will be as fair and as humane as possible. Passage of H.R. 3755 will give this assurance and it is in this spirit that I urge you, my colleagues, to vote to enact this legislation.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from West Virginia (Mr. RAHALL).

(Mr. RAHALL asked and was given permission to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. RAHALL. I yield to the gentleman from Kansas.

(Mr. GLICKMAN asked and was given permission to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Chairman, I rise in support of this bill.

Mr. Chairman, let me ask my colleagues a simple, straightforward question: Do you want this Government of ours to show decency and compassion? If the answer is yes, as I certainly do, I urge you to lend your support to H.R. 3755, the disability insurance amendments which are before us today.

We need to protect the integrity of programs like the disability insurance program covered by this bill, but there are right ways and wrong ways to assure that. The legislation is designed to stop abusive practices which have been used to cut people off who critically needed and were eventually proven to be qualified for the benefits they had been receiving. At the same time, it will not inhibit the Social Security Administration's ability to remove from the disability roles individuals who do not indeed belong on them.

Over the last several years, my staff and I have dealt with all too many cases where individuals had their disability benefits abruptly terminated when indeed they were qualified. Not only did that create a severe financial burden on these families, but, in some instances, the result was worsened health or even death. As this issue has been considered here in the House, one particular letter I received last December has come to my mind time and again. It is from the brave widow of a young man who, after months of hasseling over being cut off of the disability roles, ultimately passed away. Let me share with you excerpts from her letter:

Prior to the review, Steve had had several heart attacks and strokes. He also had rheumatic heart disease, severe hypertension, hephrolithiasis, polycystic kidney disease, pericarditis and cardiac arrythmia. In 1976 he had an artificial aortic valve replacement during open heart surgery and the rest of these problems came up after that except for the rheumatic heart disease which he had since age 6. He was quite frequently in the hospital. All of this is documented in the Social Security records and some of it is on file in your Wichita office.

When the notice of review was sent it upset Steve greatly and he was back in the hospital the same day. The tension he was under while he waited for the decision was extreme and caused his blood pressure to elevate more than it ever had in the past. He was also in the hospital and at his doctor's much more often than before. He had a great deal of fear about our family's future and the fact that I am an uncontrollable diabetic made him fear for me and the effect the stress was having on my health. It was certainly showing on both of us.

We received the notice that he was losing his benefits on November 26, 1982. We immediately went to the Social Security Administration and filed for reconsideration. We then went * * * to talk to * * * Steve's brother and showed the letter to him. Steve got very ill while we were there and I took him to the hospital. This was another stroke. I don't believe it was a coincidence that he got the denial and had a stroke on the same day within a few hours of each other or that it was a coincidence he was in the hospital after first receiving the notice of review. Steve's health steadily declined after the denial.

We then filed an appeal and hired an attorney. * * *

His case was finally decided in his favor in the early spring after six months. I can not give you an exact date because we were notified by telephone and we never received a confirmation letter even though one was requested.

Steve was never the same after all of that. Too much damage had been done to his already unstable condition. He was constantly in the hospital. On September 4 at 3:00 a.m. he had a cerebral hemorrhage at home and was taken to St. Francis Hospital by ambulance. He died at 12:45 a.m. on September 5 without ever regaining consciousness. He was 36 years old. The autopsy showed extensive cerebral damage from previous strokes, arteries to his heart with 80% blockage, kidney deterioration to the point where he would have been on dialysis within a short period of time among other problems. His hypertension contributed to a great extent to the damage in all areas.

This was the man Social Security Disability Determination said should go back to work. I never believed they paid any attention to his doctor's reports. They cared about nothing except cutting off people's benefits.

My husband was in bad health and could not have lived a long life but I, his doctors, and everyone else involved are thoroughly convinced that he would, at least, be alive today if it had not been for all of the aggravation the Social Security Administration caused him which definitely damaged his health further and faster. * * *

I'll put it very bluntly—they killed Steve and it was legal. How can that be allowed in this country? I realize his isn't the only case that turned out this way but this one concerns my husband who I loved very much.

I sat in the hospital on his last day praying he would live even though I had been told otherwise and at the same time thought of the persons we had dealt with at the Social Security Administration and realized they finally got what they wanted. He would no longer qualify for disability benefits. How I hated them that day. * * *

It always has taken the Social Security Administration forever to do anything, but Steve was dead less than one week before they notified me that his benefits would be terminated and I had to go to the office to make myself the payee for our minor daughter's survivor's benefits. * * *

Steve never wanted to go on disability. He wanted to work but could not find a doctor that would sign a release. I know he could not have worked but he wanted to try always. Finally, he realized it was impossible. I was always here to take care of him which saved the government a fortune in Medicare payments because he could always be released from the hospital sooner than he could have been otherwise. This counts for nothing as far as my Social Security credits are concerned. From the government's point of view I did nothing at all during these years.

* * * Steve would be pleased if he thought that the procedure used in the reviews could be changed so someone else doesn't have to go through the anguish he did. * * *

Mr. Chairman, those are not the words of a person who is trying to take the Government for a ride. They are the words of a person who has every reason to resent what the Federal Government has done to her and her family. We should never let a situation like that happen again. This legislation is a major step to assuring that it does not.

There has been talk of a moratorium being imposed by the administration on some of the heartless review procedures that have been in use in these cases. I am certainly all for a moratorium, but I urge my colleagues not to let that weaken your resolve about the need for this legislative remedy. A moratorium would help those people whose cases come up for review while it is in effect. Still, the very term "moratorium" implies that the move is of limited duration. As far as I am concerned, there will never be a time when a situation like that in the letter I shared with you should be allowed to reoccur.

I would also urge my colleagues to consider as well, as a followup to the legislation I trust we will approve here today, the need for a comprehensive look at the whole structure under which the administrative law judges who review these cases and other administrative decisions operate. Just last week, along with a bipartisan group of cosponsors from the Judiciary Committee, I introduced legisla-

tion which would pull all of the administrative law judges from the various agencies where they are presently assigned into a unified corps of administrative law judges. My goal in pushing such legislation is to protect these judges from any undue pressure from within their agencies to agree with agency determinations, to meet quotas of one sort or another, or to any other end. There have been some horror stories at the Social Security Administration and elsewhere. I hope H.R. 5156 will focus our attention on resolving those circumstances as well.

Mr. RAHALL. Mr. Chairman, as a cosponsor of this bill, I rise today to express my very strong support for this legislation which is intended to bring some fairness to the disability review process. I wish to personally express my appreciation to the chairman of the Subcommittee on Social Security, the Honorable J. J. PICKLE, the chairman of the Committee on Ways and Means the Honorable DAN ROSTENKOWSKI, and the Honorable JAMES SHANNON for their efforts to bring this most needed legislation before the House for a vote. I urge that my colleagues pass H.R. 3755 and I ask that my statement be inserted here for the RECORD.

The Social Security Disability Reform Act of 1984 is urgently needed by hundreds of thousands of Americans who suffer from some form of disability. Back in 1980 when Congress enacted legislation requiring that disability cases be reviewed at least once every 3 years, it was not anticipated that the procedure used would be as unfair and impersonal as the program we see today. We have heard too many accounts of how the Social Security Administration (SSA) has terminated the benefits of recipients whose medical condition has not improved. As an illustration, during fiscal year 1983 SSA completed 436,498 disability investigations. Benefits were terminated in 182,074—42 percent—of those cases. Yet, 61 percent of those terminations were reversed at the administrative law judge (AJL) level—very clearly indicating that disability cases are being terminated based on faulty evidence.

Mr. Chairman, during the numerous meetings I have held with my constitutents, I have seen the agony and stress these review procedures gave many truly disabled West Virginians. This legislation, H.R. 3755, addresses many of the problems with the current disability termination program.

Under H.R. 3755, a statutory standard will be established—based primarily on the concept of medical improvement—which must be met before a social security disability insurance (SSDI) beneficiary can be found to be no longer disabled and have their benefits terminated. This standard would specify that benefits could not be terminated unless one of the following conditions are met: A person's medical condition improves to the point of being able to perform substantial-gainful work, a person has benefited from advances in medical therapy or technology permitting them to perform substantial-gainful work, new evidence demonstrating that the original impairment is less severe that first thought, the person is currently working, or the original determination was clearly in error or fraudulently obtained.

Many Americans are afflicted with more than one disability. H.R. 3755 addresses this problem by stating that the combined effects of all of an individual's impairments must be taken into account when making a disability determination. The establishment of face-to-face interviews by January 1, 1985, is an attempt to cut down on the cases where obviously disabled individuals are having to appeal their cases to prove their disability.

The provision of the greatest importance to disability recipients in my district is the one allowing for the continued payment of benefits during the appeal process—through the ALJ hearing. However, if the termination is upheld, the beneficiary will be required to repay the Government for the money they got during the appeal.

Other provisions of interest are: A temporary moratorium on the review of beneficiaries suffering from mental illnesses until SSA releases review standards for mental impairments, requiring the Secretary of Health and Human Services and the National Academy of Sciences to conduct a joint study on the use of subjective evidence of pain in determining a disability, allowing those receiving supplemental security income (SSI) to use the same disability criteria established for SSDI recipients, and extending through June 30, 1986, a temporary program allowing the continuation of SSI and/or medicaid benefits for certain disabled persons who are working but still suffer from disabling impairments.

By bringing some fairness and good old commonsense to the disability review program we can save money and show the American people that Congress does really care for those who are disabled. Again, I urge my colleagues to pass this legislation and demonstrate the compassion that the citizens of this great country expect from their elected officials. It is my hope that the other body will quickly pass this legislation and send it along to the President for his signature.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. LEVIN).

(Mr. LEVIN of Michigan asked and was given permission to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Chairman, I rise in strong support for H.R. 3755 and I commend the committee on their decision to bring H.R. 3755 to the floor as a separate bill.

The social security disability and the supplemental security income programs, which this legislation seeks to amend, are two of the most important means by which American workers and their families are protected from the consequences of disabling accidents and illness. I strongly support efforts to insure that only those who are truly deserving are receiving benefits; if this was the purpose of the administration's implementation of the continuing disability review it has become increasingly clear that something is terribly wrong with it.

Since March 1981, 435,000 cases were reviewed nationally and 195,000 individuals were terminated. In Michigan, 16,600 people were terminated before the Governor issued an executive order halting further reviews. On the surface this would indicate that an astounding 45 percent of all beneficiaries were collecting benefits undeservedly. The quality of these reviews, however, was poor and unfair as seen by the subsequent reinstatement nationally of 63 percent of the cases that were appealed to Federal administrative law judges. In Michigan, 70 percent of those who appealed were reinstated; others were reinstated by reapplication.

The continuing disability review wreaked such havoc with the lives of the disabled that 26 States, including Michigan, are now either refusing to continue the review process until Congress enacts reform legislation or are under court order to use more reasonable standards.

Before considering the merits of H.R. 3755, I would like to share with my colleagues the results of a study prepared by the Michigan Interagency Task Force on Disability. This study shows that most of the savings to the Federal Government from cutting the disability rolls results in increased costs to the States who have no payroll tax to cover the expense. In 1982, a Michigan task force followed 158 SSI beneficiaries who had their benefits terminated by the disability review. These terminations saved the Federal Government $366,831 while costing the State of Michigan $341,068. This was because, despite the termination order, most of these individuals lacked a means of basic support and became eligible for State assistance programs and treatment services. This same study shows that much of the savings from terminations is lost through increased administrative costs which can total $14,049 per case through reconsideration and the administrative hearing. Compare this to the average SSDI benefit level of $5,472 in 1983.

Mr. Chairman, H.R. 3755 addresses the present failure of disability review process in a fair and reasonable manner. I am particularly pleased that the bill will establish a requirement that a beneficiary's medical condition must have improved before benefits can be terminated. Constituent service staff in our district offices are continually relating horror stories of obviously disabled individuals who have

been receiving benefits for several years and are then suddenly cut off from their sole source of income not because their condition has improved, but because some new and arbitrary standard of disability has been applied.

I recently received a letter from the wife of one such individual. She writes:

How can a person be considered disabled for 10 years and suddenly be totally well because the President changes the guidelines * * * It is exhausting just to try and shave corners that have been cut so much, there is not anywhere to go * * * It is a toss-up as to whether you eat, buy clothes and shoes or pay utility bills * * * If this is what America and our way of life are about, we are slipping. It is not what I was taught nor is it what I believed until the past few years.

We must not lose sight of the hundreds of thousands of disabled who have been victimized by the current system. These are the most vulnerable of the poor no matter what the administration might say. Behind all the numbers are real people with problems that are all too real. I believe H.R. 3755 will correct the inequities in the present system while providing the assurances to the American taxpayer that only the truly disabled are receiving benefits. I urge my colleagues to join me in passing this important legislation.

Mr. CONABLE. Mr. Chairman, I now yield all my remaining time, not to exceed 5 minutes, to the ranking minority member of the Subcommittee on Social Security, the gentleman from Texas (Mr. ARCHER).

The CHAIRMAN. The gentleman from Texas (Mr. ARCHER) is recognized for 5 minutes.

(Mr. ARCHER asked and was given permission to revise and extend his remarks.)

Mr. ARCHER. Mr. Chairman, H.R. 3755 enjoys broad bipartisan support, and given the recent status of the continuing disability reviews, this is understandable. But I want to add a note of caution to the enthusiastic approval being voiced today.

First, I want to remind my colleagues that Congress mandated these periodic investigations in 1980 under the Carter administration. A portion of that legislation responded to a General Accounting Office report that as many as 20 percent of social security disability beneficiaries were no longer disabled. Many of us supported that legislation in part because we personally knew of cases in which beneficiaries were working, or were able to work. We believed those clearly ineligible beneficiaries undermined the credibility of the program.

Unfortunately, the Social Security Administration's existing, paper-oriented review process was overwhelmed with the workload. As a result, the reviews brought hardship and duress to some deserving beneficiaries. Responding to those beneficiaries and to a vacuum in current law, the courts and some States, which administer the disability determination process developed their own medical improvement criteria, undermining a national program.

In our committee's attempts to resolve this particular problem, I fear we may be generating new problems. My overriding concern is equity, and I question the equity of establishing a dual eligibility standard, which in some cases will require a new applicant to be more severely disabled than a beneficiary who has collected benefits for some time. Further, we may find that the determination of medical improvement is as subjective as the determination of disability, and equally prone to litigation.

I also have concerns about the bill's costs. CBO has estimated the cost to be $1.5 billion over the next 5 years. SSA's estimate is even higher, $3.4 billion. SSA also warns that its estimate could double if courts interpret medical improvement retroactively. For the record, I would emphasize the committee's intent that the remedies in this bill are prospective only. In any case, neither CBO nor SSA may be correct, because the program is in a state of flux now, and it is virtually impossible to determine precisely the price of the new criteria for mental impairment or the effect the legislation will have on those who actually make the frontline disability decisions. Therefore, it is possible that this bill could jeopardize the narrow margin of safety in trust fund operating reserves if:

First, the economy performs poorly—that is, it performs worse than the economic assumptions used in enacting the 1983 Social Security Amendments; or

Second, the allowance rate for initial claims goes up, and the corresponding termination rate for cases periodically reviewed goes down—more than either SSA or CBO has projected.

I have additional reservations about several other features of the bill.

As an interim measure, in 1982 Congress enacted Public Law 97-455, which among other provisions, continued payments for beneficiaries who were appealing the cessation of benefits, until the second level of appeal, the review by an administrative law judge. The rationale was that the ALJ represented the first opportunity for a face-to-face interview with one who had the authority to make a disability determination. That provision expired December 7, 1983.

The current bill reinstates those payments on a permanent basis. This ignores the fact that the 1982 amendments also required SSA to implement face-to-face interviews at the reconsideration level, effective January 1984.

I believe we potentially jeopardize the effectiveness of the first appeal level, the reconsideration interview, by explicitly encouraging beneficiaries to appeal to the second level. And, since that second level has a backlog, we are authorizing an additional 6 months of benefits. Frankly, Mr. Chairman, I question the wisdom of this provision.

A companion provision in this bill would move that face-to-face interview from the reconsideration level back to the initial decision, and mandate that the States conduct those interviews effective January 1985. While some States welcome that provision, I fear others will be overcome by problems of logistics and personnel ceilings. This will not be an easy provision to implement.

Finally, this bill will be difficult for SSA to implement in a timely fashion because it incorporates major changes in the disability determination process. That implementation is encumbered—unnecessarily I believe—with redtape. Is it, for example, really essential that SSA publish in the Federal Register its standards for consultative examinations? Those are the medical examinations arranged at SSA's expense to supplement medical evidence submitted by an applicant. Candidly, I worry about the precedent this establishes. On this basis, I can foresee the day when we require the Social Security Administration to publish in the register the 25,000 pages of operating manual instructions tabulated by J. Peter Grace for the President's Private Sector Survey on Cost Control.

I have reservations, too, about requiring SSA to accept, as precedent, unfavorable appellate court decisions. This is a national program, which certainly will be hampered by following different rules in different judicial districts. Let me quote from a letter our committee chairman received from Robert A. McConnell, Assistant Attorney General for the Department of Justice:

Because the agency administers a nationwide program while court of appeals jurisdiction is only regional, a requirement that the SSA obey the court of appeals may simply be unworkable as a practical matter. For example, in both *Rosenberg* v. *Richardson*, 538 F.2d 487 (2d Cir. 1976) and *Davis* v. *Califano*, 603 F.2d 618 (7th Cir. 1979), two wives applied for benefits as widow of the wage earner. In *Davis*, the Court held that benefits could not be paid to the second wife under the deemed spouse provision in section 216(h)(1)(B) of the Act after the entitlement of a legal widow was established, as the facts of the case so indicated.

In contrast, the *Rosenberg* court divided the full widow's benefit share between a legal widow and a deemed widow. Thus, if an Illinois legal widow and New York deemed widow both applied for the same benefits, the agency would necessarily have to rule contrary to one of those decisions.

Mr. McConnell concludes:

. . . the Justice Department strongly objects to the provisions of H.R. 3755 and S. 476 requiring compliance with certain court orders. Any such legislation would constitute an unprecedented interference with the litigation efforts of the government and would restrict the flexibility of the legal system.

For all these reasons, I would caution you that enactment of H.R. 3755 may in some instances complicate, and

not resolve, some of the underlying problems in the disability program. I hope certain constructive corrections will occur in conference with the other body.

□ 1350

The CHAIRMAN. The time of the gentleman from Texas (Mr. ARCHER) has expired.

Mr. ARCHER. Mr. Chairman, I ask unanimous consent to proceed for 1 additional minute.

The CHAIRMAN. Time is controlled, all time to the gentleman from New York (Mr. CONABLE) has expired.

Mr. ARCHER. I ask unanimous consent for 1 additional minute.

The CHAIRMAN. The time is controlled by the rule and all time has expired.

PARLIAMENTARY INQUIRY

Mr. ARCHER. Parliamentary inquiry, Mr. Chairman. Is it not possible by unanimous consent to proceed further?

The CHAIRMAN. The House has set the time for debate. All time has expired to the gentleman from New York (Mr. CONABLE). There will be a limited debate upon the amendment should the gentleman wish to rise then.

Mr. ARCHER. I thank the Chair.

The CHAIRMAN. Does the gentleman from Illinois have anything further?

Mr. ROSTENKOWSKI. Mr. Chairman, I yield my remaining time to the gentleman from Texas (Mr. PICKLE).

The CHAIRMAN. The gentleman from Texas (Mr. PICKLE) is recognized for 3 minutes.

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Chairman, I wish the gentleman from Texas (Mr. ARCHER) could have had more time, because he certainly approaches this measure with an objective spirit.

I think it has been interesting that today no one has spoken in opposition to this bill. I do not know of any bill as far reaching that has such unanimous support.

Now, the gentleman from Texas did speak with some caution about the actual operation of this program. The gentleman from Texas is rather cautious about these kinds of changes and we accept that. But he has been completely cooperative with our subcommittee in advancing this legislation and I thank him for it.

I want to point out to you now that the trust fund will not be jeopardized by this act.

The social security actuaries have said that this bill will not cause that to happen. We have two or three things to remember about this bill, Mr. Chairman. No. 1, in December we had a provision that said an individual could draw benefits up to the ALJ level. That has expired. We must pass new legislation between now and May 3 in order that that provision can be restored. And that is in this particular bill.

We also have been threatened, so to speak, with a moratorium that the administration might propose saying they could hold up all reviews for 18 months. Mr. Chairman, that does not settle anything. It only holds up and delays all reviews, the good and the bad.

As a result it hurts, it does not help. And I hope this House today by a large vote will say to the other body and to the administration that in spite of that threatened moratorium we are going to advance this bill because it is the right thing, it is the humane thing, it is the fair thing, and it will bring relief to the thousands of beneficiaries across the land who need to have these benefits restored.

I commend the chairman of my committee (Mr. ROSTENKOWSKI) and the gentleman from New York (Mr. CONABLE) for the bipartisan manner in which we have presented this legislation today and I particularly want to compliment the members of my subcommittee who, together in a unanimous spirit, advanced this bill today.

Mr. FORD of Tennessee. Will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Tennessee (Mr. FORD).

Mr. FORD of Tennessee. I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of the bill that is before the House today.

(Mr. FORD of Tennessee asked and was given permission to revise and extend his remarks.)

Mrs. KENNELLY. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I yield to the gentlewoman from Connecticut.

Mrs. KENNELLY. I thank the gentleman, and also thank the gentleman from Texas, and commend him for support of this bill.

I want to commend the gentleman from Texas (Mr. PICKLE) and the gentleman from Massachusetts (Mr. SHANNON) for their hard work in developing this legislation and bringing it to the point where I hope it will be passed by the House today.

I am sure my colleagues have been troubled by stories of individuals who are obviously disabled but whose benefits had been terminated by the harshness of the disability review process that has been conducted. Perhaps the hardships that have been foistered on individuals is most evident in our own offices by the people who turn to us for help when they suddenly face loss of benefits even though their medical condition has not improved, and who face a long and uncertain appeals process. For them, the trauma, the anxiety, and the pressure of the present process is all too real and apparent.

The present disability review process is too chaotic. The Social Security Administration declares a particular fact and circumstance to be sufficient to end disability benefits, but administrative law judges declare the same facts and circumstances to be an insufficient reason for termination of benefits. The Governors of several States are refusing to administer the current disability review process, and Federal courts have stepped in to reopen cases or establish their own guidelines. Meanwhile, constituents and their families are being whipsawed between opposite poles in an administrative struggle.

It is time for Congress to step in and establish clear and precise guidelines for the disability review program. By approving this legislation, we will be doing precisely that, and I urge its adoption.

Mr. PICKLE. Now, Mr. Chairman, this legislation needs to be passed. Time is of the essence. Let us say today to all Americans, we want to have fairness and equity in the disability program. This legislation accomplishes this purpose.

Give us your vote so America will know that we do care and we are concerned.

Mr. Chairman, I yield back the balance of my time.

● Mr. DYSON. Mr. Chairman, 3 years ago the Congress established a process for periodically reviewing disability claims submitted for social security or supplemental security income benefits. At the time, the Congress was responding to the concern that benefits were being paid to individuals whose disabilities had substantially improved since first being ruled eligible for payments.

If properly administered, the review process would have worked smoothly and humanely. For more than 20 years the Social Security Administration had employed a medical improvement standard and routinely terminated claims when mental or physical disabilities had been successfully treated. Had the SSA continued this standard, the review should not have threatened anyone. It would have inconvenienced only those whose conditions did not justify continuing benefits. The process would not have endangered the safety nor disrupted the lives of the seriously disabled.

The SSA, however, had little regard for humane treatment or the legitimacy of benefit claims. The review process was used as a tool for purging from the rolls more than 425,000 cases during 1982-83 alone. These cases were simply terminated, without a face-to-face interview or any evidence of medical improvement. Those choosing to appeal their case went without benefits until administrative judges rendered a final decision.

Over half the 425,000 cases terminated 1982-83 were returned to the rolls. They received retroactive benefits, but this is meager compensation. The sheer number of such court-ordered reinstatements, however, suggests the reality of the SSA's interests. They

were not looking to remove from the rolls those whose disability had improved and who could rejoin the workforce. They were simply looking to cut their expenditures. 10 million experienced and able bodied workers could not find suitable employment, and the SSA was telling the mentally and physically impaired they were completely able to locate and perform semi or unskilled work.

Today we take up H.R. 3755, the Disability Reform Amendments Act. It is a fair response to the SSA's callous neglect of their responsibilities. It requires the SSA to employ a standard of medical improvement when reviewing a disability claim. It grants claimants the right to a personal interview before a review board, and it authorizes continuing benefits to all cases under appeal. I am deeply gratified that the House is giving H.R. 3755 its immediate attention, and proud to have been an original cosponsor of this bill.

I am also proud to submit for the RECORD exerpts from the testimony of the Honorable Stephen Sachs, attorney general for the State of Maryland. Attorney General Sachs is a compassionate man and a learned counsel. He directs his comments, made before the House Select Committee on Aging, toward the particular hardships which the disability review process imposes on the mentally disabled. He diagnoses administrative problems and suggests legislative remedies, and his words are worth considering. Under his counsel, Maryland took a leading position against the SSA, refusing to process disability claims without a clear and coherent medical improvement criteria. This was a risky position, and the SSA was not unable to retaliate. But my State pressed ahead, and Attorney General Sachs speaks on disbility with well earned authority.

EXTRACT OF TESTIMONY GIVEN BEFORE THE HOUSE SELECT COMMITTEE ON AGING BY THE HONORABLE STEPHEN H. SACHS, ATTORNEY GENERAL OF MARYLAND

I have been asked to advise about the legality of the Social Security Administration's actions by my clients—The Maryland Department of Health and Mental Hygiene and the Department of Human Resources, which provide services to many persons who receive SSI and SSDI and the State's Department of Vocational Rehabilitation, which is responsible for administering the social security disability determination program in Maryland. The State agencies in each State which are responsible for making disability determinations under contract with the Social Security Administration have been caught in an impossible situation—trying to administer the program humanely while SSA and the courts give them conflicting directions.

As Attorney General, I have been particularly concerned about the plight of our citizens who are afflicted with mental disabilities. In the past, government—both Federal and State—has often ignored the needs of these groups or worse, by clumsy intervention, have made their lives more difficult. I have tried within the limits of my office to make a positive difference for this highly vulnerable segment of our population.

In Maryland, under Governor Harry Hughes, State government has begun to make significant efforts to care for the mentally ill and retarded outside of large institutions and in community settings. These steps are difficult and the progress at times uncertain. But all in all, State government in Maryland is beginning to work in positive ways for the mentally ill and mentally retarded.

For instance, we were able to make great progress several years ago when we identified almost three hundred mentally retarded Marylanders who were being illegally housed (not to say "warehoused") in State psychiatric institutions where they received none of the training and education to which they were legally entitled. All of these citizens are now currently in more appropriate treatment surroundings. Many are in group homes in community settings. For many of these people, the existence of regular monthly disability benefits from SSA made the difference in their being able to find a quality community placement.

There is much more work to do. We should find the federal government an eager partner—if not the leader—in this effort. Indeed, it has been the stated federal policy since enactment of the Community Mental Health Center in 1963 to provide mental health services in community settings. At a minimum, we should expect that the federal government would not hinder our efforts.

Unfortunately, the arbitrary termination of the disabled from the disability rolls now stands as a notorious example of the federal government hobbling earnest efforts by states to help our less fortunate citizens.

There is little assurance that the SSA system for determination of mental disability claims can be trusted to produce fair decisions in accord with the law. That substantial error seems to infect the disability determination process is evidenced by the SSA's own "Special Psychiatric Study". The study team review 49 cases, including initial denials as well as terminations. A total of 11 cases (or over 22 percent) were found to have been improperly decided against the claimants. Not a single case was found to have been improperly decided in favor of the claimants.

In one of the cases, the Disability Determination Services denied benefits to one claimant because "her impairment has not resulted in any restriction of daily activities, constriction of interests, or impaired ability to related to others." Looking at the same case the Study team found that the claimant had "a history of many suicide attempts, constricted affect, limited interests and sociability and many severe phobic and compulsive symptoms. After discharge from two recent hospitalizations, the patient has cycled into severe chronic depression . . . despite medication." On this basis, the Study team concluded that the woman was inarguably totally disabled.

Both internal reviews and audits by the General Accounting Office document the human suffering caused by erroneous decisions. The fault for error lies not with individual examiners. In Maryland these workers can be credited with attempting to handle a tremendous increase in the number of cases with totally inadequate resources. The fault lies with basic flaws in the disability determination process and the way disabling mental impairments have been defined by the Social Security Administration.

Some of these flaws are easily categorized:

(1) *Special Nature of Mental Disability Cases.* Unlike physical disabilities, mental disabilities rarely have clear "objective" signs and symptoms. But the SSA treats mental illness as simply another impairment like any other. They ignore the unique nature and manifestations of mental illness, and resist the idea that the cases must be treated differently than physical impairment cases.

(2) *Need for Psychiatric Expertise.* Mental impairment cases require the medical expertise of psychiatrists and psychologists to properly evaluate the disability. Yet without the funds to employ experienced staff, the States have to make do with limited resources, resulting in inadequate reviews of some cases.

(3) *Inadequate and Outdated Psychiatric Standards.* According to the American Psychiatric Association, the National Mental Health Liaison and Maryland's top mental health officials, the medical criteria which form the basis for determination of psychiatric impairments are inconsistent with current psychiatric standards.

(4) *Inadequate Evaluations of Ability to Work.* Under current laws, even if a mentally disabled individual does not meet or equal the medical criteria set forth in the regulations, that individual is entitled to disability benefits if the person is incapable to work. The SSA, however, does not seem to be conscious of this regulation. When asked to clarify its review policy, the SSA's Office of Operational Policy and Procedures announced that:

With a finding that a mental impairment does not (or does no longer) meet or equal the Listing, it will generally follow that the individual has the capacity for at least unskilled work.

(5) *Lack of Face-to-Face Contact by the Decisionmaker with the Claimant.* Those who actually decide the cases in the State Disability Determination Service virtually never meet or talk with the claimant before deciding to allow or deny the claim. Beginning January 1, 1984, SSA was to begin face-to-face at reconsiderations for all impairments pursuant to Public Law 97-455. They have not yet begun because of the moratoria by the States and the various court decisions arising from the SSA's own administration problems.

State review boards, unlike their federal counterparts, see first hand in their communities the human suffering and devastation caused by erroneous terminations. They have been frustrated when told by courts to apply one standard to determine eligibility for benefits, but told by SSA to apply another, more restrictive standard.

For example, in testimony to the Budget Committee on February 22, Secretary Heckler said that reviews of Social Security disability payments were fair and insisted there was no need for evidence of medical improvement to terminate benefits. The same day Mrs. Heckler was testifying, the 9th U.S. Circuit Court of Appeals in San Francisco rebuked her for ignoring two earlier court orders to prove that a recipient's medical condition had improved before cancelling benefits and ordered SSA to restore benefits to a large number of former recipients. In another proceeding, Judge James R. Miller of the Federal District Court in Maryland enjoined SSA from terminating benefits in SSDI cases based on medical factors without a showing of medical improvement. *Doe v. Heckler,* Civil No. M-83-2218 (D.C. Md., Dec. 13, 1983).

On October 4, in response to these contradictory directions, Maryland began a moratorium on the termination of benefits for any persons now on Social Security Disability rolls until crucial policy question are resolved by the Social Security Administration or the Congress.

Because SSA has failed to act responsibly, I urge Congress to pass pending legislation which will:

(1) Provide for a return to the use of a medical improvement standard;

(2) Place a moratorium on mental impairment reviews;

(3) Provide for revision of the psychiatric criteria; and,

(4) Require SSA to comply with court orders issued by a United States Court of Appeals.

I further urge Congress to insure that free legal representation for indigent disabled clients is available. A study by the Maryland Legal Services Corporation confirms what logic would suggest. Those who are denied benefits and appeal with the help of a lawyer have the best chance of having a denial reversed. In the past year in Maryland, 3,011 persons were denied SSI benefits at the reconsideration stage and were entitled to appeal their applications. On appeal to an Administrative Law Judge, the reversal rate is about 43.6%. Where legal council was available, the reversal rate was 75%. The process is obviously seriously flawed, and legal assistance is a prerequisite to a fair hearing.●

● Mrs. ROUKEMA. Mr. Chairman, I strongly support H.R. 3755, the Social Security Disability Insurance Reform Act of 1984, a bill to restore a measure of equity to the disability appeals procedure. It is my hope that our colleagues in the other body approve passage of this important piece of legislation so that we may move toward implementation.

My vote in support of this measure is predicated on the need to ensure the Nation's disabled of a fair and effective disability insurance program. These necessary reforms would require greater accountability on the part of Social Security Administration officials in Washington and locally, would enact uniform medical criteria standards for use in disability determinations, and would prevent claimants from having to endure the present time consuming, painfully intricate review process. The passage of this legislation is significant, and will help to remedy the existing deficiencies in the social security disability insurance program. I am proud to be part of this effort, and encourage my colleagues in the other body to move expeditiously for passage.●

● Mr. WILLIAMS of Ohio. Mr. Chairman, on Monday, March 19, 1984, I held a congressional hearing in my district which dealt with the social security disability review process. The response was overwhelming. Six hundred concerned citizens crowded a local senior center to hear the testimony, to share their stories, and to offer their views.

One witness, a 50-year-old woman who suffered a stroke in May of 1983 which left her with impaired speech and limited physical activity, was courageous enough to come forward and testify. Yes, she is bitter that she is unable to collect social security disability benefits, but she also demonstrated a strong concern for others who may be more seriously ill than she, and still unable to collect benefits. The testimony reemphasized the urgent need for reform to this vital Federal program. Mr. Speaker, this brave woman is but one example. Even with her critical physical condition, she maintains a sense of humor, a commitment to her fellow man, and a belief in her Government.

Let us honor that belief today by passing H.R. 3755.●

● Mr. WALGREN. Mr. Chairman, today I give my wholehearted support to H.R. 3755, the Disability Benefits Reform Act, and hope that it will help restore fairness to a system of reviews that has been ineptly and cruelly handled by the Reagan administration.

In 1980, Congress directed that all disability beneficiaries (except those permanently disabled) be reviewed at least every 3 years to determine continued eligibility for benefits. Unfortunately, the Reagan administration came in and took the initiative to knock people off the disability program arbitrarily and unfairly.

The result was that in fiscal year 1983, 42 percent of those reviewed were terminated in an atmosphere of reports that the administration set quotas for the number of terminations that were expected. Two-thirds of these terminations were reversed on appeal according to the General Accounting Office. Certainly these numbers are an indictment of the merits of this administration's conduct of these reviews.

Many of those disabled with mental impairments were dropped with little notice on the basis of little evidence. Many clearly disabled people were told they were in theory able to do some kind of work and would therefore no longer receive benefits even through their medical condition had not improved. Often different standards were used during the review than were used when the initial disability determination was made.

I would like to share a few real-life examples of people from my district being unfairly treated:

A truck driver, who contacted my office, lost an arm and leg by amputation when he was struck by another vehicle while changing a tire. He was denied disability on the grounds that he could still drive. He is appealing.

One of my constituents was called in for a review and directed to see a doctor for a medical review. He had to go through a treadmill test. After the test, he had a heart attack and died.

These individual tragedies are multiplied by the suffering of so many who are needlessly questioned and wind up in tears in social security offices with their dignity and integrity threatened.

The bill we are considering today will bring stability, and humaneness to disability reviews. To secure uniform treatment, it establishes a specific medical improvement standard which must be met for termination of disability benefits before a beneficiary can be dropped. To secure fair treatment, the bill provides that, in determining whether a person is disabled, the combined effects of all impairments suffered by an individual must be taken into account, both at the initial determination stage and during any subsequent reviews. To prevent arbitrary treatment, the bill requires actual, face-to-face interviews if benefits might be terminated. Currently, these decisions are too often made on the basis of records—paper reviews—without the opportunity for a claimant to present their case in person. Finally and most importantly, to provide a transition, the bill prohibits any cutoff against the beneficiaries' wishes during the process of an appeal.

This bill provides no new benefits and does not expand the program. It does provide and require clear, nationwide procedures and standards that will help insure that truly disabled people are not treated unfairly.

All should note, and will remember, that the Reagan administration opposes these measures. That, I am afraid, is par for the course for this administration.●

● Mr. OBERSTAR. Mr. Chairman, I opposed Public Law 96-265, the Disability Amendments of 1980, because I believe the reduction in benefits to young workers and families was too severe. I continue to believe that is the case. I did not, however, oppose the concept of a periodic review of disability recipients to insure that individuals who had recovered from their disabilities were not continued on the benefit rolls.

The social security disability insurance program is an all-or-nothing situation. Individuals who are judged capable of working even 6 hours a day at minimum wages are not disabled, no matter how severe their impairments. It is immaterial in the decisionmaking process that the impaired individual, prior to becoming disabled, might have been capable of earning $20 an hour and putting in 60 hours a week. This all-or-nothing feature of law affords the disability determination specialist no discretion. A decision must be made on the preponderance of medical evidence and, if medical evidence alone is insufficient to make a determination, on the basis of medical evidence combined with age, education, and experience. That same criteria has been the law for many years.

We are told, however, that adjudicative climate also influences decisions. When the final decision becomes a matter of subjective judgment of objective evidence, the disability examiner must make the final choice. In the past, it has been suggested that the benefit of the doubt may have been decided in favor of the disability applicant. We know, without question, that in the implementation of the continuing disability review program the adjudicative climate has been anything but beneficial to the applicant. Regulations were promulgated, without benefit of public comment, providing new

guidelines for judging medical severity and instructing disability examiners in the application of vocational criteria. In the region of which Minnesota is a part, regulations were imposed which precluded consideration of vocational factors for young, mentally impaired individuals. Three levels of review—State, regional, and Office of Disability Operations—were established to review favorable decisions only to assure the quality of decisions.

Clearly, the adjudicative climate has shifted. In this atmosphere, is it any wonder that thousands of severely impaired individuals were thrown off the disability benefit rolls?

In my congressional district, hundreds of men who had worked for years in iron ore mines—heavy, dirty, back breaking work in all kinds of adverse weather—crippled by back disabilities, arthritis, or severe heart impairments, for example, were told they were capable of sedentary labor. More disabled individuals were advised to seek jobs such as ticket taker in a parking lot or night watchman than such jobs existed in the State. I am not addressing the fact that these persons would not be hired, I am talking about the supposed existence of a reasonable number of jobs which they had the physical capability of performing. Somewhere in the region where they lived or in other regions of the country, sedentary jobs existed in reasonable numbers in the economy. Never mind that millions of able bodied persons were unemployed. After months or years on the disability rolls, they were told they had the responsibility to move to where jobs might potentially exist. They were no longer disabled and their benefits would cease.

H.R. 3755 does not redefine disability so as to grant or continue benefits to persons who are able to work. It does assure that we will not change rules in the middle of the game and discontinue benefits to persons, many of whom have been out of the work force for years, without some showing of medical or vocational improvement unless their original award of benefits was clearly in error. H.R. 3755 also provides that individuals whose benefits are terminated can request that they be continued, subject to repayment, until an administrative law judge can hear an appeal.

The administration's handling of the disability review process has created hardship and pain for thousands of individuals, but none more severely than the mentally impaired and mentally deficient. No other group in our society is least able to represent and defend itself. Yet this group was singled out. If the disability did not meet the "Listing," and the impaired individual was under age 50, the requirement of the law that vocational criteria be evaluated was disregarded. A Federal court decision demanded that the law be followed and thousands of cases were ordered reinstated and reevaluated. The basic problem of measuring mental disability has not been resolved. The legislation before us today recognizes that fact and imposes a moratorium on review of all mental disability cases until new guidelines can be developed, published for comment, revised if warranted, and published in final form. I wholeheartedly support the need for this stay.

I urge my colleagues to vote in favor of this legislation as a necessary step toward restoring integrity to the disability insurance program.●

● Mr. FRENZEL. Mr. Chairman, this bill does improve the procedures under which social security disability benefits are paid and appeals are made. It should be passed.

However, the bill does not cure all the faults of the system, nor guarantee that the system is equitable, responsible, and sustainable. It will be helpful, but standards must be more clearly defined in the future.

I shall vote for the bill.●

● Mr. RICHARDSON. Mr. Chairman. I rise in strong support of the Social Security Disability Benefits Reform Act. I would like to commend the distinguished chairman of the Ways and Means Committee. Mr. ROSTENKOWSKI, and the chairman of the Subcommittee on Social Security, Mr. PICKLE, for their hard work in bringing this vital piece of legislation to the floor.

In 1980, Congress enacted legislation requiring the Social Security Administration to review all nonpermanent disability beneficiaries once every 3 years. This legislation was spurred by reports that over 20 percent of those on the rolls were no longer disabled.

After the Social Security Administration began implementing the new requirements, 42 percent of those reviewed were dropped from the rolls. The sad fact is many of these individuals were declared ineligible for benefits, not because their situation had improved, but because new harsh disability standards were being applied. Many individuals have had their benefits terminated despite having severe impairments which render them incapable of functioning in a work environment. Those with mental disabilities have been particularly hard hit. Most of my case work in New Mexico deals with individuals who have been unjustly dropped from the disability rolls.

Regrettably, what began as a sincere effort to save the social security system money has resulted in real suffering by those truly needy and deserving of assistance.

Mr. Chairman, the legislation we have under consideration today will rectify this serious problem by creating a uniform national disability review system that is fair and compassionate and will be approved by the courts and supported by the States.

I urge Members to vote for this legislation. It is our duty to provide for those who are helpless to provide for themselves.●

● Mr. JEFFORDS. Mr. Chairman, I rise in strong support of H.R. 3755, the social security disability amendments. I commend my colleagues on the committee for bringing this legislation forward. I am an original cosponsor of this legislation, and have been actively supporting disability reform for the past 2 years.

Last summer, my colleagues, Mr. SHUMWAY, Mr. VANDERGRIFF, and Mr. BILIRAKIS, joined me in Vermont at a field hearing of the Aging Committee's Subcommittee on Retirement Income and Employment on this very issue. The message I heard at that hearing was virtually unanimous—the social security disability insurance program was badly in need of fundamental reform. Despite the best efforts of the individuals responsible for administering this program, the system was and is badly flawed. Recipients were dropped from the rolls in spite of their disabilities, yet administrators and judges were often unable to prevent this from happening.

Since that hearing last summer, support has continued to mount for reform of the disability program. The board of managers of the Vermont Bar Association recently endorsed several of the principles contained in this legislation. I believe that the bill before us today will go a long way toward correcting the problems we found in Vermont and across the country.

I am pleased that this issue continues to be bipartisan in nature. Only last week. I was pleased to join the gentleman from Tennessee (Mr. QUILLEN), the gentleman from Arkansas (Mr. HAMMERSCHMIDT), and others in a "Dear Colleague" letter to our fellow Republicans urging passage of this important legislation.

Since the 1980 amendments were signed into law, 470,000 disability recipients have received termination notices. The high incidence of reversal—61 percent—of the States CDR termination decisions by administrative law judges is evidence that many of these persons are terminated without improvement in their disability nor adherence to our system of due process. Our legislation would address both problems by including a prospective medical improvement standard and several reforms in the appeals process. Findings from hearings conducted by the Aging Committee on the issue of disability reform in Vermont in 1983 were consistent with the nationwide trends that make passage of this legislation imperative. The State DDS director from Vermont testified that the haste and overreaction in the CDR process have caused disabled persons in our State to be deprived of needed benefits and to endure lengthy, expensive, and inefficient appeals from these decisions.

Over one-half of the States have abandoned Federal guidelines by order

of their Governors or Federal courts. In January, Secretary Heckler notified the States that they must resume the reviews. Eight States were given a 2-week deadline, yet none of the States is willing to succumb to the pressure to terminate benefits for its citizens. In Vermont, the continuing disability review process has resulted in shifting financial burdens from the Federal Government to State programs such as general assistance, medicaid, and food stamps.

Hearings conducted by the House Aging Committee, including testimony received at field hearings conducted by the committee in Vermont, illustrate the crisis with respect to the treatment of the mentally impaired under the CDR program. The commissioner of mental health in Vermont noted that there was no relationship between the eligibility and redetermination criteria and the test of whether or not a person can perform substantial gainful activity. The commissioner also noted that internal guidelines are based on out-of-date psychiatric definitions, developed 25 years ago.

Statistics from our Vermont hearing show that 28 percent of the initial CDR's are mentally impaired, although they comprise only 11 percent of SSDI and 13 percent of the SSIDI rolls. The reversal rate at the ALJ level for those with mental impairments was 91 percent as compared to an overall reversal rate of 63 percent, which emphasizes the injustice in the review process against the mentally impaired.

I am supportive of the intent of the administration to discontinue the reviews of certain mentally impaired beneficiaries until the listings are revised. However, this moratorium does not go far enough because it is restricted to functional psychotic disorders. Moreover, it does not include a deadline for revising the listings, nor does the administration's initiative include all mental impairments affected by these changes.

Section 201 of H.R. 3755 provides for a pause in the reviews of all mental impairment cases until HHS revises the mental disorders category of the listings of impairments. The bill is also consistent with recommendations the Aging Committee received in Vermont to revise the listings for residual functional capacity sufficiently to evaluate the ability to engage in substantial gainful activity in a competitive setting. Our bill also includes the deadline of 9 months after enactment for these provisions.

Witnesses at the Vermont hearing, who had experienced sudden benefit terminations with no evidence of improvement in their disabling condition, recommended the inclusion of a medical improvement standard such as the provision in the legislation we are considering today. The medical improvement standard in H.R. 3755 will codify the standard that has been developed by the courts and advanced by the States. Section 101 of the bill requires a medical improvement standard that establishes a category of beneficiaries who are presumed to be unable to work and continue to be eligible for benefits because their disabling conditions have not improved. Exceptions, such as the ability to perform substantial gainful activity or rehabilitation techniques that allow the person to work would result in termination of benefits. I am optimistic that this provision will eliminate the injustice of benefit terminations solely because social security has created a more rigorous adjudicative climate as well as applying progressively stringent standards during the past 2 years than those originally followed when placing the recipients on the rolls.

The failure to apply standards of due process and inordinate delays in the appeals process illustrate the need for a permanent provision for payment of benefits through the ALJ level of the Appeals process. Without the legislation we are considering today, benefits will terminate in May 1984 for those who await ALJ hearings.

H.R. 3755 contains the provision for consideration of multiple impairments. SSA currently considers multiple impairments only when one of the impairments alone meets the listings. Clients of the Vermont developmental disabilities law projects, especially those with mental retardation, suffer a myriad of problems, none of which is severe enough to meet the listed impairment, yet when taken in combination, they prohibit the individual from functioning adequately. For example, we received testimony concerning a client with an IQ of 70, with emotional problems and a speech defect, who could not work except in a supervised setting. This client was not disabled according to SSA because no single problem was severe enough to meet the listing.

The stricter adjudicative climate created by the 1980 amendments has resulted in numerous tragedies nationwide, such as suicides in California, loss of benefits for heroic veterans in Texas, and a death in my own State of Vermont. In testimony before the committee, a constituent noted that last February her husband suffered a heart attack. After he was discharged from the hospital, his doctor advised him that he would not be able to return to work. He applied for social security disability, and was denied benefits after a delay of a few months. He decided to return to work to make up for lost funds while he was waiting for disability payments. Soon after his return, he suffered another heart attack at work and died.

The disparity in standards followed by States versus the ALJ's creates confusion and delays for recipients. The Ways and Means report to accompany H.R. 3755 cites the Bellmon report findings on the hearings and appeals process mandated by the 1980 amendments. The report found that the standards applied by ALJ's who were bound by statute and regulation to be less stringent than the guidelines for disability contained in the program operating manuals [POM's] and used by the States. The POM's became a vehicle for more rigorous guidelines for evaluating disability as well as exempt from the notice and comment provisions of the Administrative Procedures Act. The high rate of reversal of State DDS decisions and the disparity between the guidelines used by States and ALJ's resulted in a provision for uniform standards for disability determinations. H.R. 3755 subjects most disability policy changes to the Administrative Procedures Act.

The crises experienced in the States has been exacerbated by the refusal of SSA to follow the decisions of the Federal Courts in favor of the disabled. Thousands of cases are pending in the Federal Courts, with lengthy delays that often impoverish the truly disabled. Mr. Chairman, the legislation we are considering today would require SSA to either apply court decisions uniformly within a circuit, or appeal those decisions to the Supreme Court.

While SSA has failed to follow with court decisions, it has recognized some of the problems and attempted to respond administratively. For example, the Secretary of HHS has placed a moritorium on the reviews of certain mentally impaired, reworded the mental improvement listings, and increased the number exempt from the review process. Yet, far more needs to be done to enact permanent reforms in the review process in order that short-term reforms by both Congress and the administration will not be necessary in the future.

Our Federal budgetary policy must interact with the administrative policy that governs the disability review process. The range in cost estimates for this legislation, from $1.5 billion by CBO to $6 billion by SSA—if medical improvement standards were applied retrospectively—is a concern. I agree with the constituent who observed that expenditures in SSA can be reduced by administrative streamlining without cutting benefits. A significant portion of the estimated costs will be expended without this legislation as a result of existing court orders and State executive orders. Thus, the savings that SSA felt would be achieved by the 1980 review process are quickly being depleted.

What is needed today is a legislative response to the pleas of the disabled, the mentally impaired, our heroic veterans, and the terminally ill who are losing hope. It is a cruel injustice to continue to deny these people the assistance they have paid for with their taxes, through the defense of their country, and finally with the quality of their lives.●

Mr. COYNE. Mr. Chairman, I rise in trong support of H.R. 3755, the Social ecurity Disability Benefits Reform ct.

This measure is a partial solution to n increasingly desperate problem. very Member of this House, I am ure, has had experiences similar to hose we have faced in Pittsburgh as eople who legitimately qualify for ocial security disability benefits are orced off the rolls.

This administration opposes this easure, as well it might. Since it took ffice nearly half a million people ave been notified they no longer ualify for disability benefits. One out f five people on the rolls when the tepped up review process began 3 ears ago have been subjected to the reat personal strain of seeing their enefits challenged. In the matter of ssuring fairness to those who must urn to the Government for assistnce, this administration has been art of the problem, not the solution.

This measure addresses the situation hich has resulted from the arbitrary nd often callous decisions to force the isabled, especially those with mental isabilities, off the social security olls. The acclerated review of disabily cases has brought about a situation nintended by the change in the law n 1980 which requires periodic review f social security disability insurance. he review, mandated by the Conress, was not intended to bring about wholesale reduction of beneficiaries, ut that is what has been attempted. n fiscal 1983, for example, of the 36,498 disability investigations comleted, 182,074 beneficiaries, or 42 perent, saw their benefits terminated.

In many instances, the review procss determined that the terminations ere unjustified; 6 out of 10 terminaion decisions were reversed in 1983. hile such reversals are welcome, an ppeals win is not always the victory it ppears to be. The law which allows eneficiaries to continue receiving enefits while appealing terminations xpired December 7, 1983. Now, if you ppeal a determination by social secuity, you are on your own.

The bill we consider today would enew that law, allowing beneficiaries o continue receiving benefits until an ppeal is decided by an administrative aw judge. If the termination is pheld, benefits would, in most cases, e repaid to the Government.

Perhaps the most important provilons of this legislation are those hich clarify the standards by which he Government will determine hether a beneficiary is able to work, nd thus be disqualified from benefits. nder this legislation, benefits cannot e cut off unless one of the following onditions apply: the beneficiary's edical condition has improved to the oint of being able to perform subtantial, gainful work; advances in edical technology or therapy, or vo-ational therapy, have benefited the eneficiary to the point of being able to perform work; new evidence shows the impairment less severe than originally thought; the beneficiary is currently working; or the original determination was clearly erroneous or fraudulently obtained.

In addition, H.R. 3755 establishes an important new dimension to the disability review process. As things now stand, the initial decision to terminate benefits and the first level appeal are handled strictly on a written basis. The beneficiary is not entitled to meet with anyone face to face until the case reaches appeal with an administrative law judge. This legislation would allow a beneficiary 30 days after receiving a preliminary notice of an unfavorable decision to request a face-to-face meeting before final action is taken.

This bill also provides for a muchneeded moratorium on mental impairment reviews and requires that the combined effects of an individual's impairment be taken into account to determine if a person is disabled, even if none of the impairments, considered on their own, would meet disability standards.

Mr. Chairman, this is a balanced piece of legislation. It retains the principle of periodic review while restoring some fairness to the methods used in such a review. Without its passage, the arbitrary and unfair reduction in the rolls of disability recipients would, I fear, continue.

I urge a "yes" vote on H.R. 3755.●

● Mr. SUNIA. Mr. Chairman, I rise in support of H.R. 3755, the Social Security Disability Benefits Reform Act of 1983, which 61 of our colleagues have placed today before the House for its consideration. I praise them for their work on this bill.

H.R. 3755 will merely change the rules which govern social security disability insurance (SSDI). It will standardize eligibility and reform the procedures for periodic review of SSDI cases. The basis will be SSDI beneficiaries' medical improvement. There will be five succinct criteria which will determine whether beneficiaries will lose their SSDI. Their medical improvement will have to meet at least one of these before the Federal Government will terminate their benefits.

These standards will prevent termination simply on a reevaluation of a beneficiary's condition. Capriciousness will not be the rule. At the moment nearly half of the Union has a patchwork of disparate determinants. To decide whether someone is disabled, H.R. 3755 provides that the Federal Government must take into account all of his or her impairments, even if none of these alone would meet the standards for disability.

I urge my fellow Members to act swiftly and favorably on this piece of urgent legislation. The administration intends to end the benefits of many beneficiaries in the very near future. Our constituents need H.R. 3755 to restore order to their disability-insurance programs. The House must help those SSDI recipients whose benefits have ended. Their medical condition or ability to work may not have improved, but jurisdictions apply different standards or apply the same standards with more stringency.

For the sake of our citizens who rely on SSDI and have no other place to turn, if they found themselves without these funds, I recommend that you vote in favor of H.R. 3755.●

● Mr. BOUCHER. Mr. Chairman, on behalf of the thousands of disabled Virginians who receive social security disability benefits, I am pleased to rise in support of H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. As a cosponsor of this important measure, and as a member of the House Select Committee on Aging, I have participated in a number of hearings which have documented the urgent need for reform in the disability program. H.R. 3755 provides the safeguards necessary to guarantee fair and accurate treatment of truly disabled people across this country, while restoring order and fairness to the social security disability program.

In March of 1981, the administration initiated reviews of individuals who had been receiving social security disability benefits. The reviews were intended to identify people on the disability rolls who were capable of resuming full- or part-time employment.

However, the harsh review procedures have created nationwide confusion in the social security disability program. More than one-half of the States have halted disability reviews until the guidelines are reformed. In my own State of Virginia, Gov. Charles Robb imposed a moratorium on disability reviews on September 28, 1981, to protect disabled Virginians from the threat of unfair benefit terminations.

For the State administrators of the program and for recipients of benefits, the current disarray which plagues review procedures is confusing and disruptive. Immediate reform is clearly needed. While I firmly support the goal of eliminating abuses in the social security system, I believe that the administration has implemented its review procedure in an arbitrary manner which has led to the improper termination of benefits for thousands of people who are physically or mentally disabled.

On a personal level, I am disturbed by the hardships in injustices which have been suffered by many deserving people in my district in southwest Virginia. For example, in Tazewell County, a man who had received social security disability benefits for 15 years was notified in February 1982, that his benefits were terminated, even though he had a nervous condition, back problems and congenital heart disease. In the time since his benefits were terminate, he has suffered three heart attacks. In December of 1982, the disability benefits of a Radford man were

terminated, even though he was unable to work because of a liver disease, brain damage and heart dysfunction.

Disabled people who need the assistance provided by the social security disability program should not be treated with such insensitivity. Moreover, the astonishing number of termination decisions which are reversed upon appeal calls into question the legality of the administration's procedures. In Virginia alone, more than 40 percent of those individuals reviewed have had their benefits terminated. However, on appeal, an estimated 60 percent of those termination decisions were ultimately reversed by administrative law judges. The percentage of reversals is even higher in those cases in which the disabled individuals, many of whom have very limited income, have hired attorneys to represent them in the appeals process.

We can no longer ask States to administer a program which is not uniform or fair. H.R. 3755 represents an important positive step toward restoring uniformity and fairness to the disability determination process. This measure will clarify the disability guidelines to insure that no beneficiary loses eligibility for benefits as a result of careless or arbitrary decisionmaking by the Federal Government.

I, therefore, urge my colleagues to join in supporting H.R. 3755 to make sure that disabled Americans do not unfairly lose their benefits.●

● Mr. ERDREICH. Mr. Chairman, I rise today in support of this legislation before the House, H.R. 3755. As we are all aware, numerous accounts have surfaced detailing undue termination of social security disability benefits and the resulting hardship and human suffering imposed. As a member of the House Select Committee on Aging, I heard witness after witness testify to the unfairness of the disability review procedures. Because of the unfairness of the reviews, a number of States, including Alabama, have imposed moratoriums upon disability termination decisions. As a result, the current disability review procedures represent an uneven patchwork of arbitrary decisions, which are often overturned upon repeal.

It is clear to me that the disability review procedures are in need of review and reform. Compensation has been terminated only to be reinstated upon appeal. Delays, withdrawal of compensation for those with disabling illnesses, allegations of administrative law judges having to fill quotas on termination cases: this is not indicative of a fair, efficient, streamlined, review procedure, but a wasteful, inefficient system which has brought about undue and unjust hardship.

It is time for Congress to straighten out the mess which has been created by the passage of the 1980 disability review amendments. It is time for Congress to act to insure that the law is carried out in a fair, just, and uniform manner. Enactment of H.R. 3755 will enable Congress to carry out this responsibility.

Mr. Chairman, I urge swift enactment of this important legislation in order that we may insure that the disabled citizens of this country are not arbitrarily denied disability insurance.●

● Mr. MINETA. Mr. Chairman, there have been few actions of this administration that are more outrageous than what they have done to the social security disability program. In passing H.R. 3755 today, this House will be placing itself firmly on the side of the poor and the disabled; and in opposition to the administration's foolish and cruel policies.

To me there is no more poignant symbol of the heartlessness of the Reagan administration than those long computerized lists of SSDI beneficiaries that some computer has decided are no longer eligible for disability benefits. In a trial, one is innocent until proven guilty; but to this administration, the disabled are guilty of waste and abuse unless they can prove otherwise.

Yes, this bill would increase spending. According to the CBO, the 4-year increase in spending will be less than what the President's 1985 budget would have us spend on defense in less than 1½ days. Over 4 years, this administration would have us spend more than a trillion dollars on defense. Surely we can take one-thousandth of that figure and devote it to the truly worthy and honorable calling of caring for our sick and disabled.

I urge my colleagues to support this worthy legislation.●

● Mr. SHELBY. Mr. Chairman, as a cosponsor of the Social Security Disability Benefits Reform Act, I rise in strong support of the bill.

My only regret in voting for passage of this legislation today is that we have not accomplished this a lot sooner. Many States across the country have ceased the continuing disability review process entirely. They are calling upon Congress to provide the guidance and fair standards of review seriously lacking in the administration-initiated continuing disability investigations. Some States have suspended action on disability reviews for many months, the Governor of the State of Alabama imposed a moratorium in September of last year, requesting Congress to enact uniform, unequivocal and just standards of review along the lines of those encouched in the legislation before us.

Mr. Chairman, I commend the Subcommittee on Social Security for crafting a workable and fair package of reforms which addresses the many concerns of the various State Governors, Federal appeals court judges and the disabled beneficiaries. Perhaps most vital is that component of the legislation defining a medical improvement standard for reviewing prior disability determinations. The bill establishes a standard of medical improvement which shifts the burden of proof to the reviewing agency to prove that a beneficiary's condition has improved before benefit termination. Clarification of this element of the review procedure is critical given the number of Federal courts which have ordered the use of a medical improvement standard. We owe our disabled citizenry who were once proven deserving of disability benefits, the decency of every consideration to their advantage.

Additional components of the bill which delay the most controversial of reviews; mental impairments, require fact-to-face interviews, and provide the benefits will continue during appeals before administrative law judges are imminently humane and justifiable. The committee has worked diligently to fashion legislation that does not overcompensate for the zealous continuing disability reviews which have terminated deserving beneficiaries.

The disability insurance program is designed to provide benefits only for those people who are completely unable to work; this principle has not been compromised by H.R. 3755, it has been strengthened and reinforced. The bill will accomplish a worthy objective: It will restore public confidence in the social security program and promote genuine understanding that cost consciousness in the Federal Government will not overshadow a compassion and appreciation for the condition of our fellow man.●

● Mr. KOLTER. Mr. Chairman, social security disability insurance problems represent a substantial portion of the total number of open cases in my district offices in western Pennsylvania. In fact, my caseworkers advise me that they have about 250 open cases requesting assistance for a disability.

Although the method of determining disability is complicated and in need of adjustment, one area is of particular concern and interest. My district staff has alerted me to some unusual problems inherent in the review process. Some patients choosing to appeal an unfavorble decision are being advised to visit doctors who do not necessarily specialize in the area of the patient's illness. In one very telling case, a former coal miner who was literally crushed in a mining accident had his disability status come up for review. While attempting to build his case for an appeal, he was instructed to visit a psychologist. The psychologist was supposed to judge whether or not the applicant was disabled. In another instance, a constituent suffering from a crushed tail bone was sent to a heart specialist who is no longer permitted to practice medicine at local hospitals because he cannot obtain malpractice insurance. Clearly, a system that allows these things to occur is a system in need of change.

I believe H.R. 3755 represents a move to rectify some of the serious

problems facing the social security disability program. I urge my colleagues to support the bill.●

● Mr. BEVILL. Mr. Chairman, the attitude which continues to come across loud and clear from some members of this administration is that America's citizens at the lower end of our economic ladder do not count. That is not only wrong, it is patently offensive to the very principles which have made America great.

A clear-cut example of this administration's "rich man's view of society" is the manner in which, under their management, the social security disability benefits rolls have been purged.

The disabled have become a defenseless target of the same budget experts who insisted the rich be given huge tax breaks. Now these experts are trying to compensate for the massive deficits created by that windfall to the rich by cutting benefits for the disabled.

The Social Security Administration was more than overeager in carrying out a congressionally ordered investigation into possible fraud and abuse of the disability benefits program. They were cruel. They used the investigation as an excuse to drop more than 182,000 from disability in 1983, alone. Fully 42 percent of those they investigated were dropped from the program.

But the unfairness of their attempt to balance the budget on the backs of the disabled was starkly evident. At least 21 States refused to administer the harsh directive of the Secretary of Health and Human Services regarding the review process for these disability investigations. And Federal courts in at least 25 States have struck down the Social Security Administration's guidelines in this process as illegal.

But those who were terminated lost their benefits immediately. And even though more than half were reinstated, the long and cumbersome appeals process took its toll on families who lost their meager incomes for up to 1 year or more, during their appeals. I received hundreds of letters from constituents who, without warning, were notified that their disability payments would be cut off. I worked with them, advising them of the appeals process and contacting the Social Security Administration in their behalf. As I met with many of them in my district offices and at town meetings throughout my district, I could tell that these people were not trying to abuse the system. They were truly disabled and perplexed at why their Government was treating them like criminals.

As further proof of the callous nature of this purging of the disability rolls, a large number of terminally ill patients in my district were notified, that they were no longer considered to be disabled. Their families contacted me, pleading for help. We worked together and were successful in getting them reinstated. But often, their letter of reinstatement came after the disabled individual had died.

The pain and anguish of the illness itself was more than a family should bear. But to add the indignity of being treated as a cheat and an abuser of the system too which they had contributed throughout their lives was too much to ask them to bear.

I was proud last year to work vigorously to help pass legislation temporarily continuing payments to disability recipients who appealed their abrupt terminations. And as that temporary legislation is now running out, we must act quickly to insure that America does not turn its back again on the disabled.

I am concerned that continuing investigations to determine whether additional people can be eliminated from the disability program are again being directed in an insensitive manner.

Disabled Americans are still being dropped from this program with little or no warning: especially those with mental impairments. They are being told that although their conditions have not improved, a new standard is being used to judge them. And they no longer are disabled.

The Social Security Disability Reform Act embodies several pieces of legislation which I was proud to coauthor. It would make identifiable medical improvement the standard for termination of benefits. It would require face-to-face interviews, rather than bureaucratic letters, before a person could be terminated from the program. And it would continue benefit payments during the appeals process, to insure that families will not face losing everything they own due to a bureaucratic error or insensitivity.

I believe our social security program is a proud example of people and government working together. And I am proud to support this legislation and to urge my colleagues to vote in favor of the Social Security Disability Reform Act.●

● Mr. MARKEY. Mr. Chairman, today, the House takes corrective action on a situation that causes many Americans to suffer great hardship. Mr. Chairman, I rise in strong support of this legislation and urge its swift passage.

The people of Massachusetts have suffered greatly from this harsh review program. Many people in Massachusetts have suffered from these cruel and ill-conceived disability review programs when they never should have lost their benefits. I strongly support these reforms since they will guarantee that deserving people will get their rightful benefits.

Since the Reagan administration began its disability review program, the injustices suffered by disability insurance recipients are intolerable. Since the reviews began in March 1981, disability examiners have ordered 46 percent of those reviewed off the rolls. And of those who appealed their denials, 60 percent have had their monthly payments reinstated

Consequently, 60 percent of those people cut off from disability benefits were terminated unjustly and without proper cause. And in my home State of Massachusetts, an even higher percentage—74 percent—have been reinstated after appealing the initial termination decision. These facts make it clear that severe problems exist in the disability review programs.

What has the administration offered to combat these plain numbers: More of the same. In fact, this administration has gone out of its way to make life hard for disabled Americans.

By refusing to consider any of the reform legislation pending in Congress, the administration ignores the problem.

By threatening the States that have strived for compassion on disability review with financial penalties, the administration has gone beyond ignorance to being mean-spirited.

By disciplining judges who have shown too much compassion in reversing many determination decisions, the administration demonstrates the extremes it will go to in order to achieve its objectives.

By harassing disability recipients who have had their benefits reinstated upon review, the administration has been cruel.

And by removing people from the disability program before a judge has ruled on whether they are still eligible for disability benefits, the administration shows an insensitivity that surprises no one.

I think the time has come for this House to take action which will prevent the administration from pursuing a policy which is at best misguided—and at worst, mean-spirited.

I support this bill and urge its passage to stop the administration and protect disabled Americans.●

● Mr. SKELTON. Mr. Chairman, today I supported H.R. 3755, a bill which I cosponsored. Social security disability insurance recipients are among the neediest and most helpless of the poor; interruption of their benefits can be, literally, a life-threatening development for these people. Yet, with encouragement from the administration, thousands of disabled Americans have been denied SSDI payments after being given less than a full and fair opportunity to be heard.

H.R. 3755 provides important procedural safeguards for SSDI recipients that will insure a more accurate and humane review process than the one currently in use. It guarantees recipients face-to-face contact with the decisionmaker before the termination of benefits. H.R. 3755 shifts the burden of proof to those who would deny benefits by requiring a finding of medical improvement before benefits can be discontinued. And, H.R. 3755 provides for the continuation of benefit payments through the appeal process, up to the administrative law judge level.

As important and necessary as these procedural safeguards are, perhaps the most far-reaching result of the enactment of H.R. 3755 would be to send a clear message to the administration that Congress wants an immediate cessation to the harassment of SSDI recipients. In my district, some recipients who won reversals by administrative law judges of termination of benefits, have been informed within a year that their benefits are, again, being discontinued. The high rate of reversals by administrative law judges of termination of benefits is, in itself, clear evidence of bad faith on the part of those who are pushing these reviews. Nearly 50 percent of all cases heard by administrative law judges result in the reinstatement of benefits for the SSDI recipients involved. Indeed, administrative law judges in Kansas City brought suit against the Secretary of Health and Human Services because of pressure exerted upon them by DHHS to maintain a certain quota of cases in which termination of benefits are upheld.

Mr. Chairman, enactment of H.R. 3755 will not add a single undeserving person to the rolls of the social security disability insurance program. Rather, it will prevent the discontinuation of payments to persons whose lives may depend on the SSDI aid they receive.●

● Mr. GEJDENSON. Mr. Chairman, I rise today to express my strong support for the Social Security Disability Benefits Reform Act of 1984.

The problems of the social security disability program over the last 3 years are well known to all of us in this body. The accelerated disability review process that began n 1981 has resulted in thousands of individuals being quickly and wrongfully removed from the disability rolls. While 61 percent of the terminations were reversed, the mental anguish and fear this process created for people already laboring under difficult circumstances is absolutely inexcusable.

The situation is even worse in the case of mental disability reviews. Between June 1981 and August of 1982, for example, 91 percent of the decisions to terminate that were appealed were reversed at the administrative law judge level, and the claimant's benefits were reinstated. It seems to me that when 9 out of 10 decisions are reversed on appeal, it becomes more than obvious that something is terribly wrong with the present criteria for determining mental disability and with the review process itself.

Over the last 2 years there have been a series of administrative and legislative changes in the review process, but all of them have proven to be inadequate. At least 21 States have refused, in whole or in part, to administer the disability review process in the manner prescribed by the Secretary of Health and Human Services. In at least 25 States, Federal courts have struck down the Social Security Administration's internal operating guidelines and ordered the administration to reopen previous decisions and/or to reinstate benefits pending such reopening.

The only way to reestablish some national uniformity and fairness in the disability process is to enact legislation which establishes a fair review process, provides for payment of benefits through the appeal process, and imposes a moratorium on mental impairment reviews until the Social Security Administration revises its criteria for determination of mental disability.

H.R. 3755 is a well thought out piece of legislation that will bring the chaos in the disability review process to an end. I believe that the time for this bill is long overdue, and I urge my colleagues to support this urgently needed legislation.●

● Mr. ROTH. Mr. Chairman, over the past 2 years, troubles have been brewing in the social security disability program. In 1980 Congress passed a law which was designed to provide better oversight for the disability insurance program. Prompted by concern over the growing disability rolls, this law mandated review at least once every 3 years for all beneficiaries not permanetly disabled.

Unfortunately, unintended results have arisen. Thousands of individuals have had benefits erroneously discontinued as a result of a review process that has largely been unfair, confusing, and capricious.

I have no quarrel with the goal of the disability insurance review program—to remove from the rolls the people who can work. Most people would agree that the periodic review of the disability rolls is good and necessary.

What I am very concerned about is the lack of rhyme or reason in the guidelines and procedures under which these reviews are conducted. Each Member and his or her caseworkers often hear from dozens of constituents who were dropped from the disability rolls with only cursory reviews, despite the fact that they did not have any improvement in their health. During appeals, the administrative law judges would review the file and frequently restore benefits, without requiring a hearing.

The data reflects well the harshness, the haphazardness, and the hastiness of the current review program. Out of the 470,000 people who have received initial notices, 160,000 people have been restored on appeal and 120,000 appeals are pending hearing. Twenty-six States, either under court order or on their own, have refused to continue processing terminations. These figures are nothing to brag about.

The bill before us today addresses the problems of the disability review program in a more balanced and comprehensive manner. It clarifies the statutory guidelines by which disabilities will be determined. To me, it is plain commonsense and fairness to seek proof of medical improvement and to consider the cumulative effect of multiple impairments in the determination of eligibility for benefits.

The face-to-face interview and the payment of benefits during appeal will foster a more humane review and appeal process.

The publishing of policies affecting disability determination and the bringing of future procedures in line with Federal court of appeals rulings will help to create a more stable review program nationwide.

The bill does not expand the disability program nor does it change the original goal of the review process—to weed out those individuals who are no longer eligible, while insuring that no beneficiary loses eligibility for benefits as a result of careless and erratic decisionmaking.

Yes, there is a cost to this legislation if enacted. Yet, this cost is worthwhile and will not jeopardize the disability insurance trust fund.

The cost that we must keep in mind is the cost of not enacting the legislation. This cost is of a greater and more terrible magnitude. There will be the administrative costs, because thousands of disabled people will have their benefits wrongly terminated, thereby flooding the appeals process. And, of course, there will the inestimable costs of greater hardship, undue suffering, and lost confidence among the disabled.

Some semblance of fairness, clarification and uniformity must be restored to this review program. Congress now has the opportunity to give the continuing disability reviews clear standards, an understandable process and a firm direction.

My colleagues, the flaws are evident, the despair is mounting, and the time is passing.

Let this House do something truly good today. Let it pass this important legislation.●

● Mrs. LLOYD. Mr. Chairman, I want to join my colleagues in support for H.R. 3755. I am very pleased that we are considering this bill today and that we have been given the opportunity to vote on it apart from other concerns not related to disability.

I, too, have been greatly disturbed by the manner in which the disability review process has been conducted. At present we have almost half of our States operating under Federal court guidelines which differ from those set by the Social Security Administration. In just the past few days the Department of Health and Human Services stated that, to clarify standards of eligibility, it will consider imposing a moratorium on its policy of removing people from the disability rolls. I hope the agency takes that step but it is important that the Congress set statutory guidelines to insure that no one loses benefits as a result of careless or arbitrary decisionmaking by the Fed-

eral Government. Since March of 1981, over 400,000 out of a total of almost 4 million disability recipients have been declared ineligible. But 160,000 have been reinstated after appeals and more than 100,000 cases are still pending. In fiscal year 1983, 61 percent of the termination decisions appealed to the administrative law judges were reversed. I think these figures clearly indicate the need for the legislative reinforcement proposed by H.R. 3755.

Mental health experts in my district have raised many questions about current methods for assessing mental impairments. This bill recognizes that there is a particular need for careful review of cases involving mental impairments. I think it rightly imposes a moratorium on reviews of these cases until the Social Security Administration revises the criteria it uses to determine mental impairment disability. These guidelines are to be reviewed in consultation with an advisory council on medical aspects which is created by this bill. To insure a timely process, the bill calls for publication of the criteria no later than 9 months after the bill's enactment. This deal would apply to all mental impairment cases on which an appeal was pending on or after June 7, 1983, as well as new reviews.

Mr. Chairman, I believe passage of this bill is essential if we are to make the disability review process more humane and sensitive to the needs of the disabled. I think the gentleman from Texas has brought us a good bill, one that addresses the present uncertainty.●

● Mr. MOLLOHAN. Mr. Chairman, last fall, I met with a woman from my district who began receiving social security disability benefits in 1977 after her glaucoma grew so bad she could not work. In late 1981 her benefits were cut off, even though two physicians submitted statements to the Social Security Administration in support of her claim. In June of 1982 she went back to work but was forced to quit a few months later.

This woman could not see well enough even to write a check, Mr. Chairman, yet the Social Security Administration blithely assured her she was quite capable of finding work. This is fairly outrageous on the face of it, but it is doubly so when one remembers that this person lived in a part of the country where, at the time, nearly one out of every five perfectly health individuals could not find a job.

There is, unfortunately, nothing particularly noteworthy about this incident. I have talked with many other constituents with similar problems, as has each of my colleagues here.

If one thing has marked social security legislation in the past decade or two, it has been the lesson that even subtle changes in the law can cause severe budgetary problems. Nevertheless, I wholeheartedly support the bill brought to the floor of the House today by the distinguished chairmen of the Social Security Subcommittee and the Ways and Means Committee, for it recognizes the injustice of a system that required a blind woman to find a job to support herself when there were no jobs available.

More specifically, H.R. 3755 will: First, direct that no individual will be terminated from disability unless his or her condition has improved; second, require the SSA to consider the combined effects of several disabling conditions even if each of the conditions, by itself, would not result in a disability determination; third, require the SSA to consider to work environment when determining whether or not an individual is capable of finding employment; and fourth, direct the SSA to draft uniform standards for disability determination.

I urge my colleagues to support this bill.●

● Mr. BIAGGI. Mr. Chairman, I rise in full support of H.R. 3755, the Social Security Disability Benefits Reform Act. As a cosponsor of this crucial legislation, I consider its passage essential if we are to rectify a terrible injustice that has been directed against hundreds of thousands of our Nation's disabled population.

Specifically, I am referring to the seemingly arbitrary purge of our Nation's social security disability rolls by the current administration. This procedure, which was excused by the administration as an effort to increase Government efficiency, has been totally lacking in compassion and was done with a callous mentality that presumed persons already receiving social security disability benefits to be ineligible.

Consider, for example, that since 1981 the Social Security Administration has terminated some 470,000 SSDI beneficiaries. Of those persons, almost one-third, or 160,000, have had their benefits fully restored after appealing the decision; another 120,000 cases are still in the appeals process; and some 100,000 cases have been ordered reopened by Federal district courts. This means that out of the initial 470,000 SSDI beneficiaries terminated by the Social Security Administration, approximately 380,000 have had or could have their benefits restored. So much for efficiency. The reason for this nightmare: A prevailing attitude within the administration of cut first and review later.

As an original member of the House Select Committee on Aging, I have joined with a number of my colleagues over the past 2 years in fighting these inhumane and inexcusable efforts by the administration to reduce the number of SSDI beneficiaries. The legislation before us today would make the necessary changes in the SSDI program to prevent arbitrary terminations and to insure that a person is not terminated from the SSDI rolls until the appeals process is exhausted.

Specifically, the bill would establish a standard for termination that is based primarily on the concept of medical improvement. This new standard states that benefits may not be terminated unless one of the following conditions are met:

First, the beneficiary's medical condition has improved to the point of being able to perform substantial, gainful work;

Second, the beneficiary has benefited from advances in medical therapy or technology, or from vocational therapy, to the point of being able to perform substantial, gainful work;

Third, new evidence—including new diagnostic or evaluation techniques—shows the impairment to be less severe than originally thought;

Fourth, the beneficiary is currently working—at substantial, gainful work; or

Fifth, the original determination was clearly erroneous or fraudulently obtained.

The bill would also insure that the combined effects of the multiple impairments a person may suffer must be considered, rather than considering the effect of each of the impairments by themselves.

In addition, the bill would impose a moratorium on reviews of SSDI beneficiaries suffering from mental impairments until the Social Security Administration revises its criteria for determination of disability based on mental impairment. These criteria are to be revised in consultation with the new advisory council on medical aspect of disability established by the bill. This measure would also require that a psychiatrist or psychologist review any case where SSDI benefits are to be terminated for a person with mental impairment.

The bill also provides that if a decision to terminate a person for medical improvement is made, the beneficiary would have 30 days to request a "face-to-face" meeting before a final decision would be made. Under present procedures, both the initial decision and first-level appeal are handled strictly on a written basis.

Further, the bill specifies that beneficiaries must be allowed to continue to receive SSDI payments during the appeals process. Once a decision to terminate is made, payments would continue, if the beneficiary so chooses, until an appeals decision is reached by an administrative law judge. If the termination is upheld, benefits continued during the appeals process would have to be repaid to the Government, with certain hardship exceptions.

Other provisions of the bill would require the Social Security Administration to follow any generally applicable principles of decisions by circuit courts of appeal; create an advisory council on medical aspects of disability; extend the changes made in the SSDI program to the supplemental security income program; and extends a tempo-

rary program that allows the continuation of SSI and/or medicaid benefits for certain disabled persons who are working but who continue to suffer from disabling impairments.

Significantly, the Social Security Administration has stated that the disability insurance trust fund would remain solvent and in actuarial balance under this bill.

Some 30 States, including New York, have either voluntarily, or through court order, suspended or altered the current flawed SSDI review proceedings. Hundreds of thousands of SSDI beneficiaries have been terminated for no good reason. Clearly, this situation must be corrected and H.R. 3755 would achieve that objecitve.

I commend my good friend, the distinguished gentleman from Texas (Mr. PICKLE) for bringing this responsible legislation to the floor and I urge its passage.●

● Mr. ADDABBO. Mr. Chairman, for 3 years now the social security disability system has been perverted to the point where it works against the people it was originally designed to protect. All of us who serve in this Chamber have seen numerous instances where persons legitimately receiving disability allowances have had their benefits arbitrarily cut until such time as they could prove their disability. The harm this has done to thousands of handicapped and disabled American citizens across this land is incalculable. The unfairness of an administration that takes away benefits from disabled persons before it is determined they are receiving benefits improperly is obvious and has generated great dissatisfaction in the Chamber on both sides of the aisle.

Today we will pass H.R. 3755, the Social Security Disability Benefits Reform Act of 1984 as a direct response to the improprieties forced upon an unsuspecting citizenry over these last few years. This bill is a direct order by the Congress of the United States to this department that the people for whose care this agency is responsible are to be treated with the respect due citizens of this land. Where improper benefits are determined to exist they will be withdrawn, but it is the intention of this Congress that our disabled citizens be given the support by their Government that is legitimately theirs.

H.R. 3755 seeks to protect those persons least able to protect themselves. Persons with mental impairments have too often in past years been dropped from the rolls with little warning and on the basis of little evidence. All too often these people have been unable to perform work of any nature and have had no other form of income.

It would be nice to believe that the Social Security Administration listened to the protest of the people, listened to the warnings of the Congress, and heeded the decisions of the courts. Sadly, it did not. In fact, an objective observer could conclude that this agency deliberately and heartlessly ignored all objections from all sources as it tore shreds into a program so vital to the everyday needs of the handicapped.

This bill is designed to bring eligibility reviews into line on a national basis. It brings the Federal Government into line, if you will, with the consensus of the States which early on realized how ridiculous the Federal standards had become. Mr. Chairman, it is about time we took this action. I call upon the Senate to endorse this bill as it is passed here today and I hope that President Reagan will concern himself with the true needs of the American people and sign this bill into law.●

● Ms. SNOWE. Mr. Chairman, I am pleased to cast my vote for H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. It is important that Congress address this issue without further delay

Since the implementation of the 1980 amendment to the Social Security Act requiring a review of disability cases, all of us have heard from constituents who have unjustly suffered as the result of the seemingly calloused and insensitive handling of this congressional directive. This is evident by the fact that since March 1981, when the disability reviews began, of the 470,000 beneficiaries removed from the disability rolls, an astonishing number, 160,000, have since have been restored upon appeal, and thousands more appeals are pending court action. Moreover, Federal courts have ordered the reopening of another 100,000 cases.

These figures represent a terribly inadequate review system which has drastically affected the most vulnerable in our society. This was not Congress intent.

I understand the administration has been planning to announce an 18-month moratorium on trimming the social security disability rolls, but to date this announcement has not been forthcoming—and we simply cannot wait any longer for possible in-house corrections. By our vote today, and I am sure it will be a strong endorsement of H.R. 3755, we are signaling the end to hearings and further handwringing, never mind our patience. Face-to-face interviews during medical determinations and a revised medical improvement definition seem basic to any review process. Therefore, I urge the House and Senate conferees to adopt these changes as soon as possible.●

The CHAIRMAN. All time has expired.

Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule.

The text of the bill, H.R. 3755, is as follows:

H.R. 3755

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

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1983"

TABLE OF CONTENTS

TITLE I—STANDARDS OF DISABILITY

STANDARD OF REVIEW FOR TERMINATIONS OF DISABILITY BENEFITS

SEC. 101. Section 223 of the Social Security Act is amended by inserting after subsection (e) the following new subsection:

"(f) In the case of an individual who is a recipient of disability benefits, such individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are payable has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence indicating one or more of the following:

"(1) that there has been medical improvement in the individual's impairment or combination of impairments so that the individual now is able to engage in substantial gainful activity;

"(2) that new medical evidence and a new assessment of the individual's residual functional capacity demonstrate that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology which result in ability to engage in substantial gainful activity; or

"(3) that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that such

ndividual was under a disability or contin-ued to be under a disability, so that the indi-idual now is able to engage in substantial ainful activity.

Nothing in this subsection shall be con-trued to require a determination that an ndividual is entitled to disability benefits if vidence on the face of the record shows hat any prior determination of such enti-lement to disability benefits was either learly erroneous at the time it was made or ras fraudulently obtained or if the individu-l is engaged in substantial gainful activity. For purposes of this subsection, the term disability benefit' means a disability insur-nce benefit or a child's, widow's, or widow-r's insurance benefit based on disability."

STUDY CONCERNING EVALUATION OF PAIN

SEC. 102. (a) The Secretary of Health and Human Services shall, in conjunction with he National Academy of Sciences, conduct study concerning the question of using ubjective evidence of pain, including state-nents of the individual alleging such pain s to the intensity and persistence of such ain and corroborating evidence provided by reating physicians, family, neighbors, or ehavioral indicia, in determining under sec-ion 221 of the Social Security Act whether n individual is under a disability.

(b) The Secretary shall submit the results f the study under subsection (a), together vith any recommendations, to the Commit-ee on Ways and Means of the House of Representatives and the Committee on Fi-nance of the Senate not later than January , 1985.

MULTIPLE IMPAIRMENTS

SEC. 103. Section 223(d)(2) of the Social Security Act is amended by adding at the nd thereof the following new subpara-raph:

"(C) In determining whether an individ-al's physical or mental impairment or im-airments are of such severity that he or he is unable to engage in substantial gain-ul activity, the Secretary shall consider the ombined effect of all of the individual's im-airments without regard to whether any uch impairment, if considered separately, ould be of such severity.".

TITLE II—DISABILITY DETERMINATION PROCESS

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 201. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise he criteria embodied under the category 'Mental Disorders" in the "Listing of Im-airments" in effect on the date of the en-ctment of this Act under appendix 1 to ubpart P of part 404 of title 20 of the Code f Federal Regulations. The revised criteria nd listings, alone and in combination with ssessments of the residual functional ca-acity of the individual involved, shall be esigned to realistically evaluate the ability f a mentally impaired individual to engage n substantial gainful activity in a competi-ive workplace environment. Regulations es-ablishing such revised criteria and listings hall be published no later than April 1, 1984.

(b) The Secretary shall make the revisions ursuant to subsection (a) in consultation vith the Advisory Council on Medical As-ects of Disability (established by section 04 of this Act), and shall take the advice nd recommendations of such Council fully nto account in making such revisions.

(c)(1) Until such time as revised criteria ave been established by regulation in ac-ordance with subsection (a), no continuing ligibility review shall be carried out under ection 221(i) of the Social Security Act vith respect to any individual previously de-termined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individu-al prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsec-tion (d)(1) the term "continuing eligibility review", when used to refer to a review under section 221(i) of such Act of a previ-ous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determina-tion, or where an individual is engaged in substantial gainful activity.

(d)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determina-tion that an individual is not under a dis-ability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised crite-ria are established by regulation in accord-ance with subsection (a), and any determi-nation that an individual is not under a dis-ability by reason of a mental impairment made under or in accordance with title II of such Act in a reconsideration of, hearing on, or judicial review of a decision rendered in any continuing eligibility review to which subsection (c)(1) applies, shall be redeter-mined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disabil-ity, if such individual is found on redeter-mination to be under a disability, such redeter-mination shall be applied as though it had been made at the time of such prior action.

(3) Any mentally impaired individual who was found to be not disabled pursuant to an initial disability determination or continu-ing eligibility review between March 1, 1981, and the date of the enactment of this Act; and who reapplies for benefits under title II of the Social Security Act, may be deter-mined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be submitted within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

REVIEW PROCEDURE GOVERNING DISABILITY DE-TERMINATIONS AFFECTING CONTINUED ENTI-TLEMENT TO DISABILITY BENEFITS; DEMON-STRATION PROJECTS RELATING TO REVIEW OF DENIALS OF DISABILITY BENEFIT APPLICA-TIONS

SEC. 202. (a)(1) Section 221(d) of the Social Security Act is amended—

(A) by inserting "(1)" and "(d)"; and

(B) by adding at the end thereof the fol-lowing new paragraph:

"(2)(A) In any case where—

"(i) an individual is a recipient of disabil-ity insurance benefits, or of child's widow's, or widower's insurance benefits based on disability, and

"(ii) the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Sec-retary in a case to which subsection (g) ap-plies) to have ceased, not to have existed, or to no longer be disabling,

such individual shall be entitled to notice and opportunity for review as provided in this paragraph.

"(B)(i) Any determination referred to in subparagraph (A)(ii)—

"(I) which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for an initial decision of the Secretary with regard to an individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or other-wise changed), and

"(II) which is in whole or in part unfavor-able to such individual,

shall remain pending until after the notice and opportunity for review provided in this subparagraph.

"(ii) Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (in-cluding the right to make a personal ap-pearance as provided in this subparagraph) and the right to submit additional evidence prior to or in such review as provided in this clause. Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving di-vorced wife, surviving divorced mother, hus-band, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be preju-diced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsec-tion (g) applies) of such determination, in-cluding the right to make a personal ap-pearance, and may submit additional evi-dence for purposes of such review prior to or in such review. Any such request must be filed within 30 days after notice of the pend-ing determination is received by the individ-ual making such request. Any review carried out by a State agency under this subpara-graph shall be made in accordance with the pertinent provisions of this title and regula-tions thereunder.

"(iii) A review under this subparagraph shall include a review of evidence and medi-cal history in the record at the time such disability determination is pending, shall ex-amine any new medical evidence submitted or obtained in the review, and shall afford the individual requesting the review the op-portunity to make a personal appearance with respect to the case at a place which is reasonably accessible to such individual.

"(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination as so affirmed or modified.

"(C) An initial decision by the Secretary as to the continued rights of any individual to benefits under this title which is based in whole or in part on a determination de-scribed in subparagraph (A)(ii) and which is in whole or in part unfavorable to the indi-vidual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's deci-sion, the reason or reasons upon which the

decision is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

"(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with an initial decision of the Secretary referred to in subparagraph (C) as to continued rights to benefits under this title shall be entitled to a hearing thereon to the same extent as is provided in section 205(b) with respect to decisions of the Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b) with respect to matters other than the determination referred to in subparagraph (A)(ii).

"(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly appointed in accordance with section 3105 of title 5, United States Code.".

(2) Section 205(b)(1) of such Act is amended by inserting after the fourth sentence the following new sentence: "Reviews of decisions relating to continued entitlement to benefits based on disability shall be governed by the provisions of section 221(d)(2) in addition to the provisions of this section.".

(b)(1) Section 205(b) of such Act (as amended by subsection (a)(2)) is further amended—

(A) by striking out "(1)" after "(b)"; and

(B) by striking out paragraph (2).

(2) Section 4 of Public Law 97-455 (relating to evidentiary hearings in reconsiderations of disability benefit terminations) (96 Stat. 2499) and section 5 of such Act (relating to conduct of face-to-face reconsiderations in disability cases) (96 Stat. 2500) are repealed.

(c) The amendments made by this section shall apply with respect to determinations (referred to in section 221(d)(2)(A)(ii) of the Social Security Act (as amended by this section)) issued after December 31, 1984.

(d) The Secretary of Health and Human Services shall, as soon a practicable after the date of the enactment of this Act, implement as demonstration projects the amendments made by this section with respect to all disability determinations under subsections (a), (c), (g), and (i) of section 221 of the Social Security Act and decisions of entitlement to benefits based thereon in the same manner and to the same extent as is provided in such amendments with respect to determinations referred to in section 221(d)(2)(A)(ii) of such Act (as amended by this section) and decisions of entitlement to benefits based thereon. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than April 1, 1985.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 203. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in clause (i), by inserting "or" after "hearing,"; and

(B) by striking out ", or (iii) June 1984".

(2) Section 223(g)(3) of such Act is amended by striking out "which are made" and all that follows down through the end thereof and inserting in lieu thereof the following: "which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.".

(b)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Disability Insurance Trust Fund and the rate of appeals to administrative law judges of unfavorable benefit entitlement determinations involving determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 204. Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) A determination under subsection (a), (c), (g), or (i) that an individual is not under a disability by reason of a mental impairment shall be made only after a qualified psychiatrist or psychologist employed by the State agency or the Secretary (or which services are contracted for by the State agency or the Secretary) has completed the medical portion of any applicable sequential evaluation and residual functional capacity assessment.".

REGULATORY STANDARDS FOR CONSULTATIVE EXAMINATIONS

SEC. 205. Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

TITLE III—MISCELLANEOUS PROVISIONS

ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS

SEC. 301. Section 205(a) of the Social Security Act is amended—

(1) by inserting "(1)" after "(a)"; and

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

"(2) Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to matters relating to benefits under this title. With respect to matters to which rulemaking requirements under the preceding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provisions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State agency or the Secretary, including any hearing before an administrative law judge.".

COMPLIANCE WITH CERTAIN COURT ORDERS

SEC. 302. (a) Title II of the Social Security Act is amended by adding at the end thereof the following new section:

"COMPLIANCE WITH CERTAIN COURT ORDERS

"SEC. 234. In the case of any decision rendered by a United States court of appeals which—

"(1) involves an interpretation of this title or any regulation prescribed under this title;

"(2) involves a case to which the Department of Health and Human Services or any officer or employee thereof is a party; and

"(3) requires that such department, or officer or employee thereof, apply or carry out any provision, procedure, or policy under this title with respect to any individual or circumstance in a manner which varies from the manner in which such provision, procedure, or policy is generally applied or carried out,

the Secretary of Health and Human Services, or such other officer or employee of the Department of Health and Human Services as may be a party to such case, or such other officer of the United States as may be appropriate, shall acquiesce in such decision with respect to all beneficiaries whose appeals would be within the jurisdiction of such court of appeals, unless the Secretary makes a timely request for review of such decision by the United States Supreme Court pursuant to section 1254 of title 28, United States Code. If the United States Supreme Court denies such a request for review, the Secretary shall so acquiesce in such decision on and after the date of such denial of review until such time as the United States Supreme Court rules on the issue involved and reaches a different result."

(b) The amendment made by subsection (a) of this section shall not apply with respect to a decision by a United States court of appeals if the period for making a timely request for review of such decision by the United States Supreme Court expired before the date of the enactment of this Act.

BENEFITS FOR INDIVIDUALS PARTICIPATING IN VOCATIONAL REHABILITATION PROGRAMS

SEC. 303. The first sentence of section 222(d)(1) of the Social Security Act is amended by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months or where such individuals are determined to be no longer entitled to such benefits because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this paragraph shall be made with respect to any individual for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, which ever first occurs), and is cases where such individuals refuse without good cause to accept vocational rehabilitation services or fail to

cooperate in such a manner as to preclude their successful rehabilitation".

ADVISORY COUNCIL ON MEDICAL ASPECTS OF DISABILITY

SEC. 304. (a) There is hereby established in the Department of Health and Human Services an Advisory Council on the Medical Aspects of Disability (hereafter in this section referred to as the "Council").

(b)(1) The Council shall consist of—

(A) 10 members appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 30 days after the date of the enactment of this Act from among independent medical and vocational experts, including at least one psychiatrist, one rehabilitation psychologist, and one medical social worker; and

(B) the Commissioner of Social Security ex officio.

The Secretary shall from time to time appoint one of the members to serve as Chairman. The Council shall meet as often as the Secretary deems necessary, but not less often than twice each year.

(2) Members of the Council appointed under paragraph (1)(A) shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such members, while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be paid at rates fixed by the Secretary, but not exceeding $100 for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Council; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(3) The Council may engage such technical assistance from individuals skilled in medical and other aspects of disability as may be necessary to carry out its functions. The Secretary shall make available to the Council such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out its functions.

(c) It shall be the function of the Council to provide advice and recommendations to the Secretary of Health and Human Services on disability standards, policies, and procedures, including advice and recommendations with respect to—

(1) the revisions to be made by the Secretary, under section 201(a) of this Act, in the criteria embodied under the category 'Mental Disorders' in the 'Listing of Impairments'; and

(2) the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as the assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved.

(d) Whenever the Council deems it necessary or desirable to assist in the performance of its functions under this section, the Council may—

(1) call together larger groups of experts, including representatives of appropriate professional and consumer organizations, in order to obtain a broad expression of views on the issues involved; and

(2) establish temporary short-term task forces of experts to consider and comment upon specialized issues.

(e)(1) Any advice and recommendations provided by the Council to the Secretary of Health and Human Services shall be included in the ensuing annual report made by the Secretary to Congress under section 704 of the Social Security Act.

(2) Section 704 of the Social Security Act is amended by inserting after the first sentence the following new sentence: "Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommendations provided to the Secretary by the Advisory Council on Medical Aspects of Disability, with respect to disability standards, policies, and procedures, during the preceding year).".

(f) The Council shall cease to exist at the close of December 31, 1985.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 305. (a)(1) The Secretary of Health and Human Services shall, within 180 days after the date of the enactment of this Act, establish a sufficient number of attorney adviser positions at grades GS-13 and GS-14 in the Department of Health and Human Services to ensure adequate opportunity for career advancement for attorneys employed by the Social Security Administration in the process of adjudicating claims under section 205(b) or 221(d) of the Social Security Act. In assigning duties and responsibilities to such a position, the Secretary shall assign duties and responsibilities to enable an individual serving in such a position to achieve qualifying experience for appointment by the Secretary for the position of administrative law judge under section 3105 of title 5, United States Code.

(b) The Secretary of Health and Human Services shall—

(1) within 90 days after the date of the enactment of this Act, submit an interim report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the Secretary's progress in meeting the requirements of subsection (a), and

(2) within 180 days after the date of the enactment of this Act, submit a final report to such committees setting forth specifically the manner and extent to which the Secretary has complied with the requirements of subsection (a).

EFFECTIVE DATE

SEC. 306. Except as otherwise provided in this Act, the amendments made by this Act shall apply with respect to cases involving disability determinations pending in the Department of Health and Human Services or in court on the date of the enactment of this Act, or initiated on or after such date.

The CHAIRMAN. No amendments are in order except the amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the bill which shall be considered as having been read and shall not be subject to amendment.

The text of the committee amendment in the nature of a substitute is as follows:

Strike out all after the enacting clause and insert:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".

TABLE OF CONTENTS

TITLE I—STANDARDS OF DISABILITY

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

SEC. 101. (a) Section 223 of the Social Security Act is amended by inserting after subsection (e) the following new subsection:

"Standard of Review for Termination of Disability Benefits

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that—

"(A) the individual is now able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii) does not apply) a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that—

"(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(B) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that the requirements of clause (i) or (ii) of subparagraph (A) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to disability benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subsection shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subsection, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "A period of disability may be determined to end on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence described in paragraph (1), (2), or (3) of section 223(f). Nothing in the preceding sentence shall be construed to require a determination that a period of disability continues if evidence on the record at the time any prior determination of such period of disability was made, or new evidence which relates to such determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subparagraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subparagraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination.".

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not be to entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that the individual is now able to engage in substantial gainful activity, or

"(ii) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that he or she is now able to engage in substantial gainful activity; or

"(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity.

Nothing in this paragraph shall be construed to require a determination that a recipient of benefits under this title based on disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual (unless he or she is eligible to receive benefits under section 1619) is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior determination of disability nothing in this paragraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this paragraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior determination.".

STUDY CONCERNING EVALUATION OF PAIN

SEC. 102. (a) The Secretary of Health and Human Services shall, in conjunction with the National Academy of Sciences, conduct a study of the issues concerning (1) the use of subjective evidence of pain, including statements of the individual alleging such pain as to the intensity and persistence of such pain and corroborating evidence provided by treating physicians, family, neighbors, or behavioral indicia, in determining under section 221 or title XVI of the Social Security Act whether an individual is under a disability, and (2) the state of the art of preventing, reducing, or coping with pain.

(b) The Secretary shall submit the results of the study under subsection (a), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than April 1, 1985.

MULTIPLE IMPAIRMENTS

SEC. 103. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physicial or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

TITLE II—DISABILITY DETERMINATION PROCESS

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 201. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than nine months after the date of the enactment of this Act.

(b) The Secretary shall make the revisions pursuant to subsection (a) in consultation with the Advisory Council on the Medical Aspects of Disability (established by section 304 of this Act), and shall take the advice and recommendations of such Council fully into account in making such revisions.

(c)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(h) of the Social Security Act (as redesignated by section 204(1) of this Act), or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (d)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity.

(d)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, or judicial review of a decision rendered in any continuing eligibility review to which subsection (c)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

REVIEW PROCEDURE GOVERNING DISABILITY DETERMINATIONS AFFECTING CONTINUED ENTITLEMENT TO DISABILITY BENEFITS; DEMONSTRATION PROJECTS RELATING TO REVIEW OF OTHER DISABILITY DETERMINATIONS

SEC. 202. (a)(1) Section 221(d) of the Social Security Act is amended—

(A) by striking out "Any" and inserting in lieu thereof "(1) Except in cases to which paragraph (2) applies, any"; and

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

"(2)(A) In any case where—

"(i) an individual is a recipient of disability insurance benefits, child's, widow's, or widower's insurance benefits based on disability, mother's or father's insurance benefits based on the disability of the mother's or father's child who has attained age 16, or benefits under title XVIII based on disability, and

"(ii) the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Secretary in a case to which subsection (g) applies) to have ceased, not to have existed, or to no longer be disabling,

such individual shall be entitled to notice and opportunity for review as provided in this paragraph.

"(B)(i) Any determination referred to in subparagraph (A)(ii)—

"(I) which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for a decision of the Secretary with regard to the individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or otherwise changed), and

"(II) which is in whole or in part unfavorable to such individual,

shall remain pending until after the notice and opportunity for review provided in this subparagraph.

"(ii) Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (including the right to make a personal appearance as provided in this subparagraph), the right to submit additional evidence prior to or during such review as provided in this clause, and that, if such review is not requested, the individual will not be entitled to a hearing on such determination and such determination will be the disability determination upon which the final decision of the Secretary on entitlement will be based. Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsection (g) applies) of such determination, including the right of such individual to make a personal appearance, and may submit additional evidence for purposes of such review prior to or during such review. Any such request must be filed within 30 days after notice of the pending determination is received by the individual making such request. Any review carried out by a State agency under this subparagraph shall be made in accordance with the pertinent provisions of this title and regulations thereunder.

"(iii) A review under this subparagraph shall include a review of evidence and medical history in the record at the time such disability determination is pending, shall examine any new medical evidence submitted or obtained for purposes of the review, and shall afford the individual requesting the review the opportunity to make a personal appearance with respect to the case at a place which is reasonably accessible to such individual.

"(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination, as so affirmed or modified, as the disability determination under subsection (a), (c), (g), or (h) (as applicable).

"(C) Any disability determination described in subparagraph (A)(ii) which is issued by the State agency (or the Secretary) and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the determination, the reason or reasons upon which the determination is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

"(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with the disability determination referred to in subparagraph (C) shall be entitled to a hearing thereon to the same extent as is provided in section 205(b) with respect to decisions of the Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b) with respect to matters other than the determination referred to in subparagraph (A)(ii).

"(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly appointed in accordance with section 3105 of title 5, United States Code.".

(2) Section 205(b)(1) of such Act is amended by inserting after the fourth sentence the following new sentence: "Reviews of disability determinations on which decisions relating to continued entitlement to benefits are based shall be governed by the provisions of section 221(d)(2).".

(b)(1) Section 205(b) of such Act (as amended by subsection (a)(2)) is further amended—

(A) by striking out "(1)" after "(b)"; and

(B) by striking out paragraph (2).

(2) Section 4 of Public Law 97-455 (relating to evidentiary hearings in reconsiderations of disability benefit terminations) (96 Stat. 2499) and section 5 of such Act (relating to conduct of face-to-face reconsiderations in disability cases) (96 Stat. 2500) are repealed.

(c) Section 223(g) of the Social Security Act (as amended by section 203(a) of this Act) is further amended—

(1) in paragraph (1)(C), by striking out "for a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "for review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)";

(2) in paragraph (1)(ii), by striking out "a hearing or an administrative review" and inserting in lieu thereof "review or a hearing"; and

(3) in paragraph (3), by striking out "a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)".

(d) The amendments made by this section shall apply with respect to determinations (referred to in section 221(d)(2)(A)(ii) of the Social Security Act (as amended by this sec-

tion)), and determinations under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, which are issued after December 31, 1984.

(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement as demonstration projects the amendments made by this section with respect to all disability determinations under subsections (a), (c), (g), and (h) of section 221 of the Social Security Act, and with respect to all disability determinations under title XVI of such Act in the same manner and to the same extent as is provided in such amendments with respect to determinations referred to in section 221(d)(2)(A)(ii) of such Act (as amended by this section). Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than April 1, 1985.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 203. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,";

(B) in clause (i), by inserting "or" after "hearing,"; and

(C) by striking out ", or (iii) June 1984".

(2) Section 223(g)(3) of such Act is amended by striking out "which are made" and all that follows down through the end thereof and inserting in lieu thereof the following: "which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

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

"(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

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

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.".

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 204. Section 221 of the Social Security Act is amended—

(1) by redesignating subsection (i) as subsection (h); and

(2) by adding at the end thereof the following new subsection:

"(i) A determination under subsection (a), (c), (g), or (h) that an individual is not under a disability by reason of a mental impairment shall be made only if, before its issuance by the State (or the Secretary), a qualified psychiatrist or psychologist who is employed by the State agency or the Secretary (or whose services are contracted for by the State agency or the Secretary) has completed the medical portion of the case review, including any applicable residual functional capacity assessment.".

REGULATORY STANDARDS FOR CONSULTATIVE EXAMINATIONS

SEC. 205. Section 221 of the Social Security Act (as amended by section 204 of this Act) is further amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

TITLE III—MISCELLANEOUS PROVISIONS

ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS

SEC. 301. (a) Section 205(b) of the Social Security Act (as amended by sections 202(a)(2) and 202(b)(1) of this Act) is further amended—

(1) by inserting "(1)" after "(b)"; and

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

"(2) Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to matters relating to benefits under this title. With respect to matters to which rulemaking requirements under the preceding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provisions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State agency or the Secretary, including any hearing before an administrative law judge.".

(b) Section 1631(d)(1) of such Act is amended by inserting "(b)(2)," after "(a),".

COMPLIANCE WITH COURT OF APPEALS DECISIONS

SEC. 302. (a) Title II of the Social Security Act is amended by adding at the end the following new section:

"COMPLIANCE WITH COURT OF APPEALS DECISIONS

"SEC. 234. (a) Except as provided in subsection (b), if, in any decision in a case to which the Department of Health and Human Services or an officer or employee thereof is a party, a United States court of appeals—

"(1) interprets a provision of this title or of any regulation prescribed under this title, and

"(2) requires such Department or such officer or employee to apply or carry out the provision in a manner which varies from the manner in which the provision is generally applied or carried out in the circuit involved,

the Secretary shall acquiesce in the decision and apply the interpretation with respect to all individuals and circumstances covered by the provision in the circuit until a different result is reached by a ruling by the Supreme Court of the United States on the issue involved or by a subsequently enacted provision of Federal law.

"(b) Acquiescence shall not be required under subsection (a) during the pendency of any direct appeal of the case by the Secretary under section 1252 of title 28, United States Code, or any request for review of the case by the Secretary under section 1254 of such title if such direct appeal or request for review is filed during the period of time allowed for such filing. If the Supreme Court finds that the requirements for the direct appeal under such section 1252 have not been met or denies a request for review under such section 1254, the Secretary shall resume acquiescence in the decision of the court of appeals in accordance with subsection (a) from the date of such finding or denial.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) Section 234 shall apply with respect to decisions of United States courts of appeals involving interpretations of provisions of this title or of regulations prescribed under this title (and requiring action with respect to such provisions) in the same manner and to the same extent as it applies with respect to decisions involving interpretations of provisions of title II or of regulations prescribed thereunder (and requiring action with respect to such provisions).".

(c) The amendments made by subsections (a) and (b) of this section shall not apply with respect to a decision by a United States court of appeals in any case if the period allowed for filing the direct appeal or request for review of the case with the Supreme Court of the United States expired before the date of the enactment of this Act.

PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 303. (a) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(1) by striking out "into substantial gainful activity"; and

(2) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(b) The second sentence of section 222(d)(1) of such Act is amended by inserting after "substantial gainful activity" the following: ", the determination that an individual, without good cause, refused to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

(c) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months, (2) in cases where such individuals are determined to be no longer entitled to benefits under this title because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(d) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) of the Social Security Act (or who are determined to be no longer entitled to benefits under title XVI of such Act because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling), or who refuse to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

ADVISORY COUNCIL ON MEDICAL ASPECTS OF DISABILITY

SEC. 304. (a) There is hereby established in the Department of Health and Human Services an Advisory Council on the Medical Aspects of Disability (hereafter in this section referred to as the "Council").

(b)(1) The Council shall consist of—

(A) 10 members appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act from among independent medical and vocational experts, including at least one psychiatrist, one rehabilitation psychologist, and one medical social worker; and

(B) the Commissioner of Social Security ex officio.

The Secretary shall from time to time appoint one of the members to serve as Chairman. The Council shall meet as often as the Secretary deems necessary, but not less often than twice each year.

(2) Members of the Council appointed under paragraph (1)(A) shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such members, while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be paid at rates fixed by the Secretary, but not exceeding $100 for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Council; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(3) The Council may engage such technical assistance from individuals skilled in medical and other aspects of disability as may be necessary to carry out its functions. The Secretary shall make available to the Council such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out its functions.

(c) It shall be the function of the Council to provide advice and recommendations to the Secretary of Health and Human Services on disability standards, policies, and procedures under titles II and XVI of the Social Security Act, including advice and recommendations with respect to—

(1) the revisions to be made by the Secretary, under section 201(a) of this Act, in the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments"; and

(2) the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved.

The Council shall also have the functions and responsibilities (with respect to work evaluations in the case of applicants for and recipients of benefits based on disability under title XVI) which are set forth in section 307 of this Act.

(d) Whenever the Council deems it necessary or desirable to obtain assistance in order to perform its functions under this section, the Council may—

(1) call together larger groups of experts, including representatives of appropriate professional and consumer organizations, in order to obtain a broad expression of views on the issues involved; and

(2) establish temporary short-term task forces of experts to consider and comment upon specialized issues.

(e)(1) Any advice and recommendations provided by the Council to the Secretary of Health and Human Services shall be included in the ensuing annual report made by the Secretary to Congress under section 704 of the Social Security Act.

(2) Section 704 of the Social Security Act is amended by inserting after the first sentence the following new sentence: "Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II and the program of benefits for the blind and disabled under title XVI (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommendations provided to the Secretary by the Advisory Council on the Medical Aspects of Disability, with respect to disability standards, policies, and procedures, during the preceding year).".

(f) The Council shall cease to exist at the close of December 31, 1985.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 305. (a)(1) The Secretary of Health and Human Services shall, within 180 days after the date of the enactment of this Act, establish a sufficient number of attorney adviser positions at grades GS-13 and GS-14 in the Department of Health and Human Services to ensure adequate opportunity for career advancement for attorneys employed by the Social Security Administration in the process of adjudicating claims under section 205(b), 221(d), or 1631(c) of the Social Security Act. In assigning duties and responsibilities to such a position, the Secretary shall assign duties and responsibilities to enable an individual serving in such a position to achieve qualifying experience for appointment by the Secretary for the position of administrative law judge under section 3105 of title 5, United States Code.

(b) The Secretary of Health and Human Services shall—

(1) within 90 days after the date of the enactment of this Act, submit an interim report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the Secretary's progress in meeting the requirements of subsection (a), and

(2) within 180 days after the date of the enactment of this Act, submit a final report to such committees setting forth specifically the manner and extent to which the Secretary has complied with the requirements of subsection (a).

SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 306. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1986".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled."

ADDITIONAL FUNCTIONS OF ADVISORY COUNCIL; WORK EVALUATIONS IN CASE OF APPLICANTS FOR AND RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME BENEFITS BASED ON DISABILITY

SEC. 307. The functions and responsibilities of the Advisory Council on the Medical Aspects of Disability (established by section 304 of this Act) shall include—

(1) a consideration of alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(2) an examination of the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(3) a review of the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations, in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(4) an examination of possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

For purposes of this section, "work evaluation" includes (with respect to any individual) a determination of (A) such individual's skills, (B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate, (C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated, (D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and (E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

EFFECTIVE DATE

SEC. 308. Except as otherwise provided in this title, the amendments made by this title shall apply only with respect to cases involving disability determinations pending in the Department of Health and Human Services or in court on the date of the enactment of this Act, or initiated on or after such date.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Chairman, the committee amendment in the nature of a substitute, which is printed in the bill, simply makes several technical changes in the bill as introduced and makes conforming disability changes in the supplemental security income program. I know of no controversy surrounding the committee amendment. I have no requests for time concerning the committee amendment, but I would ask unanimous consent that one clerical error in the committee amendment be corrected.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 39, lines 17 and 18, strike out "title" and insert in lieu thereof "Act".

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois (Mr. ROSTENKOWSKI)?

There was no objection.

The CHAIRMAN. Without objection, the amendment is agreed to.

There was no objection.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. CONABLE).

Mr. CONABLE. Mr. Chairman, I rise in support of the committee amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

□ 1400

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. WISE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 3755), to amend title II of the Social Security Act to provide for reform in the disability determination process, pursuant to House Resolution 466, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ROSTENKOWSKI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 410, nays 1, not voting 22, as follows:

[Roll No. 55]

YEAS—410

Ackerman	Clinger	Ford (TN)
Addabbo	Coats	Fowler
Akaka	Coelho	Frank
Albosta	Coleman (MO)	Franklin
Alexander	Coleman (TX)	Frenzel
Anderson	Collins	Frost
Andrews (NC)	Conable	Fuqua
Andrews (TX)	Conte	Garcia
Annunzio	Conyers	Gejdenson
Anthony	Cooper	Gekas
Applegate	Corcoran	Gibbons
Archer	Courter	Gilman
Aspin	Coyne	Gingrich
AuCoin	Craig	Glickman
Badham	Crane, Daniel	Gonzalez
Barnard	Crockett	Goodling
Barnes	D'Amours	Gore
Bartlett	Daniel	Gradison
Bateman	Dannemeyer	Gramm
Bates	Darden	Gray
Bedell	Daub	Green
Beilenson	Davis	Gregg
Bennett	de la Garza	Guarini
Bereuter	Dellums	Gunderson
Berman	Derrick	Hall (OH)
Bethune	DeWine	Hall, Ralph
Bevill	Dickinson	Hall, Sam
Bilirakis	Dicks	Hamilton
Bliley	Dingell	Hammerschmidt
Boehlert	Dixon	Hansen (UT)
Boggs	Donnelly	Harkin
Boland	Dorgan	Harrison
Boner	Dowdy	Hartnett
Bonior	Downey	Hatcher
Bonker	Dreier	Hawkins
Borski	Duncan	Hayes
Bosco	Durbin	Hefner
Boucher	Dwyer	Hertel
Boxer	Dymally	Hightower
Britt	Dyson	Hiler
Brooks	Early	Hillis
Broomfield	Eckart	Holt
Brown (CA)	Edgar	Hopkins
Brown (CO)	Edwards (AL)	Horton
Broyhill	Edwards (CA)	Howard
Bryant	Edwards (OK)	Hoyer
Burton (CA)	Emerson	Hubbard
Burton (IN)	English	Huckaby
Byron	Erdreich	Hughes
Campbell	Evans (IA)	Hunter
Carney	Evans (IL)	Hutto
Carper	Fascell	Hyde
Carr	Feighan	Jacobs
Chandler	Fiedler	Jeffords
Chappell	Fields	Jenkins
Chappie	Fish	Johnson
Cheney	Flippo	Jones (NC)
Clarke	Florio	Jones (OK)
Clay	Ford (MI)	Jones (TN)

Kaptur
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kogovsek
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Lloyd
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Markey
Marriott
Martin (IL)
Martin (NC)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McNulty
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Patman
Patterson
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pritchard
Pursell
Quillen
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal
Rudd
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Seiberling
Sensenbrenner
Shannon
Sharp
Shaw
Shelby
Shumway
Shuster
Sikorski
Siljander
Simon
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Winn
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

NAYS—1

Crane, Philip

NOT VOTING—22

Biaggi
Breaux
Coughlin
Daschle
Erlenborn
Fazio
Ferraro
Foglietta
Foley
Forsythe
Gaydos
Gephardt
Hall (IN)
Hance
Hansen (ID)
Heftel
Ireland
Marlenee
Morrison (CT)
Paul
Waxman
Wilson

□ 1410

Mr. BONKER changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: "A bill to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MATSUI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

PERSONAL EXPLANATION

Mr. FAZIO. Mr. Speaker, I was unable to be present for the very important vote on H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. Had I been present I would have voted "aye." I wish to have the RECORD show that I am a strong supporter of that very important legislation.

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT (H.R. 3755)

● Mr. COUGHLIN. Mr. Speaker, the Social Security Disability Benefits Reform Act (H.R. 3755) presents the House with an opportunity for restoring confidence in the social security disability review process and for insuring that the truly disabled do not lose their benefits. This legislation makes a number of important changes in the review process to assure that it is administered fairly and uniformly. I wholeheartedly support it.

I feel strongly that disability payments should go to only the genuinely disabled and that a review process is necessary to reevaluate those individuals who have been receiving benefits for an extended period of time. However, I believe that the current review process has caused uncertainty, confusion and undue anguish especially for the mentally impaired. Too many individuals have been unfairly removed from the disability rolls and have had to endure the long appeals process before having their benefits restored.

The disability review process has serious flaws which H.R. 3755 strives to correct. This bill provides for a more definitive medical explanation of disability and requires a continuation of benefits during the appeal of terminations. Face-to-face interviews during State review proceedings would be mandated and a moratorium on all reviews of mental impairment cases would be implemented until the Department of Health and Human Services reevaluates the criteria for determining mental disorders.

These reforms are urgently needed. Through enactment of H.R. 3755, we will hopefully regain the confidence of the truly disabled to whom we have given our commitment that benefits will not be terminated, that the safety net will not be torn apart. We can assure the millions of Americans currently receiving social security disability benefits that Congress will not break faith with them.●

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PAGE

Calendar No. 791

98TH CONGRESS
2D SESSION

H. R. 3755

IN THE SENATE OF THE UNITED STATES

MARCH 28 (legislative day, MARCH 26), 1984
Received and read the first time

APRIL 24, 1984
Read the second time and placed on the calendar

AN ACT

To amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process.

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

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".

TABLE OF CONTENTS

TITLE I—STANDARDS OF DISABILITY

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

SEC. 101. (a) Section 223 of the Social Security Act is amended by inserting after subsection (e) the following new subsection:

"Standard of Review for Termination of Disability Benefits

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that—

"(A) the individual is now able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii) does not apply) a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that—

"(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(B) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that the requirements of clause (i) or (ii) of subparagraph (A) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower

or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to disability benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subsection shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subsection, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's

insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "A period of disability may be determined to end on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence described in paragraph (1), (2), or (3) of section 223(f). Nothing in the preceding sentence shall be construed to require a determination that a period of disability continues if evidence on the record at the time any prior determination of such period of disability was made, or new evidence which relates to such determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subparagraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subparagraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination.".

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not be to entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that the individual is now able to engage in substantial gainful activity, or

"(ii) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that he or she is

now able to engage in substantial gainful activity; or

"(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity.

Nothing in this paragraph shall be construed to require a determination that a recipient of benefits under this title based on disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual (unless he or she is eligible to receive benefits under section 1619) is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior determination of disability nothing in this paragraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this paragraph, from securing additional

medical reports necessary to reconstruct the evidence which supported such prior determination.".

STUDY CONCERNING EVALUATION OF PAIN

SEC. 102. (a) The Secretary of Health and Human Services shall, in conjunction with the National Academy of Sciences, conduct a study of the issues concerning (1) the use of subjective evidence of pain, including statements of the individual alleging such pain as to the intensity and persistence of such pain and corroborating evidence provided by treating physicians, family, neighbors, or behavioral indicia, in determining under section 221 or title XVI of the Social Security Act whether an individual is under a disability, and (2) the state of the art of preventing, reducing, or coping with pain.

(b) The Secretary shall submit the results of the study under subsection (a), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than April 1, 1985.

MULTIPLE IMPAIRMENTS

SEC. 103. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are of such

severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physicial or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

TITLE II—DISABILITY DETERMINATION PROCESS

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 201. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal

Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than nine months after the date of the enactment of this Act.

(b) The Secretary shall make the revisions pursuant to subsection (a) in consultation with the Advisory Council on the Medical Aspects of Disability (established by section 304 of this Act), and shall take the advice and recommendations of such Council fully into account in making such revisions.

(c)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(h) of the Social Security Act (as redesignated by section 204(1) of this Act) , or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (d)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity.

(d)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accord-

ance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, or judicial review of a decision rendered in any continuing eligibility review to which subsection (c)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and

benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

REVIEW PROCEDURE GOVERNING DISABILITY DETERMINATIONS AFFECTING CONTINUED ENTITLEMENT TO DISABILITY BENEFITS; DEMONSTRATION PROJECTS RELATING TO REVIEW OF OTHER DISABILITY DETERMINATIONS

SEC. 202. (a)(1) Section 221(d) of the Social Security Act is amended—

(A) by striking out "Any" and inserting in lieu thereof "(1) Except in cases to which paragraph (2) applies, any"; and

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

"(2)(A) In any case where—

"(i) an individual is a recipient of disability insurance benefits, child's, widow's, or widower's insurance benefits based on disability, mother's or father's insurance benefits based on the disability of the mother's or father's child who has attained age 16, or benefits under title XVIII based on disability, and

"(ii) the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Secretary in a case to which

subsection (g) applies) to have ceased, not to have existed, or to no longer be disabling,

such individual shall be entitled to notice and opportunity for review as provided in this paragraph.

"(B)(i) Any determination referred to in subparagraph (A)(ii)—

"(I) which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for a decision of the Secretary with regard to the individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or otherwise changed), and

"(II) which is in whole or in part unfavorable to such individual,

shall remain pending until after the notice and opportunity for review provided in this subparagraph.

"(ii) Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (including the right to make a personal appearance as provided in this subparagraph), the right to submit additional evidence prior to or during such review as provided in this clause, and that,

if such review is not requested, the individual will not be entitled to a hearing on such determination and such determination will be the disability determination upon which the final decision of the Secretary on entitlement will be based. Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsection (g) applies) of such determination, including the right of such individual to make a personal appearance, and may submit additional evidence for purposes of such review prior to or during such review. Any such request must be filed within 30 days after notice of the pending determination is received by the individual making such request. Any review carried out by a State agency under this subparagraph shall be made in accordance with the pertinent provisions of this title and regulations thereunder.

"(iii) A review under this subparagraph shall include a review of evidence and medical history in the record at the time such disability determination is pending, shall examine

any new medical evidence submitted or obtained for purposes of the review, and shall afford the individual requesting the review the opportunity to make a personal appearance with respect to the case at a place which is reasonably accessible to such individual.

"(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination, as so affirmed or modified, as the disability determination under subsection (a), (c), (g), or (h) (as applicable).

"(C) Any disability determination described in subparagraph (A)(ii) which is issued by the State agency (or the Secretary) and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the determination, the reason or reasons upon which the determination is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

"(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with the disability determination referred to in subparagraph (C) shall be entitled to a hearing thereon to the same extent as is provided in section 205(b) with respect to decisions of the Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b) with respect to matters other than the determination referred to in subparagraph (A)(ii).

"(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly appointed in accordance with section 3105 of title 5, United States Code.".

(2) Section 205(b)(1) of such Act is amended by inserting after the fourth sentence the following new sentence: "Reviews of disability determinations on which decisions relating to continued entitlement to benefits are based shall be governed by the provisions of section 221(d)(2).".

(b)(1) Section 205(b) of such Act (as amended by subsection (a)(2)) is further amended—

(A) by striking out "(1)" after "(b)"; and

(B) by striking out paragraph (2).

(2) Section 4 of Public Law 97–455 (relating to evidentiary hearings in reconsiderations of disability benefit terminations) (96 Stat. 2499) and section 5 of such Act (relating to conduct of face-to-face reconsiderations in disability cases) (96 Stat. 2500) are repealed.

(c) Section 223(g) of the Social Security Act (as amended by section 203(a) of this Act) is further amended—

(1) in paragraph (1)(C), by striking out "for a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "for review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)";

(2) in paragraph (1)(ii), by striking out "a hearing or an administrative review" and inserting in lieu thereof "review or a hearing"; and

(3) in paragraph (3), by striking out "a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)".

(d) The amendments made by this section shall apply with respect to determinations (referred to in section 221(d)(2)(A)(ii) of the Social Security Act (as amended by this section)), and determinations under the corresponding requirements established for disability determinations and re-

views under title XVI of such Act, which are issued after December 31, 1984.

(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement as demonstration projects the amendments made by this section with respect to all disability determinations under subsections (a), (c), (g), and (h) of section 221 of the Social Security Act, and with respect to all disability determinations under title XVI of such Act in the same manner and to the same extent as is provided in such amendments with respect to determinations referred to in section 221(d)(2)(A)(ii) of such Act (as amended by this section). Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than April 1, 1985.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 203. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title

XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,";

(B) in clause (i), by inserting "or" after "hearing,"; and

(C) by striking out ", or (iii) June 1984".

(2) Section 223(g)(3) of such Act is amended by striking out "which are made" and all that follows down through the end thereof and inserting in lieu thereof the following: "which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

"(ii) the physical or mental impairment on the basis of which such benefits are payable is found to

have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

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

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.".

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Repre-

sentatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 204. Section 221 of the Social Security Act is amended—

(1) by redesignating subsection (i) as subsection (h); and

(2) by adding at the end thereof the following new subsection:

"(i) A determination under subsection (a), (c), (g), or (h) that an individual is not under a disability by reason of a mental impairment shall be made only if, before its issuance by the State (or the Secretary), a qualified psychiatrist or psychologist who is employed by the State agency or the Secretary (or whose services are contracted for by the State agency or the Secretary) has completed the medical portion of the case review, including any applicable residual functional capacity assessment.".

REGULATORY STANDARDS FOR CONSULTATIVE EXAMINATIONS

SEC. 205. Section 221 of the Social Security Act (as amended by section 204 of this Act) is further amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

TITLE III—MISCELLANEOUS PROVISIONS

ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS

SEC. 301. *(a)* Section 205(b) of the Social Security Act (as amended by sections 202(a)(2) and 202(b)(1) of this Act) is further amended—

(1) by inserting "(1)" after "(b)"; and

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

"(2) Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to matters relating to benefits under this title. With respect to matters to which rulemaking requirements under the preceding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provisions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State agency or the Secretary, including any hearing before an administrative law judge.".

(b) Section 1631(d)(1) of such Act is amended by inserting "(b)(2)," after "(a),".

COMPLIANCE WITH COURT OF APPEALS DECISIONS

SEC. 302. (a) Title II of the Social Security Act is amended by adding at the end the following new section:

"COMPLIANCE WITH COURT OF APPEALS DECISIONS

"SEC. 234. (a) Except as provided in subsection (b), if, in any decision in a case to which the Department of Health and Human Services or an officer or employee thereof is a party, a United States court of appeals—

"(1) interprets a provision of this title or of any regulation prescribed under this title, and

"(2) requires such Department or such officer or employee to apply or carry out the provision in a manner which varies from the manner in which the provision is generally applied or carried out in the circuit involved,

the Secretary shall acquiesce in the decision and apply the interpretation with respect to all individuals and circumstances covered by the provision in the circuit until a different result is reached by a ruling by the Supreme Court of the United States on the issue involved or by a subsequently enacted provision of Federal law.

"(b) Acquiescence shall not be required under subsection (a) during the pendency of any direct appeal of the case by the Secretary under section 1252 of title 28, United States Code, or any request for review of the case by the Secretary under section 1254 of such title if such direct appeal or request for review is filed during the period of time allowed for such filing. If the Supreme Court finds that the requirements for the direct appeal under such section 1252 have not been met or denies a request for review under such section 1254, the Secretary shall resume acquiescence in the decision of the court of appeals in accordance with subsection (a) from the date of such finding or denial.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) Section 234 shall apply with respect to decisions of United States courts of appeals involving interpretations of provisions of this title or of regulations prescribed under this title (and requiring action with respect to such provisions) in the same manner and to the same extent as it applies with respect to decisions involving interpretations of provisions of title II or of regulations prescribed thereunder (and requiring action with respect to such provisions).".

(c) The amendments made by subsections (a) and (b) of this section shall not apply with respect to a decision by a United States court of appeals in any case if the period allowed for filing the direct appeal or request for review of the case with the Supreme Court of the United States expired before the date of the enactment of this Act.

PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 303. (a) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(1) by striking out "into substantial gainful activity"; and

(2) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous

period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(b) The second sentence of section 222(d)(1) of such Act is amended by inserting after "substantial gainful activity" the following: ", the determination that an individual, without good cause, refused to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

(c) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months, (2)

in cases where such individuals are determined to be no longer entitled to benefits under this title because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(d) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) of the Social Security Act (or who are determined to be no longer entitled to benefits under title XVI of such Act because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling), or who refuse to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

ADVISORY COUNCIL ON MEDICAL ASPECTS OF DISABILITY

SEC. 304. (a) There is hereby established in the Department of Health and Human Services an Advisory Council on the Medical Aspects of Disability (hereafter in this section referred to as the "Council").

(b)(1) The Council shall consist of—

(A) 10 members appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act from among independent medical and vocational experts, including at least one psychiatrist, one rehabilitation psychologist, and one medical social worker; and

(B) the Commissioner of Social Security ex officio.

The Secretary shall from time to time appoint one of the members to serve as Chairman. The Council shall meet as often as the Secretary deems necessary, but not less often than twice each year.

(2) Members of the Council appointed under paragraph (1)(A) shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such members, while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be paid at rates fixed by the Secretary, but

not exceeding $100 for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Council; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(3) The Council may engage such technical assistance from individuals skilled in medical and other aspects of disability as may be necessary to carry out its functions. The Secretary shall make available to the Council such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out its functions.

(c) It shall be the function of the Council to provide advice and recommendations to the Secretary of Health and Human Services on disability standards, policies, and procedures under titles II and XVI of the Social Security Act, including advice and recommendations with respect to—

(1) the revisions to be made by the Secretary, under section 201(a) of this Act, in the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments"; and

(2) the question of requiring, in cases involving impairments other than mental impairments, that the

medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved. The Council shall also have the functions and responsibilities (with respect to work evaluations in the case of applicants for and recipients of benefits based on disability under title XVI) which are set forth in section 307 of this Act.

(d) Whenever the Council deems it necessary or desirable to obtain assistance in order to perform its functions under this section, the Council may—

(1) call together larger groups of experts, including representatives of appropriate professional and consumer organizations, in order to obtain a broad expression of views on the issues involved; and

(2) establish temporary short-term task forces of experts to consider and comment upon specialized issues.

(e)(1) Any advice and recommendations provided by the Council to the Secretary of Health and Human Services shall be included in the ensuing annual report made by the Secretary to Congress under section 704 of the Social Security Act.

(2) Section 704 of the Social Security Act is amended by inserting after the first sentence the following new sentence: "Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II and the program of benefits for the blind and disabled under title XVI (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommendations provided to the Secretary by the Advisory Council on the Medical Aspects of Disability, with respect to disability standards, policies, and procedures, during the preceding year).".

(f) The Council shall cease to exist at the close of December 31, 1985.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 305. (a)(1) The Secretary of Health and Human Services shall, within 180 days after the date of the enactment of this Act, establish a sufficient number of attorney adviser positions at grades GS–13 and GS–14 in the Department of Health and Human Services to ensure adequate opportunity for career advancement for attorneys employed by the Social Security Administration in the process of adjudicating claims under section 205(b), 221(d), or 1631(c) of the Social Security Act. In assigning duties and responsibilities

to such a position, the Secretary shall assign duties and responsibilities to enable an individual serving in such a position to achieve qualifying experience for appointment by the Secretary for the position of administrative law judge under section 3105 of title 5, United States Code.

(b) The Secretary of Health and Human Services shall—

(1) within 90 days after the date of the enactment of this Act, submit an interim report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the Secretary's progress in meeting the requirements of subsection (a), and

(2) within 180 days after the date of the enactment of this Act, submit a final report to such committees setting forth specifically the manner and extent to which the Secretary has complied with the requirements of subsection (a).

SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 306. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after

such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1986".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.".

ADDITIONAL FUNCTIONS OF ADVISORY COUNCIL; WORK EVALUATIONS IN CASE OF APPLICANTS FOR AND RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME BENEFITS BASED ON DISABILITY

SEC. 307. The functions and responsibilities of the Advisory Council on the Medical Aspects of Disability (established by section 304 of this Act) shall include—

(1) a consideration of alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(2) an examination of the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(3) a review of the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work eval-

uations, in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(4) an examination of possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

For purposes of this section, "work evaluation" includes (with respect to any individual) a determination of (A) such individual's skills, (B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate, (C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated, (D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and (E) any modifications which may be neces-

sary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

EFFECTIVE DATE

SEC. 308. Except as otherwise provided in this Act, the amendments made by this Act shall apply only with respect to cases involving disability determinations pending in the Department of Health and Human Services or in court on the date of the enactment of this Act, or initiated on or after such date.

Passed the House of Representatives March 27, 1984.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

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LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

mber 98-38 March 28, 1984

Yesterday, March 27, the House of Representatives passed by a vote of 410 to 1, H.R. 3755, the "Social Security Disability Reform Amendments of 1984." Earlier the House adopted by voice vote a Ways and Means Committee amendment to insert the word "only" in the effective date section to express the committee's views that the changes should apply only to disability cases pending in HHS or in court on or after the date of enactment. H.R. 3755 as passed by the House would:

- Provide a medical improvement standard to determine when disability has ceased.
- Continue payment of benefits through ALJ level in medical cessation cases.
- Eliminate reconsideration and provide a face-to-face evidentiary interview before final notice of termination at the State agency initial level in medical cessation cases.
- Require publication of all OASDI and SSI regulations under APA procedures.
- Require compliance with or recommendation of appeal in Federal circuit court decisions.
- Mandate a study on evaluation of pain.
- Require consideration of combined effect of multiple impairments in making disability determinations.
- Provide a temporary moratorium on mental impairment periodic reviews until new adjudicative criteria are published.
- Require promulgation of regulations to establish standards for consultative examinations.
- Create an Advisory Council on the Medical Aspects of Disability which would examine Social Security and SSI issues.
- Expand the provisions providing for payment from the trust funds for costs of rehabilitation services.
- Require a qualified psychiatrist or psychologist to complete medical portion and RFC assessment in unfavorable determinations in mental impairment cases.

- Require Secretary to establish GS-13 and GS-14 attorney advisor positions to enable SSA staff attorneys to acquire experience necessary to qualify as ALJ's.

The bill would make conforming changes in the SSI disability program and would extend through June 30, 1986, section 1619 of the Social Security Act that provides for continuation of SSI benefits and/or Medicaid for disabled recipients who engage in SGA in spite of their impairments.

The bill now goes to the Senate for its consideration.

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LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

mber 98-43 May 16, 1984

Yesterday, May 15, the Senate Finance Committee began marking up a disability reform bill offered by Senator Dole (R., KS) as an amendment in substitute for S. 476 introduced by Senators Cohen (R., ME) and Levin (D., MI). The committee tentatively agreed to all but four of the bill's provisions. The four provisions not agreed upon concern the standard of review for termination of disability benefits (medical improvement), compliance with court orders, the evaluation of pain in the disability determination process, and the adequacy of disability insurance financing.

The committee tentatively agreed to the following:

- Extension until June 1, 1986 of the temporary provision for continued payment of benefits until the ALJ decision, in cases where a medical cessation decision was appealed.

- Requirement of publication of regulations setting forth uniform standards for disability determinations under the Administrative Procedure Act (APA) rulemaking procedures which would be binding at all levels of adjudication. The rules would not be subject to pre-implementation review under APA judicial review standards but would only be subject to review under the Social Security Act provision (section 205(g)) for judicial review of disability determinations.

- Suspension of periodic review of all mentally-impaired beneficiaries until revised mental impairment criteria in the Listing of Impairments are published as regulations which would be required within 90 days of enactment. Also requires redetermination of eligibiity under the new criteria for individuals denied benefits after enactment and prior to the revision of criteria and for those whose disability benefits were terminated since June 7, 1983.

- Requirement that the Secretary make every reasonable effort to ensure that a qualified psychiatrist or psychologist complete the medical portion of the sequential evaluation and any assessment of residual functional capacity in mental impairment cases in which a decision unfavorable to the claimant or beneficiary is made.

- Requirement that in determining the severity of a claimant's impairment(s), the Secretary consider the combined effect of all impairments regardless of whether any one impairment would itself be considered severe.

- Requirement that the Secretary notify individuals when initiating a periodic review that the review could result in termination of benefits and that medical evidence may be submitted. Also requires demonstration projects providing for a pretermination face-to-face appearance in periodic review cases only, in lieu of face-to-face evidentiary hearing at reconsideration.

- Requirement that the Secretary make every reasonable effort to obtain necessary medical evidence from claimant's treating source before ordering a consultative examination. Also requires development of a complete medical history, covering at least the preceding 12 months, in initial and continuing disability review cases.

- Expansion of vocational rehabilitation (VR) program to reimburse States for VR services provided to beneficiaries who medically recover while receiving VR. Ends VR reimbursement after 9 months of substantial gainful activity (SGA) by beneficiary or when his entitlement to disability benefits ends, whichever is earlier.

- Extension through June 30, 1987 of the section 1619 authority that continues SSI benefits and Medicaid for disabled recipients who engage in SGA. Also requires the Secretaries of Education and HHS to establish training programs on section 1619 for staff personnel in SSA district offices and State VR agencies and to disseminate information to SSI applicants, recipients and potentially interested public and private organizations.

- Requirement that the next quadrennial SSA Advisory Council study and make recommendations on medical and vocational aspects of disability including the use of subjective evidence of pain and findings which demonstrate pain in disability determinations, alternative approaches to work evaluation for SSI recipients and the use of medical specialists for completing State agency medical and vocational evaluations.

- Requirement that the Secretary promulgate regulations which establish the standards to be used in determining the frequency of periodic eligiblity reviews. Also provides that no individual may have more than one periodic review until issuance of such regulations.

- Requirement that the Secretary: (1) evaluate the qualifications of prospective representative payees prior to or within 45 days following certification; (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than either the entitled individual, or his parent or spouse living in the same household; and (3) establish a system whereby parent and spouse payees who live in the same household as the

entitled individual would periodically verify that they continue to live with the individual. Would also increase the penalties for misuse of benefits by representative payees. Requires Secretary to report to Congress within 6 months of enactment on implementation of new provisions and annually on the number and disposition of cases of misused funds.

- Requirement that the Secretary federalize disability determinations in a State within 6 months of finding that the State is failing to follow Federal law and standards. Also requires that such finding be made within 16 weeks of the time the State's failure to comply first comes to the attention of the Secretary.

Markup is scheduled to resume today at 2 p.m.

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LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 98-44

May 17, 1984

Yesterday, May 16, the Senate Finance Committee voted to report a disability reform bill offered by Senator Dole (R., KS) as an amendment in substitute for S. 476 introduced by Senators Cohen (R., ME) and Levin (D., MI). The 13 provisions the committee tentatively approved on May 15 were described in Legislative Bulletin 98-43. The committee adopted these 13 and the following additional provisions:

- Establishment of a standard of review for termination of disability benefits (medical improvement). Provides that benefits may be terminated if the beneficiary can perform substantial gainful activity (SGA), unless the beneficiary can show that his condition is the same as or worse than at the time of the prior determination (i.e., beneficiary's condition has not medically improved).

  If the beneficiary shows that he has not medically improved, his benefits may be terminated only if the Secretary can show that one of the following occurred and if the beneficiary is determined to be able to perform SGA: (1) the individual has benefited from medical or vocational therapy or technology; (2) new or improved diagnostic or evaluative techniques indicate that his impairment(s) is not as disabling as believed at the time of the prior determination; (3) the prior determination was fraudulently obtained; or (4) there is substantial reason to believe that the prior determination was erroneous. If the beneficiary has not medically improved and none of the foregoing conditions is met, benefits must be continued whether or not the individual would have been found to be able to perform SGA.

  Benefits would also be terminated if the beneficiary is engaging in SGA; cannot be located; or fails, without good cause, to cooperate in the continuing disability review or to follow prescribed treatment that could be expected to restore his ability to work.

  Provision would sunset on December 31, 1987; the regulations would have to be issued no later than 6 months after enactment.

- Requirement that SSA notify Congress and publish in the Federal Register (within 90 days after decision date, or on the last date available for appeal, whichever is later) a statement of the Secretary's decision to acquiesce or not acquiesce in decisions of the circuit courts affecting the

Social Security Act or SSA regulations, and the reasons in support of the Secretary's decision. In cases where the Secretary acquiesced, the reporting requirement would apply only to significant decisions. States that nothing in the section shall be interpreted as sanctioning nonacquiescence with circuit court decisions.

- Requirement that the Secretary adjust disability benefit increases to prevent the disability insurance trust fund balance from going below a defined threshold. Requires Secretary to notify the Congress by July 1 in any year in which the amount of the disability insurance trust fund for the second following year is projected to decline to less than 20 percent of the year's benefits. Provides that, if Congress takes no action, the Secretary must scale back, as necessary to keep the fund balance above 20 percent (1) the next cost-of-living increase for disability beneficiaries and, if further necessary, (2) the benefit formula used to determine benefit levels for people newly disabled in the following year.

- Requirement that the present regulatory language describing the use of evidence of pain in evaluation of an individual's eligibility for disability benefits be included in statute. Provision would sunset on December 31, 1987. Also requires the Secretary to convene a commission to study the use of pain in evaluation of disability. The 12-member Commission, consisting of a significant number of medical professionals as well as administrative personnel with expertise in disability evaluations and attorneys, would be required to report by December 31, 1986.

The committee also clarified that the bill will not contain specific language excluding Social Security Administration regulations from pre-implementation judicial review under Administrative Procedure Act (APA).

Consideration of the bill by the full Senate could occur as early as next week.

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Calendar No. 899

98TH CONGRESS, *2d Session* | SENATE | REPORT 98-466

SOCIAL SECURITY DISABILITY AMENDMENTS OF 1984

MAY 18 (legislative day, MAY 14), 1984.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 476]

The Committee on Finance, to which was referred the bill (S. 476) to amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are terminated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

I. SUMMARY OF SOCIAL SECURITY DISABILITY PROVISIONS

The bill (S. 476), as amended by the Committee, modifies the standards and procedures to be used in determining disability and continuing eligibility for benefits under the Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) programs. In addition, the bill makes a number of changes to improve the accuracy of disability determinations, the uniformity of decisions between the different levels of adjudication, and the consistency of such decisions with Federal law and standards. Provisions are also included to ensure the adequacy of financing for the DI program.

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Medical Improvement

Modifies, for a period of 3½ years, the requirements and procedures used for determining continuing eligibility for social security disability benefits. If the Secretary finds that a beneficiary undergoing review has not medically improved, the Secretary must show that there has been one of the following improvements or changes in circumstances prior to determining whether such beneficiary is disabled under the meaning of the law: (a) the individual has benefited from medical or vocational therapy or technology; (b) new or improved diagnostic or evaluative techniques indicate the individual's impairment(s) is not as disabling as believed at the time of the last decision; (c) the prior determination was fraudulently obtained; or (d) there is demonstrated substantial reason to believe that the prior determination was erroneous. If any of these factors are met, the Secretary must then determine whether the individual can perform substantial gainful activity.

If the Secretary finds that the evidence does not show that the individual's condition is the same as or worse than at the time of the prior determination, the Secretary would determine whether the individual can perform substantial gainful activity.

(Benefits also would be terminated if the individual is currently engaging in substantial gainful activity or if the individual cannot be located or fails, without good cause, to cooperate in the review or to follow prescribed treatment that could be expected to restore his ability to work.)

This new standard, which expires December 31, 1987, would be applied to future determinations of continuing eligibility to individuals who currently have claims properly pending in the administrative appeals process, and to certain cases pending in court.

Continuation of Payments During Appeal

Reauthorizes, until June 1, 1986, the provision which permits individuals notified of a termination decision to elect to have disability insurance (DI) benefits and Medicare coverage continued during appeal until the administrative law judge hearing decision.

Uniform Standards

Makes the Social Security Administration (SSA) subject to the rulemaking requirements of the Administrative Procedure Act on matters relating to the determination of disability and the payment of disability insurance benefits.

Moratorium on Mental Impairment Reviews

Suspends eligibility reviews for individuals with disabilities based on mental impairments pending a revision of eligibility criteria. Also, require redetermination of eligibility under the new criteria (and reinstatement of benefits where appropriate) for individuals denied benefits after enactment and prior to the revision of the criteria, and to those terminated from the rolls since June 7, 1983.

Qualifications of Medical Professionals Evaluating Mental Impairments

Requires the Secretary to make every reasonable effort to ensure that a qualified psychiatrist or psychologist completes the medical portion of the evaluation or assessment of residual functional capacity in mental impairment cases in which a decision unfavorable to the claimant or beneficiary is made.

Nonacquiescence in Court Orders

Requires the Secretary to send to the Committees on Finance and Ways and Means, and publish in the Federal Register, a statement of the Secretary's decision, and the specific facts and reasons in support of such decision, to acquiesce or not acquiesce in U.S. Court of Appeals decisions affecting the Social Security Act or regulations issued thereunder. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

Multiple Impairments

Requires the Secretary, in determining the medical severity of an individual's condition, to consider the combined effect of all of the individual's impairments without regard to whether any one impairment itself would be considered severe.

Evaluation of Pain

Directs the Secretary to appoint a Commission of experts (including significant representation from the field of medicine as well as other appropriate specialities such as law and administration) to conduct a study concerning the evaluation of pain in determining eligibility for disability benefits. This Commission would be directed to report by December 1986.

Pending the results of this study and any Congressional action which might be based on it, incorporates into the statute a requirement that disability determinations take into consideration subjective allegations of pain only to the extent they are consistent with medical signs and findings which show the existence of a medical condition which could reasonably be expected to produce the alleged pain, or other subjective symptoms (identical to the current rule applied by the Administration). The provision expires December 31, 1987.

Modification of Reconsideration Preview Notice

Requires the Secretary to conduct demonstration projects in five States in which the opportunity for personal appearance is provided prior to making a determination of ineligibility (in lieu of face-to-face hearings at reconsideration). This would apply only to periodic review cases. The Secretary would be required to report to Congress by April 1, 1986.

In addition, requires the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in

termination of benefits and that medical evidence may be submitted.

Consultative Examinations/Medical Evidence

Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from an individual's treating physician prior to seeking a consultative examination. Additionally, the Secretary would be required to develop a complete medical history for individuals applying for benefits or undergoing review over at least the preceding 12-month period.

Vocational Rehabilitation

Authorizes reimbursement of vocational rehabilitation (VR) services provided to individuals who are receiving disability benefits under Section 225(b) of the Social Security Act and who medically recover while in VR. Reimbursable services would be those provided prior to his or her working at substantial gainful activity for 9 months, or prior to the month benefit entitlement ends, whichever is earlier.

Special Benefits for Individuals Who Perform Substantial Gainful Activity Despite Severe Medical Impairment

Reauthorizes, through June 30, 1987, Section 1619 of the Social Security Act, which permits severely impaired SSI recipients to receive a special payment and maintain medicaid eligibility despite earnings. In addition, the Secretaries of HHS and Education would be required to establish training programs on Section 1619 for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

Advisory Council

Directs the next quadrennial Social Security advisory council to study and make recommendations on various medical and vocational aspects of disability, including alternative approaches to work evaluation for SSI recipients, the effectiveness of vocational rehabilitation programs for SSI recipients, and the question of using medical specialists for completing medical and vocational forms used by State agencies. The council would be authorized to convene task forces of experts to deal with specialized areas. Members of the council must be appointed by June 1, 1985, and the report is scheduled to be issued by December 31, 1986.

Frequency of Periodic Reviews

Requires the Secretary, within 6 months of enactment, to issue regulations establishing the standards to be used in determining the frequency of periodic eligibility reviews. Pending issuance of such regulations, no individual could be reviewed more than once.

Monitoring of Representative Payees

Requires the Secretary to: (1) evaluate the qualifications of prospective payees either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than the entitled individual, or parent or spouse living in the same household, and (3) increase the penalties for misuse of benefits by representative payees. Also, requires the Secretary to report to Congress within 6 months of enactment on the implementation of this provision, and to report annually on the number of cases of misused funds and the disposition of such cases.

Fail-Safe

Requires the Secretary to notify the Congress by July 1, if the DI fund is projected to decline to less than 20 percent of a year's benefits. If Congress took no other action, the Secretary would scale back (in part or in full) the next cost-of-living increase for disability beneficiaries as necessary to keep the fund balance at 20 percent. If necessary, the Secretary would also scale back the increase in the benefit formula used for determining benefit levels for persons newly awarded disability benefits. Measurement of the fund assets would include any funds (now $5 billion) loaned by the DI trust fund under the interfund borrowing authority.

Measures To Improve Compliance With Federal Law

Requires the Secretary to federalize disability determinations in a State within 6 months of finding that the State is failing to follow Federal law and standards. (Such a finding must be made within 16 weeks of the time the State's failure to comply first comes to the attention of the Secretary.) This provision expires on December 31, 1987.

II. BACKGROUND

When the Senate originally agreed to adopt a disability insurance program as a part of the Social Security Act in the 1950's, opponents of the legislation argued that it would be impossible to administer such a program tightly so as to limit its benefits to those truly disabled, and to keep its costs within the bounds of what Congress might believe to be an appropriate payroll tax level. The Congress did not accept this argument, and the program was enacted into law.

The developments with respect to the cost of the program since that time do indicate that there was some basis for the fears then expressed. The costs of the program have grown substantially and have shown a far greater degree of volatility than is true of the old-age and survivors insurance program. Nevertheless, the Congress has continued to believe that the Social Security Act disability programs provide important protections to American workers and their families and that, with careful administration, the programs can be continued within the constraints of cost levels which taxpayers can reasonably expect to bear.

The Congress has found it necessary on occasion to reemphasize its concern that the costs of the program not be allowed to grow out of control as a result of overbroad construction of the statute or lack of careful administration. In the 1967 amendments, for example, the Congress found it necessary to address situations in which some courts were, by broadly construing the statute, providing benefits on a basis not intended by Congress. Specifically, in 1967 the Congress added explicit language to continue to make clear that eligibility under the program was to based on the inability to do any substantial work, without regard to the economy in the applicant's region or his inability to perform his prior occupation. In addition the Congress then added language requiring that benefits be based on objectively verifiable medical evidence.

In the 1980 disability amendments, Congress again found it necessary to deal with problems which had driven the cost of the program beyond the bounds that Congress had intended or found acceptable. Among the concerns addressed in the 1980 legislation were the problems of consistency of decision-making throughout the country and among different levels of the appeals process. Another major concern was the adequacy of administrative review both at the initial allowance level and in terms of continuing review of eligibility.

The concerns of the Congress that the Social Security Act disability programs be carefully administered, and that the definition of disability be applied in a way to assure that benefits are paid only to those who are unable to engage in substantial work, continue to be valid and are not in any sense repudiated by the pending legislation. The validity of the action taken in 1980 to provide for periodic review has been amply borne out by sample surveys showing substantial levels of ineligibility.

III. GENERAL STATEMENT OF PURPOSE

The Committee recognizes that the review process mandated under the 1980 amendments has resulted in some significant problems and dislocations which were not anticipated and which contributed to an unprecedented degree of confusion in the operation of the program. The transition from a too loosely administered program with few post-entitlement reviews to a more tightly administered program with regular, periodic reviews revealed weaknesses and ambiguities which need to be dealt with.

It is the purpose of the Committee bill to deal with these problems while continuing the Congressional insistence that this program be tightly and carefully administered. The present-law requirement of a periodic review of eligibility for all disability beneficiaries is unchanged by this bill. For those not classified as permanently disabled, these reviews are to be carried out at least once every 3 years to assess their continuing eligibility for benefits. This bill only affects the standards of review, not the requirement that reviews be undertaken, nor the size of the population that must be reviewed.

Under present law, the standard of eligibility is in ability to work, and that standard applies both in initial applications and in continuing eligibility cases. The Committee bill does not change

this basic standard of eligibility, but it does provide protection or reassurance for those who are correctly and properly allowed on the rolls that they will remain on the rolls if their condition fails to improve. It does not assure anyone that they will not be reviewed. And it continues to require that terminations continue for those who should not be getting benefits. Some people were improperly allowed in the first place and it is not until their eligibility is reviewed that the error is detected; other people recover their work ability, either due to medical or vocational improvement. In these cases termination of benefits should and will occur.

Where there was previously only one standard of review, then, the Committee amendment adds a new standard—not to protect ineligible persons, but to provide a reassurance to those properly allowed. This standard, along with other features of the bill, will eliminate the existing confusion on this matter by reemphasizing the Congressional intent that there be national uniformity under Federal standards established by Congress and authoritatively interpreted in the regulations of the Department. Many of the other provisions of the bill also are intended to resolve ambiguities and reestablish the important principle that this is a national program which must be administered as such in accordance with Congressional intent. For example, the provision subjecting the program to the Administrative Procedure Act is intended to improve national uniformity and to assure that the regulations of the Secretary are accorded proper deference. Similarly the bill deals with the issues of multiple impairments and pain because there are major concerns about the need for national policy guidance with respect to these issues.

The Committee expects that the enactment of this legislation will, in a major way, restore confidence and credibility to the disability insurance program. The Committee recognizes that concerns have been expressed that the legislation could be misinterpreted as a license for lesser review and easier administration. There is no such intent. Lest there be any doubt, the Committee has included in the bill a fail-safe provision so that taxpayers may know that the Committee does not intend an open-ended commitment of taxpayer funds should either those who administer the program at the State and Federal level or the courts disregard the intent of the Committee in such a way as to cause the costs of the program to grow out of control. The Committee does not anticipate that this will happen, and does not expect that the fail-safe mechanism will be needed.

IV. GENERAL DISCUSSION OF THE BILL

Medical Improvement

(Section 2 of the bill)

Present law

There is no distinction in the law between how eligibility for disability benefits is to be determined for people newly applying for benefits and those currently on the rolls being reviewed to assess their continuing eligibility. Eligibility or ineligibility is based on

the standards of disability (in the law, regulations, and Commissioner's rulings) in effect at the time of the most recent decision.

Under the law, disability means inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to end in death or has listed or can be expected to last for a continuous period of at least 12 months.

Prior to the Secretary's announcement, on April 13, 1984, of a temporary, nationwide moratorium on periodic reviews, 9 States were operating under a court-ordered medical improvement standard, and 9 States had suspended reviews pending implementation of a court-ordered medical improvement standard or pending action by circuit court.

Committee amendment

The Committee amendment modifies, through December 31, 1987, the requirements and procedures used for determining continuing eligibility for disability benefits. If the Secretary finds that there has been no medical improvement in the individual's impairment(s) (other than medical improvement which is not related to his work ability), the Secretary would have the burden to show that there has been one of the following improvements or changes in circumstances prior to determining whether such beneficiary is disabled under the meaning of the law: (a) the individual has benefited from medical or vocational therapy or technology; (b) new or improved diagnostic or evaluative techniques indicate the individual's impairment(s) is not as disabling as believed at the time of the last decision; (c) the prior determination was fraudulently obtained; or (d) there is demonstrated substantial reason to believe that the prior determination was erroneous.

If none of the above factors are met, benefits would be continued (whether or not the individual would have been found to be able to perform substantial gainful activity). If any of these factors are met, the Secretary would then determine whether the individual can perform substantial gainful activity. If he can, benefits would be terminated.

If the Secretary finds that the evidence does not show that the individual's condition is the same as or worse than at the time of the prior determination, the Secretary would determine whether the individual can perform substantial gainful activity, and, if he can, benefits would be terminated. (Benefits would also be terminated if the individual is currently engaging in substantial gainful activity or if the individual cannot be located or fails, without good cause, to cooperate in the review or to follow prescribed treatment that could be expected to restore his ability to work.)

In making a determination, the Secretary shall consider the evidence in the file as well as any additional information concerning the claimant's current or prior condition that is secured by the Secretary or provided by the claimant. (The Secretary is thus not limited to considering only the prior decision or the evidence developed at the time of the prior decision.)

In the case of a finding relating to medical improvement, the burden of proof is on the claimant. Burden cannot be met by allegations regarding the beneficiary's condition; objective evidence

containing clinical findings, laboratory findings and diagnoses, as outlined in regulations, must be provided. In other words, for benefits to be continued, the individual must state and the evidence in the file must show that the individual's medical condition is the same as or worse than at the time of the last decision (or, if there is medical improvement, it is not related to work ability).

In the case of a finding relating to factors a–d, the Secretary has the burden of proof. In other words, for benefits to be terminated on the basis of any of these reasons, the evidence in the file must show that one of these factors is met.

The Committee bill requires that regulations to implement the medical improvement standard shall be published within 6 months of enactment.

Reasons for change

The new standard of continuing eligibility is designed to respond to and address a number of serious problems in the disability review process. First and foremost, the Committee is reaffirming its commitment to and insistence upon a nationally uniform disability insurance program. In recent months, due both to independent actions by States that are in violation of Federal law and guidelines and to Court actions, the social security disability insurance program is no longer being administered in a nationally uniform manner, consistent with the goals of the Federal program. The issue of medical improvement and the standards to be applied in determining eligibility for people after they are on the benefit rolls has been one of the central issues of contention. This new standard is thus intended to make explicit to the States administering the disability insurance program and to the courts the standards to be applied in determining continuing eligibility for benefits—the standards as set forth in national policy by the Congress. As discussed below, the effective date of the medical improvement standard underscores the Committee's intention to ensure uniform application of the single standard of review.

Secondly, the Committee is reaffirming its commitment to and insistent upon a tightly administered disability insurance program. The standard included in the bill does not in any way relieve the Secretary of the obligation to carefully and regularly review the accuracy of the benefit rolls, as mandated by the 1980 disability amendments. Nor does it relieve the individual of the obligation to periodically reestablish his continuing eligibility. If the individual is found to have been allowed on the rolls erroneously, or on the basis of fraud, or if his condition has improved, either medically or vocationally, or is not as disabling as originally believed, benefits will be terminated if the individual can perform substandard gainful activity. Benefits will also be terminated if the individual is currently working, cannot be located, or fails, without good cause, to cooperate in the review or to follow prescribed treatment which could be expected to restore his ability to work. Clearly, it is not the Committee's intention to grandfather people onto the benefit rolls who can perform substantial gainful activity, as this would create a serious inequity—a double-standard—between current beneficiaries and new applications with identical impairments.

In this regard, the Committee considered carefully and rejected the proposal to shift the burden of proof in eligibility determinations from the claimant to the Government once the individual is on the benefit rolls. The weight of the evidence must demonstrate that the individual should remain on the rolls, not the reverse, where the weight of the evidence would have to warrant termination. In addition the Committee considered carefully and rejected the proposal to require that a quality or quantity of improvement (vocational or medical) be shown prior to determining whether the individual can work. The protections in the Committee amendment are for those whose conditions have remained the same or deteriorated since the time of their last disability decision. The amendment does not include protections for people who have improved, or who have failed to improve to some particular degree, so long as it is demonstrated that they can work. The Committee thus rejected putting up legal or procedural hurdles to removing from the rolls those people who can work and who have experienced some change in circumstances since the time of the last disability determination.

Third, the Committee is concerned that the confidence of the disabled population in the social security disability insurance program has been seriously eroded in recent years as a result of the periodic review process. This amendment is designed to provide reassurance to the severely impaired population who have every right to expect their benefits to be continued under this program. If an individual is correctly and properly allowed onto the benefit rolls, and if the evidence shows that his medical condition has not improved (other than in ways that are not related to work ability), the Secretary must demonstrate that there is some other stated change in circumstances prior to making a determination of work ability. Work ability, or the ability of the individual to be found eligible for benefits if newly applying, will no longer be the sole standard of continuing eligibility.

While the Committee is aware that there are many difficult details to be worked out by the Secretary pertaining to the administration of the new standard, the Committee expects the type of process described below to be followed as closely as possible.

Explanation of Continuing Eligibility Review Process With Medical Improvement Standard

Step 1: Beneficiary is notified of review and asked to come to local social security district office for interview:

Review process explained, including role of medical improvement in the process,

Beneficiary explains current condition and how condition compares to condition at time of last review,

District office assists beneficiary in listing medical treating sources and other information on current activities (including any work),

(If, at any point during the review, the beneficiary is found to be working at substantial gainful activity, the review is ceased and benefits terminated.) [1]

Interviewer observes condition of beneficiary to determine if review should be ceased at this point and benefits continued.

Step 2: State agency secures and reviews medical evidence, both that provided by the claimant and secured by the Secretary. (Review may be ceased at this point and benefits continued based on the evidence in the file.) [2]

Step 3: If a continuance decision is not made in Step 2, the record of evidence is reviewed to establish whether the individual has medically improved and to determine whether he is disabled under the meaning of the law (i.e., can he perform substantial gainful activity?)

NO MEDICAL IMPROVEMENT

If the Secretary finds that there has been no medical improvement in the individual's impairment(s) (other than medical improvement which is not related to his work ability), the Secretary must determine whether any one of the following factors is met:

(a) the individual has benefited from medical or vocational therapy or technology,

(b) new or improved diagnostic or evaluative techniques indicate the individual's impairment(s) is not as disabling as believed at the time of the last decision,

(c) the prior determination was fraudulently obtained, or

(d) there is demonstrated substantial reason to believe that the prior determination was erroneous (not considering the claimant's current medical condition).

If the answer to each of these factors is no, benefits are continued (whether or not the individual would have been found to be able to engage in substantial gainful activity).

If the answer to any of these factors is yes, the Sectetary then makes a determination of whether the individual can engage in substantial gainful activity.

If the Secretary determines that he can, benefits are terminated;

If the Secretary determines that he cannot, benefits are continued.

MEDICAL IMPROVEMENT

If the Secretary finds the evidence does not establish that the individual's impairment(s) is the same as or worse than at the time of the prior determination (disregarding medical improvement which is not related to his work ability), the Secretary determines whether the individual is able to perform substantial gainful activity.

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[1] Review shall also be ceased and benefits terminated if the individual cannot be located, or fails, without good cause, to cooperate in the review or to follow prescribed treatment that could be expected to restore his ability to work.

[2] Review may be ceased and benefits continued at any point in the process that is warranted by the evidence in the file.

If the Secretary determines that he can, benefits are terminated;

If the Sectetary determines that he cannot, benefits are continued.

The Committee is aware that certain beneficiaries may be unable to cooperate in a review as a result of the very nature of their impairment (mental impairment cases, for example). Current SSA operating guidelines provide that such persons be accorded special assistance and that, where appropriate, a third party—such as a family member or treating physician—become involved in the process. The Committee stresses the importance of these guidelines and urges the Secretary to exercize caution in applying the failure to cooperate exception to the medical improvement standard.

The Committee believes that the standard in this amendment is one that provides protections for beneficiaries who belong on the rolls, yet is understandable and workable—essential features for a standard that is to be uniformly applied.

Fourth, the Committee is aware that, notwithstanding the effort to create a clear standard that can be tightly administered, the complexity and the enormity of the disability determination process makes an assessment of the likely impact of the new standard most difficult. Over 1 million people with widely different disabilities apply for benefits each year and over 400,000 beneficiaries are reviewed each year to assess their continuing eligibility. These disability determinations are made by 12,000–13,000 State agency employees in some 54 States and jurisdictions under the direction and monitoring of the Secretary. Three levels of administrative appeals, then the opportunity for appeal to the Federal courts, add thousands more people to the decision-making process. How the new standard will actually be applied will be determined by the actions of all of these agents—the Secretary, the States, and the courts.

The acturial cost estimates received by the Committee underscore the inherent uncertainty. Whereas the Social Security Administration believes the new standard will involve a substantial cost and significantly impact the rate of present-law terminations, the Congressional Budget Office estimates a much lower cost and a lesser impact on terminations.

The Committee's uncertainty about how the new standard will actually impact beneficiaries, program administration, and the trust funds has led the Committee to include a sunset on the provision—it expires on December 31, 1987. By this time, the Committee expects that over 1 million people will have been reviewed under the new standard (including 200,000—300,000 who have not yet been reviewed for the first time under the periodic review requirement), in addition to the individuals who will be eligible for redetermination under this bill. The Committee should then be in a strong position to assess the merits and workability of the new standard.

To help ensure that the Committee carefully monitor developments over the next 3 years and make a timely decision on the reauthorization of the standard, Section 18 of the Committee amendment, which tightens Federal control over State disability determinations, also expires on December 31, 1987.

Effective date

The effective date in the Committee amendment clearly delineates which cases are to be determined or redetermined and under the new standard. The nw standard would (subject to the 3-year sunset) be applied to future determinations of continuing eligibility and to all individuals who currently have claims properly pending in the administrative appeals process. The amendment would further direct that continuing disability cases properly pending in the Courts (as of the date of Committee action) would be remanded to the Secretary for review by the Secretary under the new standard. (This amendment would also apply to new court cases which are timely filed by individuals who have completed the administrative appeals process during the period between March 15, 1984 and 60 days after enactment.) This remand procedure would apply only to individual litigants and to members of class actions identified by name.

In the case of other members of class actions, a different rule would be followed. The Secretary would be required to notify any member of a class who has, prior to the date of Committee action, been properly certified as a class member (even though not individually named) that these individuals would be allowed a period of 60 days from the date of notification to request a review of the determination that they are no longer disabled. If they make such a request within the 60 days, their case will be reviewed administratively under the new standards established by the bill. The result of that review could be further appealed under rules of appeal established by the Social Security Act and Secretary's regulations. If they fail to request such a review, however, they would lose the right of judicial review of their case—just as claimants under current law lose such rights if they fail to make timely appeals, and as unnamed members of class action litigation now lose thier rights of appeal if they fail to make a timely application for the relief which is ordered under the class action.

In the case of any individual with respect to whom a continuing disability determination has become administratively final prior to the date of Committee action and who has not initiated a court action either individually or as a member of a class properly certified prior to such date, the amendment would provide that the administrative determination of the Secretary is final and conclusive and not subject to appeal. In other words, the amendment would not allow for redeterminations in the case of individuals who have failed to exercise their appeal rights and therefore have no reason to consider themselves protected by the certification of a class action. This would avoid the possibility that a future certification of one or more class actions—or even a nationwide class action might give the Committee decision much broader retrospective effect (and for higher cost) than the Committee intends.

Individuals remanded to the Secretary for review or those who request review within the allowable time limit could elect to receive payments on an interim basis pending redetermination of their eligibility under the new standard. These payments would commence with the month in which the individual requests that such payments be made. Individuals who are found eligible for ben-

efits under the new standard would receive any additional benefits that may be due for the retroactive period since their benefits were ceased. Any interim payments made to individuals found ineligible under the new standard would be subject to recovery as overpayments under the same conditions that apply to payments made under the continuation of benefits during appeal provision in existing law.

Because of the apparent complexity of the effective date provision, a detailed rationale for the Committee's action is appropriate. The Committee has determined that the legislation should establish precisely the application of the new medical improvement provisions in order to eliminate the confusion and disruption resulting from the extensive litigation now pending in the courts on medical improvement.

The plaintiffs in many of these pending suits have sought to represent a class of all present or former recipients of disability benefits who reside in a particular state or judicial circuit. The Administration has informed the Committee that there are in excess of 30 such class actions or putative class actions pending, often purporting to be brought on behalf of thousands of individual claimants. The overwhelming majority of these individual claimants are not aware that they are members of a class or putative class in a suit brought by someone else and have essentially abandoned their claims by not personally seeking judicial review. The disruptive impact of these class actions is particularly severe in those cases in which the plaintiffs have sought to represent a class that is so broadly defined as to include hundreds or thousands of claimants who either (a) did not exhaust their administrative remedies (which is a prerequisite to obtaining judicial review of the denial of their claims) or (b) previously allowed an administrative denial of their claim at some level to become final and binding because they failed to seek further administrative review or to seek judicial review of a final decision by the Appeals Council within 60-days.

A major purpose of this legislation is to resolve the current controversy over the medical improvement issue, without unnecessarily increasing the cost of the disability program by broadly applying the new standard to thousands of individuals who had effectively accepted the finding of ineligibility and abandoned their claims by not following prescribed procedures for seeking review of the denial of benefits.

Insofar as the Committee has not provided for cases that are no longer live and properly pending on the date of enactment to be reopened and reconsidered, this provision merely restates existing law that precludes judicial review of administrative denials of claims that the claimants themselves allowed to become final. *Califano* v. *Sanders,* 430 U.S. 99 (1977). And because the new medical improvement standard will be applied to claims that are not stale; that is, claims that are live and properly pending in the administrative appeals process or in court on the date of enactment—there will be no further litigation on the medical improvement issue in connection with those claims either. The combined effect, then, will be to eliminate all of the current litigation on the medical improvement question under existing law and to start afresh under the new statutory standard.

Whether a claim raising the question of medical improvement is properly pending on the date of enactment and therefore is subject to the new medical improvement standard in this legislation will be determined by reference to the requirements of Section 205 of the Social Security Act and the implementing procedural regulations promulgated by the Secretary.

Under the amendment, if a claimant has a determination pending before the Secretary, his claim would automatically be considered under the new statutory medical improvement standard in the course of any further administrative review. If, however, a claimant's determination is not pending before the Secretary because the claimant has not sought further administrative review within the prescibed time limits, the administrative decision denying his claim for benefits becomes final and binding and is not subject to further administrative or judicial review. *Califano* v. *Sanders,* 430 U.S. 99 (1977). The administrative decision denying the claim therefore would not be reopened and reconsidered under the new statutory medical improvement standard.

The amendment also provides for application of the new statutory medical improvement standard to claims properly pending in court on the date of enactment. Under Section 205(g) of the Social Security Act, a claimant may obtain judicial review only of the Secretary's "final decision" on a claim made after a hearing, and only if he seeks judicial review within 60 days of that final decision. Governing regulations in turn provide that the Secretary's "final decision" subject to judicial review is rendered only after the individual has pressed his claim for benefits through all levels of the existing administrative appeals process, including seeking review by the Appeals Council. The Supreme Court held in *Weinberger* v. *Salfi,* 422 U.S. 749, 764, 766 (1975), that full exhaustion of the administrative appeals process established by the Secretary's regulations is a jurisdictional prerequisite to seeking judicial review pursuant to Section 205(g) of the Social Security Act, and the Supreme Court recently reaffirmed that holding in *Heckler* v. *Ringer,* No. 82-1772 (May 14, 1984), slip op. 2, 3, 16. Accordingly, the only claims raising the medical improvement issue that would be "properly pending" in court under existing law on the date of enactment would be the claims of individuals who exhausted their administrative remedies through the Appeals Council stage and then sought judicial review under Section 205(g) of the Social Security Act within 60 days.

There will, however, be many thousands of individuals who may have exhausted their administrative remedies without thereafter personally seeking judicial review pursuant to Section 205(g), but who are unnamed members of a class in a suit filed as a class action or putative class action raising the medical improvement issue on behalf of all claimants in a particular state or judicial circuit. Under the amendment, if a district court has actually certified a case as a class action, the claims of all class members in such a certified class action who fully exhausted their administrative remedies on or after a date 60 days prior to the filing of the class action will be regarded as "properly pending" in court. However, to protect against the substantial increase in the cost of this legislation that could result from a rash of class certifications in present-

ly uncertified class actions prior to the enactment of this legislation, this special protection for unnamed class members applies only to class actions certified on or before May 16, 1984, the date of the Finance Committee's action on the bill.

The claims of the members of certified classes who fully exhausted their administrative remedies will not automatically be remanded to the Secretary for reconsideration under the new standard. This is because these class members have not pressed their claims in court, possibly because they had accepted the correctness of the decision, and therefore effectively abandoned them. Instead of providing for an automatic reconsideration of such cases, the amendment provides for the Secretary to send a notice to each member of the certified class informing him that if he wants to pursue his claim for benefits notwithstanding his failure to seek judicial review under Section 205(g) following the Appeals Council's denial of his claim, he must notify the Secretary within 60 days. If the class member responds within 60 days, his claim will be reconsidered under the new medical improvement standard in this legislation. If the class member does not notify the Secretary within 60 days that he wants to have his claim reconsidered under the new standard, the amendment provides that the previous Appeals Council decision denying his claim will be final and binding and will not be subject to judicial review.

A claimant who has not individually sought review of his case in a timely manner is not, however, protected under the amendment by the pendency of a class action suit in which no class has been certified prior to the date of the Committee's action. His individual claim would be barred from judicial review, unless of course the Secretary, in a particular case extended the time for seeking judicial review under her discretionary authority in Section 205(g). This would avoid the possibility that a future certification of one or more class actions—or even nationwide class action—might give the Committee decision much broader retrospective effect (and much higher costs) than the Committee intends.

The Committee's decision to bar judicial review of claims of putative members of uncertified classes (who have not individually protected their appeal rights) was based on the following considerations:

(1) In the case of uncertified class actions, it is extremely speculative as to whether and to what extent a class would ever be certified. Thus, claimants cannot have reasonably relied on the mere pendency of a class action complaint to excuse them from pursuing their rights individually.

Putative members of uncertified classes have little if any likelihood of learning about the pendency of suits which include class allegations, let alone about the details of the proposed class and the relief being sought. There is therefore no reason to believe that this group of claimants refrained from perfecting their appeals in the hope of being included in class relief. They simply abandoned their claims. To the extent individual claimants may have been misled by the pendency of a class suit, the Committee notes that the Secretary retains the discretion to extend the time to appeal or to reopen the case administratively;

(2) Members of this group have no cases in court either individually or by means of a class action. Moreover, each of them received a notice from the Secretary advising them of the time limit for seeking judicial review and they let that time lapse. Since Section 205(g) of the Act is an authorization to sue the United States, its 60-day time limit for filing suit is jurisdictional and cannot be tolled by the pendency of a class suit. *Hunt* v. *Schweiker,* 685 F.2d 121 (4th Cir. 1982). Since this legislation in effect causes the denial of class certification for these persons, the putative members are in the same position they would have been had the various courts merely denied certification. In either event, their abandoned claims could not be reviewed in court.

(3) The number of claimants who might ultimately be certified in the pending suits is unknown and, in the nature of things, unknowable. There is, however, no escaping the fact that the number of class members is potentially staggering. If these claimants were permitted to revive their lapsed claims, thousands of claimants who had long since abandoned their claims might seek to reopen and relitigate them under the new statute. The burden these untold thousands of cases would pose to the orderly administration of the Social Security program is unacceptable—given the lack of interest shown by these claimants in keeping their own cases alive, and the crushing load of properly perfected cases the agency is struggling to process. In addition, the cost of including this vast class of unknown persons in the new statute could add over $1 billion to $2 billion to the cost of the bill. The Committee cannot justify this drain on the Trust Fund for the benefit of a group of individuals who had, but chose not to exercise, opportunities for appeal.

(4) Closing out these claims in consistent with the Social Security review system, which is generally designed to provide individualized review of final decisions of the Secretary. This approach also is consistent with the overall intent of the bill to avoid retroactive application to the maximum extent possible. At the same time, however, the Committee wants to ensure that neither the courts nor the Secretary will have to struggle in the pending cases to define what the prior law in termination cases meant. Thus, if the amendment were to permit these uncertified classes to proceed under the prior law, one of the principal purposes of this legislation—to bring a halt to the acrimonious and burgeoning "medical improvement" litigation—would be defeated.

CONTINUATION OF PAYMENTS DURING APPEAL

(Section 3 of the committee amendment)

Present law

DI benefits are automatically payable for the month the beneficiary is notified of ineligibility and for the 2 following months. Benefits do not generally continue during appeal. Based on a Supreme Court decision, supplemental security income (SSI) payments must continue through opportunity for an evidentiary hearing.

Under a temporary provision in P.L. 97-455 (as extended by P.L. 98-118), individuals notified of a termination decision could elect to

have DI benefits and Medicare coverage continued during appeal—through the month proceeding the month of the administrative law judge (ALJ) hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld. This provision expired for terminations on or after December 7, 1983. Committee amendment: The Committee amendment reauthorize payments pending appeal through the ALJ hearing for terminations prior to June 1, 1986.

The original provision authorizing payments pending appeal resulted in large part because of the lack of uniformity of decisions between the State agencies and the administrative law judges (ALJs). In the early stages of the periodic review process, States agencies were finding about 50 percent of the people reviewed ineligibile for benefits, and among those who appealed to an ALJ, about 60 percent were having benefits reinstated. The provision making continued payments available to people found ineligible for DI was thus temporary in nature, based on the view that either significant administrative, or legislative reforms would be necessary to remedy this untenable situation. It is the Committee's belief that the reforms contained in this bill will reduce the need for these payments by: (1) improving the quality and accuracy of disability determinations at the first stage of decision-making, (2) enhancing the uniformity of decisions between different levels of appeal, and thereby (3) reducing the number of appeals and the rate of decisions which are being reversed by ALJ's.

UNIFORM STANDARDS

(Section 4 of the committee amendment)

Present law

The guidelines for making social security disability determinations are contained in regulations, social security rulings, and the Program Operating Manual System (POMS).

Regulations, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication—state agencies, administrative law judges, the Social Security Administrations (SSA's), Appeals Council, and the Federal Courts. On a voluntary basis, SSA issues its regulations in accordance with the public notice and comment rulemaking requirements of the Administrative Procedure Act (APA). The APA requirements do not, however, apply to social security programs because of a general exception for benefit programs.

Rulings consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts and ALJs, and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of adjudication.

The POMS are a compilation of detailed policy instructions and step-by-step procedures for the use of State agency personnel in developing and adjudicating claims. The POMS are not binding on the Administrative Law Judges, the Appeals Council, or the Courts.

Committee amendment

The Committee amendment would require the Secretary to establish by regulation uniform standards, of eligibility to be binding on all levels of adjudication in determining whether individuals are disabled under the meaning of the Social Security Act. Such regulations must be published in accordance with the rulemaking requirements of the APA (thus removing SSA's exclusion from the provisions of the APA on matters relating to the determination of disability.)

It is the Committee's goal to ensure uniform decisionmaking at all levels of the disability adjudication process through the publication of regulations under the APA. It is the intent of the Committee, however, that the Secretary be required to publish in regulations only those changes in policies and procedures that could be reasonably expected to have an impact on findings of eligibility. The Committee is particularly concerned that SSA retain the flexibility to respond quickly to changes in conditions through the issuance of other less formal vehicles including Rulings and POMS.

Effective date

This provision is effective on enactment.

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

(Section 5 of the committee amendment)

Present law

Under the Disability Amendments of 1980, all DI beneficiaries with non-permanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments.

Under an Administration initiative (of June 7, 1983), periodic eligibility reviews have been suspended for those mental impairment cases involving functional psychotic disorders, pending a revision, arrived at in consultation with outside mental health experts, of the criteria used for determining disability.

Under a subsequent Administration action (announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

Committee amendment

The Committee amendment suspends eligibility reviews for all individuals with disabilities based on mental impairments pending a revision of the eligibility criteria. Such revisions would be made in consultation with outside mental health and vocational rehabilitation experts. Also, a redetermination of eligibility under new criteria (and reinstatement of benefits where appropriate) would be required for individuals denied benefits after enactment and prior to revision of criteria, and to those terminated from the rolls since June 7, 1983.

Effective date

Such revised eligibility criteria must be published as regulations within 90 days after enactment.

QUALIFICATIONS OF MEDICAL PROFESSIONALS

(Section 6 of the committee amendment)

Present law

By regulation, the State review team making disability determinations must consist of a State agency medical consultant (physician) and a State agency disability examiner. Under SSA operating instructions, both must sign the disability determination.

Committee amendment

The Committee amendment would require that in the case of an individual seeking benefits on the basis of a mental impairment, in which a decision unfavorable to the claimant or beneficiary is being made, the Secretary must make every reasonable effort to ensure that a qualified psychiatrist or psychologist completes the medical portion of the evaluation and any assessment of residual functional capacity.

The Committee does not intend that the Secretary be considered to have made every reasonable effort to obtain the services of qualified personnel for purposes of this provision in cases where such services could clearly be obtained if compensation for those services were made available at levels which meet the pervailing norms for such services. If such a situation arises, the Committee expects the Secretary to exercise her authority to require proper administration by the States or to utilize appropriate Federal resources to assure that determinations continue to be fully carried out in mental impairment cases with qualified psychiatrists and psychologists.

The Committee is aware that this amendment—by placing emphasis on the use of mental health specialists for making disability determinations in mental impairment cases—may appear to be setting a precedent requiring specialization among the types of physicians and other qualified professionals who make determinations. Carried to the extreme, this could impede the making of timely decisions, thereby causing substantial backlogs, and significantly disrupt the effective administration of a process which requires millions of determinations each year. The merits and consequences of such specialization have not been evaluated, and warrant serious consideration. As a result, Section 14 of this bill directs the next social security advisory council to study and make recommendations on this issue.

Effective date

This provision is effective for determinations made on or after date of enactment.

NONACQUIESCENCE TO CIRCUIT COURT DECISIONS AFFECTING POLICY

(Section 7 of the committee amendment)

Present law

The Social Security Administration (SSA) abides by all final judgments of Federal courts with respect to the individuals in particular suits, but does not consider itself bound to implement the policy approach embodied in such decisions with respect to nonlitigants. In the infrequent case that a circuit court decision is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA may at times issue a ruling of nonacquiescence stating it will not adopt the court's decision as agency policy. There are now 8 rulings of nonacquiescence.

Committee amendment

In the case of U.S. Court of Appeals decisions affecting the Social Security Act or regulations, the Committee amendment would require the Secretary to send to the Committees on Finance and Ways and Means, and publish in the Federal Register, a statement of the Secretary's decision to acquiesce or not acquiesce in such court decision, and the specific facts and reasons in support of the Secretary's decision. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

The Secretary would make these reports within 90 days after the issuance of the court decision or the last day available for filing an appeal, whichever is later.

The Committee is aware that a dispute exists as to the right of the Secretary to not acquiesce in circuit court decisions. While the Committee is concerned that a policy of mandatory acquiescence would be difficult to reconcile with the long standing Congressional importance attached to national uniformity, this legislation does not attempt to resolve that issue. Those who argue that the Secretary has no such right frequently cite the case of *Marbury* v. *Madison* in support of their contention that the Secretary's position violates the principle that the courts may interpret the laws. On the other hand, the Committee received testimony from the Department of Justice that the ability to not acquiesce is an important element of the Government's ability to pursue litigation in an orderly manner. Accordingly, the implications of changing this practice range widely beyond the Social Security Act. In its testimony, the Justice Department cited a recent case, *United States* v. *Mendoza* in which the Supreme Court upheld the Government position in an issue closely related to nonacquiescence. Clearly, if a constitutional issue is involved, it cannot be settled in this legislation and must be left for ultimate resolution by the Supreme Court. For this reason, the Committee bill provides that "nothing in this section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a U.S. Court of Appeals."

Effective date

For U.S. Court of Appeals decisions rendered on or after date of enactment.

MULTIPLE IMPAIRMENTS

(Section 8 of the committee amendment)

Present law

In determining whether an individual is disabled, a sequential evaluation is followed: current work activity, duration and severity of impairment, residual funcational capacity, and vocational factors are considered in that order. Medical considerations alone can justify a finding of ineligibility where the impairment(s) is not severe. An impairment is nonsevere if it does not significantly limit the individual's physical or mental capacity to perform basic work-related functions.

By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs."

Committee amendment

In determining the medical severity of an individual's impairment, the Secretary would be required under the Committee amendment to consider the combined effect of all of the individual's impairments without regard to whether any one impairment itself would be considered severe.

It is the expectation of the Committee that in most cases, multiple nonsevere impairments do not have a cumulative severe impact. The Committee is concerned, however, that the disability evaluation process accomodate those circumstances in which an individual has multiple impairments, the severely limiting effect of which is not reflected in any one of them.

In adopting this amendment, the Committee wishes to emphasize that the new rule is to be applied in accordance with the existing sequential evaluation process and is not to be interpreted as authorizing a departure from that process. As the Committee stated in its report on the 1967 amendments, an individual is to be considered eligible "only if it is shown that he has a severe medically determinable physical or mental impairment or impairments." The amendment requires the Secretary to determine first, on a strictly medical basis and without regard to vocational factors, whether the individual's impairments, considered in combination, are medically severe. If they are not, the claim must be disallowed. Of course, if the Secretary does find a medically severe combination of impairments, the combined impact of the impairments would also be considered during the remaining stages of the sequential evaluation process.

Effective date

For determinations made on or after January 1, 1985.

EVALUATION OF PAIN

(Section 9 of the committee amendment)

Present law

Under the law, an individual's disability (whether mental or physical) must be medically determinable, expected to end in death or last for 12 continuous months, and must prevent any substantial gainful activity. There is no specific statement in the law as to how pain is to be evaluated. The law does provide that eligibility must be based on "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

SSA's policy on how pain is to be evaluated is contained in regulations which were issued in August 1980. By regulation, symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could "reasonably be expected" to produce those symptoms.

Committee amendment

The determination of whether an individual is eligible for social security disability benefits can often involve difficult evaluations of medical and vocational evidence. The Congress has provided general policy guidance to the administration indicating the clear intent that benefits be provided only to those who have severe medical conditions which preclude their engaging in substantial gainful activity. To assure the integrity of the program, Congress has also specifically indicated that eligibility must be based on verifiable and objective medical evidence. Further the Congress has indicated that it attaches high importance to the administration of the disability program with a high degree of national uniformity. To carry out these general policies in the day to day administration of the program, the Congress necessarily relies upon the Administration to undertake on a continuing basis a careful evaluation of the state of medical art and, through regulations and other quidelines, to apply criteria and evidentiary rules which are consistent with them.

It has come to the attention of the Committee, that there are a number of outstanding court cases which are challenging the current policies of the Administration concerning the weight to be attached to claimant's subjective allegations concerning pain and other symptoms. The Committee questioned representatives of the Administration of this matter during its consideration of the legislation and understands that the Administration has been, on a continuing basis, consulting some of the best available medical experts on the extent to which subjective allegations of this type can be verified. At this time, the Administration has found that the weight of opinion does not justify a departure from present practice as being consistent with the program principles enunciated by the Congress.

The Committee is always reluctant to statutorily codify detailed eligibility criteria which are more properly promulgated by regulations. Such regulations should receive appropriate deferrence from

the courts. However, if courts ignore the Secretary's regulatory authority and the expressed Congressional concerns for careful administration, national uniformity, and verifiable evidence, the Committee has little choice but to draw the statute as narrowly as possible. For this reason, the Committee has included in the statutory rules for determining disability a specific rule for evaluating subjective allegations of pain. It is the clear intention of the Committee that this rule should be seen as a codification of the regulations and policies currently followed by the Administration. This rule prohibits basing eligibility for benefits solely on subjective allegations of pain (or other symptoms). There must be evidence of an underlying medical condition and (1) there must be objective medical evidence to confirm the severity of the alleged pain arising from that condition or (2) the objectively determined medical condition must be of a severity which can reasonably be expected to give rise to the alleged pain.

The Committee recognizes that this is an area involving difficult medical questions to which complete answers may not be available. For this reason, the Committee is recommending a high-level study to be conducted over the next two years by a panel of at least 12 experts to be appointed by the Secretary of Health and Human Services. This body is to include in its membership significant representation from the field of medicine who are involved in the study of pain along with representation from other appropriate fields including law and administration. This panel is to be appointed within 60 days of enactment and is to report to the Committee on Finance and the Committee on Ways and Means no later than December 31, 1986.

The Committee anticipates that the results of this study will help clarify this issue. If necessary, the Committee will be ready to consider further legislation which may be appropriate in the light of the study. In any event, the Committee amendment would cease to be a part of the statute after December 31, 1987. Since the provision simply codifies existing practice, the termination of the provision would not modify the rules governing the program, but it would fully restore the Administration's current degree of flexibility to implement regulatory changes which might then appear appropriate. Any such changes would, of course, have to be consistent with the policy guidance contained in the law and its legislative history.

MODIFICATION OF RECONSIDERATION AND PREREVIEW NOTICE

(Section 10 of the committee amendment)

Present law

A person whose initial claim for disability benefits is denied or who is determined after review to be no longer disabled, may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record, including any new evidence submitted by the claimant, conducted by the State agency.

Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries found ineligible for benefits must be given op-

portunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary.

Committee amendment

The committee amendment would require the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted.

In addition, the Secretary would be required to conduct demonstration projects in at least 5 States in which the opportunity for personal appearance is provided prior to determination of ineligibility (in lieu of face-to-face hearing at reconsideration). This would apply to periodic review cases only. A report would be due to Congress by April 1, 1986.

The Committee is aware that one of the reasons for the difference in decisions made by State agencies and administrative law judges (and the high rate at which administrative law judges reverse termination decisions) is the fact that the hearing decision involves face-to-face contract between the claimant or beneficiary and the decision-maker. Whether or not those decisions made with personal appearance contact are more accurate, given the inherent subjectivity that may be introduced, has not been established.

This provision would, on a demonstration basis, permit the opportunity for face-to-face appearance prior to the State agency making a decision to terminate benefits. The Committee has made a decision not to mandate this change for all denial decisions or all termination decisions in recognition of the need for caution in this area. Procedural changes such as these, particularly when coupled with the many reforms in this bill, can have significant and unforseen consequences on the administration of the program and the rate of allowances.

This provision will complement the legislation enacted in 1983 (P.L. 97–455) which requires that face-to-face evidentiary hearings be provided at the reconsideration hearing level for all terminated beneficiaries.

Effective date

As soon as practicable after date of enactment.

CONSULTATIVE EXAMS/MEDICAL EVIDENCE

(Section 11 of the committee amendment)

Present law:

Consultative exams are medical exams purchased by the State agency from physicians outside the agency. By regulation, consultative examinations may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence so obtained is to be considered in conjunction with all other medical and nonmedical evidence submitted in connection with a disability claim.

Committee amendment:

The Committee amendment requires the Secretary to make every reasonable effort to obtain necessary medical evidence from the individual's treating physician prior to seeking a consultation examination. In proposing this amendment, it is the Committee's purpose to underscore the importance of obtaining evidence from the claimant's or beneficiary's physician who is likely to be the medical professional most able to provide a detailed, longitudinal picture of the individual's medical condition.

The Committee does not intend to alter in any way the relative weight which the Secretary places on reports received from treating physicians and from consultative examinations. Nor is it intended that the Secretary shall be precluded from obtaining consultative examinations when the Secretary finds it necessary to secure additional information or to resolve conflicting evidence.

The Committee amendment would also require the Secretary to develop a complete medical history for individuals applying for benefits or undergoing review over at least the preceding 12 month period. However, in cases involving applications for disability benefits where the claimant alleges that the disability began less than 12 months prior to his application, obtaining a medical history of at least 12 months may be unnecessary.

Effective date

These provisions are effective for determinations made on or after the date of enactment.

VOCATIONAL REHABILITATION

(Section 12 of the committee amendment)

Present law

Presently, States are reimbursed for VR services provided to DI beneficiaries which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Section 225(b) of the Social Security Act, a work incentive provision enacted in 1980) but VR services may not be reimbursable since the individual's ability to engage in SGA is attributable to medical improvement rather than rehabilitation.

Committee amendment

The committee amendment authorizes reimbursement for VR services provided to individuals who have medically recovered but are receiving disability benefits under Section 225(b). Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier.

Effective date

On enactment.

SPECIAL BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENTS

(Section 13 of the committee amendment)

Present law

Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA—$300 monthly.

Under Section 1619 of the Social Security Act, enacted in the Disability Amendments of 1980, SSI recipients who have seven medical impairment and who work and earn more than SGA ($300 monthly) cease to be eligible for SSI as such, but may receive a special payment and maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., when countable monthly earnings exceed $713). Medicaid and social services may continue, however.

Section 1619 expired on December 31, 1983. It is being continued administratively, however, during 1984 under general demonstration project authority.

Committee amendment

The Committee amendment reauthorizes Section 1619 through June 30, 1987. In addition, the Secretaries of HHS and Education are required to establish training programs on Section 1619 for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

This provision will supersede the Secretary's one-year extension of Section 1619.

ADVISORY COUNCIL

(Section 14 of the committee amendment

Present law

Section 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the social security and medicare programs. Each council is to be comprised of representatives of employee and employer organizations, the self-employed, and the general public.

The next advisory council is scheduled to be appointed in 1985 and to make its final report by December 31, 1986.

Committee amendment

The Committee amendment directs the next quadrennial advisory council to study and make recommendations on various medical and vocational aspects of disability, including the alternative approaches to work evaluation for SSI recipients, the effectiveness of vocational rehabilitation programs for DI and SSI recipients, and the question of using medical specialists for completing medical and vocational forms used by State agencies. The council would be authorized to convene task forces of experts to deal with specialized areas.

Members of the Council must be appointed by June 1, 1985.

FREQUENCY OF PERIODIC REVIEWS

(Section 15 of the committee amendment)

Present law

Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed to assess their continuing eligibility at least once every 3 years.

Under a provision enacted in 1983 (P.L. 97–455), the Secretary is provided the authority to waive this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels.

On April 13, 1984, Secretary Heckler announced a termporary, nationwide moratorium on periodic eligibility reviews.

Committee amendment

The Committee amendment requires the Secretary to issue final regulations, within 6 months of enactment, establishing the standards to be used in determining the frequency of periodic eligibility reviews. Pending issuance of such regulations, no individual can be reviewed more than once.

In proposing this amendment, the Committee does not in any way intend to suggest that the Secretary is being granted authority to waive or modify the present-law requirements pertaining to the periodic review of all DI beneficiaries. Regular eligibility reviews are mandated by law.

Situations have arisen, however, which are of concern to the Committee and which could be clarified through the issuance of such a regulation. For example, it is not the intention of the Committee that individuals who are found eligible for benefits after a lengthy administrative appeal find themselves subjected to a second eligibility review after only a relatively brief period. Conversely, with the number of people now classified administratively as being permanently impaired approaching 40 percent of the disabled-worker benefit rolls, the Committee is concerned that the responsibility to assess the continuing eligibility of such beneficiaries not be neglected. A failure to periodically review eligibility in these cases could seriously undermine the intent of the 1980 legislation. Finally, there are individuals who are medically diaried and expected to recover in less than 3 years. For these individuals, reviews should be scheduled accordingly.

MONITORING OF REPRESENTATIVE PAYEES

(Section 16 of the Committee Amendment)

Present law

The Social Security Act permits the Secretary of Health and Human Services to appoint a representative payee for an individual entitled to social security or supplemental security income (SSI) benefits when it appears to be in the individual's best interest. Payees must be appointed for individuals receiving SSI based on drug or alcohol addictions.

The Social Security Act defines penalties for misuse by payees of social security and SSI payments, but places no requirements or restrictions on the selection and monitoring of payees.

A payee convicted of misusing a social security beneficiary's funds is guilty of a felony, punishable by imprisonment for not more than 5 years and/or a fine of not more than $5,000. A payee convicted of misusing an SSI recipient's funds is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year and/or a fine of not more than $1,000.

Prior to 1978, all payees except parents or spouses with custody, legal guardians and State and Federal institutions were required to account annually. Systematic accounting procedures for these payees were suspended as a work-saving measure between 1978 and March 1984. (However, State institutions are subject to an on-site accounting process at least every 3 years and this process has not been suspended.) In March 1983, a Federal district court ordered the Social Security Administration (SSA) to institute a system of periodic mandatory payee accounting within 1 year *Jordan* v. *Heckler*. In March 1984, SSA implemented an accounting system under which a random sample of 10 percent of all payees are required to account annually. At the request of the plaintiff, the court subsequently revised its order in *Jordan* so as to require an annual accounting from all payees.

Committee amendment

The entitlement of retirees, survivors, and the disabled to social security benefits is an important element in the economic security of often vulnerable individuals. When the Social Security Administration finds that such individuals cannot manage their own funds, it has a serious obligation to exercise caution is selecting an alternate payee and to undertake reasonable efforts to assure proper use of and accountability for the benefits disbursed to that payee. The Committee amendment would establish a statutory base for that obligation of the agency. At the same time, the Committee amendment recognizes that it is neither necessary nor appropriate to require governmental supervision or detailed accounting in the case of close familial relationships (parent and child or spouses living together) absent some allegation or overt reason to suspect the possibility of misuse of funds.

More specifically, the amendment would require the Secretary to: (1) evaluate the qualifications of prospective payees either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are

made to someone other than the entitled individual, or parent or spouse living in the same household, (3) establish a system whereby parent and spouse payees who live in the same household as the entitled beneficary would peridocially verify that they continue to live with the beneficiary, and (4) increase the penalties for misuse of benefits by representative payees. (The amendment also permits the Secretary to establish an accounting system for State institutions which serve as payees.)

The fine for a first offense by a payee convicted of misusing SSI benefits would be increased to not more than $5,000 and, for both programs, a second offense by a payee would be made a felony punishable by imprisonment for not more than 5 years and/or a fine of not more than $25,000. Individuals convicted of a felony under either program may not be selected as a representative payee.

Finally the Secretary would be required to report to Congress within 6 months of enactment on the implementation of the new system, and also to report to Congress annually on the number of cases of misused funds, and the disposition of such cases.

Effective date

On enactment.

FAIL-SAFE FINANCING

(Section 17 of the Committee amendment)

Present law

Under permanent law, each social security trust fund is intended to have sufficient resources to meet its full benefit obligations. The main source of funding for the Disability Insurance Trust Fund is that portion of the social security tax allocated for disability. At present, the disability part of the tax is 1 percent of taxable payroll (employee and employer combined). It is scheduled to rise to 1.2 percent in 1990 and to 1.42 percent in 2000 and thereafter. Temporary legislation enacted in 1983 also allows for borrowing among the trust funds in view of the relatively low balances in the cash benefits funds at the present time. This authority expires, however, in 1988. Present law does not contain any authority for making benefit payments in the event the social security trust funds should prove to have inadequate resources.

Committee amendment

The Committee believes that the social security disability insurance program provides important protections to American workers and their families against the threat of income loss should they suffer disabling medical conditions which prevent them from engaging in substantial gainful employment. The cost of this program is significant, and it is considerably higher than originally estimated. Nevertheless, the Committee believes that those who support this program through social security payroll taxes are willing to bear those costs provided that they can have confidence that the program will be carefully administered that that its benefits will be limited to the intended, eligible population.

The Committee views the present bill as an important measure to restore order and confidence to the disability program. It does have significant short-term costs, but if current estimates are correct it should not seriously affect the long-range stability of the disability program or of the social security funds generally. The Committee is, however, aware that the disability program has shown considerable volatility, and there is the unfortunate possibility that the pending legislation could be misinterpreted as a signal of Congressional intent for looser program administration. Should that happen, the costs of the program might escalate rapidly. Such a development is neither anticipated nor desired by the Committee.

To assure that taxpayers and beneficiaries may have confidence in the continuing fiscal integrity of the program, the Committee amendment includes a fail-safe provision. This provision will put those who administer the program at the Federal and State level, and the courts, on notice that there is not an open-ended commitment of taxpayer funds to underwrite rapidly expanding costs which might follow from lax administration or overbroad construction of the law. At the same time, the provision will serve to prevent a situation in which the fund might be rapidly depleted to the extent of placing the continuing regular payment of basic benefits in doubt.

Specifically, the fail-safe provision in the Committee amendment would operate as follows. If the disability fund is projected to decline to less than 20 percent of a year's benefits as of the start of any year, the Secretary would be required to notify the Congress by the preceding July 1. If Congress took no other action, the Secretary would scale back (in part or in full) the next cost-of-living increase for disability beneficiaries as necessary to keep the fund balance at 20 percent. If necessary, the Secretary also would scale back the increase in the benefit formula used for determining benefit levels for persons newly awarded disability benefits. In making the determination under this provision, the Secretary would be required to consider actual assets properly owned by the DI trust fund. Thus, the fund would get full credit for the approximately $5 billion which it has temporarily loaned to the OASI fund under the interim interfund borrowing arrangements. With these assets, it is now projected that the DI fund would not dip below the 20 percent level until well into the next century.

The fail-safe provision in the Committee amendment is generally similar to a fail-safe provision for the OASI and DI programs combined which the Committee recommended and the Senate approved as part of the 1983 amendments. That provision, however, was not included in the conference agreement on that legislation.

Effective date

On enactment.

MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

(Section 18 of the Committee Amendment)

Present law

Since 1956, when the Disability Insurance program was enacted, the States have been responsible, on a voluntary and reimbursable basis, for determining whether individuals are disabled under the meaning of the law. Under the law, States administering the program are required to make disability determinations in accord with Federal law and the standards and guidelines established by the Federal Department of Health and Human Services. The program is 100 percent Federally financed, with all benefit costs as well as all of the administrative costs incurred by the States either directly financed or reimbursed by the Federal government.

The law provides for the Secretary to commence actions to take over the disability determination process of a State fails to follow Federal rules. However, the law includes a large number of procedural steps which must be complied with before such a Federal assumption can be accomplished. The Secretary may not commence making disability determinations earlier than 6 months after: (1) finding, after notice and opportunity for hearing, that a State agency is substantially out of compliance with Federal law; (2) developing all procedures to implement a plan for partial or complete assumption of the disability determinations which grant hiring preference to the State employees; and (3) the Secretary of Labor determines that the State has made fair and equitable arrangements to protect the interests of displaced employees.

Committee amendment

Since States bear no part of either administrative or benefit costs of the program, there has always been an inherent risk that determinations might not be made with the best interests of the program in mind. States could take the view that they are acting against their own interest to the extent that they deny wholly Federal benefits to their citizens, especially since this may in some instances result in added State costs under general assistance or other programs. Until recently there was no indication that State governments were attempting to influence the disability determination process in a manner which departed from Federal law and regulations concerning standards of eligibility. As a practical matter, however, a 1976 review by the General Accounting Office found that the State agency system resulted in too little national uniformity of decisionmaking and recommended increased efforts by the Social Security Administration to control the process. A follow-up GAO study in 1978 found the situation not improved and recommended the development of a plan to bring the system under complete Federal management.

Recently States have begun to directly challenge the authority of the Federal government to prescribe the standards to be applied in determining eligibility. Numerous States have either refused to conduct reviews under the standards prescribed by the Secretary or have conducted the reviews under a medical improvement standard contrary to the Secretary's authoritative interpretation of the law.

In some cases, such actions were based on court orders but in several instances (10 States, as of March 1984), the action was taken solely on the authority of the Governor. In hearings before other committees Governors have given some indication that they may be prepared to challenge Federal authority in areas other than medical improvement. Thus far, the Department has taken no action to require States to resume following Federal standards.

The Committee recognizes that the traditional cooperative arrangments between the States and the Federal government have been beneficial to the program and hopes that those arrangements can continue. On the other hand, the sole Federal responsibility for the funding of the program, the necessity of having a uniform national program, and the national importance of maintaining the integrity of the Social Security Trust Funds necessitate that the Congress and the Administration remain fully in control of and accountable for the policies applicable to the Social Security Act disability programs. A situation in which individual States begin tailoring those policies or selectively applying them cannot be tolerated.

The 1980 amendments properly sought to assure that any transition from State to Federal administration is done on an orderly basis and with due concern for the legitimate interests of affected employees. However, such procedural concerns cannot take precedence over the need to assure the continuing application of uniform Federal rules and standards to the disability determination process. For this reason, the Committee amendment would modify the provisions of law dealing with State determination of disability to assure better Federal monitoring of the situation and to require the Secretary to take prompt and effective action to deal with any future situations in which States refuse to follow Federal rules or to apply Federal standards of eligibility. The Secretary would be required to federalize disability determinations in a State within 6 months of finding that such State is failing to follow Federal law and standards.

Specifically, when the Secretary has reason to believe that a State is not following Federal law and standards, the matter must be promptly investigated and a preliminary finding must be made within 3 weeks. If the preliminary finding indicates that the State is out of compliance, the Secretary must immediately notify the State and request a response agreeing to follow Federal standards. If a satisfactory response is received within 21 days of the preminary finding, the Secretary would simply monitor the situation over the next 30 days to determine that the State is, in fact, in compliance. If a satifactory response has not been received by that deadline or if the State does not perform in accordance with such a response, the Secretary would be required to make a final finding. this finding would be made no later than 60 days after the preliminary finding, except that an additional 30 days would be allowed if the state requests and the Secretary, in her discretion grants, a hearing before the Secretary on the issue. The Secretary's decision on the matter would not be subject to appeal.

If the Secretary finds that the State is unwilling or unable to follow Federal guidelines in determining disability, the Secretary would be required to federalize the disability determination process

in that State as quickly as possible using SSA personnel or other means of administration available to the Federal government. To the extent feasible, the Secretary would attempt to meet the requirements of existing law which are designed to provide for an orderly transfer of functions, but in no event could the full Federalization take place more than 6 months after the final finding. Moreover, even during that 6 months the Secretary would be required to take such steps as may be necessary to assure that the final decision on all claims processed by that State was made in accordance with Federal standards of eligibility. This might require a Federal re-review of all claims or of those claims involving particular issues with respect to which the State was out of compliance.

This provision expires on December 31, 1987.

V. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the committee states that the estimates of the Administration and the CBO are as follows:

[Memorandum, May 18, 1984]

From: Eli N. Donkar, Office of the Actuary
Subject: Estimated Additional OASDI Benefit Payments Under S. 476 as Reported by the Senate Committee on Finance

The attached table presents the estimated additional OASDI benefit payments that would result from the proposed disability amendments contained in S. 476 as reported by the Senate Committee on Finance on May 16, 1984. The estimates are based on the alternative II–B assumptions of the 1984 Trustees Report. In this respect, the basic program assumptions underlying these estimates are the same as those used for my memorandum dated May 4, 1984, showing similar estimates for earlier versions of these proposals. In particular, these estimates do not reflect the effects of the national moratorium on periodic reviews announced April 13, 1984 by Secretary Heckler.

The final Committee bill represents a combination of provisions contained in the two packages of proposals described in my earlier memorandum. In addition, S. 476 contains three new sections that provide for (1) closer monitoring of cases where benefits are sent to representative payees, (2) improved State compliance with Federal law and standards established for the disability determination process, and (3) a mechanism to automatically restrict the level of annual cost-of-living benefit increases to DI beneficiaries if DI Trust Fund assets fall below 20 percent of annual DI outlays.

The attached table indicates that there are two key provisions with respect to costs attributable to the bill under this set of assumptions. The first of these, contained in section 2, would temporarily institute a revised procedure for the determination of continuing disability eligibility. The revised procedure would include a modified "medical improvement" standard, whereby an individual's disability benefits could generally not be terminated if the individual could demonstrate that his condition had not medically

improved since a previous determination of disability had been made.

The bill provides for the expiration of this new procedure at the end of calendar year 1987. The committee has indicated its intention to review the experience under the revised procedure, with the possibility that the medical improvement standard could be extended beyond its legislated expiration date. The current estimates, however, only reflect the costs resulting from the effect of the medical improvement standard during the period ending in 1987.

Previous estimates have included a range of examples with respect to the possible retrospective application of a medical improvement standard. However, the current bill includes specific language with respect to the application of this provision; it would apply to new decisions after enactment and to certain cases in the appeals "pipeline" as of the date of committee action on the bill.

The "pipeline" is defined in the bill to include those cases that (1) have not yet had a final decision of the Secretary, (2) cases covered under individual Federal court appeals, and (3) other cases covered under class action suits where the class was certified by the date of committee action. Therefore, the attached estimates for the current bill include only one set of costs for the medical improvement standard.

The second provision with a significant cost is section 3 which would provide for the continuation of benefits during the appeal of a medical cessation. Benefits could continue on appeal through the Administrative Law Judge decision in cases where the initial cessation was issued before June 1986. Furthermore, no payments would be made under this provision for months after January 1987.

It should be noted that a third section of the bill has the potential for a significant impact on DI Trust Fund outlays, although under the alternative II-B assumptions it would have no effect. Section 17 provides for the automatic adjustment of benefit increases otherwise applied to benefits paid from the DI Trust Fund. Under that provision, DI benefit increases would be reduced if a specified DI "trust fund ratio" is estimated to decline below a 20-percent "trigger level." Benefits payable to new beneficiaries joining the rolls might also be affected, if required to maintain a 20-percent level of trust fund assets. Under the alternative II-B assumptions, this trust fund ratio is estimated to stay above 30 percent during the projection period 1984-89. Therefore, the cited provision would not result in benefit reductions.

Under more adverse conditions, however, such as those contained in the 1984 Trustees Report alternative III assumptions, the corresponding ratios are estimated to fall below the "trigger level" beginning in 1988. Consequently, under that set of assumptions, this provision would result in reduced benefit increases for DI beneficiaries beginning in December 1986.

The average OASDI cost over the long range (1984-2058) is estimated to be less than 0.005 percent of taxable payroll, for each section of the bill separately and for the total cost of all sections combined.

Attachment.

ESTIMATED ADDITIONAL OASDI BENEFIT PAYMENTS UNDER S. 476 AS REPORTED BY THE SENATE COMMITTEE ON FINANCE

[In millions]

Section	Proposal	Fiscal year—						Total 1984–87
		1984	1985	1986	1987	1988	1989	
2	Revised CDR procedure, including medical improvement standard [1]	$150	$440	$400	$410	$400	$250	$2,050
3	Continuation of benefits during appeal (through ALJ for initial cessations before June 1986)	60	130	110	60	50	40	450
4	Uniform standards for disability determinations	(2)	(2)	(2)	(2)	(2)	(2)	(2)
5	Moratorium and revised criteria for mental impairment cases	(3)	(3)	(3)	(3)	(3)	(3)	(3)
6	Qualifications of certain medical professionals	(2)	(2)	(2)	10	10	20	40
7	Compliance with certain court orders							
8	Multiple impairments		(2)	(3)	10	10	20	40
9	Study on evaluation of pain	(2)	(2)	(2)	(2)	(2)	(2)	(2)
10	Modification of reconsideration prereview notice	(2)	(2)	(2)	(2)	(2)	(2)	(2)
11	Case development and medical evidence							
12	Payment of costs of rehabilitation services	(2)	(2)	(2)	(2)	(2)	(2)	(2)
14	Advisory council							
15	Regulations on fequency of reviews	(2)	(2)	(2)	(2)	(2)	(2)	(2)
16	Monitoring of representative payees	(2)	(2)	(2)	(2)	(2)	(2)	(2)
17	"Fail-safe" reduction of automatic benefit increases for DI beneficiaries	(4)	(4)	(4)	(4)	(4)	(4)	(4)
18	Measures to improve State compliance with Federal law and standards for the disability determination process	(5)	(5)	(5)	(5)	(5)	(5)	(5)
	Total for bill [6]	260	460	480	480	460	320	2,460

[1] See covering memorandum concerning which groups would be subject to the new procedure.
[2] Cost or savings less than $5 million.
[3] No cost is shown for this provision since existing Administration initiatives are expected to accomplish the same results under present law.
[4] No cost is shown for this provision since, under this set of assumptions, the approriate DI trust fund ratio does not fall below the 20-percent "trigger level" in this period.
[5] No cost is shown for this provision since estimates assume that any noncompliance of States would end upon enactment of a medical improvement standard for continuing disability reviews.
[6] Include $90 million due to continuation of benefits during appeal for past CDR terminations which would be reopened and evaluated under the new medical improvement standard but which would not be reinstated.

Notes:
(1) The above estimates do not reflect the affects of the national moratorium on periodic review cases announced on Apr. 13, 1984, by Secretary Heckler. See memorandum dated Apr. 24, 1984, by Eli N. Donker for a discussion of this issue.
(2) Estimates shown for each section alone exclude the effects of interaction with other proposals. Total costs for bill reflect such interactions.
(3) Due to the uncertainly concerning the effects of many of these proposals, actual experience could vary substantially from these estimates.
(4) Estimates are based on the 1984 trustees report alternative II–8 assumptions.

Source: Social Security Administration, Office of the Actuary, May 18, 1984.

U.S. CONGRESS,
CONGRESSIONAL, BUDGET OFFICE,
Washington, D.C., May 18, 1984.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the provisions of S. 476, the Social Security Disability Amendments of 1984, as ordered reported by the Senate Committee on Finance on May 18, 1984. We have not received a copy of this bill. The attached cost estimate is based on committee documents, and on conversations with committee staff.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 476.
2. Bill title: Social Security Disability Amendments of 1984.
3. Bill status: As ordered reported by the Senate Committee on Finance, May 18, 1984.
4. Bill purpose: To amend Title II of the Social Security Act to provide for reform of the disability determination process.
5. Estimated cost to the Federal Government: The following table shows the estimated costs of this bill to the federal government. These estimates assume an effective date retroactive to May 1, 1984, unless otherwise noted. The estimate was prepared without a draft of the bill. Estimates were prepared based on committee documents and on conversations with committee staff.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 476

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Budget function:						
Function 550: [1]						
Budget authority	3	10	12	11	5	6
Estimated outlays	3	10	12	11	5	6
Function 570:						
Budget authority	1	28	19	8	13	6
Estimated outlays	7	73	55	42	43	30
Function 650:						
Budget authority	−1	−14	−31	−45	−55	−67
Estimated outlays	46	220	225	127	136	121
Function 600: [1]						
Budget authority	1	5	8	10	8	11
Estimated outlays	1	5	8	10	8	11
Total costs or savings:						
Budget authority	4	29	8	−16	−29	−44
Estimated outlays	57	308	300	190	192	168

[1] Funding for entitlements that requires further appropriations action.

BASIS FOR ESTIMATE

This bill would change the disability process for those individuals who undergo continuing disability reviews (CDR's) and for those who apply for Disability Insurance (DI) and Supplemental Security Income (SSI) benefits. Historically, continuing disability reviews have been performed on medical diaried cases—these cases which the Social Security administration (SSA) evaluates as having some chance of medical improvement within a specific length of time. In 1981, SSA began an intensified process of periodically reviewing all cases on the rolls not considered permanently disabled.

It is difficult to project the costs of the provisions in this bill for several reasons. First, there are little data available on the characteristics of the people who have been terminated from the DI rolls as a result of the continuing disability investigations. Second, the Administration has changed some of its policies regarding the review process a number of times, and it is unknown how these changes will affect the number of terminations from the program. In addition, there are many class action cases pending in the court

system. The impact of this bill on the outcome of these cases is unclear. Finally, the language of the provisions allows for various interpretations which would affect costs.

This cost estimate assumes that 110,000 medical diary reviews would be performed annually. The number of periodic reviews is assumed to decline from less than 300,000 in 1984 to 120,000 in 1989, as the percentage of beneficiaries already reviewed increases. Approximately 45 percent of the medical diary reviews are estimated to result in initial terminations of benefit payments, but CBO estimates about 57 percent of these beneficiaries would have their benefits restored after appeals are reviewed. For periodic reviews, the percentage of initial terminations is projected to decline from 40 percent in 1984 to 20 percent in 1989. About 55 percent of those initially terminated from the rolls after a periodic review are estimated to have their benefits restored in the appeal process.

There are also costs to the Medicare program which would result from a larger number of recipients continuing to receive DI benefits, because most DI beneficiaries also receive assistance from the Hospital Insurance (HI) of Supplemental Medical Insurance (SMI) components of the Medicare program. Estimates of these costs are based on the average number of disabled beneficiaries receiving HI and SMI and on the average benefit payments for these programs. There are also costs to the Medicaid program because SSI beneficiaries generally receive Medicaid.

Table 2 displays CBO's outlay estimates for the major sections of the bill. Following the table is a description of the methodology used for the estimates of the outlays for each section listed in Table 2.

TABLE 2.—ESTIMATED OUTLAYS RESULTING FROM THE MAJOR PROVISIONS IN S. 476

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Termination of benefits based on medical improvement:						
DI	22	86	123	130	113	90
HI and SMI	4	25	35	40	35	25
Medical	(1)	3	4	4	3	3
SSI	1	3	4	4	3	3
Multiple impairments:						
DI	(1)	4	7	11	13	15
HI and SMI	(1)	(1)	(1)	1	2	2
Medical	(1)	(1)	1	1	1	1
SSI	(1)	1	2	2	3	3
Continued payment during appeal:						
DI	25	149	112	−20	0	0
HI and SMI	3	48	20	0	0	0
Medical personnel qualifications:						
DI	(1)	(1)	(1)	10	10	20
HI and SMI	(1)	(1)	(1)	1	1	3
Medical	(1)	(1)	(1)	1	1	2
SSI	(1)	(1)	(1)	2	2	5
Compliance with court orders	(2)	(2)	(2)	(2)	(2)	(2)
Vocational rehabilitation:						
DI	(1)	2	4	7	8	8
HI and SMI	(1)	(1)	(1)	(1)	(1)	(1)
SSI	(1)	(1)	(1)	(1)	(1)	(1)
Extension of sections 1619a and 1619b:						
Medical	3	7	7	6	0	0

TABLE 2.—ESTIMATED OUTLAYS RESULTING FROM THE MAJOR PROVISIONS IN S. 476—Continued

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
SSI	(1)	1	2	2	0	0
Total outlays [3]	57	308	300	190	192	168

[1] Less than $500,000.
[2] The costs of this provision cannot be estimated because they depend on future court decisions.
[3] The details do not add to the totals due to interaction between provisions.

Note.—This estimate was prepared based on conversations with committee staff. A draft of the bill as ordered reported has not been received.

TERMINATION OF BENEFITS BASED ON MEDICAL IMPROVEMENT

The medical improvement provision in S. 476 would require SSA to show that a current recipient's disabling condition has medically improved before the benefit could be terminated. Under current law, the condition of a beneficiary is compared to the medical listings and other guidelines to determine if the recipient is still disabled. SSA does not have to establish medical improvement, but only that the recipient is not disabled under current standards.

In 1979, the medical standards were made more precise; some beneficiaries who previously qualified under the old standards are now being terminated as not disabled under the new. These new standards toughened and codified stricter evaluation guidelines in determining disability. Prior to the new standards, 33.9 percent of reviews resulted in cessations; after 1979, these cessations before appeal were 40.9 percent of those reviewed. It is assumed that the resulting 20 percent increase in cessations were for those not meeting the new procedures but previously found disabled under the old. CBO assumes that 20 percent of those currently terminated are the result of this change, and are the group that would be affected by this medical improvement standard.

Of the 20 percent initially denied benefits under current law for medical improvement, we project that 85 percent would appeal and 75 percent of those who appeal would be continued on the rolls. Therefore, under current law, about 64 percent of the people losing benefits initially and whose disabilities have not improved would ultimately be continued on the DI rolls. Costs for the medical improvement provision would result from the continuation of benefits for the remaining 36 percent, who under current law, would not appeal or who would lose an appeal and would consequently be dropped from the rolls. In 1985, the first full year this provision would be in effect, it is estimated that approximately 6,500 people would be retained on the rolls as a result of this provision. The additional number of beneficiaries receiving DI as a result of this provision would fall over time as CBO's estimate of the number of CDRs performed declines. The costs to DI, including administrative expenses, are estimated to rise from $22 million in 1984 to $130 million in 1987, declining to $90 million by 1989. This estimate is assumed to be applied only to prospective cases and to certain cases currently in the court system. In SSI, only concurrent cases—those receiving both DI and SSI—would be affected because no CDRs have been planned for SSI only cases.

This medical improvement provision will expire on December 31, 1987. It is possible that a larger number of terminations than currently estimated will occur after that date, since those not terminated from the rolls in the intervening period may be reevaluated after 1987. This could negate some of the costs shown in 1988 and 1989. This estimate does not include any effect of such potential savings in 1988 and 1989.

The standards set by this provision will also apply to individual litigants in pending court cases and to certain members of certified class action suits. The impact that this part of the provision will have on the ultimate decision in the court cases is difficult to estimate. Specifying standards could facilitate judgments in favor of the claimant and result in increased program costs. However, judgments could still go against the claimant, or the law could be interpreted less favorably toward the claimant, lowering costs attributable to the bill. No impact on costs or savings is included in this estimate from the provision's impact on pending court cases.

MULTIPLE IMPAIRMENTS

This provision would require SSA to consider whether the combination of the applicant's disabilities is severe enough to keep the individual from working at the "significant gainful activity" level in the case where no one impairment is considered severe enough to warrant benefit payments. The SSA estimates that about 500 additional cases per year would be added to the rolls as a result of this provision. This would increase DI costs by a range of less than $500,000 in 1984 to $15 million in 1989. In SSI, about 150 cases would be added initially, increasing SSI costs by a negligible amount in 1984 and by $3 million in 1989.

CONTINUED PAYMENT DURING APPEAL

This provision would provide for continued payment of disability benefits through the Adminstrative Law Judge (ALJ) level of appeal for those individuals who appeal SSA's decisions to end their benefits as a result of CDRs. This provision would affect terminations through June 1986 and continue benefit payments until January 1, 1987. The estimated costs, including administrative costs, are $25 million in 1984 and $149 million in 1985. The costs arise as a result of extra benefits paid to those who ultimately lose their appeal but do not repay the interim benefits as required under this provision. The estimate assumes that seven months of additional benefits are paid to each individual and that 15 percent of those who are finally terminated repay the extra beneifts. This repayment is expected to occur in the year after the benefits are paid.

MEDICAL PERSONNEL QUALIFICATIONS

This provision would require that the Secretary of HHS make every reasonable effort to ensure that a psychologist or a psychiatrist complete a medical evaluation in mental impairment cases before the individual can be denied benefits. The SSA expects fewer than 500 individuals will be added to the rolls annually as a

result of this change in procedure. DI costs would be less than $500,000 in 1985, rising to $20 million by 1989, while SSI costs would total $5 million by 1989.

VOCATIONAL REHABILITATION

This provision changes the regulations concerning benefit payments for individuals participating in vocational rehabilitation programs. The SSA estimates that about 300 individuals per year would be affected by this change. DI costs would range from negligible in 1984 to $8 million in 1989. SSI costs would be insignificant.

COMPLIANCE WITH COURT ORDERS

This provision requires SSA to apply the decisions of the circuit courts of appeal to all beneficiaries residing within states within the circuit, until or unless the decision is overruled by the Supreme Court. This provision could substantially increase costs but these effects cannot be estimated since they would depend on the outcome of future court decisions.

FAIL SAFE FINANCING PROPOSAL

This provision would require the Secretary of HHS to reduce or eliminate the cost-of-living adjustments and to reduce benefits for current and future disabled workers if the Disability Insurance trust fund's reserve is projected to decline to less than 20 percent of a year's outlays. This mechanism would trigger only if the Congress takes no other action. The trust fund balance used for this calculation would include the funds owed to it by the OASI trust fund—currently $5 billion. CBO does not project the DI fund to fall below this level. The estimated DI costs in this bill do not trigger the benefit reduction mechanism.

EXTENSION OF SECTIONS 1619a AND 1619b

Sections 1619a and 1619b provide SSI and Medicaid benefits to disabled individuals who work and who would not otherwise be eligible for benefits because their earnings exceed the "substantial gainful activity" level. These sections, which expired on December 31, 1983, are extended by these amendments through June 30, 1987. Section 1619a is estimated to add 575 persons to the SSI rolls in 1984 and 950 by 1986. Section 1619b is estimated to add 8,300 persons to the Medicaid rolls in 1984 and 10,500 by 1986.

6. Estimated cost to State and local governments: A number of the provisions of this bill would increase expenditures of state and local governments. The estimated net impact of the bill on state and local expenditures is less than $5 million a year.

The changes in SSI would increase state and local government costs because virtually all states supplement federal SSI benefits. By making more persons eligible for SSI benefits, state costs would increase. States are also affected by the added outlays in Medicaid because states finance a portion of the program. The current state financing share is 46 percent.

There could be some offsets to these added SSI and Medicaid costs to the extent that persons made eligible for DI and SSI by the

bill might otherwise be eligible for general assistance or health care financed fully by states and localities. These potential offsets are not included in the cost estimate.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Stephen Chaikind and Janice Peskin.

10. Estimate approved by C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

VI. REGULATORY IMPACT OF THE BILL

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate.

VII. VOTE OF THE COMMITTEE

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote of the committee on the motion to report the bill. S. 476 as amended, was ordered favorably reported by a rollcall vote of 20 yeas and 0 nays.

VIII. ADDITIONAL VIEWS OF HON. RUSSELL B. LONG

Although I continue to have reservations about S. 476, the Finance Committee has made important modifications in the bill:

The medical improvement standard in the Committee bill is a less complete presumption of continuing eligibility for persons who were not disabled when they began receiving disability benefits;

A measure of protection of the disability insurance trust fund, if the cost of the bill far exceeds the estimates, is incorporated in a fail-safe provison which will scale back cost-of-living increases if the fund begins to deteriorate;

By incorporating a statutory definition of pain the Committee bill re-emphasizes that legislative policy is set by the Congress and that the Congress expects the Administration and the courts to interpret and apply that policy in the light of the Congressional intent that the disability insurance program be carefully administered and nationally uniform; and

By providing a mandatory expedited timetable for dealing with State failure to follow Federal rules in determining eligibility, the Committee bill would prevent another protracted deterioration in State administration of this Federal program such as in now occurring.

The Medical Improvement Standard

Under legislation enacted in 1980, the Administration has conducted a large number of continuing disability reviews to see if persons on the disability insurance rolls are still disabled. A significant number of persons were removed from the rolls.

Under present law, when a recipient of disability insurance benefits is reviewed to determine whether he is still disabled, the same definition of disability applies to him as is used for a new applicant, namely: Is he able to engage in "substantial gainful employment"?

S. 476 as introduced would for the first time have set a different standard of continuing eligibility for a person already on the rolls. Finding him capable of engaging in substantial gainful activity would not have sufficed to end his benefits; the Secretary would also have had to show that he had undergone medical improvement since he was first determined to be disabled.

The Committee bill amends and improves this provision. The original bill would have almost totally foreclosed the Secretary from removing from the rolls a person who was not disabled when he bagan receiving benefits. The Committee bill instead lets the Secretary challenge the original disability determination, develop additional evidence and require the complainant to prove that his condition has not medically improved.

Even with this modification, the Social Security Act for the first time will have permitted persons who are able to engage in substantial gainful employment to continue receiving disability insurance benefits.

The Committee bill is estimated to cost $2.5 billion over a five-year period. Virtually this entire amount will be paid to persons who are able to work.

These very significant costs of this legislation are justified by the proponents of the bill on the basis of the need to deal with the current chaotic situation which prevails in the administration of the social security disability program. Even if this argument were to be accepted, it remains deeply troubling for us to expend $2.5 billion, at a time when we are struggling to cope with alarming Federal deficits, to provide benefit payments to individuals who would be unable, despite several levels of appeals, to establish their eligibility.

The situation will be much worse if the legislation, instead of resolving the current chaotic situation, simply serves as a signal for further efforts to broaden eligibility. The bill as reported by the Committee on Finance clearly does not intend such a result. However, the costs and caseloads of this program have over the years proven highly volatile and difficult to control. The adoption by the Congress of a dual standard of eligibility creates a tension which could be laying the groundwork for further expansion of the program. It may prove difficult to maintain a situation in which individuals are denied admission to the benefit rolls—even though equally or less disabled persons who managed to get on the rolls are allowed to keep receiving benefits.

Disability Program Needs Further Review and Revision

S. 476, as reported by the Committee on Finance, attempts to deal with major problems which now exist in the way the program is administered. I believe a number of the provisions of the bill will help in this regard. For example, the specific provision reaffirming the existing regulation on the evaluation of pain will resolve whatever confusion there may be on this issue. It emphasizes again the Congressional view of the need to limit eligibility to cases where disability can be established by objective medical evidence. The timetable for dealing with State defiance of Federal rules should help the Secretary deal with such problems more forcefully. Even the medical improvement provision, though it is troublesome from a policy perspective, at least will resolve a large body of litigatioin according to a policy standard which is set, as it should be, by the Congress and not the courts.

While these features of the Finance Committee bill are desirable improvements in the program, I am concerned that there remain major problems in the structure of the disability program which are not adequately addressed by the pending legislation. If Congress is to bring this program back under control and restore the confidence of both taxpayers and beneficiaries in its evenhandedness, we will need to undertake stronger measures than those contained in this bill.

Consistency of decisionmaking.—One of the arguments most frequently advanced in support of the medical improvement standard is that many, or even most, of the benefit terminations as a result of the recent eligibility reviews were erroneous. The evidence offered in support of this argument is that more than half of the terminations appealed to an administrative law judge (ALJ) were overturned at that level.

While the statistic is correct, the conclusion drawn from it is not. The phenomenon of a reversal rate by ALJs exceeding 50 percent is not peculiar to the recent review process. Both for continuing reviews and initial awards, the ALJs have consistently over the past ten years reversed more than half of the cases appealed to them.

This prolonged pattern of high reversal rates indicates only that different standards are being applied at different levels of the administrative structure. This problem has been recognized for some time. The 1980 amendments attempted to address the problem by mandating a study of its causes and by requiring the Secretary to undertake to review a significant portion of cases which are reversed by ALJs. In addition to these actions, the agency has undertaken to publish rulings aimed at providing a uniform set of basic eligibility guidelines for all levels of the administrative process.

Thus far, at least, there is no evidence that any of these measures are having a significant impact. It may be too early for any results to show up, particularly in the present confused administrative atmosphere. But if the present approach does not succeed in achieving consistent decisionmaking within the present program structure, the Congress may need to consider modifications in that structure.

The role of the courts.—In the 1956 hearings on the question of establishing a disability program, witnesses from the insurance industry predicted that the courts would be only too eager to broaden the scope of the program beyond what Congress intended. That prediction has proven to be quite accurate. In the 1967 amendments the Committee report cited several examples of ways in which the courts had broadened the original intent of the statute. The Committee then directed the Administration to report to the Congress on "future trends of judicial interpretation of this nature," and added to the statute provisions designed to counteract those court cases.

The situation has not noticeably improved. In a recent case *Polaski* v. *Heckler,* a U.S. District Court judge excoriated the Secretary for following her own regulation in violation of what he deemed to be the "fundamental policies at the heart of the disability program." He found these fundamental policies embodied in a law review article by another judge to the effect that the disability statute "should be broadly construed and liberally applied." On the basis of his findings that the Secretary was not obeying what he calls "Eighth Circuit Law," this judge ordered the Secretary to substitute his policy judgment for hers (and that of the Congress) in carrying out the Social Security Act in an area covering seven States.

This case would not be so troubling if it were atypical. But apparently it is almost the judicial norm. Courts do, of course, have the responsibility to carry out the law and to resolve questions of

interpretation. In so doing, however, they should be guided by the statute and its legislative history, not by abstract theories found in law review articles. If the judge in this case had bothered to examine the statute and legislative history, he would have ample evidence of Congress's concern not that the law be more broadly construed, but that it be more narrowly construed. He would also have found great concern on the part of Congress that this law be administered more uniformly. This might have led him to give more weight to national law than to "Eighth Circuit Law." In the United States, the law is the law of the land and it is made by Congress. The courts, including the district and circuit courts, have an important role in carrying out and enforcing the law. But Circuit courts are not regional legislatures.

In its provision on the evaluation of pain, the Committee deals with one of the areas in which the Courts have been broadening the program. However, it is clear from the law review article quoted in the *Polaski* case that there are many other aspects of the program on the judicial agenda. If the regional courts are going to persist in ignoring the policy objectives expressed by Congress and persist in refusing to grant appropriate deference to the duly promulgated regulations of the Secretary, the Congress may be forced to find ways of dealing with this situation.

There have, of course, been some changes in the eligibility requirements for disability benefits since 1956. These changes, however, explain only about one-third of the growth of the program (on the basis of the cost estimates made when they were added to the law). The bulk of the growth in the costs of the disability program cannot be adequately explained except on the basis that the program has been administered in such a manner as to pay benefits to a broader population than Congress intended the program to serve.

Even more troubling than the mere fact that program costs are greater than originally estimated is the evidence that it remains a highly volatile program. Its costs could easily expand well beyond present levels. At the time the program was first enacted, the experts estimated that by 1990 there would be a little more than a million disabled workers drawing benefits. Today there are 2.6 million workers drawing benefits. This is a large increase. But just a few years ago—in 1977—the benefit rolls were growing so rapidly that the actuaries projected they would exceed 5 million disabled worker beneficiaries by 1990. That is roughly 5 times the original estimate.

In dollar terms (using a constant dollar concept based on 1984 payroll levels), the projected long-range average costs of the program have increased from $5 billion in 1956 to $23 billion today—a fourfold increase. But today's projected costs are far from the historic high. That occurred in 1977, when instead of the original 0.33 percent of payroll or the present 1.45 percent of payroll, the long-range program costs were projected to require a tax (on a comparable basis) of about 3.4 percent of payroll—some 10 times as high as the original estimate. This extreme point in the cost of the program was partially caused by a problem in the benefit formula. But even after that problem was corrected by the 1977 amendments, the long-range average cost of the program was estimated to be 2.49 percent of payroll—over 7 times the original cost. In compara-

ble constant dollar terms, this translates into a long-range annual average cost of $40 billion per year.

Viewed in this perspective, it is clear that this is a program with a serioius potential for getting further out of control. It could easily add billions of dollars per year to the deficit and could endanger the stability of the social security system generally. It is particularly important to note that the program is now again showing a trend towards increased costs. As a result of the actions by the States and the courts and the various moratoria imposed by the Administration, the rates of termination are on a downward trend. This is not surprising. But the program has also recently shown an upswing in the allowance rates and in application rates.

Federal-State relationship.—A troubling recent development in the disability program is the tendency of some States to defy Federal rules in carrying out this program which is wholly Federally funded. Even more troubling is the fact that the Secretary took no action to being the errant States back into line. The Committee bill does attempt to deal with this for the future by establishing firm and mandatory time frames for proceeding to Federalized operations in States which refuse to comply. This situation must be monitored, however, if it is not to recur.

The handicapped population.—One reason for the volatility of the disability program is that it is intentionally limited to only the most severely disabled—those who because of their impairment cannot engage in any substantial gainful work activity. This limitation is based not solely on cost but on grounds of policy. The law should not encourage those who retain the capacity for self-support to become dependent.

Unfortunately, if society cannot provide employment opportunities for handicapped individuals who are not totally disabled, they will understandably seek to be found eligible for benefits under the disability programs. And it will be difficult for the administrators of those programs to deny them eligibility.

If we are to succeed in controlling the cost of the disability insurance program, we must find more effective ways of opening up jobs to those handicapped people who have the capability to become productive members of society. While this problem is beyond the scope of the pending bill, our failure to solve this problem has a great deal to do with why this bill is needed. There would be no requirement for a medical improvement standard if we could offer a job to any handicapped person who could work.

I hope the Congress will turn its attention to this issue and that the administration will consider whether it cannot recommend to Congress some significant measures to increase the availability of job openings for the handicapped.

THE GROWTH OF THE DISABILITY PROGRAM

When the disability program was enacted in 1956, it was projected that the program could be permanently financed by a combined employer-employee tax of 0.42 percent of payroll. After adjusting for the proportion of covered wages which are subject to tax, that is closer to a rate of 0.33 percent in today's terms. Since that time, the cost of the program has grown significantly. In the 1984 report

of the Social Security trustees, the long-range costs of the program are estimated at 1.45 percent of payroll, some 4 times what was originally estimated. Expressed on a consntant-dollar basis in relation to 1984 payroll levels, the long-range average cost of the program has increased from $5 billion per year to $23 billion per year.

Just in the past year, the social security actuaries have been required to significantly increase their estimates of what this program will cost even if there is no additional legislation. For the 10-year period ending 1992, the 1984 trustees report indicates that without any legislative change the projected disability program costs have increased by $5.5 billion. The estimates of the long-range average annual costs have similarly increased by over $1 billion per year.

For this reason, there are grounds for serious concern over the possibility that the enactment of disability legislation could be taken as a signal which would unleash another explosion of program costs. If that were to take place, the currently estimated costs of the bill, although they are substantial, would pale in comparison with the true costs of the bill. There is good reason to expect that the enactment of this legislation in the form it passed the House or in the form in which it was referred to the Finance Committee would produce just such results. The Finance Committee has modified this legislation and, in particular, has attempted to clarify it in several ways to limit the possibility that it could mistakenly be seen as the starting signal for another round of program growth. Even so, careful moitoring will be required, given the historic difficulty of controlling the program. In particular, it would be very difficult to responsibly support this legislation if the safeguards included by the Finance Committee were weakened in any significant degree.

RUSSELL B. LONG.

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

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of Rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, S. 476, as reported by the committee).

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Calendar No. 899

NOTICE: In lieu of a star print, errata are printed to indicate corrections to the original report.

98TH CONGRESS, 2d Session } SENATE { REPORT 98–466

ERRATA

MAY 18 (legislative day, MAY 14), 1984.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 476]

CORRECTIONS

Page 2, line 1: delete "for a period of 3½ years" and insert "through December 31, 1987"; paragraph 4, line 2: insert comma after "eligibility"; last paragraph, line 3, add "s" to "require".

Page 7, next to last line: delete the word "currently".

Page 8, line 6: the word "lasted" is misspelled; paragraph 6, line 6, new paragraph before "(Benefits"; last paragraph, second line, insert "This" before "Burden".

Page 10, strike second sentence and insert: Only if the individual satisfies the burden of showing that his medical condition has not improved would the burden be upon the Secretary to show some other change in circumstances that would warrant terminating benefits. If the claimant cannot meet the burden of showing no medical improvement or the Secretary can show a change in circumstances, eligibility would be determined under the present law test of ability to engage in substantial gainful activity.

Page 13, line 2: delete "and"; line 3: the word "new" is misspelled; line 13: insert "a"; paragraph 2, line 15, the word "their" is misspelled; last line of paragraph 3: the word "for" should be "far".

31-010 O

Page 18, line 6, indent Committee amendment; line 10 of second paragraph: delete comma after "administrative"; line 3 of fourth paragraph, insert apostrophe in Administration's; line 4 of fourth paragraph, delete comma after "(SSA's)".

Page 19, line 2: delete comma after "standards".

Page 21, paragraph 4, line 16: insert comma after "Mendosa,".

Page 22, line 3 of paragraph 1: the word "functional" is misspelled; line 2 paragraph 4: the word "cumulatively" is misspelled.

Page 23, paragraph 3, line 15: the word "guidelines" is misspelled.

Page 25, line 5 of paragraph 4: the word "contract" should be "contact".

Page 27, paragraph 2, line 2: the word "seven" should be "severe."; line 3: add "s" to impairment; line 9: delete the word "thus".

Page 28, paragraph 5: the word "temporary" is misspelled.

Page 30, line 4: the word "beneficiary" is misspelled; the word "periodically" is misspelled; next to last line delete the first "that" and insert "and".

Page 32, paragraph 2: insert the word "which" after "State".

Page 33, paragraph 4, line 7: the partial word "preli-" is misspelled.

Page 34, after the author's name and affiliation (on memo) add "Social Security Administration".

Page 43:

In the original printing of Senate Report 98–466, several paragraphs of the additional views of the Honorable Russell B. Long were misplaced. The additional views are correctly reprinted below.

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employer-employee tax of 0.42 percent of payroll. After adjusting for the proportion of covered wages which are subject to tax, that is closer to a rate of 0.33 percent in today's terms. Since that time, the cost of the program has grown significantly. In the 1984 report of the Social Security trustees, the long-range costs of the program are estimated at 1.45 percent of payroll, some 4 times what was originally estimated. Expressed on a constant-dollar basis in relation to 1984 payroll levels, the long-range average cost of the program has increased from $5 billion per year to $23 billion per year.

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Viewed in this perspective, it is clear that this is a program with a serious potential for getting further out of control. It could easily add billions of dollars per year to the deficit and could endanger the stability of the social security system generally. It is particularly important to note that the program is now again showing a trend towards increased costs. As a result of the actions by the States and the courts and the various moratoria imposed by the administration, the rates of termination are on a downward trend. This is not surprising. But the program has also recently shown an upswing in the allowance rates and in application rates.

Just in the past year, the social security actuaries have been required to significantly increase their estimates of what this program will cost

even if there is no additional legislation. For the 10-year period ending 1992, the 1984 trustees report indicates that without any legislative change the projected disability program costs have increased by $5.5 billion. The estimates of the long-range average annual costs have similarly increased by over $1 billion per year.

For this reason, there are grounds for serious concern over the possibility that the enactment of disability legislation could be taken as a signal which would unleash another explosion of program costs. If that were to take place, the currently estimated costs of the bill, although they are substantial, would pale in comparison with the true costs of the bill. There is good reason to expect that the enactment of this legislation in the form it passed the House or in the form in which it was referred to the Finance Committee would produce just such results. The Finance Committee has modified this legislation and, in particular, has attempted to clarify it in several ways to limit the possibility that it could mistakenly be seen as the starting signal for another round of program growth. Even so, careful monitoring will be required, given the historic difficulty of controlling the program. In particular, it would be very difficult to responsibly support this legislation if the safeguards included by the Finance Committee were weakened in any significant degree.

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Calendar No. 899

98TH CONGRESS
2D SESSION

S. 476

[Report No. 98–466]

To amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are terminated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15 (legislative day, FEBRUARY 14), 1983

Mr. LEVIN (for himself, Mr. COHEN, Mr. BOREN, Mr. SPECTER, Mr. DIXON, Mr. KENNEDY, Mr. HEINZ, Mr. MATSUNAGA, Mr. PRYOR, Mr. GLENN, Mr. NUNN, Mr. KASTEN, Mr. MOYNIHAN, Mr. COCHRAN, Mr. DECONCINI, Mr. LAUTENBERG, Mr. ANDREWS, Mr. BOSCHWITZ, Mr. RIEGLE, Mr. HUDDLESTON, Mr. HAWKINS, Mr. D'AMATO, Mr. PELL, Mr. SASSER, Mr. DURENBERGER, Mr. QUAYLE, Mr. TSONGAS, Mr. BUMPERS, Mr. STAFFORD, Mr. CRANSTON, Mr. BYRD, Mr. METZENBAUM, Mr. CHAFEE, Mr. BINGAMAN, Mr. SARBANES, Mr. EAGLETON, Mr. HART, Mr. WEICKER, Mr. WARNER, and Mr. HATFIELD) introduced the following bill; which was read twice and referred to the Committee on Finance

MAY 18 (legislative day, MAY 14), 1984

Reported by Mr. DOLE, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are termi-

nated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes.

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

~~SHORT TITLE~~

~~Section 1. This Act may be cited as the "Disability Amendments of 1983".~~

~~TERMINATION OF BENEFITS BASED ON MEDICAL IMPROVEMENT~~

~~SEC. 2. (a) Section 223(d) of the Social Security Act is amended by adding at the end thereof the following new paragraph:~~

~~"(7)(A) Except as provided in subparagraph (B), no benefits under this section, and no child's, widower's, or widow's benefit based upon disability, may be terminated on the grounds that the physical or mental impairment on the basis of which such benefit was payable has ceased, did not exist, or is no longer disabling, unless the Secretary makes a finding that the individual is significantly more able to engage in substantial gainful activity than at the time of the most recent prior decision that such individual was under a disability (or continued to be under a disability), by reason of medical improvement in the individual's impairment or combina-~~

tion of impairments, or advances in medical or vocational therapy or technology which have directly benefited such individual.

"(B) Subparagraph (A) shall not apply in the case of a termination of benefits based upon—

"(i) a finding made in accordance with paragraph (4) that services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity;

"(ii) a finding that the most recent prior decision that such individual was under a disability was clearly erroneous under the standards for disability in effect at the time of such prior decision;

"(iii) new or improved diagnostic techniques or evaluations which demonstrate that the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that such individual was under a disability or continued to be under a disability; or

(iv) a finding of fraud.

(b) The amendment made by this section shall apply with respect to determinations made on or after the date of the enactment of this Act.

CASE DEVELOPMENT AND MEDICAL EVIDENCE

SEC. 3. (a) Section 223(d)(5) of the Social Security Act is amended by inserting "(A)" after "(5)" and by adding at the end thereof the following new subparagraph:

"(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months. In making such determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence necessary in order to properly make such determination, prior to seeking medical evidence from any other source on a consultative basis.".

(b) The amendment made by this section shall be effective with respect to determinations made after the date of the enactment of this Act.

PRETERMINATION NOTICE AND RIGHT TO PERSONAL APPEARANCE

SEC. 4. (a) Section 221 of the Social Security Act is amended by redesignating subsections (d), (e), (f), (g), and (i) as subsections (f), (g), (h), (i), and (j), respectively, and by inserting after subsection (c) the following new subsections:

"(d)(1) Any preliminary decision rendered by a State agency (or by the Secretary in the case where disability determinations are made by the Secretary as provided in subsection (i)) with respect to an individual's rights for a payment under this title, including any such decision regarding a new entitlement and any decision regarding termination of or change in an existing entitlement, in the course of which a determination relating to disability or to a period of disability is required and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, the preliminary decision, the reason or reasons upon which the decision is based, the right of such individual to a review of such decision, including the right to make a personal appearance, as provided in paragraph (2), and the right to submit additional medical evidence prior to such review. Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such a decision, he or she shall be entitled to a review of such decision, including the right to make a personal appearance, and may submit additional medical evidence for purposes of such review. Any such request must be filed

within thirty days after notice of the decision is received by the individual making such request. Failure to make a timely request for a review under this subsection shall also extinguish the right to a hearing under subsection (c) with respect to the same decision.

"(2) A review required under paragraph (1) shall include a review of medical evidence and medical history available at the time of the initial preliminary decision, shall examine new medical evidence submitted, and shall afford such individual the opportunity to make a personal appearance with respect to the case at a place which shall be reasonably accessible to such individual. On the basis of the review carried out under this paragraph the State agency (or the Secretary) may affirm, modify, or reverse the preliminary decision.

"(3)(A) In the case of a preliminary decision to terminate benefits in which a determination relating to disability or to a period of disability was made by a State agency, any review under paragraph (2) relating to disability or to a period of disability shall be made by the State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to carry out reviews under this paragraph commencing with such month as the Secretary and the State agree upon, but only if (i) the Secretary has not found, under subsection (b)(1), that the State agency has substantially failed to carry out reviews

under this paragraph in accordance with the applicable provisions of this section or rules issued thereunder, and (ii) the State has not notified the Secretary, under subsection (b)(2), that it does not wish to carry out reviews under this paragraph. If the Secretary once makes the finding described in clause (i) of the preceding sentence, or the State gives the notice referred to in clause (ii) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again carry out reviews under this paragraph.

"(B) Any review carried out by a State agency under subparagraph (A) shall be made in accordance with the provisions of this title and regulations prescribed thereunder.

"(4) A decision by the Secretary after review under paragraph (2) in the course of which a decision relating to disability or to a period of disability is required and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, the Secretary's decision, the reason or reasons upon which the decision is based, the right of such individual to a hearing under subsection (c), and the right to submit additional medical evidence prior to such hearing. Such statement of the case shall be transmitted in writing to such individual.

"(5) The Secretary shall prescribe by regulation procedures for review under this subsection of issues other than issues relating to disability or a period of disability.

"(6) Each individual who requests a review under paragraph (1) shall be informed, orally and in writing, before the review, of the preceding provisions of this subsection, and shall be advised that the individual may wish to retain an attorney or other representative to assist him.

"(c)(1) Upon request by any individual described in subsection (d)(1) who makes a showing in writing that his or her rights may be prejudiced as the result of a decision under this section which has been affirmed after review under subsection (d), the Secretary shall give such individual and the other individuals described in subsection (d)(1) reasonable notice and opportunity for a hearing with respect to such decision, including the right to submit additional medical evidence for purposes of such hearing, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision in accordance with the provisions of this title and regulations thereunder. Any such request with respect to such a decision must be filed within sixty days after notice that such decision has been affirmed after a review under paragraph (2) is received by the individual making such request.

"(2) The Secretary shall prescribe by regulation a period of time after hearing decisions under this section during which the Secretary, on his own motion or on the request of the individual requesting the hearing, may undertake a review of such decision. If such decision is not so reviewed, such decision shall be considered the final decision of the Secretary at the end of such period. If such decision is so reviewed, the Secretary shall notify such individual of such review, and at the end of any such review the Secretary shall affirm, modify, or reverse the decision and such decision as so affirmed, modified, or reversed shall be considered the final decision of the Secretary. Any such review shall be governed by the requirements of this subsection.".

(b)(1) Section 221(j) (as so redesignated by subsection (a) of this section) is amended by adding at the end thereof the following new paragraph:

"(4) In any case where the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.".

(2) Section 221(c) of such Act is amended by adding at the end thereof the following new paragraph:

"(4) In any case where the Secretary initiates a review under this subsection of a determination made by a State agency that an individual is under a disability, the Secretary shall notify the individual whose case is to be reviewed of the nature of the review to be carried out and the possibility that such review could result in the termination of benefits.".

(c)(1) Section 202(j)(2) of such Act is amended by inserting "or section 221(e)" after "section 205(b)".

(2) Sections 216(i)(2)(G) and 223(b) of such Act are each amended by striking out "205(b)" and inserting in lieu thereof "221(e)".

(d) Section 205(b) of the Social Security Act is amended to read as follows:

"(b)(1) The Secretary is directed to make findings of fact and decisions as to the rights of any individual applying for a payment under this title.

"(2)(A) The Secretary may provide for review of such decisions (other than decisions to which subparagraph (B) applies) and shall provide for hearings in accordance with paragraph (3).

"(B) If the determinations required in the course of making any such decision include a determination relating to disability or to a period of disability and such decision is in whole or in part unfavorable to an individual applying for a payment under this title, the Secretary shall provide for

review of such decision and for hearings in accordance with section 221.

"(3) Upon request by any individual applying for a payment under this title or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered (other than a decision to which paragraph (2)(B) applies), he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to any such determination must be filed within sixty days after notice of the decision is received by the individual making such request.

"(4) The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this section, section 221, and the other provisions of this title.

"(5) In the course of any hearing, investigation, or other proceeding referred to in paragraph (4), the Secretary may

administer oaths and affirmations, examine witnesses, and receive evidence.

"(6) Evidence may be received at any hearing referred to in paragraph (4) even though inadmissible under rules of evidence applicable to court procedure.

"(7) Subject to the specific provisions and requirements of this Act—

"(A) any hearing held pursuant to this subsection or section 221(c) shall be conducted on the record and shall be subject to sections 554 through 557 of title 5, United States Code, and any decision made by the Secretary after such a hearing shall constitute an 'adjudication' within the meaning of section 551(7) of such title; and

"(B) the Secretary, in accordance with section 3105 of title 5, United States Code, shall appoint administrative law judges who, in any case in which authority to conduct hearings under this subsection or section 221(c) is delegated by the Secretary, shall conduct such hearings, issue decisions after such hearings, and perform such other functions and duties described in sections 554 and 557 of such title as are applicable to such hearings.".

(c) Section 221 of such Act is further amended—

~~(1) in subsection (b)(1), by inserting "under subsection (a)(1) or reviews under subsection (d)" after "disability determinations" the first place it appears, and by inserting before the period the following: "or the disability reviews referred to in subsection (d)(2) (as the case may be)";~~

~~(2) in subsection (b)(2), by inserting "or reviews under subsection (d)(2) (as the case may be)" after "subsection (a)(1)" the first place it appears, and by inserting before the period in the last sentence the following: "or the disability reviews referred to in subsection (d)(2) (as the case may be)";~~

~~(3) in subsection (b)(3)(A), by inserting "under subsection (a) or review function under subsection (d)" after "function", and by inserting "under subsection (a) or review process under subsection (d) (as the case may be)" after "process";~~

~~(4) in subsection (b)(3)(B), by inserting "under subsection (a) or review function under subsection (d)" after "function", and by inserting "under subsection (a) or review process under subsection (d) (as the case may be)" after "process";~~

~~(5) in subsection (f) (as redesignated by subsection (a)), by inserting "(1)" before "Any", by striking out "subsection (a), (b), (c), or (g)" and inserting in lieu~~

thereof "subsection (b)", and by adding at the end thereof the following new paragraph:

"(2) Any individual who requests a hearing under subsection (c) and who is dissatisfied with the Secretary's final decision after such hearing shall be entitled to judicial review of such decision as is provided in section 205(g).";

(6) in subsection (g) (as redesignated by subsection (a)), by striking out "under this section" and inserting in lieu thereof "or reviews under subsection (d)(2)", by inserting "or reviews under subsection (d)(2), as the case may be" after "under subsection (a)(1)" the second place it appears, and by striking out "subsection (f)" and inserting in lieu thereof "subsection (h)";

(7) in subsection (i) (as redesignated by subsection (a)), by inserting "or reviews under subsection (d)(2)" after "subsection (a)(1)", by inserting "under subsection (a)(1) or reviews under subsection (d)(2)" after "disability determinations" the second place it appears, by inserting after "guidelines," the following: "in the case of disability determinations under subsection (d) to which paragraph (5) thereof does not apply,", by inserting "under subsection (a) or reviews under subsection (d)" after "disability determinations" the third place it appears, by inserting "or the reviews referred to in subsection (d) (as the case may be)" after "in

subsection (a)'', and by adding at the end thereof the following new sentence: ''In the case of a review by the Secretary of a decision to terminate benefits, any disability determination made by the Secretary under this subsection in the course of such review shall be made after opportunity to make a personal appearance as provided in subsection (d)(2).''; and

(8) in subsection (j)(1) (as redesignated by subsection (a)), by adding at the end thereof the following new sentence: ''An individual who makes a showing in writing that his or her rights may be prejudiced by a determination under this subsection with respect to continuing eligibility shall be entitled to a review and a hearing to the same extent and in the same manner as provided under subsections (d) and (e).''.

(f) Section 225 of the Social Security Act is repealed.

(g) Section 5 of Public Law 97–455 is repealed.

(h)(1) Except as provided in paragraph (2), the amendments made by this section shall apply with respect to requests for reviews of decisions by the Secretary of Health and Human Services filed after the date of the enactment of this Act.

(2)(A) Section 221(d)(3) of the Social Security Act, as amended by subsection (a) of this section, shall apply only

with respect to requests (for reviews of decisions by the Secretary) filed—

(i) after the last day of the sixth month beginning after the date of the enactment of this Act, or

(ii) with respect to reviews (relating to disability or to periods of disability) to be made by a State agency in any State which notifies the Secretary in writing that it wishes to carry out reviews under such section 221(d)(3) prior to the seventh month beginning after the date of the enactment of this Act, on or after the first day of such month (after the month in which this Act is enacted and prior to the seventh month beginning after the date of the enactment of this Act) as may be specified in such notice.

For purposes of such section 221(d)(3), each State shall initially notify the Secretary in writing that it wishes to carry out reviews under such section (specifying the month with which it wishes to commence carrying out such reviews), or shall notify the Secretary in writing that it does not wish to carry out such reviews, no later than the last day of the sixth month beginning after the date of the enactment of this Act; and any State which has not so notified the Secretary by such date, shall be deemed for all the purposes of section 221 of the Social Security Act to have notified the Secretary in

writing (as of that date) that it does not wish to carry out such reviews.

(B) During any period during which the provisions of section 221(d)(3) of the Social Security Act are not yet in effect in any State, and prior to the seventh month beginning after the date of the enactment of this Act, State agencies shall continue to provide for reconsideration of disability cases under title II of the Social Security Act in the same manner as required on the date of the enactment of this Act.

PAYMENT OF DISABILITY BENEFITS DURING APPEAL

SEC. 5. (a) Section 223(g) of the Social Security Act is amended—

(1) in paragraph (1)(A), by striking out "a hearing under section 221(d), or for an administrative review prior to such hearing" and inserting in lieu thereof "a review under section 221(d), or for a hearing under section 221(e)";

(2) in paragraph (1), by inserting "or" before "(ii)" and by striking out ", or (iii) June 1984"; and

(3) by striking out paragraph (3).

(b) The provisions of section 223(g) of the Social Security Act shall apply to determinations (that individuals are not entitled to benefits) which are made—

(1) on or after January 12, 1983; or

(2) prior to January 12, 1983, but only on the basis of a timely request for a hearing under section 221(d) of such Act as then in effect, or for an administrative review prior to such hearing.

UNIFORM STANDARDS FOR DISABILITY DETERMINATIONS

SEC. 6. Section 221 of the Social Security Act (as amended by section 4 of this Act) is further amended by adding at the end thereof the following new subsection:

"(k)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d).

"(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.".

TERMINATION DATE FOR DISABILITY BENEFITS

SEC. 7. (a) Section 223(a)(1) of the Social Security Act is amended—

(1) in the first sentence, by inserting "as defined in paragraph (3)" after "termination month"; and

(2) by striking out the second sentence.

(b) Section 223(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(3)(A) Except as otherwise provided in this paragraph, the termination month for any individual shall be the third month following the month in which such individual's disability ceases.

"(B) In the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of—

"(i) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment; or

"(ii) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity but in no event earlier than the first month occurring after the fifteen months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

"(C)(i) Except as provided in clause (ii), in any case where a benefit under this section, or a child's, widow's, or widower's benefit based on disability, is terminated on the grounds that the physical or mental impairment on the basis of which such benefit was payable has ceased, did not exist, or is no longer disabling, the termination month shall be the

month, if later than the termination month as determined under subparagraph (A) or (B), in which a decision affirming such termination has been initially made after a review in accordance with section 221(d)(2), or the month in which the time for requesting such an initial review has expired and no review was requested.

"(ii) Clause (i) shall not apply in the case of any termination of benefits based upon a finding made in accordance with subsection (d)(4) that services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, or to a termination based upon a finding of fraud.".

(c) The amendments made by subsections (a) and (b) shall apply with respect to determinations made on or after the date of the enactment of this Act.

EVALUATION OF PAIN

SEC. 8. (a) Section 223(d)(5)(A) of the Social Security Act (as amended by section 3 of this Act) is amended by inserting after the first sentence the following new sentence: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical condition that could reasonably be expected to produce the pain

or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability.''.

(b) The amendment made by subsection (a) shall apply with respect to determinations of disability made on or after the date of the enactment of this Act.

MANDATORY APPEAL BY SECRETARY OF CERTAIN COURT DECISIONS

SEC. 9. (a) In the case of any decision rendered by a United States Court of Appeals which—

(1) involves an interpretation of the Social Security Act or any regulation issued thereunder;

(2) involves a case to which the Department of Health and Human Services or any officer or employee thereof is a party; and

(3) requires that such department or officer or employee thereof, apply or carry out any provision, procedure, or policy under such Act with respect to any individual or circumstance in a manner which varies from the manner in which such provision, procedure, or policy is generally applied or carried out,

~~the Secretary of Health and Human Services, or such other officer or employee of the Department of Health and Human Services as may be a party to such case, or such other officer of the United States as may be appropriate, must either acquiesce in such decision with respect to all beneficiaries, or must request review of such decision by the United States Supreme Court pursuant to section 1254 of title 28, United States Code.~~

~~(b) The provisions of this section shall apply with respect to any decision of a United States Court of Appeals rendered on or after the date of the enactment of this Act.~~

SHORT TITLE

SECTION 1. This Act, with the following table of contents, may be cited as the "Social Security Disability Amendments of 1984".

TABLE OF CONTENTS

MEDICAL IMPROVEMENT

SEC. 2. (a) Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Standard of Review for Termination of Disability Benefits

"(f)(1) In the case of a recipient of benefits under this title (or title XVIII) which are based on the disability of any individual, a termination of entitlement to such benefits on the basis of a finding that the physical or mental impairment (or combination of impairments) on the basis of which such benefits are provided has ceased, does not exist, or is not disabling, may be made only as follows:

"(A) The Secretary shall notify the individual having the impairment (or combination of impairments) that a review pursuant to this subsection is to take place.

"(B) The Secretary shall provide an opportunity for such individual to be interviewed, and at such interview the review process shall be explained to the individual (including the role of medical improvement described in subparagraph (C)), and the assistance available to the individual in obtaining evidence, including medical evidence and work history, shall be explained.

"(C)(i) The Secretary shall review medical evidence concerning the individual's current and prior condition (as provided in paragraph (2)) provided by the individual and secured by the Secretary, and shall determine whether the evidence establishes that there has been no medical improvement in such individual's condition (other than medical improvement which is not related to the individual's ability to work) since the time of the most recent determination that the individual was under a disability. The individual shall bear the burden of proof under this subparagraph with respect to any finding that there has been no medical improvement.

"(ii) If the Secretary finds that the evidence does not establish that such individual's medical condition is of the same or greater severity as it was at the time of the most recent determination that such individual was under a disability (disregarding any medical improvement which is not related to the individual's ability to work), the Secretary shall make a determination under subparagraph (E) with respect to the individual's ability to engage in substantial gainful activity.

"(iii) If the Secretary finds that the evidence does establish that such individual's medical condition is of

the same or greater severity as it was at the time of the most recent determination that such individual was under a disability (disregarding any medical improvement which is not related to the individual's ability to work), the benefits based upon such individual's impairment shall be continued, unless the Secretary finds that one or more of the conditions listed in subparagraph (D) apply.

"(D) In the case of a finding by the Secretary under subparagraph (C)(iii), the Secretary shall further determine whether—

"(i) such individual has benefited from medical or vocational therapy or technology.

"(ii) new or improved diagnostic or evaluative techniques indicate that such individual's impairment (or combination of impairments) is not as disabling as was believed at the time of the most recent determination that such individual was under a disability,

"(iii) a prior determination that such individual was under a disability was fraudulently obtained, or

"(iv) there is demonstrated, without taking into account the individual's current medical condition, substantial reason to believe that a prior

determination that the individual was under a disability was erroneous.

The Secretary shall bear the burden of proof in making any finding under the preceding provisions of this subparagraph. If the Secretary finds that one or more of the conditions described in clauses (i) through (iv) are met, the Secretary shall make a determination under subparagraph (E) with respect to such individual's ability to engage in substantial gainful activity.

"(E) The Secretary shall make a determination whether an individual described in subparagraph (C)(ii), or who meets one of the conditions described in subparagraph (D), is able to engage in substantial gainful activity in accordance with the procedures and standards established under this section. If such individual is found to be able to engage in substantial gainful activity (or, if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the Secretary finds that the severity of such individual's impairment or combination of impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity), the benefits based upon such individual's disability shall be terminated.

"(2) Any determination under this subsection shall be made on the basis of all evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary.

"(3) Notwithstanding the provisions of paragraph (1)—

"(A) the review may be ceased and the benefits continued at any point if the Secretary determines that there is sufficient evidence to make a finding that the individual is under a disability in accordance with the standards established under this section for new applicants for the type of benefits to which such individual is entitled; and

"(B) the review may be ceased and the benefits terminated at any point if the individual is engaging in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in the review or to follow prescribed treatment which could be expected to restore his ability to engage in substantial gainful activity.

"(4) For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, or a child's, widow's, or widower's insurance benefit based on disability.".

(b) Section 216(i) of such Act is amended by adding at the end thereof the following new paragraph:

"(4) A period of disability may be determined to end on the basis of a finding that the physical or mental impairment (or combination of impairments) on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only in accordance with the provisions set forth in section 223(f) for termination of benefits based on disability.".

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) In the case of a recipient of benefits under this title which are based on disability, a termination of entitlement to such benefits on the basis of a finding that the physical or mental impairment (or combination of impairments) on the basis of which such benefits are provided has ceased, does not exist, or is not disabling, may be made only in accordance with the provisions set forth in section 223(f) for termination of benefits under title II based on disability.

"(B) The requirements referred to in subparagraph (A) shall not apply to the extent that such requirements would require termination of benefits under section 1619 on the grounds that the individual is engaging in substantial gainful activity.".

(d)(1) Subject to paragraphs (2), (3), and (4), the amendments made by this section shall not apply to determinations made after December 31, 1987. The Secretary shall promulgate the regulations necessary to implement such amendments within six months after the date of the enactment of this Act.

(2) The amendments made by this section shall only apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made on the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

(C) determinations with respect to which a request for judicial review in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary was properly pending on May 16, 1984, and which involve an individual litigant or a member of a class action identified by name in such pending action on such date; and

(D) determinations with respect to which a request for judicial review in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary was made by an individual litigant of a final decision of the Secretary made during the period beginning on March 15, 1984, and ending 60 days after the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D), the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of an individual (i) who obtained a final decision of the Secretary following pursuit of all available steps in the administrative appeal process in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary; (ii) who did not personally file an action for judicial review of that decision under section 205(g) of that Act; (iii) to whom the notice of the final decision of the Secretary was mailed on or after a date 60 days prior to the filing of the class action; and (iv) who was properly certified as member of a class action (with respect to judicial review of a determination to which this section applies) prior to May 16, 1984, but was not identified by name

as a member of the class on such date, the court shall remand such case to the Secretary. The Secretary shall notify such individual that he may request a review of such determination based on the provisions of the Social Security Act as amended by this section. Such individual must request such review within 60 days after the date on which such notification is sent. If such request is made in a timely manner, the Secretary shall make a determination in accordance with the provisions of the Social Security Act as amended by this section. If such request is not made in a timely manner, the amendments made by this section shall not apply with respect to such determination, and such determination shall not be subject to any further administrative or judicial review.

(4) In the case of an individual with respect to whom a final determination was made by the Secretary prior to May 16, 1984, and which is not covered under paragraph (2) or (3), including an individual not covered by paragraph (2) who is a putative member of a class action (with respect to judicial review of a determination to which this section applies) which has not been certified prior to May 16, 1984, the amendments made by this section shall not apply to such determination, and such determination shall not be subject to any further administrative or judicial review.

(5) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a

new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a redetermination is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such requests, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such request.

(f) In the case of any individual who is found to be under a disability after a redetermination required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 3. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,"; and

(B) in clause (iii) by striking out "June 1984" and inserting in lieu thereof "January 1987".

(2) Section 223(g)(3)(B) of such Act is amended by striking out "December 7, 1983" and inserting in lieu thereof "June 1, 1986".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

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

"(iii) a timely request for a hearing under subsection (c), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so eligible,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, (II) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (III) January 1987.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not eligible for such benefits, any benefits paid under this title pursuant to such elec-

tion (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

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

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not eligible for benefits) which are made—

"(i) on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for a hearing under subsection (c), or for an administrative review prior to such hearing, and

"(ii) prior to June 1, 1986.".

UNIFORM STANDARDS

SEC. 4. (a) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d).

"(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In making determinations with respect to disability under this title, the provisions of section 221(j) shall apply in the same manner as they apply to determinations of disability under title II.".

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 5. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Such revisions shall be made in consultation with experts in the fields of mental health and vocational rehabilitation. Regulations establishing such revised criteria and listings shall be published no later than 90 days after the date of

the enactment of this Act in accordance with section 221(j) of the Social Security Act.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity.

(c)(1) Any initial determination that an individual is not under a disability, and any determination that an individual is not under a disability in a reconsideration of or hearing on an initial disability determination, in which there is evidence which indicates the existence of a mental impairment, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability in which there is evidence which indicates the existence of a mental impairment, made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual who was found not to be under a disability pursuant to an initial disability determination or a continuing eligibility review, in which there was evidence which indicated the existence of a mental impairment, between June 7, 1983, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

(d) If the provisions of this section entitle an individual to a redetermination, such redetermination shall be made whether or not such individual would be entitled to a redetermination under the provisions of section 2 of this Act. If such individual would not be entitled to a redetermination under such section 2, the redetermination under this section shall be made without regard to the amendments made by section 2.

QUALIFICATIONS OF MEDICAL PROFESSIONALS

EVALUATING MENTAL IMPAIRMENTS

SEC. 6. (a) Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) An initial determination under subsection (a), (c), (g), or (i) that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.".

(b) Section 1614(a)(3)(G) of such Act (as added by section 4 of this Act) is amended by striking out "section 221(j)" and inserting in lieu thereof "sections 221(h) and 221(j)".

(c) The amendments made by this section shall apply to determinations made on or after the date of the enactment of this Act.

NONACQUIESCENCE IN COURT ORDERS

SEC. 7. (a)(1) In the case of any decision rendered by a United States Court of Appeals which—

(A) involves an interpretation of the Social Security Act or any regulation issued thereunder;

(B) involves a case to which the Department of Health and Human Services or any officer or employee thereof is a party; and

(C) requires that such department or officer or employee thereof, apply or carry out any provision, procedure, or policy under such Act with respect to any individual or circumstance in a manner which varies from the manner in which such provision, procedure, or policy is generally applied or carried out,

the Secretary shall, within 90 days after the issuance of such decision or the last day available for filing an appeal, whichever is later, send to the Committee on Finance of the Senate and the Committee on Ways and Means of the house of Representatives, and publish in the Federal Register, a statement of the Secretary's decision to acquiesce or not acquiesce in such court decision, and the specific facts and reasons in support of the Secretary's decision.

(2) The requirements of this section shall not apply to a decision of the Secretary to acquiesce in a court decision which the Secretary determines is not significant.

(3) Nothing in this section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a United States Court of Appeals.

(b) This section shall apply to court decisions rendered on or after the date of the enactment of this Act.

MULTIPLE IMPAIRMENTS

SEC. 8. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are medically severe (without regard to age, education, or work experience), the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3)(G) of such Act (as amended by section 6 of this Act) is amended by striking out "and 221(j)" and inserting in lieu thereof ", 221(j), and 223(d)(2)(C)".

(c) The amendments made by this section shall apply to determinations made on or after January 1, 1985.

EVALUATION OF PAIN

SEC. 9. (a)(1) Section 223(d)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentence: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clini-

cal or laboratory diagnostic techniques, which show the existence of a medical condition which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability.".

(2) Section 1614(a)(3)(G) of such Act (as amended by section 8 of this Act) is amended by striking out "and 223(d)(2)(C)" and inserting in lieu thereof "223(d)(2)(C), and 223(d)(5)".

(3) The amendments made by paragraphs (1) and (2) shall apply to determinations made prior to January 1, 1988.

(b)(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and represen-

tation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary, but not less often than twice each year.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by sec-

tion 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1986. The Commission shall terminate at the time such results are submitted.

MODIFICATION OF RECONSIDERATION PREREVIEW NOTICE

SEC. 10. (a) Section 221(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) In any case where the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the

termination of benefits, and the right of the individual to provide medical evidence with respect to such review.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) In any case in which the Secretary initiates a review under this title, similar to the continuing disability reviews authorized for purposes of title II under section 221(i), the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 221(i)(4).".

(c) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 211(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than April 1, 1986.

(d) The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.

CONSULTATIVE EXAMS; MEDICAL EVIDENCE

SEC. 11. (a) Section 223(d)(5) of the Social Security Act is amended by inserting "(A)" after "(5)" and by adding at the end thereof the following new subparagraph:

"(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to seeking medical evidence from any other source on a consultative basis.".

(b) The amendments made by this section shall apply to determinations made on or after the date of the enactment of this Act.

VOCATIONAL REHABILITATION

SEC. 12. (a) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(1) by striking out "into substantial gainful activity"; and

(2) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, and (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his entitlement to such benefits ceases, whichever first occurs)".

(b) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) of the Social Security Act in or after the first month following the month in which this Act is enacted.

SPECIAL BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 13. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1987".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with

rehabilitation and social services or which represent the disabled.".

ADVISORY COUNCIL

SEC. 14. (a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Counsil on Social Security pursuant to section 706 of the Social Security Act prior to June 1, 1985.

(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including—

(A) alternative approaches to work evaluation for recipients of supplemental security income benefits;

(B) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits; and

(C) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process.

(2) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues.

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

SEC. 15. The Secretary of Health and Human Services shall promulgate final regulations, within 6 months after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act.

Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

DETERMINATION AND MONITORING OF NEED FOR REPRESENTATIVE PAYEE

SEC. 16. (a) Section 205(j) of the Social Security Act is amended by inserting "(1)" after "(j)" and by adding at the end thereof the following new paragraphs:

"(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

"(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(4)(A) The Secretary shall made an initial report to the Congress on the implementation of paragraphs (2) and (3) within six months after the date of the enactment of this paragraph.

"(B) The Secretary shall include as a part of the annual report required under section 704, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.".

(b) Section 1631(a)(2) of such Act is amended by inserting "(A)" after "(2)" and by adding at the end thereof the following new subparagraphs:

"(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

"(C)(i) In any case where payment is made under this title to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of ac-

countability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has

reason to believe that the person receiving such payments is misusing such payments.

"(D) The Secretary shall make an initial report to the Congress on the implementation of subparagraphs (B) and (C) within six months after the date of the enactment of this subparagraph. The Secretary shall include in the annual report required under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section 205(j)(4)(B).".

(c)(1) Section 1632 of the Social Security Act is amended by inserting "(a)" after "Sec. 1632." and by adding at the end thereof the following new subsection:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a), if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1631(a)(2) on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a)—

"(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

"(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 208 may not be certified as a payee under section 1631(a)(2).".

(2) Section 208 of such Act is amended by adding at the end thereof the following unnumbered paragraphs:

"Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the

preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).".

(d) The amendments made by this section shall become effective on the date of the enactment of this Act, and, in the case of the amendments made by subsection (c), shall apply with respect to violations occurring on or after such date.

FAIL-SAFE

SEC. 17. (a) Section 215(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(6)(A) On or before July 1 of each calendar year after 1983, the Secretary shall—

"(i) determine whether the estimated DI trust fund ratio for the calendar year following such calendar year will be less than 20.0 percent, and

"(ii) if the Secretary finds that such ratio will be less than 20.0 percent, notify the Congress that, absent a change of circumstances, it will be necessary to reduce the amount of the percentage cost-of-living in-

crease otherwise payable under this subsection with respect to benefits payable from the Federal Disability Insurance Trust Fund for months after November of the calendar year in which such determination is made.

"(B) Absent a change of circumstances (before such cost-of-living increase is determined) that will allow the full amount of benefits otherwise payable from such Trust Fund to be paid in a timely fashion, the Secretary shall reduce the amount of such percentage increase (but not below zero) to the extent necessary to ensure that such ratio will not fall below 20.0 percent.

"(C) If the Secretary determines that the reductions made purusant to subparagraph (B) will be insufficient to ensure that such ratio will not fall below 20.0 percent, the Secretary shall also reduce the amount by which each of the amounts computed under subsection (a)(1)(B) for the calendar year following the year of the determination would otherwise exceed the corresponding amount computed under such subsection for the preceding calendar year, for purposes of determining any primary insurance amount on the basis of which an individual becomes eligible for benefits payable from the Federal Disability Insurance Trust Fund for the calendar year for which such reductions are made, to the extent necessary to ensure that such ratio will not fall below

20.0 percent. For purposes of all computations under subsection (a)(1)(B)(ii) for calendar years thereafter, the amount so computed shall be reduced by the cumulative total of all reductions made by reason of this subparagraph for all prior years.

"(D) For purposes of this paragraph, the term 'DI trust fund ratio' shall mean, with respect to any calendar year, the ratio of—

"(i) the amount estimated by the Secretary to be equal to the balance in the Federal Disability Insurance Trust Fund as of the start of business on January 1 of such calendar year, increased by the amount of the unrepaid balance on any loan made by such Trust Fund under section 201(l) or section 1817(j), decreased by the amount of the unrepaid balance on any loan made to such Trust Fund under section 201(l), to

"(ii) the amount estimated by the Secretary to be the total amount to be paid from such Trust Fund during such calendar year (other than payments of interest on, and repayments of loans made to such Trust Fund under section 201(l), reducing the amount of any transfer from the Federal Disability Insurance Trust Fund to the Railroad Retirement Account by the amount of any transfer to such Trust Fund from such

Account), and taking into account any cost-of-living increase that otherwise would be made with respect to benefits paid from such Trust Fund during such year.".

(b) Section 215(a)(1)(B)(ii) of such Act is amended by striking out "For individuals" and inserting in lieu thereof "Except as provided in subsection (i)(6), for individuals".

MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

SEC. 18. (a)(1) Paragraph (1) of section 221(b) of the Social Security Act is amended to read as follows:

"(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

"(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

"(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

"(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

"(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1), complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period.

"(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any case with respect to which a determination referred to in subsection (a)(1) was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.".

(2) Section 221 (a)(4) of such Act is amended by striking out "subsection (b)(1)" and inserting in lieu thereof "subsection (b)(1)(C)".

(3)(A) Section 221(b)(3)(A) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(B) Section 221(b)(3)(B) of such act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(b)(1) The amendments made by subsection (a) of this section shall become effective on the date of the enactment of this Act and shall expire on December 31, 1987.

(2) The provisions of the Social Security Act amended by subsection (a) of this section shall be applied after December 31, 1987, in the same manner as such provisions were applied on the day before the date of the enactment of this Act.

Amend the title so as to read: "An Act to revise provisions of titles II and XVI of the Social Security Act relating to disability, and for other purposes.".

Calendar No. 899

98TH CONGRESS
2D SESSION

S. 476

[Report No. 98-466]

A BILL

To amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are terminated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes.

MAY 18 (legislative day, MAY 14), 1984

Reported with an amendment and an amendment to the title

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PAGE

timated and classified" by the bankruptcy court.

Organized labor has been a constant critic of the Court's decision. A statement issued by the AFL-CIO Executive Council condemned the decision for granting employers wide permission to use the bankruptcy laws to destroy collective-bargaining agreements. Laurence Gold, special counsel to the AFL-CIO, characterized the decision as obviously enhancing the opportunity for union-busting techniques.

Organized labor lobbied long and hard to overturn the Bildisco decision, and was successful in convincing the House leadership to include a provision in its bankruptcy bill. The provision creates a new standard to be used for setting aside a collective-bargaining agreement in a reorganization proceeding. The new test would be that labor contracts could not be rejected unless any financial reorganization of the debtor will fail and adds an additional test that jobs covered by such agreement will be lost. The bill would also make labor contracts enforceable after filing and until rejected by a bankruptcy court.

It is notable that the Bildisco provision was introduced only 2 days before it was taken up on the floor, was never considered by the House Judiciary Committee in hearings or committee markups, and was brought to the House floor under a rule that did not permit the House to vote on it separately from the bankruptcy bill.

Senator THURMOND, the distinguished chairman of the Judiciary Committee, has offered a compromise version of the Bildisco provision prepared, not by labor and not by management, but by the neutral National Bankruptcy Conference (NBC). The compromise maintains the balancing of the equities standard for rejecting collective-bargaining agreements but modifies the unilateral rejection portion of Bildisco by providing that such an agreement may not be rejected after a petition under the bankruptcy code is filed until there has been a final hearing by the court and the trustee has demonstrated the necessity for rejection.

The compromise also provides that, during the first 30 days after the trustee has sought rejection, the agreement is continued in effect pending the final hearing. Finally, the compromise provides that during such 30-day period or any extension thereof, the trustee may not implement any changes in the terms, conditions, wages, benefits, or work rules under the agreement except in an emergency situation when necessary to operate or preserve the business, and then only after notice to the union and authorization by the court after a hearing.

Mr. President, the NBC compromise introduced by Senator THURMOND is fair and reasonable to all concerned parties. I commend the distinguished chairman of the Judiciary Committee for including it in the Senate consideration of H.R. 5174.

Despite the reasonable nature of the NBC compromise, however, my colleague has found it necessary to offer an organized labor response to the Bildisco decision. The response would overrule the unanimous portion of the Bildisco decision by placing so many preconditions on rejection that, even under the balancing of the equities standard, few debtors, through their trustee, would be able to reject a collective-bargaining agreement. The Packwood amendment would also overrule the unilateral rejection aspect of the Court's ruling and would, interestingly enough, allow the Court to make the provision applicable to pending cases.

Mr. President, the Packwood amendment would remove the flexibility that a financially distressed employer needs to reorganize his business, thereby forcing more companies from a chapter 11, reorganization, bankruptcy into a chapter 7, liquidation, bankruptcy. Any increase in the number of outright failures obviously would exact a heavy toll in jobs lost to both union and nonunion employees.

There have been no documented cases where bankruptcy laws were used solely to break union contracts. In fact, a union cannot be decertified under the bankruptcy code. Although wages may be decreased, at least temporarily, the union remains the official bargaining agent for the employees. Although no profitable company has successfully filed for bankruptcy merely to bust its union, many companies in serious financial trouble have gained another chance of survival by reducing their labor, as well as other, costs through the bankruptcy laws.

Labor leaders apparently misunderstand the likely effects of the reform they are pressing Congress to enact. Rather than protecting their members, the changes they urge would have the opposite effect. If the proposed amendment is adopted:

Unemployment among union and nonunion workers would increase;

Deregulated industries would go through a much more difficult and dangerous transition period;

The number of failed companies in the United States would almost certainly increase, and

With the adoption of the retroactive provision of the amendment, a company such as Continental Air Lines would be forced to pay 6 months of back wages to all of its union workers, which would engender liquidation of the company and the loss of all of its union and nonunion jobs.

Mr. President, I therefore oppose the amendment offered by Senator PACKWOOD, and I urge my colleagues to do the same.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BAKER. Mr. President, it appears to me that we are unlikely to finish the bankruptcy bill this evening.

We have a unanimous-consent agreement cleared now on both sides, I believe, in respect to the disability bill. I will put the request now for the consideration of the minority leader and other Senators.

TIME LIMITATION AGREEMENT—S. 476

Mr. BAKER. Mr. President, I ask unanimous consent that the pending measure be temporarily laid aside and that the Senate turn to the consideration of Calendar Order No. 899, S. 476, the disability amendments of 1983, and that there be 30 minutes of debate on the bill to be equally divided between the chairman of the Committee on Finance and the ranking minority member thereof or their designees.

I further ask unanimous consent that no amendments be in order except for the Finance Committee reported amendment in the nature of a substitute, and that on that amendment there be 1 hour time limitation for debate to be equally divided.

I further ask unanimous consent that the distinguished Senator from Maine (Mr. MITCHELL) be granted 30 minutes of time for debate to be under his sole and exclusive control.

And I further ask unanimous consent that there be 5 minutes equally divided on any motions, appeals, or points of order, if they are submitted to the Senate, and that the agreement be in the usual form.

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

Mr. BYRD. Mr. President, reserving the right to object, and I do not intend to object, does the majority leader mean debatable motions?

Mr. BAKER. Is that not what I said?

Mr. BYRD. The Senator just said any motions.

Mr. BAKER. Mr. President, the request should be "equally divided on any debatable motion, appeal, or point of order."

Mr. BYRD. Mr. President, there is only one other concern I have, which I am not sure is taken care of in every respect. It is the condition which I

have to add on behalf of a Member who is not in the Chamber right now. Would the majority leader add the condition that when action on this measure is completed the Senate will return to the now pending business?

Mr. BAKER. Yes.

Mr. President, that is the intention of the request and since we are temporarily laying aside the bankruptcy bill, I assume that we would automatically resume consideration of it when this matter is completed.

But to make it absolutely certain, I further ask unanimous consent that on the disposition of this matter, the Senate return to the consideration of the pending business which is the bankruptcy bill.

Mr. BYRD. I have no objection.

I thank the majority leader.

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

Mr. BAKER. Mr. President, I thank the Chair.

Mr. President, I say for the benefit of Senators that I do expect a rollcall vote, at least one rollcall vote, on this measure. Therefore, the Senate will be in session for another hour or so and there will be a rollcall vote or rollcall votes.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. BAKER. Mr. President, while I have the floor, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. tomorrow.

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

Mr. BAKER. I thank the Chair and I thank the minority leader and I thank the managers of the bill on both sides.

SOCIAL SECURITY DISABILITY AMENDMENT OF 1984

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 476) to amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are terminated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Finance with an amendment to strike all after the enacting clause and insert:

SHORT TITLE

SECTION 1. This Act, with the following table of contents, may be cited as the "Social Security Disability Amendments of 1984".

TABLE OF CONTENTS

MEDICAL IMPROVEMENT

SEC. 2. (a) Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Standard of Review for Termination of Disability Benefits

"(f)(1) In the case of a recipient of benefits under this title (or title XVIII) which are based on the disability of any individual, a termination of entitlement to such benefits on the basis of a finding that the physical or mental impairment (or combination of impairments) on the basis of which such benefits are provided has ceased, does not exist, or is not disabling, may be made only as follows:

"(A) The Secretary shall notify the individual having the impairment (or combination of impairments) that a review pursuant to this subsection is to take place.

"(B) The Secretary shall provide an opportunity for such individual to be interviewed, and at such interview the review process shall be explained to the individual (including the role of medical improvement described in subparagraph (C)), and the assistance available to the individual in obtaining evidence, including medical evidence and work history, shall be explained.

"(C)(i) The Secretary shall review medical evidence concerning the individual's current and prior condition (as provided in paragraph (2)) provided by the individual and secured by the Secretary, and shall determine whether the evidence establishes that there has been no medical improvement in such individual's condition (other than medical improvement which is not related to the individual's ability to work) since the time of the most recent determination that the individual was under a disability. The individual shall bear the burden of proof under this subparagraph with respect to any finding that there has been no medical improvement.

"(ii) If the Secretary finds that the evidence does not establish that such individual's medical condition is of the same or greater severity as it was at the time of the most recent determination that such individual was under a disability (disregarding any medical improvement which is not related to the individual's ability to work), the Secretary shall make a determination under subparagraph (E) with respect to the individual's ability to engage in substantial gainful activity.

"(iii) If the Secretary finds that the evidence does establish that such individual's medical condition is of the same or greater severity as it was at the time of the most recent determination that such individual was under a disability (disregarding any medical improvement which is not related to the individual's ability to work), the benefits based upon such individual's impairment shall be continued, unless the Secretary finds that one or more of the conditions listed in subparagraph (D) apply.

"(D) In the case of a finding by the Secretary under subparagraph (C)(iii), the Secretary shall further determine whether—

"(i) such individual has benefited from medical or vocational therapy or technology.

"(ii) new or improved diagnostic or evaluative techniques indicate that such individual's impairment (or combination of impairments) is not as disabling as was believed at the time of the most recent determination that such individual was under a disability,

"(iii) a prior determination that such individual was under a disability was fraudulently obtained, or

"(iv) there is demonstrated, without taking into account the individual's current medical condition, substantial reason to believe that a prior determination that the individual was under a disability was erroneous.

The Secretary shall bear the burden of proof in making any finding under the preceding provisions of this subparagraph. If the Secretary finds that one or more of the conditions described in clauses (i) through (iv) are met, the Secretary shall make a determination under subparagraph (E) with respect to such individual's ability to engage in substantial gainful activity.

"(E) The Secretary shall make a determination whether an individual described in subparagraph (C)(ii), or who meets one of the conditions described in subparagraph (D), is able to engage in substantial gainful activity in accordance with the procedures and standards established under this section. If such individual is found to be able to engage in substantial gainful activity (or, if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the Secretary finds that the severity of such individual's impairment or combination of impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity), the benefits based upon such individual's disability shall be terminated.

"(2) Any determination under this subsection shall be made on the basis of all evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary.

"(3) Notwithstanding the provisions of paragraph (1)—

"(A) the review may be ceased and the benefits continued at any point if the Secretary determines that there is sufficient evidence to make a finding that the individual is under a disability in accordance with the standards established under this section for new applicants for the type of benefits to which such individual is entitled; and

"(B) the review may be ceased and the benefits terminated at any point if the individual is engaging in substantial gainful activ-

ity, cannot be located, or fails, without good cause, to cooperate in the review or to follow prescribed treatment which could be expected to restore his ability to engage in substantial gainful activity.

"(4) For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, or a child's, widow's, or widower's insurance benefit based on disability.".

(b) Section 216(i) of such Act is amended by adding at the end thereof the following new paragraph:

"(4) A period of disability may be determined to end on the basis of a finding that the physical or mental impairment (or combination of impairments) on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only in accordance with the provisions set forth in section 223(f) for termination of benefits based on disability.".

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) In the case of a recipient of benefits under this title which are based on disability, a termination of entitlement to such benefits on the basis of a finding that the physical or mental impairment (or combination of impairments) on the basis of which such benefits are provided has ceased, does not exist, or is not disabling, may be made only in accordance with the provisions set forth in section 223(f) for termination of benefits under title II based on disability.

"(B) The requirements referred to in subparagraph (A) shall not apply to the extent that such requirements would require termination of benefits under section 1619 on the grounds that the individual is engaging in substantial gainful activity.".

(d)(1) Subject to paragraphs (2), (3), and (4), the amendments made by this section shall not apply to determinations made after December 31, 1987. The Secretary shall promulgate the regulations necessary to implement such amendments within six months after the date of the enactment of this Act.

(2) The amendments made by this section shall only apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made on the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

(C) determinations with respect to which a request for judicial review in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary was properly pending on May 16, 1984, and which involve an individual litigant or a member of a class action identified by name in such pending action on such date; and

(D) determinations with respect to which a request for judicial review in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary was made by an individual litigant of a final decision of the Secretary made during the period beginning on March 15, 1984, and ending 60 days after the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D), the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of an individual (i) who obtained a final decision of the Secretary following pursuit of all available steps in the administrative appeal process in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary; (ii) who did not personally file an action for judicial review of that decision under section 205(g) of that Act; (iii) to whom the notice of the final decision of the Secretary was mailed on or after a date 60 days prior to the filing of the class action; and (iv) who was properly certified as member of a class action (with respect to judicial review of a determination to which this section applies) prior to May 16, 1984, but was not identified by name as a member of the class on such date, the court shall remand such case to the Secretary. The Secretary shall notify such individual that he may request a review of such determination based on the provisions of the Social Security Act as amended by this section. Such individual must request such review within 60 days after the date on which such notification is sent. If such request is made in a timely manner, the Secretary shall make a determination in accordance with the provisions of the Social Security Act as amended by this section. If such request is not made in a timely manner, the amendments made by this section shall not apply with respect to such determination, and such determination shall not be subject to any further administrative or judicial review.

(4) In the case of an individual with respect to whom a final determination was made by the Secretary prior to May 16, 1984, and which is not covered under paragraph (2) or (3), including an individual not covered by paragraph (2) who is a putative member of a class action (with respect to judicial review of a determination to which this section applies) which has not been certified prior to May 16, 1984, the amendments made by this section shall not apply to such determination, and such determination shall not be subject to any further administrative or judicial review.

(5) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a redetermination is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such requests, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such request.

(f) In the case of any individual who is found to be under a disability after a redetermination required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 3. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,"; and

(B) in clause (iii) by striking out "June 1984" and inserting in lieu thereof "January 1987".

(2) Section 223(g)(3)(B) of such Act is amended by striking out "December 7, 1983" and inserting in lieu thereof "June 1, 1986".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

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

"(iii) a timely request for a hearing under subsection (c), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so eligible,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, (II) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (III) January 1987.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not eligible for such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

"(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be

subject to waiver consideration under the provisions of subsection (b)(1).

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not eligible for benefits) which are made—

"(i) on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for a hearing under subsection (c), or for an administrative review prior to such hearing, and

"(ii) prior to June 1, 1986.".

UNIFORM STANDARDS

SEC. 4. (a) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d).

"(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In making determinations with respect to disability under this title, the provisions of section 221(j) shall apply in the same manner as they apply to determinations of disability under title II.".

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 5. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Such revisions shall be made in consultation with experts in the fields of mental health and vocational rehabilitation. Regulations establishing such revised criteria and listings shall be published no later than 90 days after the date of the enactment of this Act in accordance with section 221(j) of the Social Security Act.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity.

(c)(1) Any initial determination that an individual is not under a disability, and any determination that an individual is not under a disability in a reconsideration of or hearing on an initial disability determination, in which there is evidence which indicates the existence of a mental impairment, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability in which there is evidence which indicates the existence of a mental impairment, made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual who was found not to be under a disability pursuant to an initial disability determination or a continuing eligibility review, in which there was evidence which indicated the existence of a mental impairment, between June 7, 1983, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

(d) If the provisions of this section entitle an individual to a redetermination, such redetermination shall be made whether or not such individual would be entitled to a redetermination under the provisions of section 2 of this Act. If such individual would not be entitled to a redetermination under such section 2, the redetermination under this section shall be made without regard to the amendments made by section 2.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 6. (a) Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) An initial determination under subsection (a), (c), (g), or (i) that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.".

(b) Section 1614(a)(3)(G) of such Act (as added by section 4 of this Act) is amended by striking out "section 221(j)" and inserting in lieu thereof "sections 221(h) and 221(j)".

(c) The amendments made by this section shall apply to determinations made on or after the date of the enactment of this Act.

NONACQUIESCENCE IN COURT ORDERS

SEC. 7. (a)(1) In the case of any decision rendered by a United States Court of Appeals which—

(A) involves an interpretation of the Social Security Act or any regulation issued thereunder;

(B) involves a case to which the Department of Health and Human Services or any officer or employee thereof is a party; and

(C) requires that such department or officer or employee thereof, apply or carry out any provision, procedure, or policy under such Act with respect to any individual or circumstance in a manner which varies from the manner in which such provision, procedure, or policy is generally applied or carried out,

the Secretary shall, within 90 days after the issuance of such decision or the last day available for filing an appeal, whichever is later, send to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and publish in the Federal Register, a statement of the Secretary's decision to acquiesce or not acquiesce in such court decision, and the specific facts and reasons in support of the Secretary's decision.

(2) The requirements of this section shall not apply to a decision of the Secretary to acquiesce in a court decision which the Secretary determines is not significant.

(3) Nothing in this section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a United States Court of Appeals.

(b) This section shall apply to court decisions rendered on or after the date of the enactment of this Act.

MULTIPLE IMPAIRMENTS

SEC. 8. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are medically severe (without regard to age, education, or work experience), the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.".

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3)(G) of such Act (as amended by section 6 of this Act) is amended by striking out "and 221(j)" and inserting in lieu thereof ", 221(j), and 223(d)(2)(C)".

(c) The amendments made by this section shall apply to determinations made on or after January 1, 1985.

EVALUATION OF PAIN

SEC. 9. (a)(1) Section 223(d)(5) of the Social Security Act is amended by inserting

after the first sentence the following new sentence: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical condition which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability.".

(2) Section 1614(a)(3)(G) of such Act (as amended by section 8 of this Act) is amended by striking out "and 223(d)(2)(C)" and inserting in lieu thereof "223(d)(2)(C), and 223(d)(5)".

(3) The amendments made by paragraphs (1) and (2) shall apply to determinations made prior to January 1, 1988.

(b)(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary, but not less often than twice each year.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including travel-time, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1986. The Commission shall terminate at the time such results are submitted.

MODIFICATION OF RECONSIDERATION PREVIEW NOTICE

SEC. 10. (a) Section 221(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) In any case where the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) In any case in which the Secretary initiates a review under this title, similar to the continuing disability reviews authorized for purposes of title II under section 221(i), the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 221(i)(4).".

(c) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 211(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than April 1, 1986.

(d) The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.

CONSULTATIVE EXAMS; MEDICAL EVIDENCE

SEC. 11. (a) Section 223(d)(5) of the Social Security Act is amended by inserting "(A)" after "(5)" and by adding at the end thereof the following new subparagraph:

"(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to seeking medical evidence from any other source on a consultative basis.".

(b) The amendments made by this section shall apply to determinations made on or after the date of the enactment of this Act.

VOCATIONAL REHABILITATION

SEC. 12. (a) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(1) by striking out "into substantial gainful activity"; and

(2) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, and (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his entitlement to such benefits ceases, whichever first occurs)".

(b) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) of the Social Security Act in or after the first month following the month in which this Act is enacted.

SPECIAL BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 13. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1987".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.".

ADVISORY COUNCIL

SEC. 14. (a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Counsil on Social Security pursuant to section 706 of the Social Security Act prior to June 1, 1985.

(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including—

(A) alternative approaches to work evaluation for recipients of supplemental security income benefits;

(B) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits; and

(C) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process.

(2) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues.

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

SEC. 15. The Secretary of Health and Human Services shall promulgate final regulations, within 6 months after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

DETERMINATION AND MONITORING OF NEED FOR REPRESENTATIVE PAYEE

SEC. 16. (a) Section 205(j) of the Social Security Act is amended by inserting "(1)" after "(j)" and by adding at the end thereof the following new paragraphs:

"(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

"(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(4)(A) The Secretary shall made an initial report to the Congress on the implementation of paragraphs (2) and (3) within six months after the date of the enactment of this paragraph.

"(B) The Secretary shall include as a part of the annual report required under section 704, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.".

(b) Section 1631(a)(2) of such Act is amended by inserting "(A)" after "(2)" and by adding at the end thereof the following new subparagraphs:

"(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

"(C)(i) In any case where payment is made under this title to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(D) The Secretary shall make an initial report to the Congress on the implementation of subparagraphs (B) and (C) within six months after the date of the enactment of this subparagraph. The Secretary shall include in the annual report required under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section 205(j)(4)(B).".

(c)(1) Section 1632 of the Social Security Act is amended by inserting "(a)" after "SEC. 1632." and by adding at the end thereof the following new subsection:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a), if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1631(a)(2) on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a)—

"(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

"(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 208 may not be certified as a payee under section 1631(a)(2).".

(2) Section 208 of such Act is amended by adding at the end thereof the following unnumbered paragraphs:

"Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).".

(d) The amendments made by this section shall become effective on the date of the enactment of this Act, and, in the case of the amendments made by subsection (c), shall apply with respect to violations occurring on or after such date.

FAIL-SAFE

SEC. 17. (a) Section 215(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(6)(A) On or before July 1 of each calendar year after 1983, the Secretary shall—

"(i) determine whether the estimated DI trust fund ratio for the calendar year following such calendar year will be less than 20.0 percent, and

"(ii) if the Secretary finds that such ratio will be less than 20.0 percent, notify the Congress that, absent a change of circumstances, it will be necessary to reduce the

amount of the percentage cost-of-living increase otherwise payable under this subsection with respect to benefits payable from the Federal Disability Insurance Trust Fund for months after November of the calendar year in which such determination is made.

"(B) Absent a change of circumstances (before such cost-of-living increase is determined) that will allow the full amount of benefits otherwise payable from such Trust Fund to be paid in a timely fashion, the Secretary shall reduce the amount of such percentage increase (but not below zero) to the extent necessary to ensure that such ratio will not fall below 20.0 percent.

"(C) If the Secretary determines that the reductions made purusant to subparagraph (B) will be insufficient to ensure that such ratio will not fall below 20.0 percent, the Secretary shall also reduce the amount by which each of the amounts computed under subsection (a)(1)(B) for the calendar year following the year of the determination would otherwise exceed the corresponding amount computed under such subsection for the preceding calendar year, for purposes of determining any primary insurance amount on the basis of which an individual becomes eligible for benefits payable from the Federal Disability Insurance Trust Fund for the calendar year for which such reductions are made, to the extent necessary to ensure that such ratio will not fall below 20.0 percent. For purposes of all computations under subsection (a)(1)(B)(ii) for calendar years thereafter, the amount so computed shall be reduced by the cumulative total of all reductions made by reason of this subparagraph for all prior years.

"(D) For purposes of this paragraph, the term 'DI trust fund ratio' shall mean, with respect to any calendar year, the ratio of—

"(i) the amount estimated by the Secretary to be equal to the balance in the Federal Disability Insurance Trust Fund as of the start of business on January 1 of such calendar year, increased by the amount of the unrepaid balance on any loan made by such Trust Fund under section 201(l) or section 1817(j), decreased by the amount of the unrepaid balance on any loan made to such Trust Fund under section 201(l), to

"(ii) the amount estimated by the Secretary to be the total amount to be paid from such Trust Fund during such calendar year (other than payments of interest on, and repayments of loans made to such Trust Fund under section 201(l), reducing the amount of any transfer from the Federal Disability Insurance Trust Fund to the Railroad Retirement Account by the amount of any transfer to such Trust Fund from such Account), and taking into account any cost-of-living increase that otherwise would be made with respect to benefits paid from such Trust Fund during such year.".

(b) Section 215(a)(1)(B)(ii) of such Act is amended by striking out "For individuals" and inserting in lieu thereof "Except as provided in subsection (i)(6), for individuals".

MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

SEC. 18. (a)(1) Paragraph (1) of section 221(b) of the Social Security Act is amended to read as follows:

"(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

"(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

"(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

"(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

"(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1), complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period.

"(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any case with respect to which a determination referred to in subsection (a)(1) was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.".

(2) Section 221 (a)(4) of such Act is amended by striking out "subsection (b)(1)" and inserting in lieu thereof "subsection (b)(1)(C)".

(3)(A) Section 221(b)(3)(A) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(B) Section 221(b)(3)(B) of such act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(b)(1) The amendments made by subsection (a) of this section shall become effective on the date of the enactment of this Act and shall expire on December 31, 1987.

(2) The provisions of the Social Security Act amended by subsection (a) of this section shall be applied after December 31, 1987, in the same manner as such provisions were applied on the day before the date of the enactment of this Act.

Amend the title so as to read: "An Act to revise provisions of titles II and XVI of the Social Security Act relating to disability, and for other purposes.".

The PRESIDING OFFICER. Who yields time?

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I wish to thank the distinguished majority leader and minority leader for expediting consideration of this measure. It is a very important measure and one that I think deserves the immediate consideration of the Senate.

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

Mr. DOLE. Yes.

Mr. COHEN. Mr. President, I ask unanimous consent that Susan Collins be allowed the privileges of the floor during the consideration of this matter.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. DOLE. Mr. President, S. 476, as amended, was approved by the Finance Committee on May 16 and reported on May 18. This bill reforms the social security disability review process, and includes a series of provisions designed to improve the accuracy of disability determinations, the uniformity of decisions between the different levels of appeal, and the consistency of such decisions with Federal law and standards. A provision is also included to insure the adequacy of financing for the disability insurance program. This is not only an important bill but also a good one, as amply demonstrated by the support it received in the committee. The Finance Committee approved S. 476, as amended, by a vote of 20 to 0.

Achieving this consensus on disability reform has been a long and difficult process. There have been many misunderstandings about the nature of the problem which have, if anything, impeded our reaching this consensus. For this reason, before describing the bill in detail, I think it would be useful to provide some background and a review of legislative and administrative developments over the past 3 years. Spencer Rich, who writes daily columns for the Washington Post lobbying for a liberal disability bill, seems to have forgotten that the main reason we are here today is because of a provision enacted in 1980. It might be well for him to review the RECORD before his next article on efforts to try to tighten up this program.

In 1980, the Congress enacted legislation—The Social Security Disability

Amendments of 1980 (Public Law 96-265)—to tighten administrative oversight and control the disability insurance program. Over the preceding decade, the cost of the program had risen five-fold, from $3.3 billion to $15.8 billion, and between 1970 and 1977 alone, the number of disabled workers on the rolls almost doubled, from 1.5 million to 2.9 million. Counting spouses and children, the number of beneficiaries reached 4.8 million. Almost a third of the people who came on the rolls since the inception of the program in 1957 came on between 1970 and 1981.

The result was that the DI program was plagued by underfinancing and continuously rising taxes. Over the 27-year life of the program, the Social Security Board of Trustees reported a long-term financing deficiency on 15 occasions. On six occasions, Congress had to take steps to increase the amount of tax revenues going to the program.

Lax administration and work disincentives were both identified as prime contributors to escalating costs. Whereas in the late 1960's, 10 percent of all DI beneficiaries were reviewed each year, in the first half of the 1970's, only about 4 percent were reviewed annually. According to a report by the General Accounting Office, the overall inaccuracy rate in the DI program could be as high as 20 percent.

In trying to respond to these problems, the Congress, I think, properly, adopted in 1980 an eligibility review requirement. It has been misinterpreted, misunderstood, maligned, and criticized. Some who write about the program even forget in which administration it happened, they are so busy attributing to President Reagan something he had nothing to do with. But, again, that is beside the point. We needed to tighten up the program and we provided in that bill that all disability insurance beneficiaries, except those with permanent impairments, must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Prior to 1980, there was no requirement in the law mandating periodic review.

Several points are worth noting about this provision, as it has been surrounded by so many misunderstandings:

First, and most obviously, the periodic review requirement is a part of the law. The administration does not have the authority to ignore this requirement or to leave people on the rolls who are found not to be disabled under the meaning of the law.

Second, the periodic review requirement was passed by Congress in 1980—by a Democratic House and Senate—and approved by President Carter. Eligibility reviews were not a creation of the Reagan administration.

Again, I would call that to the attention of the reporter for the Washington Post.

Third, there was broad support for the 1980 amendments. The conference report, of which the review requirement was just one small part, was approved by a vote of 389-2 in the House, and by voice vote in the Senate. The Senate bill had been approved by a vote of 87-1.

Fourth, the eligibility review proposal was not a new idea in 1980. The provision was a part of H.R. 14084, the DI bill approved by the House Social Security Subcommittee in 1978. Even Wilbur Cohen could be counted among the supporters of the provision, and he is known for his rather progressive or liberal views. In hearings before the Senate Finance Committee in 1979, Cohen said that if the added personnel could be made available, he would support annual reviews—every year; he was advocating review every year. This law only requires every 3 years.

Fifth, we have a strict definition of disability in the law, one that has not been changed since 1967. People found ineligible under the law—accurately and properly—can therefore have very severe impairments.

While the requirement was well conceived, its implementation has resulted in some significant problems and dislocations which were not anticipated and which have contributed to an unprecedented degree of confusion in the operation of the program. In the past 3 years, 1.1 million people have been reviewed, out of which 480,000 were found ineligible by the State disability agencies administering the reviews. Among those who appealed their termination decisions to an administrative law judge, some 60 percent had benefits reinstated. This disparity between the decisions of the States and the administrative law judges was one of the first problems the Congress had to deal with, although it should be noted that this disparity existed long before periodic reviews were mandated.

Other concerns stemmed from the fact that under present law, individuals who have been on the rolls, possibly for many years, are reviewed as if they were new applicants. The only relevant issue in an eligibility determination is whether or not the individual can engage in "substantial gainful activity." As a result, people can be—and have been—terminated from the rolls who have not medically improved since the time they were initially granted benefits. While there may be many proper reasons for this to happen, such as when an individual is erroneously allowed benefits in the first place, serious questions were nevertheless raised.

Unfortunately, there were no easy answers to these questions. In both the Senate and the House, it has taken us the better part of the past 2 years to resolve some of the difficult problems plaguing the disability reviews. The administration has been actively involved in this process. Protecting the severely disabled who have every right to receive benefits under the Social Security disability program, while not recreating an untenable and unaffordable situation of lax administration, has been our goal.

LEGISLATIVE ACTIVITY IN 1982 AND 1983

The Committee on Finance first held public hearings on the problems in the disability insurance program in August 1982. The heavy workload for States conducting the new reviews was one of the key problems that was highlighted along with the relative frequency with which administrative law judges were reversing State agency decisions.

TEMPORARY LEGISLATION APPROVED IN 1982

Emergency legislation was approved by the Congress in December 1982 to help remedy both of these situations. Public Law 97-455, enacted on January 12, 1983, allowed the Secretary of Health and Human Services to slow the flow of cases sent to State agencies to take account of the backlog of cases and potential staffing difficulties. In addition, face-to-face evidentiary hearings were mandated at the reconsideration stage of appeal for terminated beneficiaries. Under prior law, there was no requirement for face-to-face contact with a decisionmaker prior to a hearing with an administrative law judge. Finally, the legislation introduced payments pending appeal. For the first time, terminated beneficiaries were granted the option to elect continued payments pending their appeal to an administrative law judge.

Many difficult problems remained, however, to which there were no easy or obvious solutions., For example, how do we protect individuals on the rolls who are severely disabled and yet maintain the principle that people who can work must be removed from the rolls? This, after all, was the underlying premise of the 3-year review requirement in the 1980 amendments. What is the proper treatment of people first applying for benefits relative to those who have been on the rolls for many years? How can we insure that this completely Federal program is administered in a nationally uniform manner? Allowance rates vary widely among the States, and some States have taken it upon themselves to set their own rules. How can we insure more accurate and uniform decisions between the levels of adjudication? How can we insure thorough and careful development of medical and vocational cases?

The absence of quick or easy remedies was demonstrated on the House side as well. The Ways and Means Committee first drafted a bill in 1982.

It was never considered by the full House, however. In 1983, the Ways and Means Committee again drafted a disability reform bill, this time with a widely different approach. These reforms were approved by the Ways and Means Committee last fall, on September 27, although they were not reported nor were they considered by the House during the balance of the year.

Our efforts to develop comprehensive legislation in the Senate continued through the end of the session in 1983. Throughout October and November, I met frequently with concerned Members of the Senate, including Senators COHEN, LEVIN, and others. In addition, I met with Secretary Heckler and Acting Commissioner of Social Security Martha McSteen, and my staff met intensively with the staff of 10 to 15 Members of the Senate.

We made real progress. The difficulties and complexities were sizable, however, and we were unable to develop a consensus bill with the support of the administration prior to adjourning.

SENATE ACTION IN 1983

I should point out that when it became clear in the final days of the session that formulating a comprehensive bill with bipartisan support would not be possible, I brought legislation to the floor that would have insured that the provision allowing payments to continue through appeal would not expire on December 7. The amendment I offered would have extended this provision until June 7, 1984, giving Congress time to enact further legislation without penalizing those who would be terminated from the rolls during the winter months. The amendment would have also extended the vitally important section 1619, which allows severely impaired individuals to continue receiving supplemental security income and medicaid despite substantial gainful activity. This legislation was approved in the Senate by a vote of 80-0 on November 18. The House, however, failed to act on this legislation prior to adjourning.

Fortunately, the administration promptly took steps to insure that no one suffered as a result of the expiration of these two provisions. A temporary moratorium on eligibility reviews, during December and January, insured that no one would be terminated and be without benefits until at least June. In addition, the Secretary announced a demonstration project to keep the people receiving payments under section 1619 covered through 1984.

ADMINISTRATION INITIATIVES

During this entire period, many improvements were being made by the administration. Through a series of administrative initiatives, positive steps were taken to improve the accuracy and fairness of decisions.

Among other important changes, face-to-face interviews were introduced in district offices for individuals preparing to undergo eligibility reviews; all medical evidence available over a 12-month period must now be examined; more detailed explanations of decisions are required; a larger proportion of the beneficiary population has been classified as permanently impaired and thus exempted from the 3-year review requirement; and a temporary moratorium was placed on the review of two-thirds of all mental impairment cases pending a revision of the criteria used for determining eligibility.

In addition, the administration has worked closely with us in developing the legislation before the Senate today.

DEVELOPMENTS IN 1984

Fortunately for all concerned, everything has fallen into place in terms of developing legislation in recent months. On the Senate side, the Finance Committee held a hearing during the first week of the session (on January 25) on the Ways and Means Committee bill and on S. 476. On the House side, the Ways and Means Committee finally reported its disability bill, H.R. 3755, on March 14, and the bill was approved by the House on March 27 by an overwhelming vote--410 to 1.

Intensive negotiations continued on the Senate side, among Members, their staff, and the administration. Senators COHEN and LEVIN worked tirelessly to help bring S. 476 to the consideration of the Finance Committee.

Last week, the Finance Committee took up disability reform legislation in executive session on May 15 and completed action the next day, reporting out S. 476 as amended on May 18. Developing a bill with unanimous support in the committee was greatly facilitated by the efforts of Senators HEINZ, MOYNIHAN, and LONG.

SUMMARY OF THE PROVISIONS OF S. 476 AS AMENDED

There are 17 provisions in the bill, the most significant of which modifies the standard to be used for reviewing the continuing eligibility of disability beneficiaries under both the social security disability insurance (DI) and supplemental security income (SSI) programs. This new standard would not alter in any way the requirement that people be periodically reviewed, it would, however, provide major protections to people whose conditions have not medically improved since the time they were allowed on the rolls.

Under the bill, if the evidence shows that an individual's medical condition is the same as or worse than at the time of the most recent prior decision, then benefits could not be terminated in a review unless the Secretary established that there had been some other change in circumstances and that the individual can perform substantial gainful activity. (A change in circumstance would include the individual having benefited from medical or vocational technology or therapy; new or improved diagnostic or evaluative techniques which indicate the impairment is not as severe as originally believed; a fraudulently obtained or erroneous initial determination; current work activity; and failure, without good cause, to cooperate in the review.) If the individual has medically improved while on the rolls (or is unable to show that his condition is the same or worse), the Secretary would have to demonstrate ability to perform substantial gainful activity in order to terminate benefits.

This new standard applies to future eligibility reviews, to individuals who now have claims properly pending in the administrative appeals process and to certain cases pending in court. The provision sunsets on December 31, 1987.

Four of the provisions in the bill are designed to improve the accuracy of disability determinations, both for new applicants and beneficiaries undergoing review. These would direct the Secretary to: First, consider the combined effect of multiple impairments, if severe, even if none are individually severe; second, consult a treating physicial for medical evidence whenever possible prior to obtaining a consultative examination, and develop a complete record of the individual's condition over at least the preceding 12-month period; third, make every reasonable effort to use a psychiatrist or psychologist in making a termination decision for beneficiaries with mental impairments; and fourth, take into consideration subjective allegations of pain only to the extent they are consistent with medical signs and findings which show the existence of a medical condition which could reasonably be expected to produce the alleged pain, or other subjective symptoms (this statutory provision expires on December 31, 1987).

To help address the problems of uniformity in decisionmaking between the levels of appeal and also at the State agency level, the bill would require the Secretary to establish by regulation uniform standards of eligibility to be binding on all levels of adjudication in determining whether individuals are disabled under the meaning of the Social Security Act. Such regulations must be published in accordance with the rulemaking requirements of the Administrative Procedure Act (APA) (thus removing SSA's exclusion from the provisions of the APA on matters relating to the determination of disability.) In addition, the Secretary would be required to federalize disability determinations in

a State within 6 months of finding that the State is failing to follow Federal law and standards. This latter provision expires on December 31, 1987.

To insure the solvency of the DI trust fund, the bill would require the Secretary to notify the Congress by July 1, if the DI fund is projected to decline to less than 20 percent of a year's benefits. If Congress takes no other action, the Secretary would scale back (in part or full) the next cost-of-living increase for disability beneficiaries as necessary to keep the fund balance at 20 percent. If necessary the Secretary would also scale back the increase in the benefit formula used for determining benefit levels for persons newly awarded disability benefits. Measurement of the fund assets would include any funds (now $5 billion) loaned by the DI trust fund under the interfund borrowing authority.

Finally, the bill would reauthorize, until June 1986, payments pending appeal to the administrative law judge hearing, which expired in December. It would also reauthorize, until July 1987, the vitally important work incentive program in SSI—special section 1619 payments to severely impaired individuals who have earnings.

These and other provisions in the bill are described in more detail at the end of my statement.

COST OF THE BILL

According to the Office of the Actuary of the Social Security Administration, this bill has a 5-year cost of $2.5 billion to the OASDI trust funds, and a total cost of about $3 billion to $3.2 billion. The long-range impact of the bill on the OASDI trust funds is projected to be 0.005 percent of taxable payroll.

The actuaries project that DI reserves will remain above 20 percent throughout this century and thus the fail-safe is not expected to be triggered.

It is important to note that the cost of the DI program has been extremely volatile over the years and that the actuarial forecasts are subject to a higher degree of uncertainty than those for the retirement program. The value of the fail-safe is that, in the event the cost of this bill turns out to be higher than we now expect, the Congress will be notified in a timely fashion that reserves are being depleted and that remedial action is necessary. Only if such action is not taken by Congress would the automatic increases in DI benefits be scaled back to protect the solvency of the program.

It is our goal in this legislation to restore order to the administration of the disability insurance program and restore the confidence of the disabled population in the social security disability programs. The committee bill underscores our commitment to and insistence upon a nationally uniform disability program. In recent months, due both to independent actions by States that are in violation of Federal law and guidelines and to court actions, the social security disability programs are no longer being administered in a nationally uniform manner, consistent with the goals of the Federal program. (As of March 1984, prior to the announcement by Secretary Heckler of a temporary nationwide moratorium, 10 States had refused to conduct eligibility reviews and 18 were operating under court-ordered eligibility criteria or pending court action.) This is an untenable situation that undermines confidence in the disability programs—just as surely as eligibility reviews do if they lead to inaccurate findings of ineligibility.

This situation must be remedied and it is my strong belief that this legislation will make major strides in that direction.

Mr. President, I am not certain that what we have done is perfect. I wish we had known about this Supreme Court decision that was handed down today by a vote of 5 to 4. The Supreme Court today blocked the Federal courts from intervening on citizens' behalf in conflicts with social security. Critics say the ruling could keep the disabled and elderly from obtaining benefits. That is what the critics say. The problem is we have all of these Federal courts making all of this policy that far exceeds the intent of Congress. That is not unusual for courts. But the High Court agreed with the Secretary of HHS that such orders are unwarranted, increasingly burdensome, judicial intrusion, and go beyond what Congress has been willing to order.

"The consistency with which Congress has expressed concern over this issue is matched by its consistent refusal to impose on the Secretary mandatory deadlines for the resolution of disputed disability claims," Justice Lewis Powell said, writing for the majority.

I want to say again, as I said in my statement, that I want to commend a number of Senators. I do not know of anyone in this body—Democrat or Republican—who wants to take anybody off the rolls who has a severe impairment.

Yesterday, I was privileged to visit a rehabilitation institute in Chicago where there are very severely disabled people—men, women, and children. I talked with them about this particular bill. I think there is a general agreement among those who are disabled in this country that we ought to reserve the program for the disabled—not those who claim they are disabled, but for the disabled. That was the intent of the original disability legislation in 1956, which was supported by the distinguished Senator from Louisiana, and that is the appropriate intent.

There are probably a number of persons who have disabilities who are not on the program and belong on. There are also a number of persons on the program who have no serious disabilities and they ought to be terminated. And that is all we are trying to deal with in this legislation.

There has been a lot of confusion and a lot of misunderstanding. There have been long efforts by a number of Senators on both sides of the aisle to find a resolution to the difficult problems. And it is fair to say that the prime movers in trying to bring this about in a responsible way—and I underscore "responsible way"—are the distinguished Senator from Maine, Senator COHEN, the distinguished Senator from Michigan, Senator LEVIN, the distinguished Senator from Pennsylvania, Senator HEINZ, and others.

Mr. President, I reserve the balance of my time as I know the distinguished Senator from Louisiana may want to make a statement.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. LONG. Mr. President, I have been deeply concerned about the pending proposals to amend the social security disability program. Over the course of its history since 1956, this program has proven to be far more costly than Congress intended. Moreover, there is clear evidence that the excess costs were not simply based on a failure to estimate the size of the disabled population. Rather, the problem has been that benefits have been paid to significant numbers of people who do not meet the eligibility requirement. There have been court decisions which have extended the program to those for whom Congress never intended it. There have been periods of lax administration. As a result, surveys have indicated that a significant percentage of those getting benefits are not in fact eligible.

In response to this unintended and inappropriate expansion of the program to those who are not eligible, Congress attempted in 1980 to require more careful administration and instituted a rule under which each individual on the rolls must be periodically reviewed to assure eligibility.

The implementation of this review process revealed weaknesses in the administrative structure and did result in a number of unfortunate instances in which benefits were, at least temporarily, denied to some individuals who were in fact eligible. Nevertheless, the reviews did confirm that many ineligible individuals have been receiving benefits.

We should, of course, act to remedy any administrative problems in how the reviews are conducted. But we should not abandon our efforts to con-

tain program costs by assuring that benefits are paid only to those who are, in fact, unable to work.

For these reasons, it was my view that disability legislation should not be acted on until the Committee on Finance had the opportunity to examine it and assure itself that we were not undermining the objective of insuring the integrity of the program. While I continue to have serious concerns about the bill before us, and in particular about the medical improvement standard in it, I think the Finance Committee has made several significant improvements in the bill. These improvements include a reaffirmation of congressional policy that the program should be carefully administered and that benefits should be allowed only on the basis of objective medical evidence.

I note, Mr. President, that that committee amendment had the support of the administration, and it puts in statutory form the regulation that the Secretary of HHS has been applying.

Moreover, the bill includes a fail-safe financing provision which would help prevent a recurrence of runaway costs should the medical improvement standard prove to be more costly than is now estimated by the actuaries.

The medical improvement standard approved by the Finance Committee is more limited than other similar proposals. It places the burden of proof on the claimant to establish that there has been no improvement and it allows the Secretary to fully redevelop the record of the earlier decision. Even so, it represents the first time that the statute has explicitly authorized benefits to be paid on the basis of disability even if an individual is able to work. This creates a double standard of eligibility which could lead to substantial expansion of the program. Moreover, it accounts for most of the cost of this bill—some $2.5 billion over the next 5 years.

At a time when Congress is struggling to find ways to control enormous Federal deficits, it is troubling to expend funds of this magnitude for a new entitlement provision, especially since this $2.5 billion entitlement is targeted specifically at individuals who would otherwise be found ineligible because they are able to work.

In addition to my concerns about the medical improvement provision, I am also concerned that other major problems in the social security disability program are not addressed in this bill. These problems will have to be dealt with. For all these reasons, while I voted to report the bill from committee, I did so with reservations. It would be difficult to responsibly support the bill if the safeguards incorporated by the Finance Committee are significantly weakened.

I ask that a more detailed statement of my views on this legislation be printed at this point.

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

ADDITIONAL VIEWS OF THE HONORABLE RUSSELL B. LONG

Although I continue to have reservations about S. 476, the Finance Committee has made important modifications in the bill:

The medical improvement standard in the Committee bill is a less complete presumption of continuing eligibility for persons who were not disabled when they began receiving disability benefits.

A measure of protection of the disability insurance trust fund, if the cost of the bill far exceeds the estimates, is incorporated in a fail-safe provision which will scale back cost-of-living increases if the fund begins to deteriorate.

By incorporating a statutory definition of pain the Committee bill re-emphasizes that legislative policy is set by the Congress and that the Congress expects the Administration and the courts to interpret and apply that policy in the light of the Congressional intent that the disability insurance program be carefully administered and nationally uniform.

By providing a mandatory expedited timetable for dealing with State failure to follow Federal rules in determining eligibility, the Committee bill would prevent another protracted deterioration in State administration of this Federal program such as is now occurring.

THE MEDICAL IMPROVEMENT STANDARD

Under legislation enacted in 1980, the Administration has conducted a large number of continuing disability reviews to see if persons on the disability insurance rolls are still disabled. A significant number of persons were removed from the rolls.

Under present law, when a recipient of disability insurance benefits is reviewed to determine whether he is still disabled, the same definition of disability applies to him as is used for a new applicant, namely: is he able to engage in "substantial gainful employment"?

S. 476 as introduced would for the first time have set a different standard of continuing eligibility for a person already on the rolls. Finding him capable of engaging in substantial gainful activity would not have sufficed to end his benefits; the Secretary would also have had to show that he had undergone medical improvement since he was first determined to be disabled.

The Committee bill amends and improves this provision. The original bill would have almost totally foreclosed the Secretary from removing from the rolls a person who was not disabled when he began receiving benefits. The Committee bill instead lets the Secretary challenge the original disability determination, develop additional evidence and require the complainant to prove that his condition has not medically improved.

Even with this modification, the Social Security Act for the first time wil have permitted persons who are able to engage in substantial gainful employment to continue receiving disability insurance benefits.

The Committee bill is estimated to cost $2.5 billion over a five-year period. Virtually this entire amount will be paid to persons who are able to work.

These very significant costs of this legislation are justified by the proponents of the bill on the basis of the need to deal with the current chaotic situation which prevails in the administration of the social security disability program. Even if this argument were to be accepted, it remains deeply troubling for us to expend $2.5 billion, at a time when we are struggling to cope with alarming Federal deficits, to provide benefit payments to individuals who would be unable, despite several levels of appeal, to establish their eligibility.

The situation will be much worse if the legislation, instead of resolving the current chaotic situation, simply serves as a signal for further efforts to broaden eligibility. The bill as reported by the Committee on Finance clearly does not intend such a result. However, the costs and caseloads of this program have over the years proven highly volatile and difficult to control. The adoption by the Congress of a dual standard of eligibility creates a tension which could be laying the groundwork for further expansion of the program. It may prove difficult to maintain a situation in which individuals are denied admission to the benefit rolls—even though equally or less disabled persons who managed to get on the rolls are allowed to keep receiving benefits.

DISABILITY PROGRAM NEEDS FURTHER REVIEW AND REVISION

S. 476, as reported by the Committee on Finance, attempts to deal with major problems which now exist in the way the program is administered. I believe a number of the provisions of the bill will help in this regard. For example, the specific provision reaffirming the existing regulation on the evaluation of pain will resolve whatever confusion there may be on this issue. It emphasizes again the Congressional view of the need to limit eligibility to cases where disability can be established by objective medical evidence. The timetable for dealing with State defiance of Federal rules should help the Secretary deal with such problems more forcefully. Even the medical improvement provision, though it is troublesome from a policy perspective, at least will resolve a large body of litigation according to a policy standard which is set, as it should be, by the Congress and not the courts.

While these features of the Finance Committee bill are desirable improvements in the program, I am concerned that there remain major problems in the structure of the disability program which are not adequately addressed by the pending legislation. If Congress is to bring this program back under control and restore the confidence of both taxpayers and beneficiaries in its evenhandedness, we will need to undertake stronger measures than those contained in this bill.

Consistency of decisionmaking.—One of the arguments most frequently advanced in support of the medical improvement standard is that many, or even most, of the benefit terminations as a result of the recent eligibility reviews were erroneous. The evidence offered in support of this of this argument is that more than half of the terminations appealed to an administrative law judge (ALJ) were overturned at that level.

While the statistic is correct, the conclusion drawn from it is not. The phenomenon of a reversal rate by ALJs exceeding 50 percent is not peculiar to the recent review process. Both for continuing reviews and initial awards, the ALJs have consistently over the past ten years reversed more than half of the cases appealed to them.

This prolonged pattern of high reversal rates indicates only that different standards

are being applied at different levels of the administrative structure. This problem has been recognized for some time. The 1980 amendments attempted to address the problem by mandating a study of its causes and by requiring the Secretary to undertake to review a significant portion of cases which are reversed by ALJs. In addition to these actions, the agency has undertaken to publish rulings aimed at providing a uniform set of basic eligibility guidelines for all levels of the administrative process.

Thus far, at least, there is no evidence that any of these measures are having a significant impact. It may be too early for any results to show up, particularly in the present confused administrative atmosphere. But if the present approach does not succeed in achieving consistent decisionmaking within the present program structure, the Congress may need to consider modifications in that structure.

The role of the courts.—In the 1956 hearings on the question of establishing a disability program, witnesses from the insurance industry predicted that the courts would be only too eager to broaden the scope of the program beyond what Congress intended. That prediction has proven to be quite accurate. In the 1967 amendments, the Committee report cited several examples of ways in which the courts had broadened the original intent of the statute. The Committee then directed the Administration to report to the Congress on "future trends of judicial interpretation of this nature," and added to the statute provisions designed to counteract those court cases.

The situation has not noticeably improved. In a recent case (*Polaski* v. *Heckler*), a U.S. District Court judge excoriated the Secretary for following her own regulation in violation of what he deemed to be the "fundamental policies at the heart of the disability program." He found these fundamental policies embodied in a law review article by another judge to the effect that the disability statute "should be broadly construed and liberally applied." On the basis of his findings that the Secretary was not obeying what he calls "Eighth Circuit Law," this judge ordered the Secretary to substitute his policy judgment for hers (and that of the Congress) in carrying out the Social Security Act in an area covering seven States.

This case would not be so troubling if it were atypical. But apparently it is almost the judicial norm. Courts do, of course, have the responsibility to carry out the law and to resolve questions of interpretation. In so doing, however, they should be guided by the statute and its legislative history, not by abstract theories found in law review articles. If the judge in this case had bothered to examine the statute and legislative history, he would have ample evidence of Congress's concern not that the law be more broadly construed, but that it be more narrowly construed. He would also have found great concern on the part of Congress that this law be administered more uniformly. This might have led him to give more weight to national law than to "Eighth Circuit Law." In the United States, the law is the law of the land and it is made by Congress. The courts, including the district and circuit courts, have an important role in carrying out and enforcing the law. But Circuit courts are not regional legislatures.

In its provision on the evaluation of pain, the Committee deals with one of the areas in which the Courts have been broadening the program. However, it is clear from the law review article quoted in the Polaski case that there are many other aspects of the program on the judicial agenda. If the regional courts are going to persist in ignoring the policy objectives expressed by Congress and persist in refusing to grant appropriate deference to the duly promulgated regulations of the Secretary, the Congress may be forced to find ways of dealing with this situation.

Federal-State relationship.—A troubling recent development in the disability program is the tendency of some States to defy Federal rules in carrying out this program which is wholly Federally funded. Even more troubling is the fact that the Secretary took no action to bring the errant States back into line. The Committee bill does attempt to deal with this for the future by establishing firm and mandatory time frames for proceeding to Federalized operations in States which refuse to comply. This situation must be monitored, however, if it is not to recur.

The handicapped population.—One reason for the volatility of the disability program is that it is intentionally limited to only the most severely disabled--those who because of their impairment cannot engage in any substantial gainful work activity. This limitation is based not solely on cost but on grounds of policy. The law should not encourage those who retain the capacity for self-support to become dependent.

Unfortunately, if society cannot provide employment opportunities for handicapped individuals who are not totally disabled, they will understandably seek to be found eligible for benefits under the disability programs. And it will be difficult for the administrators of those programs to deny them eligibility.

If we are to succeed in controlling the cost of the disability insurance program, program, we must find more effective ways of opening up jobs to those handicapped people who have the capability to become productive members of society. While this problem is beyond the scope of the pending bill, our failure to solve this problem has a great deal to do with why this bill is needed. There would be no requirement for a medical improvement standard if we could offer a job to any handicapped person who could work.

I hope the Congress will turn its attention to this issue and that the Administration will consider whether it cannot recommend to Congress some significant measures to increase the availability of job openings for the handicapped.

THE GROWTH OF THE DISABILITY PROGRAM

When the disability program was enacted in 1956, it was projected that the program could be permanently financed by a combined employer-employee tax of 0.42 percent of payroll. After adjusting for the proportion of covered wages which are subject to tax, that is closer to a rate of 0.33 percent in today's terms. Since that time, the cost of the program has grown significantly. In the 1984 report of the Social Security trustees, the long-range costs of the program are estimated at 1.45 percent of payrol, some 4 times what was originally estimated. Expressed on a constant-dollar basis in relation to 1984 payroll levels, the long-range average cost of the program has increased from $5 billion per year to $23 billion per year.

There have, of course, been some changes in the eligibility requirements for disability benefits since 1956. These changes, however, explain only about one-third of the growth of the program (on the basis of the cost estimates made when they were added to the law). The bulk of the growth in the costs of the disablity program cannot be adequately explained except on the basis that the program has been administered in such a manner as to pay benefits to a broader population than Congress intended the program to serve.

Even more troubling than the mere fact that program costs are greater than originally estimated is the evidence that it remains a highly volatile program. Its costs could easily expand well beyond present levels. At the time the program was first enacted, the experts estimated that by 1990 there would be a little more than a million disabled workers drawing benefits. Today there 2.6 million workers drawing benefits. This is a large increase. But just a few years ago—in 1977—the benefit rolls were growing so rapidly that the actuaries projected they would exceed 5 million disabled worker beneficiaries by 1990. That is roughly 5 times the original estimate.

In dollar terms (using a constant dollar concept based on 1984 payroll levels), the projected long-range average costs of the program have increased from $5 billion in 1956 to $23 billion today—a fourfold increase. But today's projected costs are far from the historic high. That occurred in 1977, when instead of the original 0.33 percent of payroll or the present 1.45 percent of payroll, the long-range program costs were projected to require a tax (on a comparable basis) of about 3.4 percent of payroll—some 10 times as high as of the original estimate. This extreme point in the cost of the program was partially caused by a problem in the benefit formula. But even after that problem was corrected by the 1977 amendments, the long-range average cost of the program was estimated to be 2.49 percent of payroll—over 7 times the original cost. In comparable constant dollar terms, this translates into a long-range annual average cost of $40 billion per year.

Viewed in this perspective, it is clear that this is a program with a serious potential for getting further out of control. It could easily add billions of dollars per year to the deficit and could endanger the stability of the social security system generally. It is particularly important to note that the program is now again showing a trend towards increased costs. As a result of the actions by the States and the courts and the various moratoria imposed by the Administration, the rates of termination are on a downward trend. This is not surprising. But the program has also recently shown an upswing in the allowance rates and in application rates.

Just in the past year, the social security actuaries have been required to significantly increase their estimates of what this program will cost even if there is no additional legislation. For the 10-year period ending 1992, the 1984 trustees report indicates that without any legislative change the projected disability program costs have increased by $5.5 billion. The estimates of the long-range average annual costs have similarly increased by over $1 billion per year.

For this reason, there are grounds for serious concern over the possibility that the enactment of disability legislation could be taken as a signal which would unleash another explosion of program costs. If that were to take place, the currently estimated costs of the bill, although they are substantial, would pale in comparison with the true costs of the bill. There is good reason to expect that the enactment of this legislation in the form it passed the House or in

the form in which it was referred to the Finance Committee would produce just such results. The Finance Committee has modified this legislation and, in particular, has attempted to clarify it in several ways to limit the possibility that it could mistakenly be seen as the starting signal for another round of program growth. Even so, careful monitoring will be required, given the historic difficulty of controlling the program. In particular, it would be very difficult to responsibly support this legislation if the safeguards included by the Finance Committee were weakened in any significant degree.

Mr. LONG. Mr. President, let me say in closing that I appreciate the concerns of Members of this body who have a great interest in helping less fortunate people. My friend and my colleague on this side of the aisle, Mr. CARL LEVIN, the Senator from Michigan, has been tireless, tenacious, and unrelenting in seeking to provide further helpful consideration to persons who in his judgment were denied help and who needed help. His sincerity and his devotion to this cause is beyond the doubt of any one of us. The same thing is true, Mr. President, of the Senator from Maine, Mr. COHEN. Senator COHEN has also indicated a tremendous sympathy for persons who have been unable to receive the payments to which they were entitled.

I sympathize with what they are trying to achieve. I simply have insisted, Mr. President, and I shall try to continue to insist, that this program be limited to those disabled persons for whom it was intended. I do not think that those who pay taxes in this country would approve of us if we permitted this program to expand fivefold or eightfold. I do not think the people of this country, for example, are prepared to pay the kind of taxes it would take. I should think it would take about $1,000 per year in additional taxes for the average working man for us to pay the kind of benefits that are being paid under the liberal standard that is used in Holland today. In Holland they have about 16 percent of their work force on the disability rolls.

We were led to believe this program would require us to put only 1 percent of our work force on the disability rolls. Today we have about 2.5 percent of our work force receiving disability insurance benefits. But I would make the point that every time we liberalize the program to take an additional person on who was not previously eligible, that sets the stage for a large number of others to profit by that example, and be added to the rolls. It is not easy to maintain and control the cost of this program.

As an original sponsor of the disability program, and one who felt when we started the program that in due course it would be liberalized, I say that it is our burden to protect the taxpayers from putting people on the rolls who should be rehabilitated, who should be brought back into the mainstream, as citizens who hold a job.

I believe we have been derelict by failing to have a more effective program to encourage and require employers to do what they should do; that is, to provide employment opportunities for handicapped people who otherwise would have no income. That is a shortcoming of the situation today, the fact that we have not come forward with a good program to assure decent and meaningful employment to handicapped people. Left without employment, those people have no choice but to make every effort to find their way onto the disability rolls. That then leaves us with a situation where we have people on the rolls who should, both as a matter of business and as a matter of good human relations, be placed in the mainstream of employment by employers who could have found ways to provide more disabled people with assignments in their work force. This would have happened if these employers had made the kind of effort that I would like to see them make to bring that result about.

Mr. President, I believe the committee has done the best it could, recognizing that we have a variety of views on the committee, just as we have a variety of views in the Senate as a whole, in trying to work out a measure that we hope will meet with the approval of the Senate itself.

Mr. DOLE. Mr. President, before I yield to the distinguished Senator from Maine, I want to indicate, as the distinguished Senator from Louisiana has indicated, that this is a very sensitive problem. The record should be clear that there is not a Senator in this body who wants to do anything to adversely impact someone who has a handicap, who is disabled, who ought to be on the rolls. I think we have made that clear. From some of the things I read, I wonder if there is really an understanding.

I have wondered myself why HHS and some people who have written about this issue have not written about those people who should not be on the rolls but are on the rolls, instead of the others.

Also, I want to acknowledge that the distinguished junior Senator from New York, Senator D'AMATO, who has played a prominent role in this legislation unfortunately has a plane to catch so that he can attend a meeting of Project Return, a rehabilitation program dealing with battered wives and drug addicts. His statement has been made part of the record. Were the Senator able to stay, he would obviously vote in favor of the legislation.

I yield 10 minutes to the distinguished Senator from Maine, one of the pioneers in the efforts to modify and revise this legislation.

Mr. COHEN. I thank the Senator for yielding.

I take this opportunity, Mr. President, to extend my sincere thanks to Senator DOLE. His effort has been nothing short of herculean.

I would point out that it has been exactly 2 years since we began our first hearing back on May 25, 1982, when Senator LEVIN and I conducted oversight hearings because we had been made aware that we had a serious problem on our hands.

I also want to congratulate and commend the Senator from Louisiana, Senator LONG, for his help in coming to the floor today with a unanimous package. It really has been a long process in which a good deal of refinement has had to take place.

I must tell you, Mr. President, we have tried to take as much emotion out of this emotionally charged issue as we possibly could. We had, for example, hearings in which I, on my own accord, decided not to allow congressional witnesses to testify. Some of our colleagues came before us and wanted to testify on this issue. I said, "No, we are going to try to get at the facts. You can submit statements for the record."

That was highly unusual, but we did not want to overdramatize it. I even went to the point of not allowing persons who were severely disabled, who had been terminated, to testify so that we would not dramatize the issue because it was so provocative by its very nature.

We in Congress had mandated and joined in the efforts of the Senator from Louisiana in requiring these reviews. We found some serious deficiencies in the way they were being conducted. For example, people were not being adequately notified that their benefits were about to be terminated; we found it was not malice on the part of the administration, rather, they did not want to unduly alarm beneficiaries. They simply sent out a postcard saying, "Your case is under review."

But the SSA officials did not tell them that they woud have to come forth with additional proof, presenting new medical evidence that they were disabled.

We had the situation of people being terminated with no face-to-face meetings and no human element involved whatever. There was also the question as to who would have the burden of proof.

Another problem concerned the lack of uniformity of standards. On one hand the State claims examiners were applying one standard, the administrative law judges another, and the courts perhaps, a third.

We also examined the question of the Social Security Administration, without any public notice, eliminating the requirement that a claimant's pain

be evaluated. That is something that has been in the SSA regulations for years. Pain is a factor to be taken into account in determining whether a person is suffering from a disabling injury.

We learned of the economic hardship experienced during the long process of review. It sometimes takes a year or almost 18 months for a beneficiary to have his case heard on appeal. In the meantime, those individuals who had their disability payments cut off had to go without for months without benefits, only to be reinstated after winning on appeal.

Some people were faced with tremendous hardships and suffering. Some people committed suicide. Others tried to. We had people who died from heart attacks, many causally connected with the fact that they could no longer support themselves because they could not work. Yet they were terminated. There were people in iron lungs, people in body casts, who had their benefits terminated.

What we had was essentially a paper-oriented process, without the human element involved. We had a lot of misinformation. We had incomplete medical exams. We had conflicting standards, which I mentioned before. And we had even an issue dealing with the nonacquiescence by the Social Security Administration in decisions rendered by Federal circuit courts in which the administration would say, "We do not acquiesce in that particular decision. It only applies to the factual case at hand and any other disability claimant will have to go to court and prove his case all over again, even though we might have an identical factual case."

These deficiencies are why Senator LEVIN, Senator HEINZ, myself and so many others recommended an overhaul of the disability review process. It was not because we do not share the same views as the Senator from Kansas and the Senator from Louisiana. We do. There is nothing that I could point to where I would be in disagreement with them. They are absolutely right. We want all of those people who are not disabled within the meaning of the law of those rolls. And we do not want to see it expanded beyond what we really intended. So we share in that common goal.

I think there have been some improvements made in our legislation, and I would agree with the Senator from Louisiana that we have made a number of improvements in refining our reforms.

I am not entirely happy, frankly, with the bill as it has been reported by the Finance Committee.

But, I think it is a good compromise. We perhaps have a different view on how I believe pain should be evaluated. Aside from that, Mr. President, I simply wish to go on record as saying this is a substantial improvement over where we are right now. I believe it will provide a substantial amount of equity in the future.

Mr. President, I am pleased that the Senate is considering this legislation which Senator LEVIN and I authored to reform the social security disability program. It has been an arduous task to bring this legislation to the Senate floor, and thank Senator DOLE for his Herculean efforts in forging a compromise that enjoys the support of the administration, the sponsors of this bill, and others who now support it.

Three years ago, the Social Security Administration began reviewing the eligibility of individuals receiving disability benefits. These reviews, mandated by Congress, created chaos and inflicted pain that Congress neither envisioned nor desired when we enacted what was intended to be a sound management tool.

By now, the statistics are familiar to all of us. Since March 1981, more than 470,000 beneficiaries have been disqualified by the State agencies which apply Social Security Administration guidelines. yet, more than 160,000 people have been reinstated after appealing to administrative law judges. The hardships imposed on the truly disabled have been documented in countless hearings, studies, reports, court decisions, newspaper articles, and personal experiences.

Many of my constituents have written to tell me of their traumatic experiences with the social security disability program. Their own words best express the pain, humiliation, and despair these disabled workers have felt.

One woman, wrote of the suffering, agony, and bitterness that she had gone through since losing her husband:

> His benefits were stopped in June of 1982, and he never lived to get his hearing date set. He was a very sick man, and I'm sure the mental pressures as well as his physical problems played an important part in his death. He worked for 36 years in a pulp and paper mill so I am sure you understand my feelings about the whole system. As far as I'm concerned, he was let down by his government in a very cruel and heartless manner.

Another woman who works for an organization that assists the disabled voiced the frustration felt by her clients:

> Physical or mental disabilities have forced them, through no fault of their own, to draw these benefits. However, they are now being penalized for having these disabilities. They become discouraged, depressed, and above all desperate. The devastating effects that are imposed on these people is something that should not happen in this country. When you take away, in many cases, the only means of financial survival that a person has, you have degraded him to the lowest point.
>
> I find it difficult to understand why American citizens who have made substantial contributions to the Social Security program, their community, society, and in many cases fought for their country, are now being deprived of what is rightfully theirs.

In a letter to me, the director of Maine's Income Maintenance Bureau summed up the problems in the disability program by declaring: "Current Federal policy on disability is completely outrageous."

My constituents painted a stark picture of a review process that sought efficiency at the expense of equity. Witnesses at hearings held by the Oversight of Government Management Subcommittee in May 1982, recounted case after case in which a truly disabled person lost benefits due to a paper oriented review process characterized by misinformation, incomplete medical examinations, inadequately documented files, conflicting standards, and erroneous decisions. The General Accounting Office has testified that the message perceived by the State agencies, swamped with cases, was to deny, deny, deny, and, I might add, to process cases faster and faster and faster. In the name of efficiency, we have scanned our computer terminals, rounded up the disabled workers in the country, pushed the discharge button, and let them go into a free all toward economic chaos.

The need for fundamental change in the disability reviews has been evident for some time. Since the reviews began, more than 12,000 individuals have filed court actions challenging the Social Security Administration's termination of their benefits. An additional 40 class action suits had been filed as of last month.

Before the administration imposed a nationwide moratorium on April 13, half of the States were refusing to follow the flawed procedures and criteria mandated by the Social Security Administration. In 10 States, including Maine, the Governors had imposed moratoriums on further disability reviews, while other States had devised their own standards for determining eligibility or were following court decisions that require medical improvement in a beneficiary's condition before benefits can be curtailed.

The legislation before the Senate today would end this chaos and insure an equitable review process. While S. 476, as reported, does not contain every provision of the legislation as introduced, it represents a worthwhile effort to improve the program and deserves our support.

First—and fundamental to a fair system—the bill would require that the claimant be given a clear and complete notice of what the review process entails. Although the Social Security

Administration has taken steps to improve its notices, this basic safeguard should be incorporated into the disability statute.

Second, S. 476 would require the standards for determining disability to be issued as regulations subject to public notice and comment. This provision would accomplish three essential objectives: It would promote uniformity in decisionmaking by requiring all adjudicators to use the same criteria; it would improve the quality and consistency of the standards by involving the public, including the medical profession, in their development; and it would insure that everyone involved has ready access to the standards. An attorney in Maine who represents the disabled describes the current criteria as secret because the internal agency guidelines used by State claims examiners are not available for public scrutiny and are so difficult for her to obtain.

Third, the cornerstone of S. 476 would establish standards for conducting the disability reviews. When Congress passed the 1980 amendments mandating the periodic reviews, we neglected to establish guidelines for determining when benefits should be ceased. S. 476 would remedy this critical omission by establishing clear criteria for continuing or terminating benefits.

As a general rule, the Secretary could terminate benefits if the evidence shows that the individual's medical condition has improved and that he can perform substantial gainful activity. If the evidence, compiled by the Secretary and the beneficiary, demonstrates that the individual's condition is the same as or worse than it was when he was first granted benefits, then he would be continued in the program unless the Secretary finds that one of the following exceptions applies:

(A) The individual has benefited from medical or vocational technology or therapy which allows him to perform substantial gainful activity;

(B) New or improved diagnostic or evaluative techniques indicate that the individual's impairment is not as disabling as it was considered to be when benefits were first granted, and he can perform SGA;

(C) There is substantial reason to believe that the initial decision was erroneous; or

(D) The benefits were fraudulently obtained.

These specific criteria would clear the confusion that shrouds the current review process and, for the first time, provide disabled workers, their attorneys, State claims examiners, and administrative law judges with lucid, fair, and unambiguous grounds for terminating or continuing benefits.

Fourth, the bill would include language on pain in the statute. For a time, the agency eliminated the evaluation of pain section from the internal guidelines which set forth the standards for disability decisions (the POMS), saying there had been an "improper emphasis on the role of pain." The deletion contradicted the SSA's own regulations which require consideration of a claimant's pain in reaching a disability determination. It also ran contrary to the weight of court decisions which have recognized the importance of pain for more than 20 years. In fact, with the exception of the medical improvement issue, no other factor in disability determinations has been the source of as much litigation as the issue of pain. Although new guidance on pain has been reinserted into the POMS, I believe it is desirable to incorporate a pain standard into the law in order to prevent future arbitrary deletions or downgrading of the role of pain.

I have reservations, however, about the specific pain language adopted by the Financial Committee. The committee approved an amendment offered by Senator LONG which simply codifies the current SSA pain regulation. This regulation requires the beneficiary to demonstrate the existence of an underlying condition that could be expected to produce disabling pain.

The problem with this language is that many pain experts contend that it is not always possible to pinpoint the cause of incapacitating pain. Yet, the existence of the pain itself can often be reliably construed though such indicators as a history of medication for pain, muscle atrophy, weight loss, and limited activities.

I share Senator LONG's belief that subjective statements of pain should not be considered conclusive evidence of disability. I believe, however, that the language in the Levin-Cohen amendment struck the proper balance by requiring findings, established by medically acceptable clinical or laboratory diagnostic techniques, which demonstrate the existence of the pain, but by not requiring proof of an underlying medical condition. With the language substituted by the Finance Committee, we risk denying disability benefits to some workers who suffer from debilitating pain that leaves them unable to work but for which a cause cannot be pinpointed.

The committee bill also mandates a study on pain. It seems inconsistent to incorporate the current standard into law—a standard that the courts have repeatedly criticized—and at the same time order a study to improve our knowledge of how pain should be evaluated.

I hope that the conferees will agree to strike the pain standard included in the Finance Committee bill and either adopt the standard in the Levin-Cohen amendment or simply await the results of the study before legislating in this area.

Fifth, the legislation addresses the SSA's policy of issuing rulings of nonacquiescence when its officials disagree with Federal court decision but choose not to appeal it. Although the Secretary currently follows the court decision for the individual affected in a particular case, the court ruling is not always adopted as binding agency policy. When the SSA issues a ruling of nonacquiescence, it, in effect, forces an identically situated claimant in the same circuit to go to court in order to obtain relief. This renders the administrative proceedings, including the ALJ hearing, pointless as the disabled individual knows he will have to file a district court action if the ALJ obeys the SSA and ignores the court ruling.

Even though the Social Security Administration has chosen to nonacquiesce in only eight judicial opinions, these cases have involved significant issues, such as medical improvement, which would significantly alter disability determinations, were they followed.

For its part, the SSA point out that it is difficult to operate a consistent, nationwide program if it must adopt different standards for determining disability in different circuits. And the prospect of an individual being granted or denied benefits depending on which circuit he lives in is indeed troubling.

The compromise we worked out with Senator DOLE is, in my judgment, a good one. The legislation would require the Secretary to justify to Congress and to publish in the Federal Register her decision to acquiesce or not to acquiesce in a U.S. circuit court ruling within 90 days after the decision is issued. This would provide an early warning system to Congress of possible problems in the disability program so that corrective legislation could be enacted. The reporting requirement will also allow us to evaluate more carefully the SSA's policy toward Federal court rulings. Finally, the compromise includes a statement making clear that Congress is not sanctioning nonaquiescence by the Secretary.

Other important provisions of S. 476 would extend for 2 more years the continuation of benefits pending appeal; require the Social Security Administration to conduct a five-State demonstration in which a claimant would have a personal interview with a State claims examiner; and mandate more careful consideration of individuals with multiple impairments.

Mr. President, I want to emphasize that I support periodic reviews of individuals receiving disability. Since a worker does not have to be permanently disabled in order to receive benefits, it makes sense to recheck beneficiaries from time to time to insure that only those who remain disabled continue to collect disability checks. Workers who have recovered should go back to work. Periodic reviews also provide a useful check against the fraud that plagues virtually every Federal program.

But what we have now is a 40-percent solution to a 20-percent problem. The percentage of ineligibles was estimated to be about 20 percent when Congress passed the 1980 amendments, but benefits have been terminated for twice that number. Based on the administrative law judges' reversal of State termination decisions, more than 160,000 mistakes have already been made, and that does not include those severely disabled people who did not pursue an appeal because they lacked the resources, willpower, or understanding.

We should remember that individuals receiving title II benefits have paid for this protection against disabling illness. This is not a welfare program; it is an insurance program.

Government has a duty to be just, as well as efficient, and right now, the disability program is neither. As a Presque Isle, Maine woman, whose 29-year-old husband died of cancer, told me: "The emotional stress of living with cancer, knowing your husband may die, is in itself overwhelming, but to have one's own government not care because first comes the paperwork and redtape, then comes people, makes it even worse." Her words are an eloquent testament to the need for this legislation.

The time has come for the Senate to embrace permanent, statutory reforms in the disability program. We have waited far too long to remedy a clearly inhumane, inefficient, and inflexible system for deciding who should receive disability payments.

The legislation reported by the Finance Committee is not perfect. In particular, I have reservations about the 3-year sunset on the medical improvement standard and the COLA fail-safe provision, as well as the language on pain. But, on balance, this legislation includes many features that will protect disabled workers from the arbitrary decisions to curtail their benefits. Since the legislation that will emerge from conference is likely to provide even stronger protections, I urge my colleagues to support this bill.

By adopting this legislation, the Senate can reform the disability program so that its hallmarks are compassion and equity rather than indifference and injustice.

Let me take this occasion to thank Susan Collins of my staff and Linda Gustitus of Senator LEVIN's staff. Those two outstanding legislation assistants have devoted hundreds of hours to this cause and without their talent and dedication, this triumph of hope over despair would not have been possible.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I should have done this at the outset, but I would like to say at this point that we would not be on the floor today with this disability reform bill if it had not been for the efforts of a number of staff people. Without question, we would not be here had it not been for the efforts of Carolyn Weaver, a member of the Senate Finance Committee staff, who handles social security and disability matters. I am not certain how many hours Carolyn has been in conference with all of the concerned parties, but it has been a great deal. I also want to note the efforts of Joe Humphreys and Mike Stern on the minority staff, along with Susan Collins of Senator COHEN's staff, and Linda Gustitus, of Senator LEVIN's staff.

We have also had the assistance of the administration, representatives of the Justice Department, HHS, and OMB.

I must say, sometimes we bring bills to the floor as if they just fell into our laps. I know that Carolyn must have had at least 50 meetings, over the past couple of years. Make it 100, why not? That is probably an understatement. I have participated in maybe 10 or 20. Literally hundreds of hours have been spent arguing about all these things that we are now saying are perfect. We then come in and make speeches indicating that we have worked all of this out.

So I want to make certain that Carolyn Weaver and the other staff who worked so hard are properly recognized for their efforts.

This is a very, very complicated, sensitive, and emotional issue.

I think they had the same sensitivity that I hope every Member has not to do anythng that would detract from or impact on someone who should be on the rolls and to make every effort—to go the extra mile, if necessary—to protect those people and, on the other hand, be responsible in letting us review those on the rolls to see if some should not be there. I thank the staff for that.

Mr. President, Senator HEINZ has also been very concerned about this legislation and has made a number of invaluable contributions.

Mr. HEINZ. Mr. President, the bill before us today, S. 476, will, if enacted, be a meaningful step forward in reforming the current continuing disability review process (CDI's) which is currently so unfair to beneficiaries and such an embarrassment to the Congress and the administration. We should not wait any longer to protect disabled individuals and their families from an unfair review process, and put an end to the wrongful practices of the past 3 years. The legislation before us would do that. This bill represents a substantial compromise from costlier, more far-reaching proposals, and as such stands as the bare minimum necessary for comprehensive reform.

It is time for the Senate to act. The House passed a similar bill by an overwhelming vote of 410 to 1, 2 months ago. There is enormous public support for this legislation. We need decisive action to restore order, uniformity, and human decency to this program, and to eliminate the great uncertainty that plagues the program now.

The social security disability program has degenerated into a state of near anarchy. In the past year, we have witnessed an unprecedented revolt of the States and the courts against the Social Security Administration, and its management of the continuing eligibility reviews. Half the States suspended the reviews altogether, or decided to conduct them under guidelines that are more equitable than those of SSA. Many States declared moratoria on the reviews on their own initiative, in open defiance to SSA. Courts in virtually every circuit have ruled that SSA must adhere to a medical improvement standard.

On a national level, the crisis in the disability program has reached immense proportions. Since March 1981, SSA has reviewed the continuing eligibility of over 1.1 million beneficiaries. Of these, almost 500,000, or about 45 percent, have received notices informing them they are no longer eligible for disability benefits. However, for every two people determined ineligible by State agencies at the initial decision level, one has his or her benefits restored upon appeal. For those who are not reinstated, a GAO study has found that one-third are forced to go on State or local welfare rolls, and less than a quarter obtain full-time employment.

The root of this crisis is the Social Security Administration's improper, overzealous, and unfair implementation of the Social Security Amendments of 1980 that mandated a triennial review of the continuing eligibility of all nonpermanently disabled beneficiaries. Rather than removing from the rolls only those who are capable of working, SSA cut thousands who simply cannot work under any reason-

able definition. This purge of the rolls was accomplished through the hasty and haphazard application of overly restrictive administrative standards, and pressure upon State agencies to make inaccurate and unfair decisions.

The social security disability program is just that—an insurance program designed to protect American workers in the event they become disabled. The program is funded by a specific payroll tax, and has never, is not, and will not be in financial jeopardy long into the future. In fact, by 1996, trust fund reserves are expected to exceed by two times the amount necessary for annual expenditures. Given the enduring solvency of the DI trust fund, I think we have an obligation to restore administrative integrity to the disability insurance program. Disabled Americans have a right to some measure of certainty, predictability, and equity in the program they contributed to throughout their working lives.

Mr. President, as a member of the Finance Committee, I would like to be very clear about the decisions the Committee made and why we made them, as I believe a transcript of our proceedings would substantiate. I have said that the legislation before us will substantially reform the disability review process, and return fairness and uniformity to the program. Most importantly, this legislation establishes the demonstration of medical improvement as the primary criterion for review of disability cases. In particular, this means that if SSA is going to terminate eligibility for disability benefits, the evidence in the file must show that an individual's medical condition has improved to the degree that he or she can actually work.

The medical improvement standard is qualified by a number of exceptions that allow for flexibility in applying it. For instance, where improved medical or vocational technology allow a person to work despite an unchanged medical condition, or where new diagnostic techniques show an impairment is less disabling than originally thought, the medical improvement standard is waived. These provisions balance the goal of protecting beneficiaries from arbitrary termination decisions with the need to include consideration of advances in medical and rehabilitation technology in the disability review process.

Though the medical improvement standard in this bill represents an enormous advance over current practice, I have serious reservations about a number of the revisions accepted by the Finance Committee.

Specifically, I am concerned that we have placed a 3-year sunset on the standard. The purpose of establishing a medical improvement standard is to build into the review process a structural safeguard to protect the disabled from arbitrary changes in administrative guidelines or capricious shifts in the adjudicative climate that surrounds the decisionmaking process. To sunset this provision is to eliminate its signficance as a long-term reform designed to insure continuity, predictability, and fairness in this program. Insofar as one key function of this bill is to regain the trust and confidence of disabled and working Americans, I think the sunset undermines this objective.

Further, I am concerned that this sunset does not include a strong mechanism to motivate Congress to act once medical improvement is repealed at the end of 1987. It took us over 2 years to report out the legislation before us, and I fear that congressional inaction may do serious harm to the disabled again in the future.

Another key dimension of the medical improvement standard reported by the Finance Committee is the definition of who has the burden of proof in determining whether the beneficiary's medical condition has improved sufficient to work. In S. 476 as introduced and amended, and in H.R. 3755, the Pickle bill, the burden is upon the Secretary to show medical improvement. It is assumed that shifting the burden of proof to the agency protects the beneficiary, and assures that he is not in the position of having to reapply for benefits every 3 years when his case comes up for review.

It is this principle that once an individual has been deemed eligible for disability insurance benefits he should be protected from arbitrary suspension of benefits that has been incorporated into many medical improvement judicial decisions. Judges have rightly argued that once a beneficiary has been entitled to benefits, it should be the responsibility of the administering agency to show otherwise. In the current system, the individual starts out guilty and has to prove he is innocent. This does not seem appropriate in an insurance program.

In the bill before us, it is incumbent upon the beneficiary to prove that he has not improved. The Secretary must assist the individual in developing his case, but in the last analysis, it is the beneficiary who bears the entire burden of proof. I have two particular reservations about this change. First, the Secretary never has to establish an affirmative link between the fact that the individual has improved, and that this improvement is directly responsible for the individual's capacity to work. The individual has to prove a negative—that he has stayed the same or gotten worse. If the Secretary finds the argument unpersuasive, she simply evaluates his capacity to work under current standards. She never has to describe the precise relationship between the implied improvement in medical condition and actual capacity to work.

The essential purpose underpinning a medical improvement standard is that there should be a coherent, identifiable rationale for determining that a beneficiary is no longer eligible for benefits—that is, you have improved medically and this improvement enables you to work. This casual link is decoupled in the proposal before us, and I fear that SSA may terminate people whose conditions has not stayed the same, yet who has not improved enough to actually seek and engage in employment.

Second, I am concerned that this standard not be applied in a fashion that disadvantages the mentally disabled, whose very impairment may preclude them from developing and presenting their case. More generally, I fear that many beneficiaries have not meticulously held onto every medical document related to their disability, and may have problems clearly demonstrating that they have not improved since their admittance to the rolls 5, 10, or 15 years ago. It is critical that every effort be made on the part of the State agencies to assist beneficiaries in collecting such documentation.

This legislation incorporates the major features of S. 1144, a bill I introduced which passed the Senate last summer. Essentially, my bill and the parallel provisions in this legislation requires HHS to revise the rules and regulations that govern the assessment of mental impairments, and utilize qualified psychiatrists and psychologists in reviewing the medical evidence for mentally disabled beneficiaries.

It is important to note the Finance Committee did make one major change in this area. Rather than explicitly mandating that a qualified mental health professional complete the medical evaluation before a termination decision, this bill only requires that SSA make every reasonable effort to secure the appropriate personnel to do so. It is critical that this revision not be interpreted loosely. In the past 3 years, SSA has proven either uninterested or unwilling to recruit qualified psychiatrists and psychologists. In some cases, SSA has attracted the right people, but do not utilize them in evaluating mental impairment cases. In other cases, State agencies do not provide sufficient reimbursement for professional services. It is crucial that "every reasonable effort" be construed to mean both that available personnel be utilized properly and that State agencies actively recruit appropriate professionals and set fees that are

usual, customary, and prevailing for psychiatric and psychological services.

One provision in this legislation that I have serious reservations about is the legislative codification of current administrative regulations governing the assessment of pain. In this bill, we limit the Secretary to only considering pain that has a medically identifiable source of underlying impairment. Objective medical evidence of pain in which an underlying cause cannot be found is deemed irrelevant for the purposes of establishing disability. Subjective evidence of pain is also excluded. It seems to me that this standard does not conform to the state of the art in medical and scientific knowledge, and sets an overly narrow and unrealistic standard. Pain is an extraordinarily complicated medical phenomenon, and it is frequently the case that pain that can be objectively identified cannot be linked to an underlying impairment. To deny the existence of this phenomenon in this program seems to be a serious mistake, one that we will have to correct in the future.

The legislation requires SSA to consider the combined effects of multiple impairments upon a claimant's capacity to work. In the past, a person with 10 nonsevere impairments could be denied benefits, despite the interactive effects these impairments may produce. This provision, like many others in this amendment, makes the review process fairer and more realistic in evaluating an individual's capacity to function in a work environment.

The Finance Committee chose to limit the application of this provision to just the question of the severity of a claimant's medical condition, which is the second step in the sequential evaluation. This will prevent many of the worst abuses that have occurred in the past 3 years, but it is important to emphasize that the Secretary should also consider the combined effect of multiple impairments in the assessment of residual functional capacity, which is intended to serve as a review of the whole person. I am concerned that SSA's current method of evaluating residual functional capacity may be overly bureaucratic, and may not have the structural flexibility to allow for a truly individual assessment of capacity to work.

This bill continues benefits to beneficiaries through the administrative law judge stage in the appeals process for 2 years, which is critical in the period of transition between old policy and new. I feel it is important that no beneficiary suffer undue financial hardship while his or her case is still pending conclusion.

One problem that has continually plagued this program is the lack of consistency of standards among various levels of adjudication. This legislation will serve to establish uniform standards binding all levels of the decisionmaking process by bringing SSA under the requirements of the Administrative Procedures Act. This will also insure that basic review criteria can be modified only after a proposed rule change has been published and opened to public comment.

Mr. President, this legislation is desperately needed. It is supported by the States who have to administer this program. It is backed by every group concerned with the disabled. In field hearings held in Dallas and Chicago, I was struck by the unanimity of support for comprehensive reform among beneficiaries, lawyers, physicians, psychiatrists, social workers, service providers, disability examiners, State administrators, and all the other institutional actors involved with the continuing disability reviews. Though I am unhappy with some of the changes made in the Finance Committee, I think this bill represents a genuine compromise, one that I feel should be passed immediately.

Mr. DOLE. Mr. President, I ask unanimous consent that a summary of the provisions of the bill, as well as the official cost estimate for the bill, be printed in the RECORD immediately following my statement.

There being no objection, the cost estimates and summary were ordered to be printed in the RECORD, as follows:

[Memorandum]

MAY 18, 1984.

From Eli N. Donkar, Office of the Actuary.
Subject: Estimated Additional OASDI Benefit Payments Under S. 476 as Reported by the Senate Committee on Finance.

The attached table presents the estimated additional OASDI benefit payments that would result from the proposed disability amendments contained in S. 476 as reported by the Senate Committee on Finance on May 16, 1984. The estimates are based on the alternative II-B assumptions of the 1984 Trustees Report. In this respect, the basic program assumptions underlying these estimates are the same as those used for my memorandum dated May 4, 1984, showing similar estimates for earlier versions of these proposals. In particular, these estimates do not reflect the effects of the national moratorium on periodic reviews announced April 13, 1984 by Secretary Heckler.

This final Committee bill represents a combination of provisions contained in the two packages of proposals described in my earlier memorandum. In addition, S. 476 contains three new sections that provide for (1) closer monitoring of cases where benefits are sent to representative payees, (2) improved State compliance with Federal law and standards established for the disability determination process, and (3) a mechanism to automatically restrict the level of annual cost-of-living benefit increases to DI beneficiaries if DI Trust Fund assets fall below 20 percent of annual DI outlays.

The attached table indicates that there are two key provisions with respect to costs attributable to the bill under this set of assumptions. The first of these, contained in section 2, would temporarily institute a revised procedure for the determination of continuing disability eligibility. The revised procedure would include a modified "medical improvement" standard, whereby an individual's disability benefits could generally not be terminated if the individual could demonstrate that his condition had not medically improved since a previous determination of disability had been made.

The bill provides for the expiration of this new procedure at the end of calendar year 1987. The committee has indicated its intention to review the experience under the revised procedure, with the possibility that the medical improvement standard could be extended beyond its legislated expiration date. The current estimates, however, only reflect the costs resulting from the effect of the medical improvement standard during the period ending in 1987.

Previous estimates have included a range of examples with respect to the possible retrospective application of a medical improvement standard. However, the current bill includes specific language with respect to the application of this provision; it would apply to new decisions after enactment and to certain cases in the appeals "pipeline" as of the date of committee action on the bill.

The "pipeline" is defined in the bill to include those cases that (1) have not yet had a final decision of the Secretary, (2) cases covered under individual Federal court appeals, and (3) other cases covered under class action suits where the class was certified by the date of committee action. Therefore, the attached estimates for the current bill include only one set of costs for the medical improvement standard.

The second provision with a significant cost is section 3 which would provide for the continuation of benefits during the appeal of a medical cessation. Benefits could continue on appeal through the Administration Law Judge decision in cases where the initial cessation was issued before June 1986. Furthermore, no payments would be made under this provision for months after January 1987.

It should be noted that a third section of the bill has the potential for a significant impact on DI Trust Fund outlays, although under the alternative II-B assumptions it would have no effect. Section 17 provides for the automatic adjustment or benefit increases otherwise applied to benefits paid from the DI Trust Fund. Under that provision, DI benefit increases would be reduced if a specified DI "trust fund ratio" is estimated to decline below a 20-percent "trigger level." Benefits payable to new beneficiaries joining the rolls might also be affected, if required to maintain a 20-percent level of trust fund assets. Under the alternative II-B assumptions, this trust fund ratio is estimated to stay above 30 percent during the projection period 1984-89. Therefore, the cited provision would not result in benefit reductions.

Under more adverse conditions, however, such as those contained in the 1984 Trustees Report alternative III assumptions, the corresponding ratios are estimated to fall below the "trigger level" beginning in 1988. Consequently, under that set of assumptions, this provision would result in reduced benefit increases for DI beneficiaries beginning in December 1986.

The average OASDI cost over the long range (1984-2058) is estimated to be less than 0.005 percent of taxable payroll, for each section of the bill separately and for the total cost of all sections combined.

ELI N. DONKAR, Ph.D., A.S.A.,
Supervisory Actuary.

Attachment.

ESTIMATED ADDITIONAL OASDI BENEFIT PAYMENTS UNDER S. 476 AS REPORTED BY THE SENATE COMMITTEE ON FINANCE

[In millions]

Section	Proposal	Fiscal year—						Total 1984–89
		1984	1985	1986	1987	1988	1989	
2	Revised CDR procedure, including medical improvement standard [1]	$150	$440	$400	$410	$400	$250	$2,050
3	Continuation of benefits during appeal (through ALJ for initial cessations before June 1986)	60	130	110	60	50	40	450
4	Uniform standards for disability determinations	[2]	[2]	[2]	[2]	[2]	[2]	[2]
5	Moratorium and revised criteria for mental impairment cases	[3]	[3]	[3]	[3]	[3]	[3]	[3]
6	Qualifications of certain medical professionals	[2]	[2]	[2]	10	10	20	40
7	Compliance with certain court orders							
8	Multiple impairments		[2]	[2]	10	10	20	40
9	Study on evaluation of pain	[2]	[2]	[2]	[2]	[2]	[2]	[2]
10	Modification of reconsideration pre-review notice	[2]	[2]	[2]	[2]	[2]	[2]	[2]
11	Case development and medical evidence							
12	Payment of costs of rehabilitation services	[2]	[2]	[2]	[2]	[2]	[2]	[2]
14	Advisory council							
15	Regulations on frequency of reviews	[2]	[2]	[2]	[2]	[2]	[2]	[2]
16	Monitoring of representative payees	[2]	[2]	[2]	[2]	[2]	[2]	[2]
17	"Fail-safe" reduction of automatic benefit increases for DI benefit	[4]	[4]	[4]	[4]	[4]	[4]	[4]
18	Measures to improve State compliance with Federal law and standards for the disability determination process	[5]	[5]	[5]	[5]	[5]	[5]	[5]
	Total bill [6]	260	460	480	480	460	320	2,460

[1] See covering memorandum concerning which groups would be subject to the new procedure.
[2] Cost or savings less than $5,000,000.
[3] No cost is shown for this provision since existing administration initiatives are expected to accomplish the same results under present law.
[4] No cost is shown for this provision since, under this set of assumptions, the appropriate DI trust fund ratio does not fall below the 20-percent "trigger level" in this period.
[5] No cost is shown for this provision since estimates assume that any noncompliance of States would end upon enactment of a medical improvement standard for continuing disability reviews.
[6] Includes $90,000,000 due to continuation of benefits during appeal for past CDR terminations which would be reopened and evaluated under the new medical improvement standard but which would not be reinstated.

Notes: (1) The above estimates do not reflect the effects of the national moratorium on periodic review cases announced on Apr. 13, 1984 by Secretary Heckler. See memorandum dated Apr. 24, 1984, by Eli N. Donkar for a discussion of this issue. (2) Estimates shown for each section alone exclude the effects of interaction with other proposals. Total costs for bill reflect such interactions. (3) Due to the uncertainty concerning the effects of many of these proposals, actual experience could vary substantially from these estimates. (4) Estimates are based on the 1984 Trustees Report alternative II-8 assumptions.

Source: Social Security Administration, Office of the Actuary, May 18, 1984.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, May 18, 1984.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the provisions of S. 476, the Social Security Disability Amendments of 1984, as ordered reported by the Senate Committee on Finance on May 18, 1984. We have not received a copy of this bill. The attached cost estimate is based on committee documents, and on conversations with committee staff.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill Number: S. 476.

2. Bill Title: Social Security Disability Amendments of 1984.

3. Bill Status: As ordered reported by the Senate Committee on Finance, May 18, 1984.

4. Bill Purpose: To amend Title II of the Social Security Act to provide for reform of the disability determination process.

5. Estimated Cost to the Federal Government: The following table shows the estimated costs of this bill to the federal government. These estimates assume an effective date retroactive to May 1, 1984, unless otherwise noted. The estimate was prepared without a draft of the bill. Estimates were prepared based on committee documents and cn conversations with committee staff.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 476

[By fiscal years; in millions of dollars]

Budget function	1984	1985	1986	1987	1988	1989
Function 550: [1]						
Budget authority	3	10	12	11	5	6
Estimated outlays	3	10	12	11	5	6
Function 570:						
Budget authority	1	28	19	8	13	6
Estimated outlays	7	73	55	42	43	30
Function 650:						
Budget authority	−1	−14	−31	−45	−55	−67
Estimated outlays	46	220	225	127	136	121

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 476—Continued

[By fiscal years; in millions of dollars]

Budget function	1984	1985	1986	1987	1988	1989
Function 600: [1]						
Budget authority	1	5	8	10	8	11
Estimated outlays	1	5	8	10	8	11
Total cost or savings:						
Budget authority	4	29	8	−16	−29	−44
Estimated outlays	57	308	300	190	192	168

[1] Funding for entitlements that requires further appropriations action.

BASIS FOR ESTIMATE

This bill would change the disability process for those individuals who undergo continuing disability reviews (CDR's) and for those who apply for Disability Insurance (DI) and Supplemental Security Income (SSI) benefits. Historically, continuing disability reviews have been performed on medical diaried cases—those cases which the Social Security Administration (SSA) evaluates as having some chance of medical improvement within a specific length of time. In 1981, SSA began an intensified process of periodically reviewing all cases on the rolls not considered permanently disabled.

It is difficult to project the costs of the provisions in this bill for several reasons. First, there are little data available on the characteristics of the people who have been terminated from the DI rolls as a result of the continuing disability investigations. Second, the Administration has changed some of its policies regarding the review process a number of times, and it is unknown how these changes will affect the number of terminations from the program. In addition, there are many class action cases pending in the court system. The impact of this bill on the outcome of these cases is unclear. Finally, the language of the provisions allow for various interpretations which would affect costs.

This cost estimate assumes that 110,000 medical diary reviews would be performed annually. The number of periodic reviews is assumed to decline from less than 300,000 in 1984 to 120,000 in 1989, as the percentage of beneficiaries already reviewed increases. Approximately 45 percent of the medical diary reviews are estimated to result in initial terminations of benefit payments, but CBO estimates about 57 percent of these beneficiaries would have their benefits restored after appeals are reviewed. For periodic reviews, the percentage of initial terminations is projected to decline from 40 percent in 1984 to 20 percent in 1989. About 55 percent of those initially terminated from the rolls after a periodic review are estimated to have their benefits restored in the appeal process.

There are also costs to the Medicare program which would result from a larger number of recipients continuing to receive DI benefits, because most DI beneficiaries also receive assistance from the Hospital Insurance (HI) or Supplemental Medical Insurance (SMI) components of the Medicare program. Estimates of these costs are based on the average number of disabled beneficiaries receiving HI and SMI and on the average benefit payments for these programs. There are also costs to the Medicaid program because SSI beneficiaries generally receive Medicaid.

Table 2 displays CBO's outlay estimates for the major sections of the bill. Following the table is a description of the methodology used for the estimates of the outlays for each section listed in Table 2.

TABLE 2.—ESTIMATED OUTLAYS RESULTING FROM THE MAJOR PROVISIONS IN S. 476

[By fiscal years; in millions of dollars]

	1984	1985	1986	1987	1988	1989
Termination of benefits based on medical improvement:						
DI	22	86	123	130	113	90
HI and SMI	4	25	35	40	35	25
Medicaid	[1]	3	4	4	3	3
SSI	1	3	4	4	3	3
Multiple impairments:						
DI	[1]	4	7	11	13	15
HI and SMI	[1]	[1]	[1]	1	2	2
Medicaid	[1]	[1]	1	1	1	1
SSI	[1]	1	2	2	3	3
Continued payment during appeal:						
DI	25	149	112	−20	0	0
HI and SMI	3	48	20	0	0	0
Medical personnel qualifications:						
DI	[1]	[1]	[1]	10	10	20
HI and SMI	[1]	[1]	[1]	1	1	3
Medicaid	[1]	[1]	[1]	1	1	2
SSI	[1]	[1]	[1]	2	2	5
Compliance with court orders	[2]	[2]	[2]	[2]	[2]	[2]

TABLE 2.—ESTIMATED OUTLAYS RESULTING FROM THE MAJOR PROVISIONS IN S. 476—Continued

[By fiscal years; in millions of dollars]

	1984	1985	1986	1987	1988	1989
Vocational rehabilitation:						
DI	(1)	2	4	7	8	8
HI and SMI	(1)	(1)	(1)	(1)	(1)	(1)
SSI	(1)	(1)	(1)	(1)	(1)	(1)
Extension of sections 1619a and 1619b:						
Medicaid	3	7	7	6	0	0
SSI	(1)	1	2	2	0	0
Total outlays: [3]	57	308	300	190	192	168

[1] Less than $500,000.

[2] The costs of this provision cannot be estimated because they depend on future court decisions.

[3] The details do not add to the totals due to interaction between provisions.

Note.—This estimate was prepared based on conversations with committee staff. A draft of the bill as ordered reported has not been received.

TERMINATION OF BENEFITS BASED ON MEDICAL IMPROVEMENT

The medical improvement provision in S. 476 would require SSA to show that a current recipient's disabling condition has medically improved before the benefit could be terminated. Under current law, the condition of a beneficiary is compared to the medical listings and other guidelines to determine if the recipient is still disabled. SSA does not have to establish medical improvement, but only that the recipient is not disabled under current standards.

In 1979, the medical standards were made more precise; some beneficiaries who previously qualified under the old standards are now being terminated as not disabled under the new. These new standards toughened and codified stricter evaluation guidelines in determining disability. Prior to the new standards, 33.9 percent of reviews resulted in cessations; after 1979, these cessations before appeal were 40.9 percent of those reviewed. It is assumed that the resulting 20 percent increase in cessations were for those not meeting the new procedures but previously found disabled under the old. CBO assumes that 20 percent of those currently terminated are the result of this change, and are the group that would be affected by this medical improvement standard.

Of the 20 percent initially denied benefits under current law for medical improvement, we project that 85 percent would appeal and 75 percent of those who appeal would be continued on the rolls. Therefore, under current law, about 64 percent of the people losing benefits initially and whose disabilities have not improved would ultimately be continued on the DI rolls. Costs for the medical improvement provision would result from the continuation of benefits for the remaining 36 percent, who under current law, would not appeal or who would lose an appeal and would consequently be dropped from the rolls. In 1985, the first full year this provision would be in effect, it is estimated that approximately 6,500 people would be retained on the rolls as a result of this provision. The additional number of beneficiaries receiving DI as a result of this provision would fall over time as CBO's estimate of the number of CDRs performed declines. The costs to DI, including administrative expenses, are estimated to rise from $22 million in 1984 to $130 million in 1987, declining to $90 million by 1989. This estimate is assumed to be applied only to prospective cases and to certain cases currently in the court system. In SSI, only concurrent cases—those receiving both DI and SSI—would be affected because no CDRs have been planned for SSI only cases.

This medical improvement provision will expire on December 31, 1987. It is possible that a larger number of terminations than currently estimated will occur after that date, since those not terminated from the rolls in the intervening period may be reevaluated after 1987. This could negate some of the costs shown in 1988 and 1989. This estimate does not include any effect of such potential savings in 1988 and 1989.

The standards set by this provision will also apply to individual litigants in pending court cases and to certain members of certified class action suits. The impact that this part of the provision will have on the ultimate decision in the court cases is difficult to estimate. Specifying standards could facilitate judgements in favor of the claimant and result in increased program costs. However, judgements could still go against the claimant, or the law could be interpreted less favorably towards the claimant, lowering costs attributable to the bill. No impact on costs or savings is included in this estimate from the provision's impact on pending court cases.

Multiple impairments

This provision would require SSA to consider whether the combination of the applicant's disabilities is severe enough to keep the individual from working at the "significant gainful activity" level in the case where no one impairment is considered severe enough to warrant benefit payments. The SSA estimates that about 500 additional cases per year would be added to the rolls as a result of this provision. This would increase DI costs by a range of less than $500,000 in 1984 to $15 million in 1989. In SSI, about 150 cases would be added initially, increasing SSI costs by a negligible amount in 1984 and by $3 million in 1989.

Continued payment during appeal

This provision would provide for continued payment of disability benefits through the Administrative Law Judge (ALJ) level of appeal for those individuals who appeal SSA's decisions to end their benefits as a result of CDRs. This provision would affect terminations through June 1986 and continue benefit payments until January 1, 1987. The estimated costs, including administrative costs, are $25 million in 1984 and $149 million in 1985. The costs arise as a result of extra benefits paid to those who ultimately lose their appeal but do not repay the interim benefits as required under this provision. The estimate assumes that seven months of additional benefits are paid to each individual and that 15 percent of those who are finally terminated repay the extra benefits. This repayment is expected to occur in the year after the benefits are paid.

Medical personnel qualifications

This provision would require that the Secretary of HHS make every reasonable effort to ensure that a psychologist or a psychiatrist complete a medical evaluation in mental impairment case before the individual can be denied benefits. The SSA expects fewer than 500 individuals will be added to the rolls annually as a result of this change in procedure. DI costs would be less than $500,000 in 1985, rising to $20 million by 1989, while SSI costs would total $5 million by 1989.

Vocational rehabilitation

This provision changes the regulations concerning benefit payments for individuals participating in vocational rehabilitation programs. The SSA estimates that about 300 individuals per year would be affected by this change. DI costs would range from negligible in 1984 to $8 million in 1989. SSI costs would be insignificant.

Compliance with court orders

This provision requires SSA to apply the decisions of the circuit courts of appeal to all beneficiaries residing within states within the circuit, until or unless the decision is overruled by the Supreme Court. This provision could substantially increase costs but these effects cannot be estimated since they would depend on the outcome of future court decisions.

Fail-safe financing proposal

This provision would require the Secretary of HHS to reduce or eliminate the cost-of-living adjustments and to reduce benefits for current and future disabled workers if the Disability Insurance trust fund's reserve is projected to decline to less than 20 percent of a year's outlays. This mechanism would trigger only if the Congress takes no other action. The trust fund balance used for this calculation would include the funds owed to it by the OASI trust fund—currently $5 billion. CBO does not project the DI fund to fall below this level. The estimated DI costs in this bill do not trigger the benefit reduction mechanism.

Extension of sections 1619a and 1619b

Sections 1619a and 1619b provide SSI and Medicaid benefits to disabled individuals who work and who would not otherwise be eligible for benefits because their earnings exceed the "substantial gainful activity" level. These sections, which expired on December 31, 1983, are extended by these amendments through June 30, 1987. Section 1619a is estimated to add 575 persons to the SSI rolls in 1984 and 950 by 1986. Section 1619b is estimated to add 8,300 persons to the Medicaid rolls in 1984 and 10,500 by 1986.

6. Estimated cost to state and local governments: A number of the provisions of this bill would increase expenditures of state and local governments. The estimated net impact of the bill on state and local expenditures is less than $5 million a year.

The changes in SSI would increase state and local government costs because virtually all states supplement federal SSI benefits. By making more persons eligible for SSI benefits, state costs would increase. States are also affected by the added outlays in Medicaid because states finance a portion of the program. The current state financing share is 46 percent.

There could be some offsets to these added SSI and Medicaid costs to the extent that persons made eligible for DI and SSI by the bill might otherwise be eligible for general assistance or health care financed fully by states and localities. These potential offsets are not included in the cost estimate.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Stephen Chaikind, Janice Peskin.

10. Estimate approved by: C. G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

DETAILED SUMMARY OF COMMITTEE BILL

SEC. 2. MEDICAL IMPROVEMENT

Present law

There is no distinction in the law between how eligibility for disability benefits is to be determined for people newly applying for ability benefits is to be determined for

people newly applying for benefits and those on the rolls being reviewed to assess their continuing eligibility. Eligibility or ineligibility is based on the the standards of disability (in the law, regulations, and Commissioner's rulings) in effect at the time of the most recent decision.

Under the law, disability means inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to end in death or has lasted or can be expected to last for a continuous period of at least 12 months.

Prior to the Secretary's announcement, on April 13, 1984, of a temporary, nationwide moratorium of periodic reviews, 9 States were operating under a court-ordered medical improvement standard, and 9 States had suspended reviews pending implementation of a court-ordered medical improvement standard or pending action by circuit court.

Committee amendment

The Committee amendment modifies, through December 31, 1987, the requirements and procedures used for determining continuing eligibility for disability benefits. If the Secretary finds that there has been no medical improvement in the individual's impairment(s) (other than medical improvement which is not related to his work ability), the Secretary would have the burden to show that there has been one of the following improvements or changes in circumstances prior to determining whether such beneficiary is disabled under the meaning of the law: (a) the individual has benefited from medical or vocational therapy or technology; (b) new or improved diagnostic or evaluative techniques indicate the individual's impairment(s) is not as disabling as believed at the time of the last decision; (c) the prior determination was fraudulently obtained; or (d) there is demonstrated substantial reason to believe that the prior determination was erroneous.

If none of the above factors are met, benefits would be continued (whether or not the individual would have been found to be able to perform substantial gainful activity). If any of these factors are met, the Secretary would then determine whether the individual can perform substantial gainful activity. If he can, benefits would be terminated.

If the Secretary finds that the evidence does not show that the individual's condition is the same as or worse than at the time of the prior determination, the Secretary would determine whether the individual can perform substantial gainful activity, and, if he can, benefits would be terminated.

Benefits would also be terminated if the individual is currently engaging in substantial gainful activity or if the individual cannot be located or fails, without good cause, to cooperate in the review or to follow prescribed treatment that could be expected to restore his ability to work.)

In making a determination, the Secretary shall consider the evidence in the file as any additional information concerning the claimant's current or prior condition that is secured by the Secretary or provided by the claimant. (The Secretary is thus not limited to considering only the prior decision or the evidence developed at the time of the prior decision.)

In the case of a finding relating to medical improvement, the burden of proof is on the claimant. That burden cannot be met by allegations regarding the beneficiary's condition; objective evidence containing clinical findings, laboratory findings and diagnosis, as outlined in regulations, must be provided. In other words, for benefits to be continued, the individual must state and the evidence in the file must show that the individual's medical condition is the same as or worse at the time of the last decision (or, if there is medical improvement, it is not related to work ability).

In the case of a finding relating to factors a-d, the Secretary has the burden of proof. In other words, for benefits to be terminated on the basis of any of these reasons, the evidence in the file must show that one of these factors is met.

The Committee bill requires that regulations to implement the medical improvement standard shall be published within 6 months of enactment.

Effective date

The new standard would (subject to the sunset) be applied to future determinations of continuing eligibility and to all individuals who currently have claims properly pending in the administrative appeals process. The amendment would further direct that continuing disability cases properly pending in the Courts (as of the date of Committee action) would be remanded to the Secretary for review by the Secretary under the new standard. (This amendment would also apply to new court cases which are timely filed by individuals who have completed the administrative appeals process during the period between March 15, 1984 and 60 days after enactment.) This remand procedure would apply only to individual litigants and to members of class actions identified by name.

In the case of other members of class actions, a different rule would be followed. The Secretary would be required to notify any member of a class who has, prior to the date of committee action, been properly certified as a class member (even though not individually named) that these individuals would be allowed a period of 60 days from the date of notification to request a review of the determination that they are no longer disabled. If they make such a request within the 60 days, their case will be reviewed administratively under the new standards established by the bill. The result of that review could be further appealed under rules of appeal established by the Social Security Act and Secretary's regulations. If they fail to request such a review, however, they would lose the right of judicial review of their case—just as claimants under current law lose such rights if they fail to make timely appeals, and as unnamed members of class action litigation now lose their rights of appeal if they fail to make a timely application for the relief which is ordered under the class action.

In the case of any individual with respect to whom a continuing disability determination has become administratively final prior to the date of Committee action and who has not initiated a court action either individually or as a member of a class properly certified prior to such date, the amendment would provide that the administrative determination of the Secretary is final and conclusive and not subject to appeal. In other words, the amendment would not allow for redetermination in the case of individuals who have failed to exercise their appeal rights and therefore have no reason to consider themselves protected by the certification of a class action. This would avoid the possibility that a future certification of one or more class actions—or even a nationwide class action might give the Committee decision much broader retrospective effect (and for higher cost) than the Committee intends.

Individuals remanded to the Secretary for review or those who request review within the allowable time limit could elect to receive payments on an interim basis pending redetermination of their eligibility under the new standard. These payments would commence with the month in which the individual requests that such payments be made. Individuals who are found eligible for benefits under the new standard would receive any additional benefits that may be due for the retroactive period since their benefits were ceased. Any interim payments made to individuals found ineligible under the new standard would be subject to recovery as overpayments under the same conditions that apply to payments made under the continuation of benefits during appeal provision in existing law.

SEC. 3. CONTINUATION OF PAYMENTS DURING APPEAL

Present law

DI benefits are automatically payable for the month the beneficiary is notified of ineligibility and for the 2 following months. Benefits do not generally continue during appeal. Based on a Supreme Court decision, supplemenal security income (SSI) payments must continue through opportunity for an evidentiary hearing.

Under a temporary provision in P.L. 97-455 (as extended by P.L. 98-118), individuals notified of a termination decision could elect to have DI benefits and Medicare coverage continued during appeal—through the month proceeding the month of the administrative law judge (ALJ) hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld. This provision expired for terminations on or after December 7, 1983. Committee amendment: The Committee amendment reauthorizes payments pending appeal through the ALJ hearing for terminations prior to June 1, 1986.

SEC. 4. UNIFORM STANDARDS

Present law

The guidelines for making social security disability determinations are contained in regulations, social security rulings, and the Program Operating Manual System (POMS).

Regulations, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication—state agencies, administrative law judges, the Social Security Administrations (SSA's), Appeals Council, and the Federal Courts. On a voluntary basis, SSA issues its regulations in accordance with the public notice and comment rulemaking requirements of the Administrative Procedure Act (APA). The APA requirements do not, however, apply to social security programs because of a general exception for benefit programs.

Rulings consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts and ALJs, and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of adjudication.

The POMS are a compilation of detailed policy instructions and step-by-step procedures for the use of State agency personnel in developing and adjudicating claims. The

POMS are not binding on the Administrative Law Judges, the Appeals Council, or the Courts.

Committee amendment

The Committee amendment would require the Secretary to establish by regulation uniform standards of eligibility to be binding on all levels of adjudication in determining whether individuals are disabled under the meaning of the Social Security Act. Such regulations must be published in accordance with the rulemaking requirements of the APA (thus removing SSA's exclusion from the provisions of the APA on matters relating to the determination of disability.)

Effective date

This provision is effective on enactment.

SEC. 5. MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Present law

Under the Disability Amendments of 1980, all DI beneficiaries with non-permanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments.

Under an Administration initiative (of June 7, 1983), periodic eligibility reviews have been suspended for those mental impairment cases involving functional psychotic disorders, pending a revision arrived at in consultation with outside mental health experts, or the criteria used for determining disability.

Under a subsequent Administration action (announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

Committee amendment

The Committee amendment suspends eligibility reviews for all individuals with disabilities based on mental impairments pending a revision of the eligibility criteria. Such revisions would be made in consultation with outside mental health and vocational rehabilitation experts. Also, a redetermination of eligibility under new criteria (and reinstatement of benefits where appropriate) would be required for individuals denied benefits after enactment and prior to revision of criteria, and to those terminated from the rolls since June 7, 1983.

Effective date

Such revised eligibility criteria must be published as regulations within 90 days after enactment.

SEC. 6. QUALIFICATIONS OF MEDICAL PROFESSIONALS

Present law

By regulation, the State review team making disability determinations must consist of a State agency medical consultant (physician) and a State agency disability examiner. Under SSA operating instructions, both must sign the disability determination.

Committee amendment

The Committee amendment would require that in the case of an individual seeking benefits on the basis of a mental impairment, in which a decision unfavorable to the claimant or beneficiary is being made, the Secretary must make every reasonable effort to ensure that a qualified psychiatrist or psychologist completes the medical portion of the evaluation and any assessment of residual functional capacity.

Effective date

This provision is effective for determinations made on or after date of enactment.

SEC.7. NONACQUIESCENCE TO CIRCUIT COURT DECISIONS AFFECTING POLICY

Present law

The Social Security Administration (SSA) abides by all final judgments of Federal courts with respect to the individuals in particular suits, but does not consider itself bound to implement the policy approach embodied in such decisions with respect to nonlitigants. In the infrequent case that a circuit court decision is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA may at times issue a ruling of nonacquiescence stating it will not adopt the court's decision as agency policy. There are now 8 rulings of nonacquiescence.

Committee amendment

In the case of U.S. Court of Appeals decisions affecting the Social Security Act or regulations, the Committee amendment would require the Secretary to send to the Committees on Finance and Ways and Means and publish in the Federal Register, a statement of the Secretary's decision to acquiesce or not acquiesce in such court decision, and the specific facts and reasons in support of the Secretary's decision. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

The Secretary would make these reports within 90 days after the issuance of the court decision or the last day available for filing an appeal, whichever is later.

Effective date

For U.S. Court of Appeals decisions rendered on or after date of enactment.

MULTIPLE IMPAIRMENTS

Present law

In determining whether an individual is disabled, a sequential evaluation is followed: current work activity, duration and severity of impairment, residual functional capacity, and vocational factors are considered in that order. Medical considerations alone can justify a finding of ineligibility where the impairment(s) is not severe. An impairment is nonsevere if it does not significantly limit the individual's physical or mental capacity to perform basic work-related functions.

By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs."

Committee amendment

In determining the medical severity of an individual's impairment, the Secretary would be required under the Committee amendment to consider the combined effect of all of the individual's impairments without regard to whether any one impairment itself would be considered severe.

Effective date

For determinations made on or after January 1, 1985.

SEC. 9. EVALUATION OF PAIN

Present law

Under the law, an individual's disability (whether mental or physical) must be medically determinable, expected to end in death or last for 12 continuous months, and must prevent any substantial gainful activity. There is no specific statement in the law as to how pain is to be evaluated. The law does provide that eligibility must be based on "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

SSA's policy on how pain is to be evaluated is contained in regulations which were issued in August 1980. By regulation, symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could "reasonably be expected " to produce those symptoms.

Committee amendment

Under the Committee amendment, eligibility for benefits may not be based solely on subjective allegations of pain (or other symptoms). There must be evidence of an underlying medical condition and (1) there must be objective medical evidence to confirm the severity of the alleged pain arising from that condition or (2) the objectively determined medical condition must be of a severity which can reasonably be expected to give rise to the alleged pain. The committee amendment would cease to be a part of the statute after December 31, 1987. Since the provision simply codifes existing practice, the termination of the provision would not modify the rules governing the program, but it would fully restore the Administration's current degree of flexibility to implement regulatory changes which might then appear appropriate.

Also, a study is to be conducted over the next two years by a panel of at least 12 experts to be appointed by the Secretary of Health and Human Services. This body is to include in its membership significant representation from the field of medicine who are involved in the study of pain along with representation from other appropriate fields including law and administration. This panel is to be appointed within 60 days of enactment and is to report to the Committee on Finance and the Committee on Ways and Means no later than December 31, 1986.

SEC. 10. MODIFICATION OF RECONSIDERATION AND PREREVIEW NOTICE

Present law

A person whose initial claim for disability benefits is denied or who is determined after review to be no longer disabled, may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record, including any new evidence submitted by the claimant, conducted by the State agency.

Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries found ineligible for benefits must be given opportunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary.

Committee amendment

The committee amendment would require the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted.

In addition, the Secretary would be required to conduct demonstration projects in at least 5 States in which the opportunity

for personal appearance is provided prior to determination of ineligibility (in lieu of face-to-face hearing at reconsideration). This would apply to periodic review cases only. A report would be due to Congress by April 1, 1986.

Effective date

As soon as practicable after date of enactment.

SEC. 11. CONSULTATIVE EXAMS/MEDICAL EVIDENCE

Present law

Consultative exams are medical exams purchased by the State agency from physicians outside the agency. By regulation, consultative examinations may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence so obtained is to be considered in conjunction with all other medical and nonmedical evidence submitted in connection with a disability claim.

Committee amendment

The Committee amendment requires the Secretary to make every reasonable effort to obtain necessary medical evidence from the individual's treating physician prior to seeking a consultation examination. The Committee amendment would also require the Secretary to develop a complete medical history for individuals applying for benefits or undergoing review over at least the preceding 12 month period.

Effective date

These provisions are effective for determinations made on or after the date of enactment.

SEC. 12. VOCATIONAL REHABILITATION

Present law

Presently, States are reimbursed for VR services provided to DI beneficiaries which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Section 225(b) of the Social Security Act, a work incentive provision enacted in 1980) but VR services may not be reimbursable since the individual's ability to engage in SGA is attributable to medical improvement rather than rehabilitation.

Committee amendment

The committee amendment authorizes reimbursement for VR services provided to individuals who have medically recovered but are receiving disability benefits under Section 225(b). Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier.

Effective date

On enactment.

SEC. 13. SPECIAL BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENTS

Present law

Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA—$300 monthly.

Under Section 1619 of the Social Security Act, enacted in the Disability Amendments of 1980, SSI recipients who have severe medical impairment and who work and earn more than SGA ($300 monthly) cease to be eligible for SSI as such, but may receive a special payment and maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., when countable monthly earnings exceed $713). Medicaid and social services may continue, however.

Section 1619 expired on December 31, 1983. It is being continued administratively, however, during 1984 under general demonstration project authority.

Committee amendment

The Committee amendment reauthorizes Section 1619 through June 30, 1987. In addition, the Secretaries of HHS and Education are required to establish training programs on Section 1619 for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

This provision will supersede the Secretary's one-year extension of Section 1619.

SEC. 14. ADVISORY COUNCIL

Present law

Section 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the social security and medicare programs. Each council is to be comprised of representatives of employee and employer organizations, the self-employed, and the general public.

The next advisory council is scheduled to be appointed in 1985 and to make its final report by December 31, 1986.

Committee amendment

The Committee amendment directs the next quadrennial advisory council to study and make recommendations on various medical and vocational aspects of disability, including the alternative approaches to work evaluation for SSI recipients, the effectiveness of vocational rehabilitation programs for DI and SSI recipients, and the question of using medical specialists for completing medical and vocational forms used by State agencies. The council would be authorized to convene task forces of experts to deal with specialized areas.

Members of the Council must be appointed by June 1, 1985.

SEC. 15. FREQUENCY OF PERIODIC REVIEWS

Present law

Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed to assess their continuing eligibility at least once every 3 years.

Under a provision enacted in 1983 (P.L. 97-455), the Secretary is provided the authority to waive this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels.

On April 13, 1984, Secretary Heckler announced a temporary, nationwide moratorium on periodic eligibility reviews.

Committee amendment

The Committee amendment requires the Secretary to issue final regulations, within 6 months of enactment, establishing the standards to be used in determining the frequency of periodic eligibility reviews. Pending issuance of such regulations, no individual can be reviewed more than once.

SEC. 16. MONITORING OF REPRESENTATIVE PAYEES

Present law

The Social Security Act permits the Secretary of Health and Human Services to appoint a representative payee for an individual entitled to social security or supplemental security income (SSI) benefits when it appears to be in the individual's best interest. Payees must be appointed for individuals receiving SSI based on drug or alcohol addictions.

The Social Security Act defines penalties for misuse by payees of social security and SSI payments, but places no requirements or restrictions on the selection and monitoring of payees.

A payee convicted of misusing a social security beneficiary's funds is guilty of a felony, punishable by imprisonment for not more than 5 years and/or a fine of not more than $5,000. A payee convicted of misusing an SSI recipient's funds is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year and/or a fine of not more than $1,000.

Prior to 1978, all payees except parents or spouses with custody, legal guardians and State and Federal institutions were required to account annually. Systematic accounting procedures for these payees were suspended as a work-saving measure between 1978 and March 1984. (However, State institutions are subject to an onsite accounting process at least every 3 years and this process has not been suspended.) In March 1983, a Federal district court ordered the Social Security Administration (SSA) to institute a system of periodic mandatory payee accounting within 1 year in *Jordan* v. *Heckler*. In March 1984, SSA implemented an accounting system under which a random sample of 10 percent of all payees are required to account annually. At the request of the plaintiff, the court subsequently revised its order in *Jordan* so as to require an annual accounting from all payees.

Committee amendment

The amendment would require the Secretary to: (1) evaluate the qualifications of prospective payees either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than the entitled individual, or parent or spouse living in the same household, (3) establish a system whereby parent and spouse payees who live in the same household as the entitled beneficiary would periodically verify that they continue to live with the beneficiary, and (4) increase the penalties for misuse of benefits by representative payees. (The amendment also permits the Secretary to establish an accounting system for State institutions which serve as payees.)

The fine for a first offense by a payee convicted of misusing SSI benefits would be increased to not more than $5,000 and, for both programs, a second offense by a payee would be made a felony punishable by imprisonment for not more than 5 years and/or a fine of not more than $25,000. Individuals convicted of a felony under either pro-

gram may not be selected as a representative payee.

Finally the Secretary would be required to report to Congress within 6 months of enactment on the implementation of the new system, and also to report to Congress annually on the number of cases of misused funds, and the disposition of such cases.

Effective date

On enactment.

SEC. 17. FAIL-SAFE FINANCING

Present law

Under permanent law, each social security trust fund is intended to have sufficient resources to meet its full benefit obligations. The main source of funding for the Disability Insurance Trust Fund is that portion of the social security tax allocated for disability. At present, the disability part of the tax is 1 percent of taxable payroll (employee and employer combined). It is scheduled to rise to 1.2 percent in 1990 and to 1.42 percent in 2000 and thereafter. Temporary legislation enacted in 1983 also allows for borrowing among the trust funds in view of the relatively low balances in the cash benefits funds at the present time. This authority expires, however, in 1988. Present law does not contain any authority for making benefits payments in the event the social security trust funds should prove to have inadequate resources.

Committee amendment

If the disability fund is projected to decline to less than 20 pecent of a year's benefits as of the start of any year, the Secretary would be required to notify the Congress by the preceding July 1. If Congress took no other action, the Secretary would scale back (in part or in full) the next cost-of-living increase for disability beneficiaries as necessary to keep the fund balance at 20 percent. If necessary, the Secretary also would scale back the increase in the benefit formula used for determining benefit levels for persons newly awarded disability benefits. In making the determination under this provision, the Secretary would be required to consider actual assets properly owned by the DI trust fund. Thus, the fund would get full credit for the approximately $5 billion which it has temporarily loaned to the OASI fund under the interim interfund borrowing arrangements. With these assets, it is now projected that the DI fund would not dip below the 20 percent level until well into the next century.

The fail-safe provision in the Committee amendment is generally similar to a fail-safe provision for the OASI and DI programs combined which the Committee recommended and the Senate approved as part of the 1983 amendment.

Effective date

On enactment.

SEC. 18. MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

Present law

Since 1956, when the Disability Insurance program was enacted, the States have been responsible, on a voluntary and reimbursable basis, for determining whether individuals are disabled under the meaning of the law. Under the law, States administering the program are required to make disability determinations in accord with Federal law and the standards and guidelines established by the Federal Department of Health and Human Services. The program is 100 percent Federally financed, with all benefit costs as well as all of the administrative costs incurred by the States either directly financed or reimbursed by the Federal government.

The law provides for the Secretary to commence actions to take over the disability determination process if a State fails to follow Federal rules. However, the law includes a large number of procedural steps which must be complied with before such a Federal assumption can be accomplished. The Secretary may not commence making disability determinations earlier than 6 months after: (1) finding, after notice and opportunity for hearing, that a State agency is substantially out of compliance with Federal law; (2) developing all procedures to implement a plan for partial or complete assumption of the disability determinations which grant hiring preference to the State employees; and (3) the Secretary of Labor determines that the State has made fair and equitable arrangements to protect the interests of displaced employees.

Committee amendment

The Committee amendment would modify the provisions of law dealing with State determination of disability to assure better Federal monitoring of the situation and to require the Secretary to take prompt and effective action to deal with any future situations in which States refuse to follow Federal rules or to apply Federal standards of eligibility. The Secretary would be required to federalize disability determinations in a State within 6 months of finding that such State is failing to follow Federal law and standards.

Specifically, when the Secretary has reason to believe that a State is not following Federal law and standards, the matter must be promptly investigated and a preliminary finding must be made within 3 weeks. If the preliminary finding indicates that the State is out of compliance, the Secretary must immediately notify the State and request a response agreeing to follow Federal standards. If a satisfactory response is received within 21 days of the preliminary finding, the Secretary would simply monitor the situation over the next 30 days to determine that the State is, in fact, in compliance. If a satisfactory response has not been received by that deadline or if the State does not perform in accordance with such a response, the Secretary would be required to make a final finding, this finding would be made no later than 60 days after the preliminary finding, except that an additional 30 days would be allowed if the state requests and the Secretary, in her discretion grants, a hearing before the Secretary on the issue. The Secretary's decision on the matter would not be subject to appeal.

If the Secretary finds that the State is unwilling or unable to follow Federal guidelines in determining disability, the Secretary would be required to federalize the disability determination process in that State as quickly as possible using SSA personnel or other means of administration available to the Federal government. To the extent feasible, the Secretary would attempt to meet the requirements of existing law which are designed to provide for an orderly transfer of functions, but in no event could the full Federalization take place more than 6 months after the final finding. Moreover, even during that 6 months the Secretary would be required to take such steps as may be necessary to assure that the final decision on all claims processed by that State was made in accordance with Federal standards of eligibility. This might require a Federal re-review of all claims or of those claims involving particular issues with respect to which the State was out of compliance.

This provision expires on December 31, 1987.

Mr. BRADLEY. Mr. President, I rise to support this important piece of legislation designed to address the serious problems that have occurred as a result of the Social Security Administration's heavy-handed implementation of the disability insurance review process.

Our limited resources must be used to support only those who genuinely require our support. But, Mr. President, the Social Security Administration clearly went too far in its attempt to purge the disability rolls. Nearly half of those reviewed were terminated, and a large majority of those who have appealed their termination decision were reinstated by the administrative law judges.

Many cases have been brought to my attention of individuals who had their benefits terminated on the basis of a superficial evaluation that was completed by someone who had no qualifications in the area of the person's impairment. Of course there are extreme cases—the horror stories—and I certainly hope that they are not typical. But they serve to point out the serious problems that have resulted from current procedures for reviewing disability benefits.

Mr. President, I am told that as many as 28 States have refused to comply with the Social Security Administration's guidelines for the review process; if the current system was truly working properly, States would not be flaunting the laws, as interpreted by the Social Security Administration. My own State of New Jersey has had to stop all terminations because a court ruling binding the administrative law judges in New Jersey, mandates more stringent requirements for termination than are applied by the Social Security Administration.

Mr. President, the disability insurance reform bill offered today is not perfect, but it represents a compromise among the various proposals brought before the Senate. I urge my colleagues to support this legislation because it assures that the people in our Nation who are unable to work for reasons beyond their own control—who already suffer the pain and indignity of a severe disability—get the relief they need.

Mr. CRANSTON. Mr. President, I rise in support of this legislation, of which I am pleased to be a cosponsor, to provide equitable procedures with respect to disability reviews of social security disability insurance [SSDI] recipients.

The issue before the Senate today has been a matter of major national focus for over 3 years. In 1980, Congress responded to concerns about a

decline in the number of reviews of persons receiving SSDI benefits by enacting in the 1980 Disability Amendments a provision requiring that, unless a disability insurance beneficiary had been diagnosed as permanently disabled, the beneficiary must be reexamined every 3 years. This provision relating to continuing disability investigations [CDI's] was to go into effect in January 1982. However, the Reagan administration made the decision in March 1981 to accelerate implementation of this provision and thus precipitiously increase the number of referred cases to State agencies which conduct the reviews. It did so without assuring that the State agencies had the resources to handle the greatly increased workloads. In many cases, the result was hurried, unfair, and inadequate reviews of individual cases.

In addition, the administration has applied new, restrictive eligibility criteria retroactively. This has resulted in the termination of many seriously disabled persons who were put on the rolls years ago and whose medical conditions have not improved.

Many of the individuals who were terminated through the CDI process chose to appeal the decision, and a very significant proportion—some 61 percent—of those who appealed have been reinstated to the disability rolls—often after a very lengthy appeals process lasting, in some cases, well over 1 year's time.

Mr. President, the scope of this problem extends beyond the Federal Government and the individual beneficiaries being reviewed. Over one-half of the States, which play a major role in conducting the reviews, have either refused to process terminations, are under court order to do so, or are applying standards other than those of the Social Security Administration [SSA].

Clearly, the current review system does not work. Recipients are terminated and then overwhelming numbers who appeal are reinstated. Congress has previously recognized the problem but has yet to enact major reforms. The States are refusing to process additonal cases. Even the Reagan administration—the administration that devised the accelerated rate of reviews—has imposed a temporary moratorium on further processing of cases. The time has long since passed for comprehensive reform of the CDI process. Let us act now before more recipients are subject to reckless disability investigations.

LOSS OF FAITH

Mr. President, one of the many great tragedies associated with the disability review process is the doubt that has been raised in the minds of those unfairly terminated from the rolls—and in the minds of their families and friends and others concerned about their well-being—about the essential fairness and responsiveness of our Government.

Many of these individuals were totally disillusioned when the Government denied that they were indeed in the very condition of disability that burdened every day of their existence. They made every effort to be reinstated to the rolls, including contacting their elected representatives, but were forced to participate in an extraordinarily lengthy appeals process—in cases preceding enactment of Public Law 97-455, without continuation of benefits—before ultimately being reinstated. Some lost homes. Their families suffered. Their lives were unnecessarily disrupted. Their sense of stability was undermined. They felt betrayed by a system in which they were compelled to participate.

Is it any wonder that so many have lost faith in their Government?

For the past 3 years, individuals who feel that they have been unfairly terminated have been fending for themselves.

As have my colleagues, I have heard from many of these individuals who feel alienated and angry. That is understandable.

We cannot make reparation to all of those disabled individuals who have suffered needlessly as a result of undergoing a CDI. We can, however, try to eliminate the unfair, callous practices that have marred the CDI process from continuing any longer. There is a dire need for the reforms embodied in this legislation, even now, 3 years after the process was begun. It is long since time that Congress stepped in to correct the injustices that have been occurring.

NEED FOR COMPREHENSIVE REFORM

Mr. President, thus far, Congress has passed legislation that treated only the symptoms of the problems created by the CDI's without addressing the underlying flaws in the review process. Congress has passed short-term legislation, designed specifically to be an interim solution, in anticipation of a measure like the one before us.

As my colleagues recall, when the Congress considered H.R. 7093—enacted as Public Law 97-455 on January 12, 1983, which contained amendments making some short-term improvements in the CDI process—Senators on both sides of the aisle and members of the committee with jurisdiction acknowledged the need for comprehensive reforms of the disability review process at some future date. The provisions of that earlier measure, which I was pleased to cosponsor, primarily sought to ease the hardships on those individuals undergoing a CDI by allowing continuation of benefit payments through the appeals process—subject to repayment if the appeal were lost—and by providing for a slowing of the rate of cases referred to State agencies for review.

When these provisions expired in October of last year, Congress agreed upon legislation extending for 67 additional days, again, in anticipation of comprehensive reform measures. When the reform measures were not forthcoming at the end of the 97th Congress, and when these minimal protections for beneficiaries again expired, the administration voluntarily placed a temporary moratorium on further terminations. Despite stating at one point its intention to lift the moratorium, the administration has extended it indefinitely. Of course, the moratorium could conceivably be lifted at any time—again placing large numbers of individuals in jeopardy—and I strongly believe that it is highly desirable for the Congress to enact needed reforms now, while the moratorium is in effect. That would make it possible for the reforms to be implemented in an orderly fashion and would help to preclude persons subject to disability reviews from again being placed in much the same vulnerable position others were in when the CDI process began over 3 years ago. We have an obligation to prevent further reckless reviews.

Mr. President, the legislation before us is the result of a long, careful examination of the many aspects of the CDI process. This measure provides, until June 1, 1986, for the continued payment of benefits through the appeals process subject to forfeiture if the appeal fails, requires that the effects of multiple impairments be considered, and directs SSA to appoint a commission of experts to conduct a study relating to the presence of pain in determining eligibility for SSDI benefits. It imposes a moratorium, pending revision of the criteria for determining the existence of disabling mental impairments, on further reviews of persons with mental disorders. I am especially encouraged by the provision that requires that, unless a beneficiary has medically improved, the Secretary must have one of certain specified reasons for believing that an individual is no longer eligible for SSDI benefits before being permitted to determine whether or not the individual can perform substantial gainful employment and, if so, to drop the individual from the SSDI rolls. This is of particular significance because of the concern about persons whose physical conditions had not changed since they were put on the rolls being terminated due to an apparent retroactive application of new rules for determining disability.

These are some of the major provisions of the legislation. The issues involved in this measure have been scrutinized by Members of Congress, by groups representing disabled persons,

and by recipients of these benefits. It was slow in coming, too slow for some, and is indeed the result of hard work by numerous individuals with a common goal: An equitable and fair review process.

CONCLUSION

Mr. President, I should like to note the efforts of several of my colleagues who have worked tirelessly toward that end. In particular, I express my deep appreciation to the Senator from Michigan (Mr. LEVIN), the Senator from Maine (Mr. COHEN), and the Senator from Pennsylvania (Mr. HEINZ) for their unyielding efforts on behalf of these reforms and the disabled persons they would assist. They have demonstrated time and time again their commitment to insuring that the disability investigations be conducted in a fair manner and their effectiveness in developing legislative measures to achieve that goal.

Mr. President, as my colleagues know, the House passed a similar measure by an overwhelming 410-1 vote. In my view, the Senate should act just as decisively in repudiating the elements of the current review process which have caused such tremendous turmoil and anguish in the lives of so many disabled individuals.

We have heard countless reports, in State after State, of the grim horror stories associated with this process. The individuals subject to these reviews need the kind of humane legislative solutions that this legislation would provide. I urge all of my colleagues to support this measure.

Mr. PELL. Mr. President, for the past 3 years Members of Congress and the American people have read almost daily news stories about the termination of social security disability benefits for persons who were clearly disabled and dependent on benefit payments.

Some of these terminations of benefits resulted, tragically, in suicides by mentally disabled recipients who could not face the prospect of battling a hostile review process or of losing income on which they depended. Many of the benefit termination resulted in a needless and harmful loss of income for disabled individuals and their families.

My own office has heard from dozens of disabled persons who found themselves suddenly, and I believe mistakenly, deprived of disability benefits and forced into hardship while they sought to reverse arbitrary, bureaucratic decisions.

In all fairness, it must be said that it was the Congress that established a requirement for review of disability benefit cases, to assure that only those who had a continued disability and a continued need for assistance would receive benefits. But it was also clearly the intent of the Congress that those who have serious disabilities and have a need for assistance should continue to receive it.

The current administration, however, has seized upon the disability review requirement as a blunt weapon with which to slash Government expenditures, with an almost total disregard of the true needs and rights of the disabled.

The administration accelerated the review process, conducting hasty and inadequate case reviews to meet arbitrary quotas.

In 1982, some 497,000 recipients, or about 18 percent of all disability recipients, were subjected to review. Many of the cases were given only the most cursory review before termination decisions were rendered. State disability review offices were forced to accept enormous increases in workloads without increase in support, staff, or funding. Many reviews were no more than reviews of papers on file, or included only a 5-minute examination by a physician who had never before seen the recipient. Many termination decisions were based on a profile of disabled persons that were thought to be most likely to be able to return to work, little or no consideration of the actual condition of the individual involved.

Needless to say, with this kind of a review process, many of the termination decisions were later found to be mistaken. The statistics tell the sad story. Nationally, about 45 percent of disability recipients reviewed received notices that their benefits would be terminated. But on appeals, 12 percent of the terminations were reversed on reconsideration—the first and lowest stage of review. And more than 60 percent of the terminations appealed to social security administrative law judges were reversed.

In the case of mentally disabled persons, a study by the General Accounting Office of 1,400 appealed cases disclosed that 90 percent of the cases were reversed by administrative law judges.

And, finally, the administration, in a startling departure from long-accepted practice, has refused to change its review policies and procedures to conform with decisions and directives of the U.S. courts, limiting their compliance to the individual case before the court.

It is clear that the disability review process is being conducted in a manner contrary to the intent of the Congress.

We have a responsibility to restore principles of justice and a sense of fairness to the social security disability review process.

I have given my strong and consistent support to proposals in the Congress to reform the disability review process, and I commend Senators LEVIN and COHEN for their leadership and persistence in bringing this legislation, S. 476, before the Senate. Passage of the legislation is essential and I urge its approval.

Mr. SASSER. Mr. President, for many of us in the Senate, the legislation before us today marks the culmination of many months. Indeed many years, of struggle. The long and winding journey which has brought us here seemed at times to reach apparent dead ends.

However, today we have an opportunity to take a significant step toward alleviating the horrendous disparities which have resulted over the past 3 years in the social security disability program and to make permanent reforms with regard to the future conduct of the program.

I will not attempt to reiterate the grim statistics which have prompted widespread public outcry over the procedures employed by the present administration over the past 3 years in an attempt to purge the social security disability rolls.

Suffice it to say that since assuming office in January 1981, the policies of this administration have resulted in nearly one-half million disabled beneficiaries either losing their benefits outright or suffering the indignity of having to justify obvious disabilities through lengthy appeals procedures.

As is always the case, the poor and the elderly have suffered the most. Those individuals inflicted with mental impairments and least able to defend themselves have borne the substantial brunt of these unfair and unjust policies.

Mr. President, I have seen and heard eligible disabled beneficiaries tell of the hardships imposed upon them by such policies. I have heard and seen poor, elderly, and obviously disabled constituents of mine pour their hearts out to me, pleading for simple justice.

Further, this is not only meant to be an anecdotal testimonial. Earlier this year I held a series of congressional hearings in Tennessee. From Memphis to Kingsport to Nashville the complaints all seemed to familiar. These hearings revealed to me in a most poignant sense, the need for substantial reform of the disability review process.

The legislation before us today, coupled with the legislation which passed the House 2 months ago by a vote of 410 to 1, offer a ray of hope that such reform will be forthcoming soon.

The persistence and diligence shown by my colleagues from Maine and Michigan, Senators COHEN and LEVIN, in pursuing the remedies outlined in S. 476 must be applauded. They have worked unceasingly over the past 2 years or more to fashion an appropriate response to this problem. We all should be grateful for their efforts.

On the House side, Chairman PICKLE of the Social Security Subcommittee also deserves our gratitude. His legisla-

tion, H.R. 3755 received near-unanimous support in the House of Representatives.

While I am pleased to see that we will finally be going to conference on this matter, I must also express my dismay with several of the shortcomings of the Senate bill. In all, the House bill is far more comprehensive and effective with respect to the current structural problems existent in the disability review system. I regret that the Senate softened what I consider to be some of the most potent provisions contained in the House bill. The deficiencies in the Senate bill to which I refer include the provisions affecting the use of a medical improvement standard. The continuation of benefits pending appeal, and the so-called nonacquiescence provision.

These components contained in the Senate version fall considerably short of the sort of permanent structural reform which is necessary in the review process. The Senate bill, for instance, would sunset the use of a medical improvement standard after 3 years. This provision, which is thought to be the heart of the legislation, does not adequately protect disability beneficiaries beyond 1987. This should be a permanent provision of disability law.

Another provision which should be a permanent part of disability law is that which allows the recipient to continue to receive disability benefits pending appeal of a termination decision. Just a few years ago, it was not uncommon to have termination appeals taking up to 18 months. This effectively meant that many eligible disabled beneficiaries were without benefits for up to 1½ years. At the same time, up to 70 percent of those who appealed the State disability agency decisions were being reinstated at the administrative law judge level of appeal.

The hardships and desperation that such loss of income visited upon these recipients can seldom be quantified. The despair felt by many of these individuals actually caused some to attempt or commit suicide. Such despair is well documented both in the hearings I held as well as elsewhere.

The third component which I hope can be resolved in conference involves the so-called nonacquiescence provision. Under the Senate version, the Department of Health and Human Services is not required to follow the rulings of the circuit courts except in the specific cases to which the ruling applies.

What in effect this amounts to is the denial of benefits to thousands of eligible disabled beneficiaries despite Federal court decisions to the contrary. This practice appears to fly in the face of established rule of law and precedent and very well may violate the Constitution.

In a recent New York Times article entitled "U.S. Flouts Courts in Determination of Benefit Claims", the chief judge of the Federal District Court in Minnesota, Miles W. Lord, was quoted as saying that social security officials were acting in "direct contravention of Federal court edicts."

He further went on to write that:

> The Secretary apparently has decided to obey only the edicts of the U.S. Supreme Court. At the same time, however, the Secretary refuses to appeal adverse rulings to the Supreme Court. Thus depriving the Court of the opportunity to issue opinions on disputed issues.

Through this practice of nonacquiescence, what in effect you have to do is make new law with every individual case. This appears to me to work a great injustice on the individual claimants because they have to go to the expense of reestablishing a new point of law or making new law with each individual case.

The administrative law judges that appeared before my hearings were unanimous in their opinion that the most troublesome area, from their standpoint, in the disability review process was this particular problem.

Judge Robert Laws, the administrative law judge in charge in Nashville, testified that social security regulations often "fly right in the face of court interpretation of particular aspects of the law." He went on to further state that in holding a social security hearing he would like to feel like:

> As a practicing attorney and one who has studied the law, to feel that I could follow these court interpretations, follow this case history. But I am mandated to do otherwise.

Mr. President, I am not happy with the language contained in the Senate bill. I would hope that the conferees will see fit to adopt language closer to that contained in the House bill. I was prepared to offer the House provision as an amendment to this bill, but I do not want to appear as though I am obstructing the progress of this much-needed legislation. Therefore, I will not offer the amendment.

I will, however, once this bill passes, prepare a "Dear Conferee" letter in conjunction with several of my colleagues who have expressed interest in this matter to me which outlines these specific concerns.

In summary, this legislation is long overdue. The Senate bill does not go far enough, and I will only support it reluctantly. It is my hope that comprehensive, structural reform of a permanent nature will emerge out of the House-Senate conference. If not, I will be prepared to carry on the fight for this reform at a later date.

Mr. STAFFORD. Mr. President, I am pleased to join with my colleagues, Senator COHEN, Senator LEVIN, Senator HEINZ, and others, in support of S. 476, the social security disability reform bill.

We have all heard for some time now about problems in the Social Security Administration regarding the disability review process. Secretary Heckler at Health and Human Services has demonstrated an awareness about these difficulties and has made significant strides toward correcting them. We have waited far too long, however, for a remedy that does not appear to be forthcoming from the administration. Legislative action is needed to remove inefficiency and inflexibility from a system that decides who should continue to receive vital disability benefits and who is no longer entitled to them. This is not a welfare system, but rather an insurance program for disabled workers.

The flaws in this system have resulted in the disqualification of more than 470,000 beneficiaries. Upon appeal to administrative law judges, close to one-third of these individuals were reinstated as eligible for their benefits. I do not think it is unreasonable to assume that other disabled workers who were removed from the rolls, who lacked the necessary financial and emotional resources to pursue a lengthy appeal, might also have been reinstated.

In my own State of Vermont and in many other States around the country, frustration over congressional inaction to correct this system, resulted in the Governor imposing a moratorium on disability reviews.

S. 476 corrects many of the fundamental inequities that trouble the existing disability review process. It reforms the disability system by allowing the Social Security Administration to eliminate from the program those who are no longer disabled, while protecting the benefits of those individuals truly in need of benefits. The social security disability reform bill does not call for sweeping reform, but rather modest changes that go a long way toward humanizing a previously arbitrary and insensitive system. I encourage my colleagues to vote in support of S. 476.

Mr. DURENBERGER. Mr. President, if ever there was a case of the Government throwing the babies out with the bathwater, it is the way the Social Security Administration administered the 1980 disability amendments.

During the 1970's, public attention became focused upon the lack of oversight in the social security disability program. Members of Congress were shocked to learn that individuals were remaining on the disability rolls long after their disabilities had ceased to exist because no efforts were made to review their eligibility. As a result, the Federal Governmeni continued to pay

disability benefits to recipients who were capable of employment.

In an effort to remedy this problem, we enacted amendments to the disability process which mandated the Social Security Administration to review disability cases every 3 years. It was our intention, at the time those amendments were passed, to remove those individuals from the rolls who were no longer disabled, but continue benefits to those who were deserving.

Unfortunately, the review process quickly became a nightmare. In an effort to remove recipients from the rolls, Social Security terminated many deserving individuals—only to have them reinstated upon appeal. In fact, over half of the 421,000 cases which are terminated by the State agencies were reinstated by administrative law judges. Despite these reinstatements, thousands of individuals have been forced to live, for an average of 6 months, without necessary benefits—both the disability payments themselves and the often equally important medicare eligibility.

So serious is this problem that the States are starting to take the administration of the program into their own hands. States have imposed moratoriums on the continuing investigation process, refusing to consider the cases sent to them by the Social Security Administration. Other States have adopted their own standards of eligibility. In my home State of Minnesota, this problem is so serious that U.S. Federal District Court Judge Miles Lord recently reinstated thousands of disability beneficiaries who were terminated in the CDI process. Additional class actions await similar rulings.

Mr. President, my first concern is for correcting the real tragedy that this process is caused—the suffering that many beneficiaries and their families endure because of the loss of benefits. I am extremely pleased that, after several years of deliberations, we are finally considering legislation to remedy this crisis and reform the social security disability review process.

I want to recognize Senator DOLE for his efforts to report this legislation from the Finance Committee. I would also like to commend the tireless work of Senators COHEN, LEVIN, and HEINZ to secure relief for thousands of disability beneficiaries who have suffered as a result of the review process.

The legislation which we are considering today will, hopefully, restore fairness and uniformity to the disability review process. Its medical improvement standard represents an appropriate balance between protecting people who have sustained disabling impairments whose conditions have not improved and removing those who are truly able to work.

The need for the medical improvement standard cannot be understated. The absence of such a standard has become a life-and-death situation. I was recently made aware of the severity of this problem when the real-life tragedy of a constituent was brought to my attention. This man nearly lost his wife as a result of his disability termination.

The man is 55 years old, has suffered numerous heart attacks and has undergone two bypass operations. He was found eligible for social security disability benefits in 1979, but was suddenly notified that he would be subjected to a continuing disability investigation in 1983. He was determined to be disqualified for benefits initially and appealed that determination to the administrative law judge.

At his hearing before the administrative law judge, over 55 medical records were introduced—showing no change in this man's medical condition. Despite this overwhelming evidence, a vocational expert, who had never examined him, submitted testimony that he could perform substantial gainful activity because he performed light housework and grocery shopping. The vocational expert did not give any consideration to the fact that the man's wife is an invalid and could not perform any of these tasks. As a result, this gentleman was penalized for his efforts to maintain his household and care for his wife.

The administrative law judge ignored the medical conclusions that this man could not undergo any stressful physical or mental activity without suffering chest pains or potential heart attacks and denied him eligibility. He was also notified that he owed over $5,000 in past benefits.

Although he has appealed the ALJ's ruling, no May check arrived to help this family meet its obligations—despite the recent CDI moratorium.

The failure of the anticipated benefit check was too much for his invalid wife and she recently attempted suicide. Although she has been dismissed from the hospital, she may have sustained permanent brain damage and may need institutionalization.

Despite the fact that he is at wit's end, the current failure of the Social Security Administration to issue regulations dealing with the moratorium has prevented the Appeals Council from moving on his case—nor can benefits be reinstated pending his appeal.

Unfortunately, this sort of tragic situation is not unusual. The impact of these reviews has been devastating and has povertized so many deserving Americans. With implementation of this medical improvement standard, people like my constituent will receive equitable consideration.

Other provisions in this legislation should also help alleviate some of the confusion that has occurred during the review process:

Disability and SSI—disability payments pending appeal through the ALJ hearing will be reauthorized until June 1, 1986.

The Social Security Administration will be subject to the rulemaking requirements of the Administrative Procedures Act on matters relating to the determination of disability and the payment of DI benefits.

Eligibility reviews for all individuals with disabilities based on mental impairments will be suspended pending a revision of the eligibility criteria.

The Secretary must make every reasonable effort to insure that a qualified psychiatrist or psychologist completes the medical portion of the evaluation or assessment of residual functional capacity.

Requires the Secretary to report to the Congress on decisions to acquiesce or not to acquiesce with U.S. court of appeals decisions affecting the Social Security Act or regulations.

Requires the Secretary to consider the combined effect of all of the individuals' impairments without regard to whether any one impairment itself would be considered severe.

Requires a study and report to be conducted on the use of subjective evidence of pain and findings which demonstrate pain in determining eligibility. Current standards would be included for 3 years.

Requires the Secretary to notify recipients upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted.

Requires the Secretary to conduct a five-State demonstration project in which personal appearance is provided prior to determination of ineligibility in lieu of face-to-face hearing at reconsideration.

Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from the treating physician prior to seeking a consultative examination.

Authorizes reimbursement of vocational rehabilitative services provided to persons who are receiving disability benefits under section 225(b) and who medically recover while in VR.

Reauthorizes section 1619 through June 30, 1987.

Directs the next quadrennial advisory council to study and make recommendations on various medical and vocational aspects of disability.

Requires the Secretary to issue regulations establishing the standards to be used in determining the frequency of periodic eligibility reviews. Pending issuance of such regulations, no individual could be reviewed more than once.

Strengthens the safeguards in the representative payee process.

Establishes the fail-safe financing proposal which allows the Secretary to adjust COLA benefits (and new bene-

fits) to the extent necessary to keep the trust fund from becoming insolvent. The Secretary must notify Congress, in advance, of any anticipated adjustments.

Requires the Secretary to federalize disability determinations within 6 months of finding that the State is failing to follow Federal law and standards.

Mr. President, this issue has generated a great deal of debate and many Members of this body hold divergent views on how to remedy this problem. Nevertheless, members of the Finance Committee have united to unanimously report this legislation. It is our belief that this measure effectuates the purpose to which we are all committed—to reform the disability review process, but maintain the intent of the original review legislation.

I urge my colleagues to support this legislation and am hopeful that we will move quickly to see disability reform legislation enacted into law.

Mr. PRYOR. Mr. President, today the Senate is considering S. 476, the Social Security Disability Amendments of 1984. I would like to take this opportunity to commend the chairman and ranking minority members of the Finance Committee, as well as members of their staffs, for the efforts that they have made to try to reconcile the wide variances in opinions among the Members of the Senate as to what changes are needed in the administration of the triannual reviews of the disabled.

I voted for the legislation which was reported out by the Finance Committee because I believe that it is of great importance that we get the issue resolved.

In many areas, the Senate bill does address serious problems within the program. S. 476 would impose a requirement for uniform standards, and subject the Social Security Administration to the reporting requirements of the administrative procedures act. This provision will greatly ease the discrepancies between the differing standards used at different levels of disability determination. The requirement that SSA publish, for notice and comment, standards relating to the determination of disability and the payment of benefits will help to make public the standards used within the program, and help to clarify the purposes of the disability insurance program.

In addition, S. 476 insures that the combined effect of multiple nonsevere impairments would be considered by the Social Security Administration during the review process. Clearly, a beneficiary may have impairments which, while individually assessed to be nonsevere, and therefore not classified as disabling impairments, may, in combination, have a far more serious effect on the individual's ability to engage in substantial gainful activity. It is of great importance that the existence of such impairments be considered throughout the sequential evaluation process.

These, as well as other changes, will address some of the longstanding problems within the disability program.

However, there are some provisions of the Finance Committee package which I find do not adequately resolve the program's ills.

One of the major areas which has been in need of reform within the disability program since 1981 has been the failure of the Social Security Administration to use a true medical improvement standard in its continuing disability investigations. Specifically, the SSA has taken the position that, despite wholesale changes in the medical listings and criteria for determining disability, present beneficiaries should be judged by the newer standards. The results have been catastrophic—thousands and thousands of individuals have been terminated from the benefit rolls despite the fact that the condition for which the Government originally found them disabled had not improved. The central question to the issue of medical improvement is one of fairness. Under the current practice, individuals have been told they are disabled, have not improved medically, and may have been on the rolls for a considerable amount of time, yet their benefits are being terminated.

The Finance Committee package does include a medical improvement standard which requires a sharing of the burden of proof regarding the medical improvement issue. However, this standard would only be applied for 3½ years. My concern with placing a limitation on the applicability of the new standard is that it will not substantially change or correct the crisis we now see in the disability program. While it will, to some degree, deal with the cases which are in the courts and the administrative pipeline currently, and will be applied over the next 3 years or so, I am greatly concerned over what will happen when that 3 years is concluded. I suspect that this standard will only delay the crisis—that in another 4 years we will once again begin to hear of unprecedented termination levels, and the courts will once again be backlogged with social security disability cases.

I also have serious reservations about the language relative to compliance with court orders. While I am certain that the provisions in S. 476 dealing with this issue was well-intentioned, I have serious concerns about the Congress, in essence, condoning any Federal agency's practice of nonacquiescence with court orders, and merely requiring that the agency report to the Congress when it fails to acquiesce. I believe that this sets a very dangerous precedent, one which threatens the relationships between the three branches of Government as specified by the Constitution. I believe this to be a very serious issue—one which has implications beyond disability reform.

Currently, in the western district of Arkansas, almost 30 percent of the civil cases pending in the U.S. district court are social security cases. Court backlogs and delays are one result, and this can be translated into extensive costs to litigants and the taxpayers. Many of these cases are relitigations of issues already decided by the 8th Circuit Court of Appeals, cases in which SSA has chosen not to acquiesce. This situation creates an untenable position for U.S. district court judges and the administrative law judges—if ALJ's follow the court of appeals decision, SSA remands the case to the Appeals Council, and may bring the ALJ in for counseling or place him on Bellmon review. If the ALJ follows SSA's practice, the case may be reversed by the court of appeals.

Mr. President, I also have some concerns about the Senate language relative to the issue of pain. I am seriously concerned that, by codifying the current SSA regulations on the issue of pain, we may seriously impede the progress that SSA is currently making in updating its listings relative to pain.

Despite my concerns about sections of this proposal, this bill represents an important step toward resolving the problems with the social security disability program. I will, therefore, support it and urge its approval.

Clearly, there are some serious differences between the House and Senate bills which must be worked out, and it is my hope that the members of the conference committee will closely examine these issues before the final package is reported out and signed by the President. This is a matter of great importance to hundreds of thousands of disabled individuals throughout this nation, and should be given very serious consideration.

Mrs. HAWKINS. Mr. President, I want to commend the chairman and the members of the Senate Finance Committee, who have brought this needed relief to the many disabled persons of my State of Florida in the form of this legislation we are voting on in this Senate this evening. The truly disabled have looked to us in the Senate for legislative relief ever since the onset of the regulatory changes struck unfairly at too many American families. I have cosponsored legislation in this disability relief area from the first moment the hardships of these proposed changes in eligibility were brought to my personal attention

by my constituents. I strongly support this legislation reported unanimously out of the Chairman BOB DOLE'S Senate Finance Committee. I want to take this opportunity to commend my colleagues for their hard work and cooperation, for the long hours of diligent hearings and attention to duty that went into the legislation we vote on this evening. This is not a perfect piece of legislation; but it does provide a measure of relief to the truly disabled. It does meet the glaring inadequacies of the current disability review process. It does humanize the review process. I will continue to keep the needs of our disabled citizens in mind while considering the necessary changes that need to be taken down the road to truly conform this disability review process to the traditions of this Nation. We need to care for the disabled among us who have worked at our sides, who deserve better, and who have earned the just compensation that is their due.

Mr. D'AMATO. Mr. President, I rise today in support of H.R. 3755, the Social Security Disability Amendments of 1984. I congratulate the distinguished Chairman of the Committee on Finance, the distinguished senior Senator from Maine, and the distinguished junior Senator from Michigan for their efforts on S. 476, the measure which has been substituted for the body of this House-passed bill. I am proud to be a cosponsor of S. 476.

Many New Yorkers have spoken to me and written to me regarding the hardships they or their loved ones have suffered as a result of the disability review process. Too many people, who were in fact disabled, had their disability benefits terminated. Then, in too many cases, they suffered additional health damage or even death as a result of the disabling condition which the disability review process had concluded was no longer disabling.

I concluded that this was a tragic situation, one which urgently required our attention. I corresponded with the then Commissioner of Social Security regarding the problem and received what I believed were unsatisfactory answers. Accordingly, I was pleased when the moratorium on disability reviews was adopted. At that time, I pledged my support for a permanent legislative solution to reform the review process.

This bill is the vitally needed reform. I believe it does not go far enough in some areas, but its key provisions will end the most serious problems with the present process. Most importantly, H.R. 3755, as amended, requires a showing of medical improvement before a disability beneficiary can be terminated. The only exceptions to this requirement are fraud, error, a showing that, due to new evaluative or diagnostic techniques, the condition in question is not as disabling as was first thought, or a showing that the beneficiary has benefited from medical or vocational therapy or technology.

H.R. 3755 also requires continuation of payment of disability benefits and continued eligibility for medicare benefits when a beneficiary has been determined no longer to be disabled and has appealed this determination. This is an especially key point, because of the very large number of beneficiaries who were determined to be no longer disabled, but who were subsequently restored to entitled status as a result of their appeals. The reinstatement rate was so high as to cast serious doubt on the fairness and competence of the basic review process.

This provision is vitally necessary because those who appealed suffered great hardship and, sometimes, even death as they awaited the final decision on their appeals. This situation recurred over and over again, as so many New Yorkers told me. Mortgages were foreclosed, cars and household goods were repossessed, and untold emotional suffering was caused as a result of termination decisions which were later overturned. Worst of all, there is evidence some people committed suicide as a result of this review process.

I am very pleased that we have finally worked out a solution to a deep and very serious human tragedy. I agree with the requirement for a review process. I demand, however, that the process be fair and humane. The current process failed to meet those standards. With our action on this measure, I am confident we are making the needed reform we must have. My only regret is that it comes too late for some Americans who counted upon their Government for support in their time of need, only to find that their justifiable expectations were most cruelly disappointed.

I urge my colleagues to support this most necessary measure. It serves the interests of all Americans to provide our disabled citizens the support they need and deserve and to administer the program in a manner in which we can all take pride. With your support, we can restore this program to the level of operation and function it must have.

Thank you, Mr. President.

Mr. DOLE. Mr. President, while we are awaiting the arrival of Senator LEVIN and Senator MITCHELL, I suggest the absence of a quorum to be charged equally to both sides.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LONG. How much time does the Senator from New York desire?

Mr. MOYNIHAN. Five minutes.

Mr. LONG. I yield the Senator 5 minutes.

Mr. MOYNIHAN. I thank my colleague.

Mr. President, I rise today in strong support and with great satisfaction for this legislation to reform the review process for Americans receiving disability benefits. It is a question of great and pressing concern to literally millions of persons in our population. This measure evolved through the great efforts of many Members of this body to establish fair, responsible, and equitable standards and procedures for periodic eligibility review of social security disability recipients.

The measure which, I trust, we will approve today represents a critical step in improving and refining the redetermination process. Its single most important element, the medical improvement standard, will require the Social Security Administration to first determine whether a disabled beneficiary's medical condition has actually improved since he or she was declared entitled to disability benefits, before the Social Security Administration can terminate those benefits.

The need for this legislation has been clear since March of 1981, when the Social Security Administration accelerated the mandated review of disability insurance recipients. In the past 3 years, SSA has reviewed the cases of nearly 1 million Americans receiving disability benefits; nearly 500,000 have had their benefits terminated. A Federal judge in Minnesota described these procedures as "arbitrary, capricious, irrational, and an abuse of discretion." In human terms, what has happened is that the Social Security Administration has tried to reduce program cost by terminating the benefits of hundreds of thousands of truly disabled Americans. Nearly 50 percent of all those terminated had their benefits reinstated during appeal.

In response to the thousands of tragic instances of wrongful terminations, Governors from 10 States, including New York, have refused to administer the reviews as directed by SSA. Citizens throughout the country have filed class action suits against SSA, challenging the standards by which their disability benefits were terminated. Circuit courts throughout the Nation have ruled against SSA, and have ordered the reevaluation of thousands of disabled individuals under a medical improvement standard.

Finally, last month, in recognition of the disarray and disorganization which has plagued the redetermination process for the past 3 years, Secretary Heckler suspended all further reviews of disabled beneficiaries.

It is the responsibility of Congress to insure that only the genuinely disabled receive social security disability insurance benefits. Thus, I supported the adoption of the Disability Insurance Amendments of 1980, requiring SSA to reexamine everyone receiving DI benefits. However, it is also the responsibility of the Congress to insure that these reexaminations are conducted in a manner that is both fair and judicious. The administration of the periodic reviews since March 1981 have been neither fair nor judicious.

It is in response to this shameful situation that legislation to reform the disability reexamination process was formulated. On October 26, 1983, I introduced S. 2002, the companion measure to H.R. 3755, Representative J. J. PICKLE's legislation that passed the House of Representatives on March 27, 1984, 410 to 1. I am pleased many of the reforms contained in my legislation are incorporated in the measure we debate today. In addition to the adoption of the medical improvement standard, this legislation would mandate payment of benefits throughout the appeal of a determination decision. It also would establish uniform standards for all disability decisions and continued the moratorium on the review of the mentally impaired.

This legislation contains an important proposal requiring the Secretary of Health and Human Services to appoint a commission of experts to conduct a study concerning the evaluation of pain in determining eligibility for disability benefits. Quite often, an individual may suffer from excruciating, debilitating pain that is impossible to measure objectively. As yet, SSA has no guidelines for the evaluation of subjective evidence of pain, in determining disability. It is my hope that, upon review of the commission's report, we can decide whether such guidelines are feasible.

I will close with the simple observation that I do not believe, in the half century history of the Social Security Act, there has ever been a situation in which 10 States of the Union have simply refused to participate in a national, legislatively mandated program. It was the judgment of these Governors that the administrators in Washington were so distorting the intentions of the law and the purposes of the act as to make it a question of elemental justice and, indeed, a crisis in federalism. I hope, Mr. President, that this event would not go unnoticed.

It was conspicuous during our markup in the Finance Committee that no senior official in the administration was present—the fact that Federal judges were striking down their rulings; that Governors of important States were refusing to participate; and that the Congress was vastly upset—they seemed to be either unaware of this or uninterested in it. There is a measure of administrative arrogance in all this which is not very assuring in an organization that for half a century has been concerned with the aged and the disabled and, more recently, the sick.

I do not propose that there is any immediate solution, but I would like to suggest that if things continue as such, the competence of the leadership in that administration is going to be raised as an issue and, indeed, the legality of their behavior, if not by Members of this body, then surely by members of the Federal bench.

It was never the intent of Congress to terminate disabled Americans from the disability insurance program. While this measure does not contain all the features we might hope for, it does represent an important achievement in reforming the disability redetermination program, and protecting the benefits of hundreds of thousands of disabled beneficiaries. I urge, in the most strong terms I am able, the prompt enactment of this legislation.

Mr. President, I thank you for your kind attention and my colleagues, and I yield the floor.

Mr. LONG. Mr. President, I yield to the Senator from Michigan.

Mr. LEVIN. I thank my friend from Louisiana.

Mr. President, today we are bringing to an end what has turned out to be a nightmare for tens of thousands of this country's disabled workers. Many of us have been working for over 2 years to reach this day, when the Senate legislates a comprehensive reform bill that will bring fairness and justice to the social security disability system.

In passing this bill we are doing a number of things. We are requiring the Social Security Administration, SSA, to demonstrate that the medical condition of a disability benficiary has changed or improved before that person can be terminated.

We are requiring SSA to consider the cumulative effect of an individual's impairments in determining whether that individual is severely impaired.

We are requiring SSA to establish uniform standards for determining eligibility and making such standards subject to public notice and comment.

We are requiring SSA to pay disability benefits through appeal to an administrative law judge for at least 2 years.

Mr. President, on Friday, May 25, it will be 2 years to the day that Senator COHEN and I held a Senate hearing of our Subcommittee on Oversight of Government Management, which he chairs with such distinction, and took testimony on the continuing disability reviews being conducted by the Social Security Administration. We were shocked by what we heard. Forty-five percent of the persons reviewed were being terminated; 50 percent of those terminated appealed that decision to an administrative law judge, ALJ; two-thirds of those who appealed were being reinstated. During that appeal period which lasted some 9 to 18 months, benefits were not paid and medical care coverage was not provided. The consequences were tragic—homes were foreclosed on, cars were repossessed, medical care could not be afforded, disabilities worsened, and in extreme cases lives were lost in despair and anxiety. It was a brutal and unbelievable account of the administration of what was designed to be a humane and helpful program for this Nation's work force.

At that hearing, based on the statistics available at the time, we estimated that a quarter of a million disabled Americans through the course of the reviews would be terminated with benefits stopped, only to be reinstated perhaps a year of misery later. To date over 150,000 persons have experienced such a fate. The husband of Mrs. Ethel Kage from Reed City, Mich., was one of these people. Unfortunately, as Mrs. Kage so poignantly testified at that May 25 hearing, her husband was dead before the reinstatement decision was made. Mrs. Kage provided the subcommittee with letters from Mr. Kage's physicians attributing the cause of Mr. Kage's death, in part, to the disability review process itself.

Senator COHEN and I were not the only ones being made aware of the problem. Hearings in the House and in the Senate Finance and Aging Committees presented a similar story. The State agencies responsible for making the initial eligibility decisions were feeling the effects on the frontlines; the terminations were causing serious harm to their disabled residents, and SSA's guidelines for conducting the reviews were more strict than many States could tolerate. The courts began reviewing disability cases at a surprising rate and many courts responded by ordering SSA to establish a fairer standard—that of medical improvement, requiring SSA to show that a beneficiary's condition had changed in a way that could justify termination. States began to impose moratoriums on the terminations to protect their citizens; courts imposed moratoriums on reviews and terminations to protect current and future plaintiffs. A patchwork quilt of standards evolved across the country, and the fairness of the process depended upon the State in which the review was being conducted.

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In light of all of this, however, SSA held firm and continued to claim that the horror stories were only isolated examples; that while some mistakes were being made, they were only mistakes and on the whole the reviews were going well. In June 1983, Secretary Heckler announced several administrative reforms which she said would solve the expanding problems. Many of us said it was not enough, and unfortunately we were right. Legislation was and is needed, but SSA refused to accept that fact until only recently.

It was just 3 months ago that Acting Commissioner of SSA Martha McSteen appeared before the Senate Finance Committee and stated the Secretary's unequivocal opposition to any legislation. By April 13, she has changed her position. SSA finally saw the handwriting on the wall—written by the 45 cosponsors on our legislation, written by 410 Members of the House who voted for H.R. 3755 on March 27, 1984, and written by the countless number of advocates for the disabled across the country who worked tirelessly to deliver the message to Washington that something was seriously wrong in the field.

Since the emergency provision requiring the payment of benefits through appeal expired last December, we have been living on borrowed time. SSA imposed its own moratorium on terminations from December 7 through the middle of February and reinstituted it again on April 13 when the administration announced support for a legislative solution.

That brings us to today. It is not an honorable history that I have recounted here. We have treated shabbaly the people who invested their dollars and who put their trust in the social security disability program. The Social Security Administration has refused repeatedly to admit the depth and scope of the problem and has showered the Congress and the public with excuses that neither would finally buy. But Congress is not without blame. The legacy of this experience is that nothing is as simple as it seems; that these programs are complex and their administration delicate. The signals Congress sends are crucial and must be carefully thought through and evaluated for their ultimate impact. What seemed like a good idea in 1980 turned into a tragedy in its implementation, and it was Congress that failed to set standards for the reviews and the probable consequences were not throughtfully anticipated.

It has taken us 3 years to come to grips with the problems in the disability review process as a legislative body. And while it was long in coming, I am pleased with the final outcome. The bill I, along with Senator COHEN and others introduced on February 15, 1983, S. 476, as reported by the Finance Committee contains the essential ingredients to the development of a fair and responsible review process. While we have, through extensive negotiations with the Finance Committee, crafted different legislative language for some key provisions, and I am not supportive of several items contained in the bill as reported, the ultimate objective of our bill has remained intact.

First, medical improvement. Central to the reform package is the requirement that SSA demonstrate medical improvement or a change in the beneficiary's condition before termination is allowable. This provision would require SSA upon reviewing a beneficiary to first determine whether or not the beneficiary has improved in a way related to his ability to work. The evidence to support such a finding is to be acquired by the joint effort of the beneficiary and SSA. If the Secretary finds after looking at all the available acquired evidence that the beneficiary has in fact improved in a way related to his ability to work, then the Secretary must determine if the individual is able to perform substantial gainful activity (SGA) using the sequential evaluation process. If the Secretary finds, however, that the beneficiary's condition has remained the same or worsened, then the Secretary must look at the exceptions to medical improvement to determine whether or not one of these exceptions is applicable. If one is, and the Secretary can show that the individual is now able to perform SGA, then the beneficiary will be terminated. If none of the exceptions applies, the beneficiary will be continued.

We are building into the review process through this provision the right of an individual to trust that the Federal Government will not whimsically change its mind and decide today, based on the same evidence available at the time of the earlier decision, that the individual is no longer disabled within the meaning of the law. The Federal Government, to the extent possible, should be able to be trusted to keep its word. If you were found by SSA 3 years ago to be so disabled as to not be able to do any job anywhere in the national economy, SSA should not and under this bill cannot come in today and, using the same evidence and looking at the same condition, say it changed its mind from conclusions reached yesterday or last month or last year. These decisions are too subjective to place in the hands of a system whose outcome can change depending solely upon the individual performing the review. While ultimate consistency will probably always elude our grasp in a program like this, we are at least attempting to bring the system closer to the principles of basic fairness.

Unfortunately, the bill sunsets this medical improvement standard 3 years from date of implementation. While sunsetting in some instances may prove to foster better congressional oversight, in this case it is unwise. We are codifying a medical improvement standard today because we know—and the courts have demanded—that such a standard is required to bring fairness to the review process. The reasons for implementing this standard today will not likely change tomorrow or 3 years from now. Unlike the need for various Federal programs which may come and go depending upon various social and economic factors, the need for fairness is constant. The exercise of procedural fairness which this medical improvement standard provides, should not have a time limit. I urge my colleagues in both Houses to consider this limitation very carefully in conference and hopefully remove this sunset provision.

There are several other provisions in the bill which enhance the fairness of this new medical improvement determination. First, under the bill, SSA is required to give the beneficiary full and complete notice as to the nature of the review process and what is expected of the beneficiary in that process. Second, SSA is to make every reasonable effort to obtain the necessary medical evidence from a beneficiary's treating physician.

One of the major causes of compliant and dissatisfaction with the disability review process has been SSA's reliance on its own purchased medical reports by doctors who give what are known as consultative exams. Beneficiaries claim repeatedly that these exams are only cursory, conducted by doctors who are not qualified in the necessary field of medicine, and are relied upon to the exclusion of the medical findings offered by the treating physician. Consultative exams are designed to be used by SSA only where there is conflicting medical evidence that is necessary to resolve in order to make an eligibility determination. Instead, allegations abound that they are in fact ordered routinely, used as a counterpoint to the report of the treating physician, and relied upon almost exclusively.

By passing this legislation today, we are directing SSA to give great credence to the findings and reports of a beneficiary's treating physician. It is the treating physician who more often than not has lived closely with that subject's disabilities and through his/her hands-on experience has developed a more thorough knowledge of the illness than the consultative examiners who may give no more than 30 minutes for the evaluation.

SSA complains that treating physicians too often provide mere opinion without the necessary test results on

specific medical findings upon which the disability examiner can make the necessary determination. This bill is telling SSA to ask the proper questions of the treating physician so it can elicit a helpful response. If there are tests to be conducted and scientific assessments made of an individual's functional capabilities, SSA should work with the treating physician to get those answers. Under the provision in this bill, we should witness far fewer consultative exams and more thorough and factually based reports by treating physicians.

MULTIPLE IMPAIRMENTS

In assessing whether or not a person can perform SGA or is severly impaired so as not to be able to perform SGA, both as a new applicant to disability benefits and as a beneficiary being reviewed for continuing eligibility, SSA is directed by this bill to consider the combined effect of all of an individual's impairments whether or not each impairment by itself is or is not severe. SSA has testified that it considers the combined effect of all impairments now in determining whether an individual with a severe impairment is unable to perform SGA, and this bill is not intended to alter that practice. But, SSA currently does not consider the combined effect of all impairments in assessing whether or not an individual has a severe impairment. That is the threshold question that currently starts the sequential evaluation process. If an individual has three impairments, but none of them alone is deemed by SSA to be severe, then the individual under current practice is denied eligibility. This bill changes that by requiring SSA to forego the requirement that any one impairment meet SSA's test for severity and that SSA also allow for the combined effect of nonsevere impairments to be considered in determining the presence of a severe impairment.

UNIFORM STANDARDS/BENEFITS THROUGH APPEAL

One of the first problems readily identified with the continuing disability reviews was the radical difference between the rate of allowances—or determinations of eligibility—by the State disability examiners and the rate of allowances by the administrative law judges. As I stated earlier, in 1981, two-thirds of the termination decisions appealed to ALJ's were reversed by the ALJ's. Senator COHEN and I focused much of our inquiry on this problem alone, and found to our surprise that disability examiners were in fact using different standards and guidelines in making their assessments than the ALJ's. The disability examiners were governed in their decisionmaking by the program operation manual system or POM's issued by SSA, and the ALJ's who never saw the POM's followed SSA regulations and caselaw. This situation was made worse by the fact that there were radical differences in standards between the POM's and the regulations.

A consensus has developed over the last 3 years as to the program inefficiency and inadvisability of such a system. Uniform standards throughout the determination process has been a universally acknowledged goal. And, this legislation mandates and reinforces that goal. SSA has argued that by using social security rulings, which are applicable to ALJ's, and by placing important provisions now in the POM's in rulings, it has corrected the lack of uniformity. The problem with that, which is addressed by this bill, is that such rulings are not subject to public notice and comment.

Under the bill we are passing today, all standards for determining eligibility under the social security disability programs would be subject to public notice and comment rulemaking under section 553 of the Administrative Procedure Act. Flexibility is provided for the Secretary to issue guidelines on rulings which are merely procedural and not substantive. But it is the intent of this legislation that any standard affecting the eligibility determination be subject to public notice and comment. If the Secretary is to err in her judgment on this, she should err on the side of public notice and comment. The flexibility provision is only for limited use in obvious situations.

Moreover, although the administration had requested that the Finance Committee limit judicial review under this provision to that contained in section 205(g) of the Social Security Act, the Finance Committee, and with Senate passage of this bill, the full Senate, have rejected that request. Judicial review of rules and regulations promulgated pursuant to this section lies in section 706 of the Administrative Procedure Act as it does with all agencies required to issue rules pursuant to section 553 of the Administrative Procedure Act.

Because this bill provides for the application of uniform standards in the eligibility determination process, and because current law now provides for a face-to-face hearing at reconsideration, it is possible that fairness will be served eventually without requiring the payment of benefits through appeal to the administrative law judge. Time will tell. This bill provides for the payment of benefits through appeal to an ALJ for terminations through June 1986. Our original bill made such a provision permanent law. Senator COHEN and I have agreed to a 2-year limitation on this provision with the understanding that at the time this provision expires, an assessment will be made as to its importance, and if the significant procedural unfairness this bill is designed to address still remains, we will be at the head of an effort to extend this provision.

The bill also contains our provision requiring a five-State demonstration project to substitute a personal interview at the initial level of determination for the face-to-face hearing at reconsideration. The Secretary is to report on the results of that project by April 1, 1986. At that time, based on those findings and the experience with the face to face hearing at reconsideration as well as the many other reforms contained in this bill, Congress will be in a good position to judge the benefits of extending this provision permanently.

Senator COHEN and I have long favored the opportunity for a personal appearance by the disability applicant and beneficiary with the State disability examiner prior to termination or a determination of ineligibility. Such a provision was included in S. 476 as introduced. SSA attributed a cost to that provision of over $2 billion over 5 years. While we do not accept that as a valid estimate, we were unable to come up with our own. Since the face-to-face hearing at reconsideration was enacted into law in January of last year as part of the emergency package, we have agreed to pursue the personal appearance on a trial basis in five States to determine its effect on allowance decisions and the opinions of State disability examiners.

PAIN

The bill codifies the current SSA standard for the consideration of pain in determining eligibility. Basically this standard requires the presence of a medical condition which can reasonably be expected to cause the pain. The final version of our bill, as offered as a floor amendment on November 17, 1983, and as printed in the CONGRESSIONAL RECORD on March 15, 1984, is quite different. It codifies a pain standard, but it does not accept SSA's current pain standard. Our pain standard does not require evidence or a finding of a medical condition as the cause of the pain, because we recognize that an underlying medical condition cannot always be identified. Nor do we take the position that benefits should be granted based on the subjective evidence of the disabled individual alone. Our pain standard would require medical findings of the presence of pain, without the need to show a medical condition causing the pain.

SSA's pain standard has been the subject of frequent and lengthy litigation in which SSA often is the loser. The courts are not willing to accept SSA's rigid standard, for assessing pain, nor should we. In fact, while questions about the appropriate pain standard may linger in many minds, there is little doubt in my mind-and many others with more impressive credentials than I on the subject—that

the current pain standard used by SSA is not a correct one.

Since the bill requires SSA to conduct a study on the appropriate standard for pain, it would be wise for Congress to leave SSA with the flexibility to modify its pain standard in the event the issue become resolved. The bill gives SSA over 2 years to conduct the study, a period of time unnecessarily excessive in light of all we are learning and have learned about pain and in light of the work already being done by SSA on the subject. To legislate an inappropriate pain standard now might lock SSA into a position that it may seek to avoid a few months or a year from now. I hope the conferees will give careful attention to this provision and resolve to go forward with a 9 or 12 month study without codifying any standard at this time.

COMPLIANCE WITH COURT ORDERS

In June 1983, the Subcommittee on Oversight of Government Management held its second hearing on the social security disability program, with the focus this time being the role of the ALJ. We discovered at this hearing one of the difficult binds ALJ's find themselves in because of the Secretary's policy on nonacquiescence—her refusal to adopt as precedence for future determinations, decisions rendered by Federal district and circuit courts.

An ALJ takes an oath to follow the law, but may be directed by the Secretary to not follow the opinion of the appeals court of his/her circuit. This has become most visible as a problem in connection with court-ordered medical improvement standards, where the Secretary has refused to acquiesce. The result has been a spate of class action filing to force the Secretary to apply a circuit court ordered standard to all persons within that circuit. I understand there are some 30 to 40 class actions regarding the disability determination process presently pending.

With the very well-reasoned testimony of Paul Bender, constitutional law professor from the University of Pennsylvania, Senator COHEN and I concluded that the only appropriate congressional response was to require the Secretary to either acquiesce in circuit court decisions or appeal them to the Surpeme Court. The Secretary's nonacquiescence policy creates a no-win situation for affected beneficiaries, because when the Secretary decides not to acquiesce, she also refuses to appeal and since as the losing party, she is the only party to appeal, such court decisions can never get resolved by the Supreme Court.

The Secretary argues that her choices are not so easy. Were she to acquiesce in those decisions she did not choose to appeal or were the Supreme Court to deny her appeal, she would have to apply the circuit court standard within that circuit, and the result she argues could be several different standards being used in different circuits. Were she to apply a circuit court decision nationally, for the sake of uniformity, she would be elevating the circuit court to the role of the Supreme Court. At the same time, it is simply not acceptable to let the Secretary use her own unaccountable discretion to follow or not follow court precedent, and the purpose of the provision in this bill is to create the accountability by requiring the Secretary to report to Congress on all her decisions to not acquiesce and her decisions to acquiesce on significant decisions, including the specific reasons in support of her decision. This places the policy debate in the hands of Congress where it appropriately belongs.

This bill in no way sanctions the Secretary's nonacquiescence policy—indeed that is explicitly stated in the legislation; it merely provides a mechanism by which the Secretary's activity in this area can be closely monitored. It may very well turn out that the Supreme Court will settle the issue of nonacquiescence in the next few years.

COLA FAIL-SAFE

The Finance Committee chose to add a provision designed to protect the disability trust fund. The fail-safe provision would require the Secretary to adjust cost-of-living increases to disability beneficiaries if the fund is projected to decline to less that 20 percent of a year's benefits, provided Congress takes no action upon notification of such a projection.

While I can understand the committee's concern for the trust fund, I agree with my other colleagues who oppose separate treatment of beneficiaries by trust fund also oppose this system which would, in effect, allow an executive department bureaucrat to set the benefit levels for the disability program by calculating the estimated expenditures. Only Congress should have the responsibility to set benefit levels in social security programs.

FREQUENCY OF PERIODIC REVIEWS

The original S. 476 as introduced did not include a provision requiring the Secretary to establish guidelines for determining the frequency with which continuing disability reviews are to be conducted. The 1980 amendments merely require such reviews at least once every 3 years, implying they could be conducted more frequently. There is a legitimate concern, however, that without some very specific controls, disability beneficiaries could find themselves in the nightmare of continually being in the review process. This is particularly possible where a review results in an appeal to an ALJ or Federal district court which may take as much as a year or 2 years respectively.

The bill requires SSA to establish proposed guidelines for the frequency of subsequent reviews and to make such guidelines subject to public notice and comment. No one can be reviewed until these regulations are in place.

Mr. President, let me close with some acknowledgements.

Obviously, I have the sense of satisfaction that we all feel, that we are finally acting. I wish to express my gratitude and my thanks to Senator COHEN, my principal cosponsor. We have worked together on a bipartisan basis on this bill and similar bills and similar amendments on so many session days and nights of the Senate that I cannot recount them. He and his staff person, Susan Collins, have been steadfastly loyal to this cause. I commend them both on it.

I also thank all our cosponsors who have stood with us throughout. This has been a 2-year process—again, on a bipartisan basis.

I thank Senator DOLE and his staff for working with us. The Finance Committee has worked very carefully with us throughout this period and on this final legislative solution.

I am very much indebted to Senator LONG for his remarks today, for the help of his staff along the way, to try to come up with a solution which could satisfy the needs of the Social Security Administration for a fiscally sound program and the needs of the truly disabled who have been injured along the way.

I thank Linda Gustitus, of my staff, who has been at my side for 2 years on this matter. I thank all the staff for the assistance given to each other in fashioning what seems to be an equitable solution.

I look forward to a conference when we can work out the differences and come back with a final legislative package.

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

Mr. LEVIN. I am happy to yield to the Senator from Louisiana.

Mr. LONG. Mr. President, I congratulate the Senator from Michigan for the determined, tireless, and tenacious efforts he has extended to provide care for those who need care, for those who have a deserving case for it. I said as much at a time when the Senator was not on the floor, and I want to say it again while he is here.

The Senator does not desire that we add persons to the rolls who should not be on the rolls, persons who can obtain employment.

I hope we have a bill here that will be fair to the taxpayers as well as to the claimants.

I have said in my remarks for the RECORD and in my additional views that if this program is to succeed, we must find effective ways to open up

jobs for handicapped people who have the capacity to become productive members of society. I regret to say that this is a big oversight in our laws that exist today. When we have put that kind of employment program in place, I believe we will have a better overall program for the disabled. The fact that we do not have such a program today puts tremendous pressure on this program for persons who, because they are unable to find employment, find that they have little choice but to make the best case they can for receiving disability benefits.

I think that is part of our problem, and I believe that with the help of the Senator and others who have a similar concern for less fortunate people, perhaps in the next Congress, if not in this one, we can come up with a much more adequate program to provide employment opportunities for severely handicapped people who can be restored to the work force. We may need to provide some type of help—through a tax subsidy, if need be—to get the cooperation of employers to help make these employment opportunities available.

Mr. LEVIN. I thank the Senator from Louisiana.

I should like to address one additional remark to Senator DOLE. Senator DOLE is one of the most extraordinary Members of this body. I do not know of anybody who has greater demands on his time legislatively. He has many duties which he handles with great grace. He means a great deal to us in this body, on both sides of the aisle. Again, I want to thank him for his unwavering dedication to finding a fair solution to this problem, for his willingness and the willingness of his staff to work with people who are interested in this issue, to see if we could come up with a solution that is fair to the social security people and to the Treasury. I believe we have done that, and I express again my personal admiration to my friend from Kansas who, with all the sponsors and cosponsors of this bill, represents the best of bipartisanship in the Senate.

Mr. COHEN. Mr. President, I want to take this occasion to express my thanks to the Senator from Michigan.

Earlier this evening, I referred to the chairman of the Finance Committee as being Herculean in his efforts and accomplishments. If I had to go back into Greek mythology, I perhaps would have to draw the analogy of Sisyphus for the Senator from Michigan. He has been rolling this rock up a hill for the past 2 years; and, unlike the tragic Greek figure, he has helped to finally roll the rock to the top of the hill.

I also wish to thank Linda Gustitus for her tremendous effort on behalf of this achievement.

I thank the chairman again.

Mr. LEVIN. I thank my friend.

Mr. DOLE. Mr. President, I thank both Senators COHEN and LEVIN. As I indicated in my statement, they have been in the forefront of this matter.

I say to the distinguished Senator from Michigan that I estimated that even more important than the efforts of all Senators were the staff efforts. I said they had a hundred meetings, and I think that was low, far low. They had meetings lasting 2 or 3 hours, sometimes 4 hours, until late at night. They never gave up because their Senators never gave up.

I thank my colleagues, the Senator from Michigan and the Senator from Maine, primarily, and many others, because it has taken a long time to reach this point. This is not a perfect piece of legislation. There will be some discussions in the conference. But without the persistent efforts of these two Senators from Michigan and Maine, we would not have the bill before us.

Mr. SARBANES. Mr. President, as a cosponsor of S. 476, I am pleased to support this compromise amendment to address problems associated with the implementation of the periodic review provisions of the Social Security Disability Amendments of 1980. I have been particularly concerned that, since the Reagan administration's implementation of these provisions, my office has been deluged with requests for assistance from Marylanders who have received disability benefits for years, are unable to work, and are now being told that they are not disabled. Many feel that the accelerated review process is being conducted much too hastily and with little thought to fairness or to the consequences of removing people from the disability rolls who are, in fact, unable to work.

Earlier this year, I submitted testimony for the Senate Finance Committee's hearing on social security disability reform, and noted that some Marylanders who have contacted me are being denied disability benefits after having been declared disabled for the past 10 years or more. In some instances, the disabled citizens of my State receive notice that they are being denied disability benefits while they are actually in the hospital receiving treatment for their health problems.

Nationwide, the accelerated review process has generated such heated controversy that many States have imposed a moratorium on decisions leading to the cessation of benefits or are functioning under a court-imposed moratorium. In Maryland, the State superintendent of schools, David Hornbeck, imposed such a moratorium on October 3, 1983, noting the confusion that developed when the Social Security Administration abandoned the termination review standard of "medical improvement" in favor of a concept of "ability to engage in substantial gainful activity." In December, the U.S. District Court for the District of Maryland essentially reaffirmed this decision, finding that "in essence, the Secretary (of HHS) must establish that the claimant's medical condition has improved (in order for that claimant to be removed from the disability rolls)."

Due to the great personal injustices of the present disability review process, affirmed by several State actions and court orders, I strongly support this compromise amendment. This thoughtful legislation would allow disabled individuals to continue to receive disability benefits if their condition was the same or worse than when they were first allowed to receive benefits and if the administration fails to provide evidence that the disabled beneficiary has benefited from advances in medical or vocational therapy or technology, that the original decision was made through error or fraud, or that new diagnostic technologies show that the individual's impairment was not as serious as originally believed. These modifications seek to address the many problems Marylanders and others throughout the Nation have experienced, while still providing that those who are clearly no longer disabled and can work will be removed from the disability rolls. Because of the complexity of this issue, I know that there are still differences to be worked out between the House and the Senate, but I urge prompt passage of this measure so that this process can begin.

Mr. RIEGLE. Mr. President, today we are not simply enacting needed and critical legislation, we are writing the final lines of a sad chapter of American history. Hundreds of thousands of disabled Americans, former workers who have paid taxes and paid for their disability insurance protection, were unjustly denied disability benefits. Some died from those disabling conditions they were no longer supposed to have, others after their benefits were cut who became stricken with grief and worried sick about an uncertain financial future, took their own lives. Although it is late in coming, I am pleased, that with the passage of this legislation, we will finally put this matter behind us.

It is hard to imagine an issue that has created a greater commotion in our six Michigan regional offices than the almost constant flow of phone calls from disability beneficiaries who in utter disbelief find themselves thrown off of the disability rolls. Some of these individuals are unable to speak for themselves due to extreme physical and emotional hardships they have experienced as a result of a severe disability. Many have seen their conditions grow worse as they have been forced to endure the hardships of the administration's review process.

Hopefully, with the enactment of this legislation, those days are over.

Mr. President, even though I am extremely pleased that we are resolving this critical matter, I think it is absolutely astounding that it has taken us this long to act. A group of us, on both sides of the aisle, have been working toward this day for over 2½ years, dating back into the previous 97th Congress. In spite of all the hard evidence that was available concerning the extreme hardship and devastation that these disability reviews were having on hundreds of thousands of Americans, the administration continued to oppose corrective legislation until last month, just on the heals of the passage of a similar House bill by a 410-to-1 vote. It is sad to think that it took almost unanimous action on the part of the House of Representatives to turn the administration around on this issue. It is even more disgraceful, that more than a month after the announced moratorium on removing individuals from the rolls, 40,000 beneficiaries are without benefits due to the failure of this administration to issue regulations governing the moratorium. While public positions on this matter may have changed, it we are to judge this administration by its actions, it looks like business as usual.

The major section of this bill, introducing a medical improvement standard of review before terminating disability benefits should end the hardships and suffering we have seen over the last few years. With only a few exceptions, the administration must now show that an individual's disability has improved before discontinuing benefits. While I do not support the sunsetting of this provision after 3½ years, we should have sufficient experience with this new procedure at the end of that period to evaluate its effectiveness. There is one provision in the bill that causes me some concern—the so-called fail-safe provision. Under this provision, in the absence of congressional action—and we have seen how long it sometimes takes the Congress to act—the Secretary of Health and Human Services would have the authority to scale back cost-of-living increases for disability beneficiaries if the disability insurance trust fund falls below 20 percent of 1 year's benefits. It is my hope that this provision, which would treat disability beneficiaries different from other social security beneficiaries, will be dropped in conference.

Mr. President, in closing I should like to say that while there were many of us who worked long and hard to drag this legislation through the Congress, there is no one who deserves more credit than my good friend and colleague from Michigan, Senator LEVIN. S. 476 is his bill, and it was in large part through his personal diligence and perseverance that we were able to get to where we are today. Congress and disabled Americans across the country owe Senator LEVIN a tremendous debt of gratitude.

Mr. KENNEDY. Mr. President, today the Senate is considering legislation which will go a long way in alleviating the needless and unfair suffering of hundreds of thousands of disabled Americans who receive social security disability insurance. I wish to commend my colleagues Senator LEVIN, Senator COHEN, and Senator DOLE for their hard work in reaching a compromise on this critical issue.

I believe I can confidently say that my colleagues in the Senate are all aware of the grave situation which has existed in the SSDI program since 1981 when the Social Security Administration began using insensitive and stricter guidelines to determine disability. It is true that Congress adopted legislation in 1980 requiring SSA to conduct reviews of beneficiary disability in response to the significant increase in the number of individuals collecting SSDI benefits and the increased cost of the program. But, Mr. President, Congress did not intend for SSA to conduct these reviews based on an assumption that many beneficiaries were not truely disabled and that their benefits should be terminated. No one anticipated the kind of abuses that the Administration fostered through its use of severely restrictive review guidelines, the speedup of these reviews and the encouragement of reviewers to terminate so capriciously that over 70 percent of all denials have been reversed by the administrative law judge.

In my home State of Massachusetts, disabled citizens testified to these injustices before a special Commission on Social Security Disability. One woman testified that her benefits were terminated despite 12 recent operations on her stomach, hand, neck, and back. Another young man born with cerebral palsy testified that he was examined by a contracted physician who totally ignored this medical history. Another person who had an artificial leg and an abscessed lung lost his benefits while he was in the hospital.

People who are mentally impaired--the most vulnerable group of all—have suffered most. In some States, up to 50 percent of the mentally ill have had their benefits terminated—many left without the means to obtain shelter and food and forced to return to hospitals and institutions. Surely monetary savings cannot take precedent over alleviating the needless suffering of our disabled citizens and in some cases, preventing unnecessary deaths. The Secretary of Health and Human Services, Margaret Heckler, has responded to the outcries of disabled individuals by proposing new regulations and moratoriums on the review process. But, these actions do not go far enough. Comprehensive reform as embodied in the legislation before us today is vital to disabled Americans. The House of Representatives has already overwhelmingly passed SSDI reform legislation with just one dissenting vote.

Although I am pleased that this compromise will be acted on today, I would like to express my concern regarding some of the provisions. The 3-year sunset of the medical improvement provision is particularly troubling to me. The heart of this SSDI reform is the medical improvement standard and the requirement that medical improvement be shown before benefits to beneficiaries can be terminated. As well, this compromise places the burden of proof for substantiating that medical improvement has not taken place on the beneficiary and not on the Secretary of HHS. I believe that those individuals who are mentally ill or physically unable to gather this needed proof, will continue to suffer. The failsafe financing provision of this compromise requires that the cost-of-living increases for disability beneficiaries be scaled back to the extent necessary to maintain the SSDI trust fund balance above 20 percent. I firmly believe that our Nation's disabled citizens should not be punished in this manner. It is my sincere hope that the conferees to this bill will carefully consider the ramifications of these provisions on our disabled people during their meetings.

We have a commitment to all Americans who are disabled and we must alleviate the needless suffering of those individuals who have been unfairly denied benefits or who have suffered needless mental anguish as a result of fear of loss of benefits. I believe that our actions here today will alleviate this suffering, and I urge swift action on this legislation.

Mr. BINGAMAN. Mr. President, I strongly support S. 476, which makes substantial revisions in the social security disability reviews process. In my opinion, this legislation, of which I am a cosponsor, is badly needed and long overdue. Comprehensive reform legislation has already been passed by the House on March 28, 1984, and the administration has recently announced its plans for imposing a moratorium on removing any more disabled people from the benefit rolls until reform legislation is enacted. Very serious problems have been permitted to exist for too long as a result of this process.

I am personally aware of the tragedies which have been caused as a result of this flawed program. The volume of social security disability casework by my field offices is greater than any other issue. Disability cases are also the most heart rending. On

October 8, 1983, I was pleased to be able to hold a field hearing of the U.S. Senate Committee on Governmental Affairs in Santa Fe on the subject of social security disability reviews. Firsthand testimony was heard from a cross-section of New Mexicans who told of their painful experiences caused by an insensitive, inefficient, and dehumanizing process. Testimony was also received from doctors who treat claimants, attorneys who represent claimants, the State of New Mexico Disability Determination Unit director, an administrative law judge who hears appeals, and a representative of the Governor's office. Many others submitted testimony that will be included in the printed hearing record.

Like those cases in New Mexico I am familiar with, other Members of Congress and the American people have read and heard, on an almost daily basis, depressing stories about termination of disability benefits for individuals who are clearly still disabled. These are people who could not face the prospect of battling a hostile review process or of losing their only source of income.

Other individuals, shortly after having their benefits terminated, had died of the same illness which examiners had found no longer disabling. Nearly all of the terminations have resulted in needless pain, suffering, and loss of income for thousands of disabled individuals and their families. Ironically, many who have been found recovered and have had their benefits terminated were later, upon closer examination, eventually restored to the disability rolls. But often it was only after months of anguish at the hands of a wasteful and inefficient system.

This flood of terminations stems largely from two factors. One was the act of Congress, the so-called Bellmon amendment, which mandated in 1980 that disability recipients be reviewed every 3 years to determine if they were still eligible for benefits. These reviews, called continuing disability investigations, or CDI's, were scheduled by Congress to begin in January 1982. The second factor behind the great number of terminations was an administration bent on reducing Government spending regardless of human costs. Wielding the Bellmon amendment, the Reagan administration decided to accelerate the implementation date to March 1981, and began ordering disability reviews at an alarming rate.

In fiscal 1982, some 497,000 disability recipients, or almost 18 percent of the total, found their cases under review. Some 340,000 individuals have been cut off the rolls since March 1981 when the Reagan administration began its review program.

No one can argue with the need for review to insure that only those who are actually disabled be permitted to continue to receive disability benefits. But the manner in which the review is conducted should be sensitive to the hardships which it can cause. The review process has been frought with insensitivity, inefficiency, and blatant abuses.

Because of the abrupt acceleration of the reviews, many individual cases received only the most cursory examination. State disability determination offices were forced to accept a threefold increase in their workloads without an increase in funding or support. Many reviews were accomplished simply on paper, without ever seeing another human being, or by a 5-minute examination by a physician who had never seen the recipient before. Often the statements of personal physicians have either never been sought or simply disregarded. Most reviews centered on a profile of disabled persons who were thought most likely to be able to go back to work. Several days of hearings before the Senate Special Committee on Aging, the Senate Governmental Affairs Committee, and other groups have documented an irrefutable pattern of unfair—and improper—denials of disability benefits to individuals, particularly those suffering from severe psychiatric problems.

Nationwide, some 45 percent of the disability recipients reviewed were sent notices that their benefits would be terminated. On its face, that 45 percent would seem to indicate that a good number of recipients were no longer disabled. The records of appeals, however, tell a different story. Twelve percent of the terminations that were appealed received reversals at the reconsideration stage. Over 60 percent of the terminations appealed to social security administrative law judges were reversed. The General Accounting Office found, in a study of 1,400 appealed cases, that 9 out of 10 terminations of mentally disabled persons were reversed by administrative law judges—the first face-to-face interview for most of these individuals. These recipients were still disabled, but subjected to the stressful and unfair process of being reevaluated.

Those charged with adjudicating appeals, the administrative law judges, have been forced to endure heavier caseloads. Those who have not adhered to the goals established have been subjected to retraining and other reprisals.

The Social Security Administration, the lead administration agency, has even admitted that some physically disabled persons died soon after the agency's examiners had ruled them healthy. In 4 of 11 cases reviewed in an internal GAO study, the former disability beneficiaries died of the very illnesses that the examiners had decided were not disabling. The study admits that the decision to terminate benefits was not correct and, although error was admitted, little good it did.

So overzealous have the examiners been that one man who received the Medal of Honor for valor in Vietnam by President Reagan was cut off from disability upon review. This individual was told he could work even though he had two pieces of shrapnel in his heart, both his arms and legs were severely impaired, one lung was punctured, and he was in constant pain. Although his benefits were restored upon review, he went through countless, unnecessary hours of pain and suffering.

S. 476

S. 476, the bill as reported by the Senate Finance Committee, makes a number of important changes in the disability review process. It would require a finding of medical improvement when disability benefits are terminated, it would provide for a review and right to personal appearance prior to termination of disability benefits, it would provide for uniform standards in determining disability, it would provide continued payment of disability benefits during the appeals process, and it would provide for other important changes.

Mr. President, one provision of legislation which I find somewhat troubling is the language which would require the Secretary to give notice to the public and Congress on decisions to acquiesce or not acquiesce in U.S. court of appeals decisions affecting the Social Security Act or regulations. I feel stronger language more similar to the language in the House-approved bill, which would insure compliance with court orders is needed.

I feel very strongly that compliance with court orders is a fundamental legal principle and to not do so violates the Constitution. The current process whereby the Social Security Administration is denying benefits to thousands of people in situations similar to cases in which Federal courts have ordered payment is just plain wrong. The capricious action by a Federal agency, motivated by cost savings at the expense of human pain and suffering, needs to be corrected. With the exception of the Internal Revenue Service, which follows the precedents set by Federal appeals court decisions within the circuit where they were issued but may seek a different ruling in another circuit in the hope that the Supreme Court would agree to resolve the conflict, all other agencies other than the Social Security Administration adhere to Federal court decisions. Social Security, however, does not regard appeals court decisions as binding even in the circuit where they are issued. This arbitrary viewpoint results in unfortunate administrative burden and cost to the Government

and taxpayers for unnecessary litigation. It also results in needless cost and delay to individual beneficiaries. If language like that contained in the House-passed bill is enacted, then if a Federal appeals court issues a ruling favorable to social security recipients, the Government must either apply it uniformly to all beneficiaries living in the circuit or appeal to the Supreme Court. I urge my colleagues who will resolve the difference between the House-passed bill and the Senate bill to resolve this issue in favor of the House-passed bill—forcing Social Security to acquiesce to court decisions.

Mr. President, I ask unanimous consent that an article by Robert Pear, which appeared in the New York Times on May 13, 1984, be printed in the RECORD.

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

U.S. FLOUTS COURTS IN DETERMINATION OF BENEFIT CLAIMS—SOCIAL SECURITY AGENCY OBEYS IN SPECIFIC CASES BUT WILL NOT EXTEND PRINCIPLES

(By Robert Pear)

WASHINGTON, May 12.—The Social Security Administration is denying benefits to thousands of people in situations similar to cases in which Federal courts have ordered payment, and Federal judges around the country have denounced the practice as lawless.

Social Security officials say they always obey decisions of the Supreme Court and apply them in cases comparable to those the Court decides. But they say they do not consider decisions of lower courts binding, except for the plaintiffs in the individual cases, when the rulings and interpretations conflict with the agency's regulations and policies.

The officials say they cannot operate a uniform nationwide program if they have to follow the potentially conflicting decisions of various courts around the country.

DISABILITY CLAIMS INVOLVED

Judges, however, say such a practice of "nonacquiescence" in the decisions of lower courts undermines the rule of law and violates the Constitution. In the last year, at least two Federal judges have threatened to cite the Secretary of Health and Human Services, Margaret M. Heckler, for contempt of court.

Many of the rulings the Social Security Administration disregards involve disputes over eligibility for disability benefits, monthly payments to people who are too ill or injured to work.

In the case of Audrey Nelson, a North Dakota woman, for example, the Social Security Administration stopped her disability benefits in 1981, saying back injuries she suffered in 1972 no longer prevented her from working.

The United States Court of Appeals for the Eighth Circuit, however, in ruling in Mrs. Nelson's favor, said the Social Security officials were disregarding several court decisions that required them to consider pain as a factor in assessing disability.

"For some unexplained reason," the appeals judges said, "the Secretary insists upon ignoring this court's statements" that she must consider subjective complaints of pain, even if they are not fully corroborated by objective medical evidence.

Many of the disregarded decisions, some of them involving old-age and survivor benefits and Supplemental Security Income, a Federal welfare program, as well as the disability payments, contain explicit guidelines for the agency's action on benefits in certain situations and say that these guidelines should apply in all similar cases.

But the Social Security Administration, either by issuing a formal notice of nonacquiescence in the court's decision or by merely disregarding it through a policy of what its officials call "informal nonacquiescence," follows the decision only in the case at issue. The officials say they do not even have to apply the court's ruling to similar situations in the same state or judicial circuit.

In a decision two weeks ago, the Chief Judge of the Federal District Court in Minnesota, Miles W. Lord, said Social Security officials were acting in "direct contravention of Federal court edicts." He wrote:

"The Secretary apparently has decided to obey only the edicts of the U.S. Supreme Court. At the same time, however, the Secretary refuses to appeal adverse rulings to the Supreme Court, thus depriving the Court of the opportunity to issue opinions on disputed issues."

AN ISSUE IN CONGRESS

In March, the House of Representatives passed a bill meant to increase compliance with court orders. Under the bill, if a Federal appeals court issues a ruling favorable to Social Security recipents, the Government must either apply it uniformly to all beneficiaries living in the circuit or appeal to the Supreme Court. But the Reagan Administration strongly opposes this provision, and it is uncertain whether the Senate will accept it.

In the last year many Federal judges have complained of the Social Security Administration's attitude toward decisions of the lower courts. In Colorado, Federal District Judge John L. Kane Jr. said the Secretary's actions "reveal a clearly rebellious frame of mind."

In California, Judge Harry Pregerson of the Court of Appeals for the Ninth Circuit said the policy was like the "pre-Civil War doctrine of nullification, whereby rebellious states refused to recognize certain Federal laws within their boundaries."

"The Secretary's nonacquiescence not only scoffs at the law of this circuit," Judge Pregerson said, "but flouts some very important principles basic to our American system of government—the rule of law, the doctrine of separation of powers imbedded in the Constitution, and the tenet of judicial supremacy." That tenet was laid down by the Supreme Court in 1803.

IRS SIMILARITY ASSERTED

In Arizona, Federal District Judge Valdemar A. Cordova struck down a recent nonacquiescene notice as "contrary to law." It manifested a "conscious and willful decision" to disregard appellate court rulings, he said.

Louis B. Hays, an Associate Commissioner of Social Security for the last three years, now temporarily assigned to the Office of Management and Budget, told Congress, "We have a policy of either acquiescing in court decisions and following them, or nonacquiescing in court decisions and not following them." He said this policy "has some similarities" to the practice of the Internal Revenue Service.

Joel Gerber, special assistant to the chief counsel of the Internal Revenue Service, said the tax agency followed the precedent set by Federal appeals court decisions within the circuit where they were issued. He said the tax agency might, at the same time, seek a different ruling in another circuit, in the hope that the Supreme Court would agree to resolve the conflict.

By contrast, Social Security officials say they do not regard appeals court decisions as binding even in the circuit where they are issued.

NO THREAT TO COURTS

For three years, the Reagan Administration has been trying to trim the disability rolls by cutting off benefits for people able to work. Officials acknowledge that they have made errors in this process, and last month, under criticism from Congress and many governors, Social Security officials suspended their efforts to cut off disability payments. But the moratorium did not apply to the thousands of people with cases pending in Federal courts or to people seeking benefits for the first time.

Some Justice Department lawyers have privately expressed doubts about the propriety of Social Security's nonacquiescence policy, but the department has often defended it in court.

Testifying recently before the Senate Finance Committee, Carolyn B. Kuhl, a deputy assistant attorney general, said, "The nonacquiescence doctrine, like the traditional Government practice of challenging settled precedents in test cases, in no way threatens the position of the judicial branch."

Mr. BINGAMAN. Mr. President, S. 476, as amended, despite the weak language on acquiesces to Federal court decisions, deserves to be approved by the Senate. This reform legislation, as a whole, is badly needed at this time. I hope my colleagues will act as expeditiously as possible to enact needed reforms and to put to an end the pain and suffering which has plagued the disability review process.

Mr. BYRD. Mr. President, ever since the Reagan administration began its all-too-enthusiastic removal of disabled beneficiaries from the social security disability insurance program rolls in 1981, it has been clear that legislation would be required to bring order to the inevitably-resulting chaos.

While it is true that the administration was responding to congressional instructions to more carefully and frequently check continued eligibility for this program, as the New York Times reported, Social Security Administration officials "quietly made clear * * * that more claims were to be denied."

The result of the administration's misguided zeal was that 485,000 persons have been abruptly found ineligible for the program since the frenzied reviews began in 1981—almost 20 percent of the program's caseload. But, in a telling comment on the absence of care and precision with which these reviews were undertaken, appeals are reversing nearly half of those terminations.

If this were the full extent of the problem with the disability insurance program, it would have been sad enough. But this disruption in the lives of beneficiaries has been visited on persons who often are neither physically nor emotionally equipped to contend with sudden adversity. As a result, some terminated beneficiaries, who either did not realize their rights of appeal or were unable financially or emotionally to pursue those rights, suffered great anguish, and in some cases, emotional breakdown.

Not only did circumstances deteriorate far beyond the level of acceptability in terms of the effect on disabled beneficiaries and their families. The States, which have been asked by the Federal Government to conduct the eligibility determination process on its behalf, have been buffeted time and again. As one illustration, State after State, on the front lines where the victims of the administration's eligibility review process are highly visible, has simply refused to continue the review process in accord with administration instructions. When coupled with those States where Federal courts have ordered the use of different review criteria, fewer than half the States currently are using the administration's review criteria—an unprecedented circumstance.

My own State of West Virginia was substantially affected by this entire situation. Hundreds of disabled persons who had relied—and many of whose families had relied—on the disability insurance benefits were shocked to learn they had been terminated. Many disabled persons had experienced no improvement of any kind in their condition since they were found initially to be eligible for the program. I have received dozens of letters expressing this shock, and always asking the question that defied answer: "Why? Why has the Federal Government done this to me?"

Ultimately, as it had in many other States, this picture became so indefensible that my State's Governor felt forced to call a halt to further terminations under the eligibility review until some degree of logic was returned to the program by either the administration or the Congress. Unfortunately, despite some highly publicized gestures that were claimed to provide sufficient and acceptable resolution to this gigantic problem, the administration failed to confront it adequately. Consequently, it was left to Congress to pick up the pieces.

Fortunately, Mr. President, there were Senators and Members of the other body who recognized early on that the administration's policies had to be changed, and that, to prevent repetition of this unacceptable episode, review procedures and criteria—that fully protected current beneficiaries and new applicants while also assuring that individuals not truly totally disabled would leave program rolls—must be enacted into Federal law.

Several Senators were key in this effort, including Senators SASSER, PRYOR, MOYNIHAN, COHEN, and HEINZ. But special attention is due the distinguished Senator from Michigan (Mr. LEVIN), who, following hearings held by the Subcommittee on Oversight on which he serves as ranking member, introduced remedial legislation with the subcommittee chairman, Mr. COHEN, and others of the Senators named previously—2 years ago.

In the intervening period, Senator LEVIN has been unswervingly committed to obtaining enactment of this vital legislation to provide relief to the Nation's disabled citizens and return order to the program's current chaotic state. Without his bulldog determination to force the Senate to address the crisis in the disability insurance program created by the administration, we would not be considering this bill today.

The distinguished chairman of the Finance Committee (Mr. DOLE) and the able ranking member, Mr. LONG, and other Senators have described the provisions of the bill in considerable detail, and I will not seek to cover the same ground. While the bill does not do everything precisely as I believe would be most desirable, I am confident that every Member of this body can say the same thing. What is most important is that a reasonable balance has been achieved between protecting the disabled, providing for an administerable program, and insuring that persons not truly disabled will be found and removed from the program in accord with a humane, careful eligibility review process that can be understood by all involved.

I am hopeful that in the conference committee with the House on this legislation, it will be possible to agree on a final bill that will come closer to the House version in assuring that persons are removed from the rolls only if their condition is medically improved from the time they were determined initially eligible; that will come closer to the House version in providing direction to the Social Security Administration on how it is to respond to Federal court decisions on appeals of eligibility denial or termination cases; and that will not jeopardize these essential benefits to fully qualified disabled citizens when the Disability Insurance Trust Fund experiences a shortfall or revenue compared to outgo.

Mr. President, I am confident that reasonable agreements on these important conference issues can be achieved. And I am certain that the legislation before us today is infinitely preferable to the state of chaos and pain that has beset this vital program for nearly 3 years.

I am pleased to support this bill, and urge all Senators to do likewise. It is essential legislation coming before us none too soon.

Mr. DOMENICI. Mr. President, I rise in support of the bill offered by the Finance Committee to strengthen the social security disability program. I want to commend my colleagues for their hard work on this very important issue.

This amendment is desperately needed to correct serious problems in the way the social security program reviews the eligibility of disabled Americans for benefits. Every Senator can point to heartbreaking cases in his or her State to confirm this. In my own State of New Mexico, I know of the tragic example of a man who had been receiving disability benefits since 1977 because of a heart condition. He was removed from the program in 1982. He appealed this decision for 12 months and was still waiting for action when the was stricken with a massive heart attack and died.

This is more than just an isolated incident. It is one of many tragedies caused by a disability review process that has been administered with too much zeal and too little compassion. Most of all, the process lacks the critical balance between the need to run an efficient program and the need to help America's disabled citizens. Numerous reports, studies, and this Senator's own direct observations confirm this.

Congress must act to restore the proper balance to the social security disability program. While the Social Security Administration (SSA) must continue to review beneficiaries to insure that they meet the standards of disability in the law, it must also improve the quality of the reviews and protect the rights of the disabled.

The amendment before the Senate addresses the major areas of concern. It would require that the SSA show that a recipient had medically improved since he or she first came on the rolls in order to remove the recipient from the program. This provision "sunsets" in 3 years. It would also require the SSA to consider the combined effect of all of an individual's impairments in determining eligibility for benefits. It would temporarily delay reviews of all mental impairment disabilities until guidelines are improved. It would allow beneficiaries removed from the program before June 1986 to continue to receive benefits while they appeal the decision. Finally, it would help insure solvency in the disability trust fund by requiring the Secretary to adjust benefits if the trust fund reserves drop so low as to endanger benefit payments.

Mr. President, I was convinced last November, when the Senate voted on a similar amendment, that this ap-

proach was the best available solution to the problems in the disability program. I voted for the amendment, but a majority of my colleagues needed more time to consider the situation.

The situation has not improved, so Congress must act. The amendment before us would permit the social disability program to carry out its basic purpose in a way that is simple, fair, and humane. It also contains provisions which I consider very important to insure that future benefit increases do not precipitate a bankruptcy crisis in the disability trust fund similar to the 1983 financial crisis in the retirement fund. I urge my collegues to join me in voting for his bill.

Mr. THURMOND. Mr. President, I wish to express my support for the measure now before the Senate, and to commend the managers of the bill, the distinguished chairman of the Finance Committee, Senator DOLE, and the able ranking member, Senator LONG, for their efforts in bringing this legislation before the Senate. I also wish to commend Senators COHEN and LEVIN, who authored the original version of this bill, for their longstanding interest in improving the social security disability program.

Mr. President, the reform of our social security disability laws is vitally important to many Americans. I have received countless phone calls and letters from South Carolinians who have suffered through the termination of disability benefits. Administrative action under current law has produced some unintended and many undesirable results. I believe that this measure will restore a great degree of fairness and equity to the disability determination system.

Mr. President, I am especially pleased to see two provisions included in this legislation. One is the section which permits individuals notified of a termination decision to elect continued disability benefits and medicare coverage during the appeal process. This is a particularly worthwhile provision which I was pleased to sponsor as an original bill. The second provision is the suspension of eligibility reviews for individuals with mental impairment-related disabilities during the revision of criteria for determining eligibility. The extensive problems in the handling of disability cases with a mental impairment basis necessitates this temporary moratorium.

Mr. President, I am pleased that this matter has been brought before the Senate, and I urge my colleagues to support it.

Mr. GLENN. Mr. President, I am pleased to be a cosponsor of S. 476, legislation to make urgently needed reforms in the disability review program. This legislation will correct many of the injustices and abuses that have occurred with the continuing disability investigations (CDI's), and will protect truly disabled persons and their families from arbitrary benefit cutoffs. I urge my colleagues to support S. 476.

This legislation is long overdue. All Senators have been hearing the same cries of outrage from their constituents about the injustice, arbitrariness, and cruelty of the disability review process. Many of our caseworkers are working overtime to help disabled persons appeal their terminations and to inject some measure of compassion and reason into the stressful review process.

I believe we have a responsibility to act as quickly as possible. Since March of 1981, when the accelerated reviews began, more than 470,000 beneficiaries have been terminated; 160,000 of those persons were reinstated after the lengthy appeals process. The appeals process is clogged with more than 120,000 cases currently pending before administrative law judges. Some individuals will have to wait 6 to 12 months for their hearing date, and we know that in a majority of cases, the administrative law judges reverse the termination decision.

Federal courts are becoming overwhelmed with disability cases—41,000 of the 44,000 lawsuits pending against the Department of Health and Human Services involve disability claimants. The lengthy appeals process presents financial hardship and physical and emotional stress to these disabled Americans.

I am particularly concerned about the situation in my home State of Ohio, where there have been 50,500 continuing disability investigations. As a result, 23,822 persons have been terminated from the disability program. An estimated 10,000 have been reinstated on appeal, indicating that many had been mistakenly terminated in the first place. The pervasive confusion and unfairness of the termination process compelled the Governor of Ohio to impose a moratorium on all continuing disability reviews. Governor Celeste has refused to allow disability reviews to resume until Congress acts to improve the process. Similar steps are being taken in other States, either under Federal court orders or by their own initiatives.

The roots of this problem date back to 1980, when Congress—in response to reports that social security disability payments were being made to ablebodied persons—asked the Social Security Administration to periodically review disability cases to insure that Federal benefits only go to those who qualify according to the law's strict standards for severe and extended disability. This was a proper and appropriate response to a legitimate concern.

Apparently, however, administration officials perceived this law as an opportunity to make dramatic budget savings, and instituted the review process at an accelerated rate, lacking carefully developed termination criteria or thorough training of disability program workers. Congressional intent has been misinterpreted and agency action has been misguided. Federal court decisions have called the agency's termination procedures unfair, unscientific, and arbitrary, and we now face a situation of continued procedural nightmares unless we pass this corrective legislation.

S. 476, as amended by the Finance Committee, includes the following elements: establishes a medical improvement standard; provides continued benefits during appeal; institutes a moratorium on reviews of persons with mental impairments until the eligibility criteria are revised; requires that reasonable efforts be made to insure that a qualified psychiatrist or psychologist participate in the evaluation of mentally impaired claimants; requires the Secretary to indicate to Congress and the public whether the agency intends to acquiesce or not acquiesce to U.S. Court of Appeals decisions dealing with social security disability; requires that the combined effect of multiple impairments be considered in determining the severity of disability; requires that a study be made concerning the evaluation of pain in determining eligibility for disability benefits; requires that terminated beneficiaries be given opportunity for a face-to-face evidentiary hearing at the reconsideration stage; requires the Secretary to make reasonable efforts to obtain an individual's complete medical records before seeking a consultative examination; reauthorizes section 1619 of the Social Security Act, which permits severely impaired individuals to receive a special supplemental security income payment and maintain medicaid eligibility despite some earnings; and establishes a "fail-safe" mechanism whereby the cost-of-living adjustment for disability beneficiaries would be adjusted if the trust fund became insolvent.

This legislation makes moderate and necessary changes to insure that we effectively remove nondisabled persons from the program without unfairly hurting truly disabled persons. Social Security disability is an insurance program; it is not welfare. Employees contribute to this program for protection against unexpected illness or injury. We are violating their trust and our promise when we allow this program to be administered so unjustly.

I encourage my colleagues to join me in supporting S. 476.

Mr. LAUTENBERG. Mr. President, I am pleased to rise in support of S. 476, the Social Security Disability Amendments of 1984. This legislation will resolve the many problems that

have developed in the administration of the disability program. It will help to overcome many of the sources of uncertainty and unfairness to which disabled workers have been subjected over the last 3½ years. As a cosponsor of this bill, I am glad that it is now being considered. It is important that we begin to put this difficult period in the disability program behind us.

The major provisions of S. 476 include a requirement that a beneficiary be found to a have medically improved before his or her benefits can be terminated; continuation of benefits for a beneficiary who is appealing a termination decision; and a moratorium on eligibility reviews for people with disabilities based on mental impairments. Other provisions include authorization for demonstrations in several States in which beneficiaries would have the opportunity to appear in person when their eligibility is being reviewed for the first time.

Mr. President, I have been disturbed by the reports that I have had from constituents about arbitrary decisions to remove from the social security rolls people who were indeed disabled and unable to work. After lengthy appeals and much anguish and hardship, many of these people were returned to the rolls and their back benefits were paid to them. These decisions to stop benefits should never have been made in the first place, and would not be made under the provisions of this bill. This bill requires that a person be maintained on the social security rolls if there has been no improvement in his impairment and the person is still unable to work. Furthermore, if a person is declared ineligible, but wishes to appeal this decision, his benefits will be continued until the appeal is decided. Should the appeal be denied, the person would, of course, be expected to repay benefits paid from the time of the original termination. These provisions will expire after several years to allow Congress to review their effectiveness.

The chaos in the disability program has harmed both the disabled people involved and the credibility of the Social Security Administration itself. Careful standards are important in a program such as this—only people who are unable to work at all should be receiving disability benefits. But in the process of maintaining the integrity of the program, only the truly ineligible should be dismissed from the rolls. The legislation being considered by the Senate today will go a long way to assuring the proper and compassionate administration of the disability program. I urge its immediate passage.

Mr. METZENBAUM. Mr. President, I have a number of concerns about the compromise bill offered by Senators LEVIN and COHEN. I support the measure because I hope it will emerge from conference in a significantly improved form.

The system of periodic review under the social security disability program has been reduced to a shambles by the heavy-handed tactics of the present administration. There is an urgent need for legislation to be passed and passed swiftly, if the program is ever to regain the confidence and trust of the American people.

Mr. President, I have recorded my criticisms of the social security disability program at some length in recent debates on this subject. Suffice it to say that what Congress intended to be an orderly and humane review became, under the present administration, an inquisition. The rights of social security disability recipients were trampled upon and, in many cases, lives were destroyed. We hope to prevent that from happening in the future by passing reform legislation.

Mr. President, there is one other major issue which this compromise bill fails to address and that is the Social Security Administration's policy of "nonacquiescence" with regard to Circuit Court of Appeals' decisions affecting the disability program.

Under the Federal judicial system, decisions of the circuit court of appeals are considered the "law of the circuit" and constitute binding case law on all district courts within the circuit. If two circuits rule differently on a particular issue, the Supreme Court will review the issue to settle the dispute.

My concern is that the Social Security Administration does not follow U.S. Courts of Appeals decisions with which it disagrees either nationwide or within the circuit of the ruling. While the agency does obey the court's ruling in the particular case being adjudicated, the interpretation of the law from the court is not considered binding by the agency either for State disability agency operations or for Federal Social Security Offices.

In addition, the agency frequently does not appeal district court or circuit court opinions with which it disagrees. Therefore, the Supreme Court is not able to review the issue and render a decision with which the agency would be forced to comply.

The policy has been vigorously criticized by Federal judges and outside legal experts since it undermines the basic rule of law and allows Social Security to use administrative inaction to circumvent the legal judgment of the Federal courts. A judge of the Court of Appeals for the Ninth Circuit has stated that this policy "flouts some very important principles basic to our system of Government," including "the rule of law."

The policy of nonacquiescence only serves to undermine the relationship between the Social Security Administration and the Federal courts. If the Federal circuit courts hand down decisions that appear at odds with the purposes or operation of the program, the Supreme Court should be given the opportunity to rule. If the agency wishes a change in the law, then it should submit legislation to Congress. However, there is no reason to allow the Social Security Administration to ignore the law as determined by the highest Federal court in each circuit, simply because the administrators view the Federal court's decision as mistaken.

I, therefore, belicve that the Social Security Administration should either apply the decisions of circuit courts of appeal to at least all beneficiaries residing within States within the circuit, or appeal the decision to the Supreme Court.

Unfortunately, this compromise bill does not resolve this issue in an acceptable form. I believe there is substantial support in the Senate for the House position on this matter and I hope the Senate conferees will recede to the House position on this critical issue.

Mr. President, I ask unanimous consent that an article published in the New York Times on this subject be printed in the RECORD.

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

A PROFOUND CONTEMPT

(By Anthony Lewis)

BOSTON, May 20.—A fundamental change is taking place in America, and the world sees it. The most legal-minded of societies, as it has been by instinct and tradition, now has a Government that feels and displays a profound contempt for law.

It is a phenomenon so large that it is hard to see whole. Though Americans are aware of this or that act of official lawlessness, most do not perceive the overall pattern. But America's friends in the world increasingly do, and they are afraid. They do not know how to communicate with a United States Government of such a character.

The concern was dramatically evidenced last week in the visit of Mexico's President, Miguel de la Madrid. From the moment he arrived at the White House he made a point of urging respect for international law. "If we exclude law," he told Congress, "our only alternative is anarchy and the arbitrary rule of whoever is able to impose his will."

That a visiting head of state should feel it necessary to remind the United States of the importance of the rule of law is truly astounding. But then the reality that moved President de la Madrid to speak as he did is hard to believe—hard for me, at least. Who would ever have thought that an American Government would try to flee the jurisdiction of the World Court as if it were running from the sheriff?

Jeane Kirkpatrick, Mr. Reagan's Ambassador to the United Nations, defended the flight from the World Court by attacking its judges. They were chosen, she said, by a process "as non-political as the U.N. General Assembly." The sarcastic implication was

that they were a bunch of worthless Third-World and Communist types.

But judges from Britain, France, Italy, West Germany and Japan were among those who voted against the American position in the World Court's preliminary decision on a Nicaraguan complaint. The court was unanimous in ruling that the United States should immediately cease mining Nicaraguan ports.

At home as abroad, the Reagan Administration rejects the rule of law when it finds the law inconvenient. The outstanding current example is again one that I would never have believed possible under any Government of the United States. That is the refusal to respect decisions of Federal courts interpreting the law on disability claims under Social Security.

The U.S. Courts of Appeals and District Courts in various circuits have held that the Social Security Administration read the law too narrowly in rejecting claims. Officials then made the payments to those particular plaintiffs but refused to apply the rule laid down by the court to other cases, even in the same circuit. They said they would only respect a Supreme Court decision—but refused to take the cases to the Supreme Court.

Judge Harry Pregerson of the Court of Appeals for the Ninth Circuit said the policy reminded him of the Southern doctrine of "nullification" before the Civil War, when "rebellious states refused to recognize certain Federal laws within their boundaries." He said the policy "flouts some very important principles basic to our system of government," including "the rule of law."

The refusal to respect those court decisions is also reminiscent of a more recent period of dangerous lawlessness. That was the time after the Supreme Court's school segregation decision of 1954 when some southern politicians and lawyers argued that the decision affected only the particular plaintiffs and need not be respected as law generally.

The administration has worked to circumvent rules laid down by Congress as well as by the courts. Last week it was reported that officials have used all kinds of fake bookkeeping and circuitous arms transfers to avoid congressional limits on spending for military aid and intelligence activities in Central America.

The attitude toward law has ironic overtones in an administration that calls itself conservative. Fifty years ago the legal realists, radicals of their day, told us that law, was not an abstract embodiment of justice but always reflected political attitudes. Now Ronald Reagan and his people have given that view a more cynical turn, reducing everything to power, mocking any idea of independent value in law.

One wonders whether lawyers in this administration will begin to ask themselves why they should continue to lend their skills to such a Government. After all, they are also officers of the court—of law.

When Richard Nixon challenged his accountability to law, a unanimous Supreme Court—including his own appointees—ruled against him. Something even more flagrant than that is developing now. Ronald Reagan's administration is telling the world that it is not accountable to any institution: not to Congress, not to the World Court, not to the courts of the United States.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, the Senator from Maine has his own time. A half hour has been allotted to the Senator from Maine on this matter.

Mr. MITCHELL. That is correct.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MITCHELL. Mr. President, in view of the hour, I shall be brief.

Mr. President, I rise to express my strong reservation about the difficulties that may occur from one section of the legislation now before us.

The bill overall has my strong support. I voted for it in the Finance Committee, and I shall vote for it tonight. It meets the glaring inadequacies of the current disability review process, it serves to protect the interests of those already on the rolls, and it protects the interests of the taxpayer in being certain that benefits are paid only to those who are in need of them.

I commend those, particularly my colleague, Senator COHEN, and Senator LEVIN for their efforts on this important legislation.

I am particularly pleased that, although the administration did not wholeheartedly support the concept of uniform standards for determining continued eligibility for benefits, the Finance Committee bill includes a strong provision insuring that needed uniformity. Without that uniformity, we risk repeating the tragic and needless confusion that has beset this program since 1981. The uniform standards provide a solid foundation on which our administrative law judges can fairly and efficiently judge the merits of cases brought before them for review without risking the arbitrary and capricious outcomes which resulted from the different standards of review in use at different levels of the review process. This is a major advance.

The tragedies and hardships brought about by the review process as it has functioned are too well known to need repeating.

At the same time, I am concerned about the antideficiency provision of the bill because it threatens the benefits of those who can least afford the loss.

Mr. President, as the chairman and ranking member of the Finance Committee know, I discussed this matter in some detail before the committee and I want merely now to note briefly and in very summary fashion my concern about that provision.

That provision mandates that if reserves fall below 20 percent of projected annual benefit payments, and if Congress in the face of this fact fails to take corrective action, then the Secretary of Health and Human Services is given the authority to unilaterally act to restore that reserve level. It is anticipated that such action would require the reduction of proposed cost-of-living increases for all current recipients, in part or in full, and if such a reduction or elimination of the cost-of-living increase proved inadequate to restore the reserve levels to 20 percent, then the Secretary could further move to reduce the benefit schedules applicable to new entrants into the system. In either case, the outcome would not be equitable.

If the cost-of-living adjustment were to be cut, those relying on disability benefits for their sole source of income would have no way of protecting themselves against inflation. This is particularly unfair, since these people would not have been responsible for the conditions that might lead to a funding reserve shortfall.

Such a shortfall, as we all know, can result from economic downturns and the resultant lowered tax payments into the system, as well as from an unanticipated increase enrollments. In either case, current beneficiaries are in no sense responsible. But this provision would make them pay the cost of such an outcome.

Furthermore, if the elimination of a cost-of-living increase were not enough to replenish the reserve fund, the provision which grants authority to alter the schedule of benefits for new entrants would have the undesirable effect of creating two classes of disability income recipients, a result that Congress never intended. And it is not a result that would enhance the confidence of our people in the social security system and its promise of security.

I recognize, of course, that the provision does give Congress the prior responsibility for taking action. This is as it should be. I am taking this opportunity to express my view that if such a reserve shortfall does occur, then Congress has an obligation to act, in preference to allowing the authority to act to devolve on the Secretary of Health and Human Services by default.

The effect of this provision is to create conditions for the disability income fund which are substantially different from conditions governing the other social security funds.

That, also, is a precedent I believe is unwise. The social security system is a unified whole, designed to replace income lost by virtue of inability to work, whether that inability arises from illness or age. To treat the former more cavalierly than the latter makes no sense, and is not equitable.

So with that proviso, I will vote for the legislation, because it is a long overdue correction of an intolerable situation. I hope, however, that the House-Senate conference will eliminate the unfortunate deficiency provision to which I have referred.

I thank the chairman and I thank you, Mr. President.

Mr. DOLE. Mr. President, I have no other request for time. I am prepared

to yield back all time on the bill and the substitute.

Mr. LONG. Mr. President, I have no further request for time and in the absence of any further request, I am prepared to yield back also.

The PRESIDING OFFICER (Ms. KASSEBAUM). All time having been yielded back, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. DOLE. Madam President, I ask unanimous consent to call up H.R. 3755, calendar order No. 791, the House-passed disability bill.

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

The legislative clerk read as follows:

A bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process.

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Madam President, I move that all after the enacting clause be stricken and the committee substitute for S. 476 be inserted in lieu thereof.

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

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. DOLE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New York (Mr. D'AMATO), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming (Mr. WALLOP), would vote "yea."

Mr. CRANSTON. I announce that the Senator from Colorado (Mr. HART), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 109 Leg.]

YEAS—96

Abdnor	Garn	Metzenbaum
Andrews	Glenn	Mitchell
Armstrong	Goldwater	Moynihan
Baker	Gorton	Murkowski
Baucus	Grassley	Nickles
Bentsen	Hatch	Nunn
Biden	Hatfield	Packwood
Bingaman	Hawkins	Pell
Boren	Hecht	Percy
Boschwitz	Heflin	Pressler
Bradley	Heinz	Proxmire
Bumpers	Helms	Pryor
Burdick	Hollings	Quayle
Byrd	Huddleston	Randolph
Chafee	Humphrey	Riegle
Chiles	Inouye	Roth
Cochran	Jepsen	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
Danforth	Kasten	Simpson
DeConcini	Kennedy	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Levin	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Trible
Eagleton	Mathias	Tsongas
East	Matsunaga	Warner
Evans	Mattingly	Weicker
Exon	McClure	Wilson
Ford	Melcher	Zorinsky

NOT VOTING—4

D'Amato	Tower
Hart	Wallop

So the bill (H.R. 3755) as amended, was passed.

Mr. DOLE. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DOLE. Madam President, I send up an amendment to the title and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

Amend the title so as to read: "An Act to revise provisions of titles II and XVI of the Social Security Act relating to disability, and for other purposes.".

The PRESIDING OFFICER. The question is on agreeing to the amendment to amend the title.

The amendment was agreed to.

Mr. DOLE. I ask unanimous consent that S. 476 be indefinitely postponed.

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

Mr. DOLE. Madam President, I move that the Senate insist on its amendments and request a conference with the House of Representatives thereon and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. DOLE, Mr. PACKWOOD, Mr. ROTH, Mr. DANFORTH, Mr. LONG, Mr. BENTSEN, and Mr. MOYNIHAN conferees on the part of the Senate.

Mr. DOLE. Madam President, I want to thank again my colleague, the distinguished Senator from Louisiana (Mr. LONG) and all the other Senators and members of the staff. I think we have demonstrated by the vote of 96 to 0—and I feel that if the absentees had been here it would have been 100 to 0—that this is a good bill. We shall now go to conference and work out our differences with the House.

I yield the floor.

THE CALENDAR

Mr. STEVENS. Madam President, I inquire of my distinguished friend, the Democratic leader, if he might agree to consideration of the following calendar numbers: Order No. 850, which is S. 2556; No. 864, S. 1999; No. 884, Senate Joint Resolution 254; No. 885, which is Senate Joint Resolution 288; No. 886, Senate Joint Resolution 289; No. 888, House Joint Resolution 451; No. 905, House Joint Resolution 526. Would that meet with the approval of the Senator's side of the aisle if we considered those matters and passed them?

Mr. BYRD. Mr. President, in response to the distinguished assistant Republican leader, there is no objection to proceeding with the measures.

AMERICAN FOLKLIFE CENTER

The Senate proceeded to consider the bill (S. 2556) to authorize appropriations for the American Folklife Center for fiscal years 1985 through 1989, which had been reported from the Committee on Rules and Administration with an amendment as follows:

On page 2, after line 7, insert

SEC. 2. (a) Notwithstanding any other provision of law and subject to the provisions of paragraph (1) of subsection (b), the Capitol Police Board is authorized to disignate certain portions of the Capitol grounds (other than a portion within the area bounded on the North by Constitution Avenue, on the South by Independence Avenue, on the East by First Street, and on the West by First Street) for use exclusively as play areas for the benefit of children attending a day care center which is established for the primary purpose of providing child care for the children of Members and employees of the Senate or House of Representatives.

(b)(1) In the case of any such designation referred to in subsection (a) involving a day care center established for the benefit of children of Members and employees of the Senate, the designation shall be with the approval of the Senate Committee on Rules and Administration, and in the case of such a center established for the benefit of children of Members and employees of the House of Representatives, the designation shall be with the approval of the House Committee on House Administration, with the concurrence of the House Office Building Commission.

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The PRESIDING OFFICER (Ms. KASSEBAUM). All time having been yielded back, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. DOLE. Madam President, I ask unanimous consent to call up H.R. 3755, calendar order No. 791, the House-passed disability bill.

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

The legislative clerk read as follows:

A bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process.

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Madam President, I move that all after the enacting clause be stricken and the committee substitute for S. 476 be inserted in lieu thereof.

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

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. DOLE. Madam President, I ask for the years and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New York (Mr. D'AMATO), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming (Mr. WALLOP), would vote "yea."

Mr. CRANSTON. I announce that the Senator from Colorado (Mr. HART), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 109 Leg.]

YEAS—96

Abdnor	Garn	Metzenbaum
Andrews	Glenn	Mitchell
Armstrong	Goldwater	Moynihan
Baker	Gorton	Murkowski
Baucus	Grassley	Nickles
Bentsen	Hatch	Nunn
Biden	Hatfield	Packwood
Bingaman	Hawkins	Pell
Boren	Hecht	Percy
Boschwitz	Heflin	Pressler
Bradley	Heinz	Proxmire
Bumpers	Helms	Pryor
Burdick	Hollings	Quayle
Byrd	Huddleston	Randolph
Chafee	Humphrey	Riegle
Chiles	Inouye	Roth
Cochran	Jepsen	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
Danforth	Kasten	Simpson
DeConcini	Kennedy	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Levin	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Trible
Eagleton	Mathias	Tsongas
East	Matsunaga	Warner
Evans	Mattingly	Weicker
Exon	McClure	Wilson
Ford	Melcher	Zorinsky

NOT VOTING—4

D'Amato	Tower
Hart	Wallop

So the bill (H.R. 3755) as amended, was passed.

Mr. DOLE. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DOLE. Madam President, I send up an amendment to the title and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

Amend the title so as to read: "An Act to revise provisions of titles II and XVI of the Social Security Act relating to disability, and for other purposes.".

The PRESIDING OFFICER. The question is on agreeing to the amendment to amend the title.

The amendment was agreed to.

Mr. DOLE. I ask unanimous consent that S. 476 be indefinitely postponed.

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

Mr. DOLE. Madam President, I move that the Senate insist on its amendments and request a conference with the House of Representatives thereon and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. DOLE, Mr. PACKWOOD, Mr. ROTH, Mr. DANFORTH, Mr. LONG, Mr. BENTSEN, and Mr. MOYNIHAN conferees on the part of the Senate.

Mr. DOLE. Madam President. I want to thank again my colleague, the distinguished Senator from Louisiana (Mr. LONG) and all the other Senators and members of the staff. I think we have demonstrated by the vote of 96 to 0—and I feel that if the absentees had been here it would have been 100 to 0—that this is a good bill. We shall now go to conference and work out our differences with the House.

I yield the floor.

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APPOINTMENT OF CONFEREES ON H.R. 3755, SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 3755) to amend title II of the Social Security Act to provide for reform in the disability determination process, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois? The Chair hears none and, without objection, appoints the following conferees: Messrs. ROSTENKOWSKI, PICKLE, JACOBS, GEPHARDT, SHANNON, FOWLER, FORD of Tennessee, CONABLE, ARCHER, GRADISON, and CAMPBELL.

There was no objection.

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CONFERENCE COMPARISON OF H.R. 3755

SOCIAL SECURITY DISABILITY AMENDMENTS OF 1984

Prepared for the use of the conferees

85-345 O

U.S. GOVERNMENT PRINTING OFFICE : 1984

CONFERENCE COMPARISON OF H.R. 3755 AS PASSED BY THE HOUSE AND SENATE

Item	Present Law
1. Standard of Review for Termination of Disability Benefits (Section 101 of the House bill and Section 2 of the Senate amendment)	To be eligible for disability benefits, a person must be unable, by reason of a medically determinable impairment expected to last at least 12 months or to end in death, to perform any substantial gainful activity (SGA) that exists in the national economy, considering his or her age, education and work experience. The impairment must be "demonstrable by medically acceptable clinical and laboratory diagnostic techniques." This definition applies both to new applicants and to beneficiaries whose eligibility is being reviewed. No other statutory standards exist for the review of beneficiaries.

House Bill	Senate Amendment
Establishes a standard for reviewing eligibility of disability beneficiaries that allows benefits to be terminated only if there is substantial evidence that the beneficiary can perform SGA as a result of (a) medical improvement in his disabling condition, or (b) medical or vocational therapy technological or advances, as shown by new medical evidence and new assessment of residual functional capacity, or (c) vocational therapy or (d) a less disabling impairment than originally thought, as shown by new or improved diagnostic techniques or evaluations.	Benefits may be terminated if beneficiary can perform SGA unless the Secretary finds there has been no medical improvement. If the evidence establishes that there has been no medical improvement (other than improvement which is not related to his ability to work), benefits may be terminated only if Secretary can show (a) beneficiary has benefited from medical or vocational therapy or technology, (b) new or improved diagnostic or evaluative techniques indicate impairment(s) is not as disabling as believed at time of last decision, (c) a prior determination was fraudulently obtained, or (d) there is demonstrated substantial reason to believe a prior determination of eligibility was erroneous.
Benefits could also be terminated if evidence on the record at the time of the earlier determination or new evidence shows that the prior determination was either clearly erroneous or fraudulently obtained, or that the beneficiary is performing SGA.	Benefits may be terminated for performance of SGA or if the individual fails, without good cause, to cooperate in the review or follow prescribed treatment, or cannot be located.
In cases where there is no evidence to support the prior decision (i.e. a lost file) the Secretary would not be precluded from securing additional medical reports in order to reconstruct that decision.	In making determination, Secretary shall consider the evidence in the file as well as any additional information concerning claimant's current or prior condition secured by Secretary or provided by claimant.
	In the case of a finding relating to medical improvement, provides that burden of proof is on claimant. In other words, for benefits to be continued on this basis, individual must state and evidence in file must show that medical condition is same as or worse than at time of last decision (or, if there is medical improvement, it is not related to work ability).
Title XVI is amended to provide that the same standard of review shall apply to SSI recipients (except that the exclusions which allow termination as the result of medical or vocational therapy (described in (b) and (c) above) do not apply to individuals receiving section 1619 special benefits).	Title XVI is amended to provide that the same procedures shall apply to SSI recipients (except that the provision requiring termination on the grounds that an individual is engaging in SGA does not apply to recipients of section 1619 special benefits).
No provisions for date of implementing regulations or expiration.	Implementing regulations must be issued within 6 months of enactment. Provision expires December 31, 1987.

Item	Present Law
1. Standard of Review for Termination of Disability Benefits—Con.	

House Bill	Senate Amendment
Effective date: Applies to all cases involving disability determinations pending in the Department or in Court on the date of enactment or initiated on or after that date.	*Effective date:* Applies to disability reviews initiated on or after date of enactment, to all individuals with claims properly pending in the administrative appeals process as of enactment, and to certain court cases. All individual litigants and named members of a class action who have cases properly pending in court as of May 16, 1984, and all individuals who properly request court review of a decision of the Secretary made during the period from March 15, 1984 until 60 days after enactment, would be remanded to the Secretary for redetermination under the new standard. Also the case of any individual who exhausted the administrative appeals process, was an unnamed member of a properly pending class action certified prior to May 16, 1984, and had been notified of the Secretary's final decision on or after a date 60 days prior to the filing of the court action, would be remanded to the Secretary. The Secretary would notify the individual that he had 60 days to request review of his claim under the new standard. If the individual did not request review, the provision would not apply and the Secretary's determination would not be subject to further administrative or judicial review. The provision would not apply to any case for which the Secretary made a final determination prior to May 16, 1984, and which was not included in the above categories. Such determination would not be subject to further administrative or judicial review. Applies the provision authorizing payments pending appeal (See item 6) to any individual whose case is remanded by a court under this section and if applicable, who timely requested redetermination. These interim payments would begin with the payment for the month in which the individual elects continued payments. If the individual is ultimately found eligible, full retroactive benefits would be provided. If he is found ineligible, the interim payments would be subject to recovery as overpayments.

Item	Present Law
2. Evaluation of Pain (Section 102 of the House bill and section 9 of the Senate amendment)	There is no statutory provision concerning the evaluation of pain (or the use of subjective allegations of pain) in determining eligibility for disability benefits. The definition of disability requires that the person be unable to work by reason of a "medically determinable impairment"—one which results from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." By regulation, subjective allegations of symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could be reasonably expected to produce those symptoms and that is severe enough to be disabling.
3. Multiple Impairments (Section 103 of the House bill and section 8 of the Senate amendment)	There is no statutory provision concerning the consideration of the combined effects of a number of different impairments. The definition of disability requires a finding of a medically determinable impairment of sufficient severity to prevent the person from doing not only his previous work but also any other kind of work that exists in the national economy, considering his age, education and work experience. By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs."

House Bill	Senate Amendment
Requires the Secretary to conduct a study in conjunction with the National Academy of Sciences on the use of subjective evidence of pain in making disability determinations, and on the state of the art of preventing, reducing or coping with pain. A report on the study is due to the Committees on Ways and Means and Finance no later than April 1, 1985.	Requires Secretary to appoint 12-member commission consisting of a significant number of medical professionals involved in the study of pain, and representatives from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise to study the use of pain in evaluation of disability. Report due to Committees on Ways and Means and Finance no later than December 31, 1986.
No provision.	Includes in statute the present regulatory policy on the use of evidence of pain in evaluation of disability. Includes title XVI conforming amendment.
Effective date: On enactment.	*Effective date:* Statutory provision applies to determinations made prior to January 1, 1988.
Requires the Secretary, in making a determination of whether a person's impairments are of such severity that he or she is unable to engage in substantial gainful activity, to consider the combined effects of all of a person's impairments, regardless of whether any impairment by itself is of such severity. Includes title XVI conforming amendment.	Same, except clarifies that the requirement applies to the determination of whether the individual has a combination of impairments which are *medically* severe without regard to age, education, or work experience. Includes title XVI conforming amendment.
Effective date: Applies to all determinations pending in the Department or in Court on the date of enactment, or initiated after that date.	*Effective date:* Applies to all determinations made on or after January 1, 1985.

Item	Present Law
4. Moratorium on Mental Impairment Reviews (Section 201 of the House bill and section 5 of the Senate amendment)	Under the Disability Amendments of 1980, all DI beneficiaries with nonpermanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments. Under a Secretarial initiative (of June 7, 1983), periodic eligibility reviews have been suspended for certain mental impairment cases involving functional psychotic disorders, pending a revision, with the help of outside mental health experts, of the criteria used for determining disability. Under a subsequent Secretarial action (announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

House Bill	Senate Amendment
Requires publication within 9 months of enctment of revised mental impairment criteria n the Listing of Impairments that are designed o realistically evaluate the person's ability to ngage in SGA in a competitive workplace envionment, taking account of the recommendaions of the disability advisory council (section 04). Delays periodic review of mentally imaired individuals until these revisions are ıade. The delay would apply to cases on which n initial decision had not been made by the ate of enactment and to those cases where an ıitial decision was made prior to the date of enctment and a timely appeal was pending on or fter June 7, 1983. Periodic reviews where (1) fraud was involved r (2) the individual was engaging in SGA, ould continue to be done. SSA could continue o review medical diary cases and make initial eterminations but would subsequently redeterıine the cases under the revised criteria. If a ew decision were favorable, it would take effect s of the time of the first determination. Menally impaired persons who received an unfavorble initial or continuing eligibility determinaion between March 1, 1981 and enactment of he bill and who reapplied for benefits within 12 ıonths of enactment would be deemed to have eapplied at the time of the unfavorable deterıination for the purpose of establishing a eriod of disability during the period covered by he prior determination, but not for benefit purposes; benefits would be payable only for the welve months prior to the date of the new aplication. The provisions also apply to title XVI. *Effective date:* On enactment.	Similar, except requires publication of revisions within 90 days after enactment, and reapplication provision applies to people who received an unfavorable determination since June 7, 1983 rather than March 1, 1981. *Effective date:* On enactment.

Item	Present Law
5. Pre-Termination Notice and Right to Personal Appearance (Section 202 of the House bill and section 10 of the Senate amendment)	A person whose initial claim for disability benefits is denied or who is determined after review not to be disabled may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record including any new evidence submitted by the claimant, conducted by the State agency. Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries determined not to be medically eligible for benefits must be given opportunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary. Individuals found ineligible for benefits at reconsideration may request a face-to-face evidentiary hearing before an administrative law judge. The next level of appeal is to SSA's Appeals Council, and finally, to a Federal court.
6. Continuation of Benefits During Appeal (Section 203 of the House bill and section 3 of the Senate amendment)	Disability benefits are payable for the month as of which the beneficiary is determined to be ineligible and for the 2 months succeeding. Benefits do not generally continue during appeal. Under a temporary provision in P.L. 97-455 (as modified by P.L. 98-118), individuals notified of a medical termination decision could elect to have DI benefits and medicare coverage continued during appeal—through the month preceding the month of the ALJ hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld (unless they qualify for waiver under the standard provisions for waiver of overpayments). This provision does not apply to terminations made after December 6, 1983. Benefits are last payable under this provision for June 1984 (i.e., the July 1984 benefit check).

House Bill	Senate Amendment
Revises determination process for beneficiaries undergoing periodic review in medical cessation cases, to provide for a face-to-face evidentiary review with State agency (upon request of the beneficiary within 30 days) after a preliminary unfavorable decision by the State. If, after the evidentiary interview (or paper review if the beneficiary requests review without the personal interview), the State agency denies benefits, the beneficiary could appeal to the ALJ and succeeding appeals levels. The reconsideration level would be abolished for these review cases.	No provision.
Requires the Secretary to establish demonstration projects in at least 5 States using this same procedure for initial disability claims, with a report to the Committees on Ways and Means and Finance on the results due no later than April 1, 1985. The provisions also apply to title XVI.	No provision.
No provision.	Requires demonstration projects on providing pretermination face-to-face interviews in disability cessation cases in lieu of face-to-face evidentiary hearings at reconsideration. Report due to Committees on Ways and Means and Finance April 1, 1986.
No provision.	Requires the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted. The provisions also apply to title XVI.
Effective date: Revised determination process applies to periodic reviews on or after January , 1985; demonstration projects to be initiated as soon as practicable after enactment.	*Effective date:* On enactment. Demonstration projects to be established as soon as practicable after date of enactment.
Permanently extends provision (with technical changes) for continuation of DI and SSI benefits during appeal. Requires the Secretary to report to the Committees on Ways and Means and Finance by July 1, 1986, on the impact of the provision on the OASDI trust funds and on appeals to ALJs.	Extends the provision for continued payment of DI and SSI benefits during appeal to termination decisions made prior to June 1, 1986. (Last month of payments would be for January 1987, i.e., the February 1987 check.)
Effective date: On enactment.	*Effective date:* On enactment.

Item	Present Law
7. Qualifications of Medical Professionals Evaluating Mental Impairments (Section 204 of the House bill and section 6 of the Senate amendment)	There is no statutory requirement concerning qualifications of persons making disability determinations. Under current policy, the State disability agency team making eligibility decisions must consist of a State agency medical consultant (physician) and a State agency disability examiner, both of whom must sign the disability determination.
8. Standards for Consultative Examinations/ Medical Evidence (Section 205 of the House bill and Section 11 of Senate amendment)	Consultative exams (CE's) are medical exams purchased by the State agency from physicians and other qualified health professionals outside the agency. By regulation, CE's may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence obtained through a CE is considered in conjunction with all other medical and non-medical evidence submitted in connection with a disability claim. There are currently no statutory or regulatory standards requiring CE's in particular cases, or requiring any standard procedures to be followed in the purchase of CE's. The SSI statute includes a cross-reference to this provision. Any changes in title II will therefore also be made for SSI.

House Bill	Senate Amendment
Requires that a qualified psychiatrist or psychologist complete the medical portion of any applicable sequential evaluation and residual functional capacity assessment in cases involving mental impairments before a determination may be made that an individual is not disabled.	Same except modified to require only that every reasonable effort be made to use qualified psychiatrist or psychologist. Also, specifically amends title XVI to make the provision applicable to SSI determinations.
Effective date: On enactment.	*Effective date:* On enactment.
Requires the Secretary to prescribe regulations which set forth standards for when a CE should be obtained, the type of referral to be made and the procedures for monitoring CE's and the referral process. Permits non-regulatory rules and statements of policy relating to CE's to be issued if they are consistent with the regulations.	No provision.
No provision.	Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from an individual's treating-physician prior to seeking a consultative examination.
No provision.	Also, requires consideration of all evidence in the case record and development of complete medical history over at least the preceding 12-month period for individuals applying for benefits or undergoing review.
Effective date: On enactment.	*Effective date:* On enactment.

Item	Present Law
9. Administrative Procedure and Uniform Standards (Section 301 of the House bill and section 4 of the Senate amendment)	The guidelines for making social security disability determinations and all other social security eligibility determinations are contained in the Social Security Act, regulations, social security rulings and the POMS (the Program Operating Manual System): *Regulations*, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication—state agencies, administrative law judges, SSA's Appeals Council, and the Federal Courts. The Administrative Procedure Act (APA) requirements do not apply to social security programs because of a general exception for benefit programs. On a voluntary basis, however, SSA issues its regulations is accordance with the public notice and comment rulemaking requirements of the APA. *Rulings* consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts, ALJs, the Appeals Council and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of administrative adjudication. *The POMS* is a compilation of detailed policy instructions and step-by-step procedures for the use of State agency and SSA personnel in developing and adjudicating claims. The POMS is not binding on the Administrative Law Judges, Appeals Council or Courts.

House Bill	Senate Amendment
Requires publication under APA public notice and comment rulemaking procedures of all OASDI and SSI regulations on matters relating to benefits. Requires that only those rules issued under Sections b–e of Section 553 of the APA shall be binding at any level of review.	Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under APA procedures. These rules would be binding at all levels of adjudication.
Effective date: On enactment.	*Effective date:* On enactment.

Item	Present Law
10. Acquiescence or Non-Acquiescence In Court of Appeals Decisions (Section 302 of the House bill and section 7 of the Senate amendment)	Claimants for benefits under the Social Security Act may appeal State agency denials through several levels of administrative appeal. A claimant who wishes to continue to pursue appeal may next turn to the Federal district court with jurisdiction over his or her claim. The district court reviews the record as compiled by the agency to determine whether substantial evidence existed for the agency's decision. The district court's decision may be appealed, by the claimant or the Secretary, to the Circuit Court with jurisdiction, and ultimately to the Supreme Court (which may or may not agree to hear the appeal). Under the Federal judicial system, decisions by a Circuit Court of Appeals constitute binding case law to be followed by all district courts in that circuit. (District courts are not bound by the case law of other circuits and often develop contrary case law on the same issue.) In general, if two circuits rule differently on a particular issue, the Supreme Court will review the issue to settle the dispute, although frequently the Court will decline to review for an extended period of time if the issue is not ripe for disposition, or if it is not of sufficient importance to warrant immediate attention. If a particular policy is found by the Supreme Court to be unconstitutional, or contrary to the statute, that decision is binding on the agency. Most social security cases decided in the Federal courts have little value as precedent for SSA decisions, since most reversals of agency determinations rest on the lack of substantial evidence for the agency's position. However, in some instances, the court's opinion is based on matter of a statutory interpretation. The Social Security Administration abides by the final judgments of Federal courts with respect to the individuals in particular cases. It does not, however, consider itself bound with respect to nonlitigants as far as adopting as agency policy, either in the circuit or nationwide, the interpretation underlying a Circuit Court's decision. If the decision of a Circuit Court is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA, like some other Federal agencies, issues a ruling stating that it will not adopt the court's decision as agency policy. There are currently 7 such rulings of nonacquiescence by the Social Security Administration.

House Bill	Senate Amendment
Requires that a decision of a Circuit Court of Appeals interpreting title II of the Social Security Act or its regulations in a manner different from prevailing policy be appealed to the Supreme Court or the Secretary must apply the interpretation underlying that decision as agency policy in the circuit. If the Supreme Court denies review, circuit-wide acquiescence with that interpretation would be required until the Supreme Court ruled on the issue. Includes title XVI conforming amendment.	Requires SSA to notify Congress and print in the *Federal Register* (within 90 days after decision date, or on the last date available for appeal, whichever is later) an explanation of the agency's decision to acquiesce or not acquiesce in decisions of the Circuit Courts relating to interpretation of the Social Security Act or of regulations issued under the Act. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions. States that nothing in the section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a circuit court.
Effective date: On enactment, with respect to all circuit court decisions made on or after the date of enactment, and with respect to circuit court decisions for which the Secretary still has an opportunity to request review by the Supreme Court.	*Effective date:* Applies to Court decisions rendered after the date of enactment.

Item	Present Law
11. Payment of Costs of Rehabilitation Services (Section 303 of the House bill and section 12 of the Senate amendment)	Presently, States are reimbursed for vocational rehabilitation (VR) services provided to DI and SSI recipients which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Sections 225(b) and/or 1631(a)(6) of the Social Security Act, work-incentive provisions enacted in 1980). The State agency is reimbursed for these VR services on the same basis as applies to other beneficiaries—only if the beneficiary is returned to SGA for 9 months.
12. Advisory Council on Medical Aspects of Disability (Sections 304 and 307 of the House bill and section 14 of the Senate amendment)	Section 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the OASI, DI, HI and SMI programs. The councils are comprised of members of the public. The next advisory council is scheduled to be appointed in 1985 and to make its final report on December 31, 1986. There are no requirements in the law pertaining to the creation of advisory councils to deal specifically with disability matters.

House Bill	Senate Amendment
Allows reimbursement to State agencies for costs of VR services provided to individuals receiving DI benefits under Section 225(b) who medically recover while in VR, and to those receiving SSI disability who are found ineligible for benefits by reason of medical recovery (whether or not receiving SSI under Section 1631(a)(6)). Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier, and would not be contingent upon the individual working at SGA for at least 9 months. Also provides for reimbursement in cases where DI or SSI disability recipient does not meet the requirement of successful return to SGA because he refuses without good cause to continue in or cooperate with the VR program.	Same, except does not pay for services to those who fail to cooperate or refuse to continue participation in VR, and does not apply to SSI program.
Effective date: For individual receiving benefits as a result of section 225(b) (or who are no longer entitled to SSI benefits because of medical recovery) for months after the month of enactment.	*Effective date:* For services rendered to individuals who receive benefits under Section 225(b) for months after the month of enactment.
Requires the Secretary to appoint, within 60 days after enactment, a 10-member advisory council on the medical aspects of disability. This would be in addition to the regular quadrennial council. The council, to be composed of independent medical and vocational experts and the Commissioner of SSA *ex officio*, would provide advice and recommendations to the Secretary on disability policies, standards, and procedures. Any recommendations would be published in the Secretary's annual reports. In addition, Section 307 of the bill requires this advisory council to study alternative approaches to work evaluation for SSI applicants and recipients and the effectiveness of VR services for SSI recipients.	Directs next quadrennial advisory council on social security to study the medical and vocational aspects of disability using *ad hoc* panels of experts where appropriate. The study shall include: (1) alternative approaches to work evaluation for recipients of SSI; (2) the effectiveness of vocational rehabilitation programs for DI and SSI recipients; and (3) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process.
Effective date: On enactment. Authority for the council expires December 31, 1985.	*Effective date:* Requires Secretary to appoint members by June 1, 1985.

Item	Present Law
13. Staff Attorneys (Section 805 of the House bill; no comparable Senate provision)	Qualifications for administrative law judge (ALJ) positions are set by the Office of Personnel Management (OPM). To qualify for SSA's GS–15 ALJ position, an applicant must have at least 1 year of qualifying experience at or comparable to the GS–14 grade level in Federal service. Staff attorneys in SSA's Office of Hearings and Appeals (OHA) have the appropriate type of qualifying experience. However, there are no GS–14 positions as OHA staff attorneys; GS–13 is the highest staff attorney position. Prior to a recent decision by OPM, staff attorneys did not have qualifying experience at the necessary grade level. On May 9, 1984, OPM revised this criteria to permit applicants to qualify with 2 years of qualifying experience at the GS–13 level. No GS–14 experience is necessary.
14. SSI Benefits for Persons Working Despite Severe Impairments (Section 806 of the House bill and section 13 of the Senate amendment)	Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA—$300 monthly. Under Section 1619(a) of the Social Security Act, enacted in the Disability Amendments of 1980, severely disabled SSI recipients who work and earn more than SGA may receive a special payment and thereby maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., the "break-even" level which is currently $713 per month for an individual with earnings). Under Section 1619(b), medicaid and social services may continue beyond this level, until earnings reach a level where the Secretary finds: (1) that termination of eligibility for these benefits would not seriously inhibit the individual's ability to continue his employment, or (2) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available in the absence of earnings. Section 1619 expired on December 31, 1983. It is being continued administratively under demonstration project authority to those people who were eligible for SSI as of that date.

House Bill	Senate Amendment
Requires the Secretary to establish enough GS-13 and GS-14 attorney advisor positions to enable otherwise qualified staff attorneys to compete for ALJ positions. A 90-day interim progress report and a 180-day final report by the Secretary would be required. *Effective date:* On enactment.	No provision.
Extends Sections 1619 (a) and (b) through June 30, 1986. In addition, requires the Secretaries of HHS and Education to establish training programs for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations. *Effective date:* On enactment, retroactive to January 1, 1984.	Same, except extended through June 30, 1987.

Item	Present Law
15. Frequency of Continuing Eligibility Reviews (No House provision; Section 15 of the Senate amendment)	Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed at least once every 3 years to assess their continuing eligibility. Under a provision enacted in 1983 (P.L. 97-455), the Secretary is provided the authority to modify this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels. On April 13, 1984, Secretary Heckler announced a temporary, nationwide moratorium on periodic eligibility reviews.
16. Monitoring of Representative Payees for Social Security and SSI Beneficiaries (No House provision; section 16 of the Senate amendment)	The Secretary may appoint a representative payee for an individual entitled to social security or SSI benefits when it appears to be in the individual's best interest. Payees must be appointed for individuals receiving SSI who are addicted to drugs or alcohol. A payee convicted of misusing a social security beneficiary's funds is guilty of a felony, punishable by imprisonment for not more than years and/or a fine of not more than $5,000. payee convicted of misusing an SSI recipient funds is guilty of a misdemeanor, punishable b imprisonment for not more than 1 year and/o a fine of not more than $1,000. There are no statutory requirements or restrictions on the selection and monitoring payees.

House Bill	Senate Amendment
No provision.	Requires Secretary to promulgate regulations establishing standards for determining the frequency of continuing eligibility reviews. Final regulations must be issued within 6 months of enactment. Until these regulations are issued, no individual may have more than one periodic review. *Effective date:* On enactment.
No provision.	Requires Secretary to: (1) evaluate qualifications of prospective payee either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than a parent or spouse living in the same household as the entitled individual, and (3) report to Congress within 6 months of enactment on implementation of the new system and report annually on number of cases of misused funds and disposition of such cases. The fine for a first offense by a payee convicted of misusing SSI benefits would be increased to not more than $5,000 and, for both programs, a second offense by a payee would be made a felony punishable by imprisonment for not more than 5 years and/or a fine of not more than $25,000. Individuals convicted of a felony under this provision could not be selected as a payee. *Effective date:* On enactment.

Item	Present Law
17. Fail-Safe (No House provision; section 17 of the Senate amendment)	The main source of funding for the DI pr gram is that portion of the social security ta allocated by law for disability. At present, th disability portion of the tax is 1 percent (en ployee and employer combined). It is schedule to rise to 1.2 percent in the 1990's and to 1.4 percent thereafter. If revenues from the ta exceed amounts needed for benefit payment the excess is placed in the trust fund reserve. revenues fall short of the amount needed, th reserve is drawn on to make up the differenc (To make timely benefit payments it is nece sary to have at least one month's benefit pa ments in reserve at the beginning of eac month—8 to 9 percent of annual expenditure Reserves must be sufficient to meet this pe centage requirement at the beginning of eac month notwithstanding any decline in revenue or increase in expenditures during the year.) To help assure continued benefit payment over the next few years in the event of advers conditions, the social security legislation er acted in 1983 authorized interfund borrowin for calendar years 1983–1987. In addition, th 1983 legislation required the OASDI Board o Trustees, whenever it determines that trus fund reserves may become less than 20 percent to immediately submit to Congress a report set ting forth its recommendations for statutory ad justments necessary to restore the reserve ratio This report to the Congress by the Trustee must provide specific information as to th extent to which benefits would have to be re duced, payroll taxes increased, or some combina tion thereof, in order to restore the trust fun reserve ratio.

House Bill	Senate Amendment
No provision.	Requires the Secretary to adjust disability insurance benefit increases as necessary to prevent the DI trust fund balance from falling below a defined threshold. The Secretary would be required to notify the Congress by July 1 in any year in which the amount of the DI trust fund at the start of the next year is projected to be less than 20 percent of the year's expenditures. If Congress took no action, the Secretary must scale back the next cost-of-living increase for disability insurance beneficiaries as necessary to keep the fund balance from falling below 20 percent. If further necessary to keep the fund from falling below 20 percent, the Secretary would also be required to scale back the increase in the benefit formula used to determine new benefit awards the following year. *Effective date:* On enactment.

Item	Present Law
18. Measures to Improve Compliance with Federal Law (No House provision; section 18 of the Senate amendment)	The States are responsible, on a volunta basis, for determining whether individuals a disabled under the meaning of the Social Secu ty Act. Under the law, States administering t program are required to make disability det minations in accord with Federal law and t standards and guidelines established by the I partment of Health and Human Services. A benefit payments and administrative costs the States making these determinations are nanced or reimbursed by the Disability Insu ance Trust Fund. The law provides for the Secretary to co mence actions to take over the disability dete mination process if a State fails to follow Fed al rules. A series of procedural steps must complied with before such Federal assumpti can be accomplished. The Secretary may n commence making disability determinatio earlier than 6 months after: (1) finding, aft notice and opportunity for hearing, that a Sta agency is substantially out of compliance wi Federal law; (2) developing all procedures to i plement a plan for partial or complete assum tion of the disability determinations whi grants hiring preference to the State employe and (3) the Secretary of Labor determines th the State has made fair and equitable arrang ments to protect the interests of displaced e ployees. Prior to the Secretary's announcement April 1984 of a temporary nationwide morato um on periodic reviews, several States on the own initiative were failing to conduct eligibili reviews in accordance with Federal law a standards. Eighteen States were operati under court-ordered eligibility criteria or pen ing court order.

House Bill	Senate Amendment
No provision.	Requires the Secretary to federalize disability determinations in a State within 6 months of finding that the State is not in substantial compliance with Federal law and standards. (Such finding must be made within 16 weeks of the time a State's failure to comply first comes to the attention of the Secretary. During this 16-week period, at the discretion of the Secretary, a hearing could be afforded to the State.) The Secretary would be required, to the extent feasible, to meet the requirements of present law regarding the transfer of functions. Provision expires December 31, 1987. *Effective date:* On enactment.

ESTIMATED COSTS OF H.R. 3755 AS PASSED BY THE HOUSE AND SENATE

TABLE 1.—CONGRESSIONAL BUDGET OFFICE ESTIMATES FOR THE BUDGETARY EFFECT OF H.R. 3755 AS APPROVED BY THE HOUSE

[Fiscal years 1984–89; in millions of dollars]

Budget function	1984	1985	1986	1987	1988	1989	Total 1984–89
Function 550:[1]							
Budget authority	3	10	11	7	8	9	48
Estimated outlays	3	10	11	7	8	9	48
Function 570:							
Budget authority	1	28	28	20	19	9	105
Estimated outlays	7	73	86	83	77	59	385
Function 650:							
Budget authority	−1	−15	−35	−55	−75	−105	−286
Estimated outlays	46	238	268	268	271	195	1,286
Function 600:[1]							
Budget authority	1	7	10	11	13	14	56
Estimated outlays	1	7	10	11	13	14	56
Total costs or savings:							
Budget authority	4	30	14	−17	−35	−73	−77
Estimated outlays	57	328	375	369	369	277	1,775

[1] Funding for entitlements that requires further appropriations action.

TABLE 2.—CONGRESSIONAL BUDGET OFFICE ESTIMATES FOR THE BUDGETARY EFFECT OF H.R. 3755 AS APPROVED BY THE SENATE

[Fiscal years 1984–89; in millions of dollars]

Budget function	1984	1985	1986	1987	1988	1989	Total 1984–89
Function 550: [1]							
Budget authority	3	10	12	11	5	6	47
Estimated outlays	3	10	12	11	5	6	47
Function 570:							
Budget authority	1	28	19	8	13	6	75
Estimated outlays	7	73	55	42	43	30	250
Function 650:							
Budget authority	−1	−14	−31	−45	−55	−67	−213
Estimated outlays	46	220	225	127	136	121	875
Function 600: [1]							
Budget authority	1	5	8	10	8	11	43
Estimated outlays	1	5	8	10	8	11	43
Total costs or savings:							
Budget authority	4	29	8	−16	−29	−44	−48
Estimated outlays	57	308	300	190	192	168	1,215

[1] Funding for entitlements that requires appropriations action.

TABLE 3.—CONGRESSIONAL BUDGET OFFICE ESTIMATES FOR ADDITIONAL OUTLAYS RESULTING FROM THE MAJOR PROVISIONS IN H.R. 3755 AS APPROVED BY THE HOUSE

[By fiscal year; in millions of dollars]

	1984	1985	1986	1987	1988	1989	Total 1984–89
Termination of benefits based on medical improvement:							
DI	22	86	123	130	136	133	630
HI and SMI	4	25	35	40	40	40	184
Medicaid	(1)	3	4	4	4	4	19
SSI	1	3	4	4	4	4	19
Multiple impairments:							
DI	(1)	4	7	11	13	15	50
HI and SMI	(1)	(1)	(1)	1	2	2	6
Medicaid	(1)	(1)	1	1	1	1	4
SSI	(1)	1	2	2	3	3	11
Face-to-face evidentiary hearings for reviews:							
DI	0	11	11	8	6	5	41
Continued payment during appeal:							
DI	25	149	134	114	107	31	560
HI and SMI	3	48	50	40	30	10	181
Medical personnel qualifications:							
DI	(1)	7	14	23	25	27	96
HI and SMI	(1)	(1)	1	2	5	7	15
Medicaid	(1)	(1)	1	2	3	4	10
SSI	(1)	2	3	5	6	7	23
Compliance with court orders	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Vocational rehabilitation:							
DI	(1)	2	4	7	8	8	29
HI and SMI	(1)	(1)	(1)	(1)	(1)	(1)	(1)
SSI	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Extension of sections 1619a and 1619b:							
Medicaid	3	7	5	0	0	0	15
SSI	(1)	1	1	0	0	0	2
Total outlays [3]	57	328	375	369	369	277	1,775

[1] Less than $500,000.
[2] The costs of this provision cannot be estimated because they depend on future court decisions.
[3] The details do not add to the totals due to interaction between provisions.

TABLE 4.—CONGRESSIONAL BUDGET OFFICE ESTIMATES FOR ADDITIONAL OUTLAYS RESULTING FROM THE MAJOR PROVISIONS IN H.R. 3755 AS APPROVED BY THE SENATE

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989	Total 1984–89
Termination of benefits based on medical improvement:							
DI	22	86	123	130	113	90	564
HI and SMI	4	25	35	40	35	25	17
Medicaid	(1)	3	4	4	3	3	17
SSI	1	3	4	4	3	3	18
Multiple impairments:							
DI	(1)	4	7	11	13	15	50
HI and SMI	(1)	(1)	(1)	1	2	2	5
Medicaid	(1)	(1)	1	1	1	1	4
SSI	(1)	1	2	2	3	3	11
Continued payment during appeal:							
DI	25	149	112	−20	0	0	266
HI and SMI	3	48	20	0	0	0	71
Medical personnel qualifications:							
DI	(1)	(1)	(1)	10	10	20	40
HI and SMI	(1)	(1)	(1)	1	1	3	5
Medicaid	(1)	(1)	(1)	1	1	2	4
SSI	(1)	(1)	(1)	2	2	5	9
Compliance with court orders	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Vocational rehabilitation:							
DI	(1)	2	4	7	8	8	29
HI and SMI	(1)	(1)	(1)	(1)	(1)	(1)	(1)
SSI	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Extension of sections 1619a and 1619b:							
Medicaid	3	7	7	6	0	0	0
SSI	(1)	1	2	2	0	0	5
Total outlays [3]	57	308	300	190	192	168	1,215

[1] Less than $500,00.
[2] The costs of this provision connot be estimated because they depend on future court decisions.
[3] The details do not add to the totals due to interaction between provisions.

TABLE 5.—SOCIAL SECURITY ADMINISTRATION OFFICE OF THE ACTUARY ESTIMATES FOR ADDITIONAL OASDI BENEFIT PAYMENTS UNDER H.R. 3755 AS PASSED BY THE HOUSE OF REPRESENTATIVES, BASED ON THE 1984 TRUSTEES REPORT ALTERNATIVE II-B ASSUMPTIONS, FISCAL YEARS 1984–89

[In millions]

Section	Proposal (including bill report requirements)	Fiscal year—						Total, 1984–89
		1984	1985	1986	1987	1988	1989	
101	Medical improvement:							
	Applied to new cases [1]	$30	$380	$460	$500	$540	$600	$2,510
	Applied to prior terminations [2]	440	780	260	210	180	170	2,040
	Subtotal	470	1,160	720	710	720	770	4,550
102	Study concerning evaluation of pain							
103	Guidelines for disability determinations:							
	Multiple impairments	(3)	(3)	10	10	20	20	60
	Noncompetitive work [4]	(3)	(3)	(3)	(3)	10	10	20
201	Moratorium and revised criteria for mental impairment cases.	(5)	(5)	(5)	(5)	(5)	(5)	(5)
202	Face-to-face evidentiary hearing for CDR reviews.		10	20	30	40	40	140
203	Continuation of benefits through ALJ hearing.	60	140	150	160	180	210	900
204	Qualifications of certain medical professionals.	(3)	(3)	10	20	20	20	70
205	Regulatory standards for consultative exams.	(3)	(3)	(3)	(3)	(3)	(3)	(3)
301	Uniform standards for disability determinations.	(3)	(3)	(3)	(3)	(3)	(3)	(3)
302	Compliance with certain court orders	(6)	(6)	(6)	(6)	(6)	(6)	(6)
303	Revision to vocational rehabilitation reimbursement rules.	(3)	(3)	(3)	(3)	(3)	(3)	(3)
304	Advisory Council	(3)	(3)	(3)	(3)	(3)	(3)	(3)
305	Staff attorneys							
(7)	Work evaluation in mental impairment cases.	(3)	(3)	(3)	(3)	(3)	(3)	(3)
	Total before ending State-initiated moratoria on CDR terminations:							
	With sec. 101 applied to new cases only.	70	480	590	660	730	810	3,340
	With sec. 101 applied to new cases and prior terminations. [8]	840	1,290	850	870	910	980	5,740
	Effect of ending State-initiated moratoria on CDR terminations.	−10	−80	(3)				−90
	Total after ending State-initiated moratoria on CDR terminations:							
	With sec. 101 applied to new cases only.	60	400	590	660	730	810	3,250
	With sec. 101 applied to new cases and prior terminations.	830	1,210	850	870	910	980	5,650

[1] Includes effect of applying medical improvement standard to all cases that will be pending a final decision of the Secretary as of the assumed enactment date of Apr. 1, 1984.

[2] Estimates assume that past CDR terminations would be reopened and evaluated under the new medical improvement standard and that reinstated beneficiaries would receive retroactive benefits from the month of termination.

[3] Cost or savings less than $5 million.

[4] Included in bill report only.

[5] No cost is shown for this provision since existing Administration initiatives are expected to accomplish the same results under present law.

[6] This provision has the potential to affect benefit costs substantially, although such effects cannot be estimated since they would depend on unpredictable court cases and the subsequent actions of the court. As an example, if future court cases were to repeat past decisions concerning the evaluation of pain, additional benefits of over $1 billion could occur during 1984–89 as a result of this section.

[7] This item is contained in the committee report only, and is not associated with a particular section of the bill.

[8] Includes $360 million due to continuation of benefits during appeal for past CDR terminations which are reopened and evaluated under the new medical improvement standard but are not reinstated.

Notes: 1. Due to the uncertainty concerning the effects of many of these proposals, actual experience could vary substantially from these estimates.

2. Estimates shown for each section alone (1) are based on the assumption that State-initiated moratoria on CDR terminations would gradually phase out over the next 2–3 years, and (2) exclude the effects of interaction with other proposals. Total costs for bill reflect such interactions.

3. The above estimates do not reflect the effects of the national moratorium on periodic review cases announced on Apr. 13, 1984 by Secretary Heckler.

TABLE 6.—SOCIAL SECURITY ADMINISTRATION OFFICE OF THE ACTUARY ESTIMATES FOR ADDITIONAL OASDI BENEFIT PAYMENTS UNDER H.R. 3755 AS PASSED BY THE SENATE, BASED ON THE 1984 TRUSTEES REPORT ALTERNATIVE II-B ASSUMPTIONS, FISCAL YEARS 1984–89

[In millions]

Section	Proposal	Fiscal year—						Total, 1984–89
		1984	1985	1986	1987	1988	1989	
2	Medical improvement	$150	$440	$400	$410	$400	$250	$2,050
3	Continuation of benefits during appeal (through ALJ level for initial cessations before June 1986).	60	140	110	60	40	40	450
4	Uniform standards for disability determinations.	(1)	(1)	(1)	(1)	(1)	(1)	(1)
5	Moratorium and revised criteria for mental impairment cases.	(2)	(2)	(2)	(2)	(2)	(2)	(2)
6	Qualifications of certain medical professionals.	(1)	(1)	(1)	10	10	20	40
7	Compliance with certain court orders							
8	Multiple impairments		(1)	(1)	10	10	20	40
9	Study on evaluation of pain	(1)	(1)	(1)	(1)	(1)	(1)	(1)
10	Modification of reconsideration pre-review notice.	(1)	(1)	(1)	(1)	(1)	(1)	(1)
11	Case development and medical evidence							
12	Payment of costs of rehabilitation services.	(1)	(1)	(1)	(1)	(1)	(1)	(1)
14	Advisory council							
15	Regulations on frequency of reviews	(1)	(1)	(1)	(1)	(1)	(1)	(1)
16	Monitoring of representative payees	(1)	(1)	(1)	(1)	(1)	(1)	(1)
17	"Fail-safe" reduction of automatic benefit increases for DI beneficiaries.	(3)	(3)	(3)	(3)	(3)	(3)	(3)
18	Measures to improve State compliance with Federal law and standards for the disability determination process.	(4)	(4)	(4)	(4)	(4)	(4)	(4)
	Total for bill [5]	260	470	480	480	450	320	2,460

[1] Cost or savings less than $5 million.

[2] No cost is shown for this provision since existing Administration initiatives are expected to accomplish the same results under present law.

[3] No effect is shown for this provision since, under this set of assumptions, the appropriate DI trust fund ratio would not fall below the 20-percent "trigger level" in this period. See covering memorandum concerning assumed definition of "fail-safe" trust fund ratio.

[4] No cost is shown for this provision since estimates assume that any non-compliance of States would end upon enactment of a medical improvement standard for continuing disability reviews.

[5] Includes $90 million due to continuation of benefits during appeal for past CDR terminations which would be reopened and evaluated under the new medical improvement standard but which would not be reinstated.

Notes: 1. The above estimates do not reflect the effects of the national moratorium on periodic disability reviews announced on April 13, 1984 by Secretary Heckler.

2. Estimates shown for each section alone exclude the effects of interaction with other proposals. Total costs for bill reflect such interactions.

3. Due to the uncertainty concerning the effects of many of these proposals, actual experience could vary substantially from these estimates.

TABLE 7.—SOCIAL SECURITY ADMINISTRATION COST ESTIMATES FOR H.R. 3755 AS PASSED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE

[Total costs for bill in millions]

	Fiscal year—						
	1984	1985	1986	1987	1988	1989	1984–89
House bill—standard applied retroactively:							
OASDI benefit payments	$830	$1,210	$850	$870	$910	$980	$5,650
OASDI administrative cost	33	184	66	62	67	67	479
Medicare	45	95	135	165	195	225	860
Medicaid		5	5	5	10	10	35
SSI	12	21	20	25	29	34	141
Total	920	1,515	1,076	1,127	1,211	1,316	7,165
House bill—Standard applied prospectively:							
OASDI benefit payments	60	400	590	660	730	810	3,250
OASDI administrative cost	12	59	66	62	67	67	333
Medicare	25	45	65	80	95	105	415
Medicaid			5	5	5	5	20
SSI	1	8	13	19	23	29	93
Total	98	512	739	826	920	1,016	4,111
Senate bill:							
OASDI benefit payments	260	460	480	480	460	320	2,460
OASDI administrative cost	26	142	44	33	18	11	274
Medicare	30	50	75	80	90	65	390
Medicaid			5	5	5	5	20
SSI	3	5	6	9	11	13	47
Total	319	657	610	607	584	414	3,191

[1] Includes class action cases in the courts, does not include 3-years sunset.

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LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 98-51

July 27, 1984

- At a press conference on Tuesday, July 24, President Reagan pointed out that there was a possibility that the increase in the Consumer Price Index (CPI) since the last Social Security cost-of-living adjustment (COLA) might be less than the 3 percent level required under the law to trigger a COLA. He said that if, indeed, it appeared that this would occur he would ask the Congress to act "to permit payment of a cost-of-living adjustment to the Social Security recipients."

- On Thursday, July 26, the Senate voted, 87 to 3, to waive the 3-percent trigger for purposes of the Social Security and Supplemental Security Income COLA's payable in January of 1985. This would be a one-time waiver, not a repeal of the 3 percent trigger.

  Under the amendment, the automatic adjustment provisions would operate as usual, regardless of the level of the CPI increase. (The actual CPI increase will not be known until late October, when the CPI for September becomes available. However, the rate of increase in the CPI over the past year has been much lower than was generally anticipated.)

  In addition, certain other provisions that adjust automatically only when there is an automatic benefit increase would continue to adjust. Thus, the contribution and benefit base ($37,800 for 1984) would be increased for 1985 by the annual increase in average wage levels, as would the exempt amounts under the earnings test. (Other automatic adjustments in Social Security such as the adjustment in the amount of earnings required for a quarter of coverage and the bend points in the benefit formula are automatically adjusted regardless of whether the annual COLA occurs.)

  The Senate amendment was adopted as a substitute for the language of a House-passed private relief bill, H.R. 1428, and now goes back to the House for further consideration.

- On July 25, the Senate passed H.R. 5798, the FY 1985 Treasury-Postal Service appropriations bill, after adopting a Moynihan (D., NY) amendment to limit Treasury funds until public members have been appointed to the Social Security Board of Trustees as required by Public Law 98-21, the Social Security Amendments of 1983. It is expected that a House-Senate conference will be convened to iron out differences between the versions of the bill passed by the two Houses.

- Yesterday a House-Senate conference committee met to resolve differences between the House- and Senate-passed versions of the disability bill, H.R. 3755 (Bulletins 98-38 and 98-46). The committee tentatively agreed to the following:

  -- Suspension of periodic review of all mentally-impaired beneficiaries until revised mental impairment criteria in the Listing of Impairments are published as regulations, which would be required within 4 months of enactment. Eligibility would be redetermined under the new criteria for individuals denied benefits after enactment and prior to the revision of criteria and for those whose disability benefits were terminated since March 1, 1981.

  -- Requirement that the Secretary, within 60 days after enactment, make every reasonable effort to ensure that a qualified psychiatrist or psychologist complete the medical portion of the sequential evaluation and assessment of residual functional capacity in mental impairment cases in which a decision unfavorable to the claimant or beneficiary is made. Report language would permit the Secretary to contract directly for the services of qualified psychiatrists and psychologists if a State is impeded from adequately compensating qualified personnel.

  -- Requirement that the Secretary promulgate regulations to establish standards for when a consultative examination should be obtained, the type of referral to be made, the procedures for monitoring consultative exams and the referral process.

  -- Requirement that the Secretary make every reasonable effort to obtain necessary medical evidence from claimant's treating source before evaluating medical evidence obtained from a consultative examination. Would also require development of a complete medical history, covering at least the preceding 12 months, in initial and continuing disability review cases.

  -- Requirement of publication of regulations setting forth uniform standards for DI and SSI disability determinations under the Administrative Procedure Act (APA) rulemaking procedures which would be binding at all levels of adjudication. Would also encourage the Secretary to publish under the APA all OASDI and SSI program regulations relating to benefits.

-- Expansion of vocational rehabilitation (VR) program to reimburse States for VR services provided to: (1) DI and SSI disability beneficiaries who medically recover while receiving VR and (2) beneficiaries who refuse without cause to continue VR or who fail to cooperate and thus preclude rehabilitation. Would end VR reimbursement after 9 months of substantial gainful activity (SGA) by beneficiary or when his entitlement to disability benefits ends, whichever is earlier. Report language would clarify that (2) would apply only in cases in which the Secretary also suspends the disability benefits to the person because of such refusal.

-- Requirement that the next quadrennial SSA Advisory Council study and make recommendations on medical and vocational aspects of disability including alternative approaches to work evaluation for SSI recipients, the effectiveness of VR programs for DI and SSI recipients, and the use of specialists for completing State agency medical and vocational evaluations. The Council's recommendations and a comprehensive description of the status of the DI and SSI programs applicable to the disabled would also be included in the Secretary's annual report to Congress.

-- Requirement that the Secretary, within 4 months after enactment, report to the Senate Committee on Finance and the House Committee on Ways and Means on the results of actions taken by the Secretary to establish positions to enable SSA staff attorneys to acquire qualifying experience and quality of experience necessary to compete for ALJ positions.

-- Extension through June 30, 1987 of the section 1619 temporary authority that continues SSI benefits and Medicaid for disabled recipients who engage in SGA. The Secretaries of Education and HHS would be required to establish training programs on section 1619 for staff personnel in SSA district offices and State VR agencies and to disseminate information to SSI applicants, recipients and potentially interested public and private organizations.

-- Requirement that the Secretary promulgate regulations within 6 months of enactment which establish the standards to be used in determining the frequency of periodic eligibility reviews. No individual could have more than one periodic review until issuance of such regulations.

-- Requirement that the Secretary: (1) evaluate the qualifications of prospective representative payees prior to or within 45 days following certification; (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than either the entitled individual, or his parent or spouse living in the same household; and (3) establish a system whereby parent and spouse payees who live in the same household as the entitled individual would periodically verify that they

continue to live with the individual. Would also increase the penalties for misuse of benefits by representative payees. Would require the Secretary to report to Congress within 9 months of enactment on implementation of new provisions and annually on the number and disposition of cases of misused funds and, when feasible, on other appropriate information.

-- Requirement that the Secretary federalize disability determinations in a State within 6 months of finding that the State is failing to follow Federal law and standards. Such a finding would have to be made within 16 weeks of the time the State's failure to comply first comes to the attention of the Secretary. In assuming the functions of a Disability Determination Service (DDS) the Secretary would be authorized to exceed Federal personnel ceilings, waive hiring restrictions, and, be required to assure, to the extent feasible, in conjunction with the Secretary of Labor, statutory protections of State agency employees not hired by the Secretary of HHS. Report language would provide that preference would be given to hiring qualified State agency employees.

The conference committee is expected to consider the remaining seven provisions of the disability bill (medical improvement standard, evaluation of pain, multiple impairments, appeal procedures, payment through the ALJ level of appeal, nonacquiescence policy and fail-safe provision) on August 2, 1984.

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98TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
98-1039

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

SEPTEMBER 19, 1984.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3755]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".

TABLE OF CONTENTS

31-006 O

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

SEC. 2. (a) Section 223(f) of the Social Security Act is amended to read as follows:

"STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that—

"(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(B)(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii)(II) does not apply) a new assessment of the individual's residual functional capacity, and demonstrates that—

"(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(ii)(I) the individual is now able to engage in substantial gainful activity, or

"(II) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

"(B) demonstrates that—

"(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

"(ii) the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "The provisions set forth in section 223(f) with respect to determinations of whether entitlement to benefits under this title or title XVIII based on the disability of any individual is terminated (on the basis of a finding that the physical or

mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).''

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

''(5) A recipient of benefits based on disability under this title may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

''(A) substantial evidence which demonstrates that—

''(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

''(ii) the individual is now able to engage in substantial gainful activity; or

''(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

''(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

''(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

''(II) the individual is now able to engage in substantial gainful activity, or

''(ii) demonstrates that—

''(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

''(II) the individual is now able to engage in substantial gainful activity; or

''(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

''(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability

under this title is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.".

(d)(1) The amendments made by this section shall apply only as provided in this subsection.

(2) The amendments made by this section shall apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act—

(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Securi-

ty Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section.

(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

(6) For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such election.

(f) In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

(g) The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this

section not later than 180 days after the date of the enactment of this Act.

EVALUATION OF PAIN

SEC. 3. (a)(1) Section 223(d)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentences: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability.".

(2) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act) is amended by striking out "section 221(h)" and inserting in lieu thereof "sections 221(h) and 223(d)(5)".

(3) The amendments made by paragraphs (1) and (2) shall apply to determinations made prior to January 1, 1987.

(b)(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5,

United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.

MULTIPLE IMPAIRMENTS

SEC. 4. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

> *"(C) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.".*

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.".

(c) The amendments made by this section shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act.

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 5. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria

embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act).

(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by

the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

NOTICE OF RECONSIDERATION; PREREVIEW NOTICE; DEMONSTRATION PROJECTS

SEC. 6. (a) Section 221(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) In any case in which the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) In any case in which the Secretary initiates a review under this title, similar to the continuing disability reviews authorized for purposes of title II under section 221(i), the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 221(i)(4).".

(c) The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.

(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 7. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,"; and

(B) in clause (iii) by striking out "June 1984" and inserting in lieu thereof "June 1988".

(2) Section 223(g)(3)(B) of such Act is amended by striking out "December 7, 1983" and inserting in lieu thereof "January 1, 1988".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

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

"(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is

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

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

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.".

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 8. (a) Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) An initial determination under subsection (a), (c), (g), or (i) that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.".

(b) Section 1614(a)(3) of such Act (as amended by section 4 of this Act) is further amended by adding at the end thereof the following new subparagraph:

"(H) In making determinations with respect to disability under this title, the provisions of section 221(h) shall apply in the same manner as they apply to determinations of disability under title II.".

(c) The amendments made by this section shall apply to determinations made after 60 days after the date of the enactment of this Act.

CONSULTATIVE EXAMINATIONS; MEDICAL EVIDENCE

SEC. 9. (a)(1) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

(2) The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act not later than 180 days after the date of the enactment of this Act.

(b)(1) Section 223(d)(5) of the Social Security Act is amended by inserting "(A)" after "(5)" and by adding at the end thereof the following new subparagraph:

"(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.".

(2) The amendments made by this subsection shall apply to determinations made on or after the date of the enactment of this Act.

UNIFORM STANDARDS

SEC. 10. (a) Section 221 of the Social Security Act (as amended by section 9 of this Act) is further amended by adding at the end thereof the following new subsection:

"(k)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d).

"(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.".

(b) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act and amended by section 3 of this Act) is further amended by

striking out "sections 221(h) and 223(d)(5)" and inserting in lieu thereof "sections 221(h), 221(k), and 223(d)(5)".

PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 11. (a)(1) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(A) by striking out "into substantial gainful activity"; and

(B) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(2) The second sentence of section 222(d)(1) of such Act is amended by striking out "of such individuals to substantial gainful activity" and inserting in lieu thereof "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

(b)(1) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1631(a)(6) (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(2) The second sentence of section 1615(d) of such Act is amended by inserting after "The determination" the following: "that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in

such a manner as to preclude successful rehabilitation, and the determination".

(c) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

ADVISORY COUNCIL STUDY

SEC. 12. (a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Council on Social Security pursuant to section 706 of the Social Security Act prior to June 1, 1985.

(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including studies and recommendations relating to—

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into

consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(c) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 13. The Secretary of Health and Human Services shall, within 120 days after the date of enactment of this Act, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on actions taken by the Secretary to establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for the position of administrative law judge under section 3105 of title 5, United States Code.

SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 14. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1987".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the district offices of the Social Security Administra-

tion. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.".

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

SEC. 15. The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

DETERMINATION AND MONITORING OF NEED FOR REPRESENTATIVE PAYEE

SEC. 16. (a) Section 205(j) of the Social Security Act is amended by inserting "(1)" after "(j)" and by adding at the end thereof the following new paragraphs:

"(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

"(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiv-

ing payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(4)(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after the date of the enactment of this paragraph.

"(B) The Secretary shall include as a part of the annual report required under section 704, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.".

(b) Section 1631(a)(2) of such Act is amended by inserting "(A)" after "(2)" and by adding at the end thereof the following new subparagraphs:

"(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

"(C)(i) In any case where payment is made under this title to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(D) The Secretary shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after the date of the enactment of this subpara-

graph. The Secretary shall include in the annual report required under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section 205(j)(4)(B).".

(c)(1) Section 1632 of the Social Security Act is amended by inserting "(a)" after "Sec. 1632." and by adding at the end thereof the following new subsection:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a), if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1631(a)(2) on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a)—

"(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

"(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 208 may not be certified as a payee under section 1631(a)(2).".

(2) Section 208 of such Act is amended by adding at the end thereof the following unnumbered paragraphs:

"Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).".

(d) The amendments made by this section shall become effective on the date of the enactment of this Act, and, in the case of the amendments made by subsection (c), shall apply with respect to violations occurring on or after such date.

MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

SEC. 17. (a)(1) Section 221(b)(1) of the Social Security Act is amended to read as follows:

"(b)(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

"(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

"(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

"(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

"(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1), complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period. In order to carry out this subparagraph, the Secretary shall, as the Secretary finds necessary, exceed any applicable personnel ceilings and waive any applicable hiring restrictions. In addition, to the extent feasible within the 180-day period after the final determination, the Secretary, in conjunction with the Secretary of Labor, shall assure the statutory protections of State agency employees not hired by the Secretary.

"(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any

case with respect to which a determination referred to in subsection (a)(1) was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.".

(2) Section 221(a)(1) of such Act is amended by striking out "subsection (b)(1)" and inserting in lieu thereof "subsection (b)(1)(C)".

(3)(A) Section 221(b)(3)(A) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(B) Section 221(b)(3)(B) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(4) Section 221(d) of such Act is amended by striking out "Any individual" and inserting in lieu thereof "Except as provided in subsection (b)(1)(D), any individual".

(b) The amendments made by subsection (a) of this section shall become effective on the date of the enactment of this Act and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.

SEPARABILITY

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

And the Senate agree to the same.

That the Senate recede from its amendment to the title of the bill.

DAN ROSTENKOWSKI,
J.J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD A. GEPHARDT,
JIM SHANNON,
WYCHE FOWLER, Jr.,
HAROLD FORD,
BARBER B. CONABLE, Jr.,
BILL ARCHER,
WILLIS D. GRADISON, Jr.,
CARROLL CAMPBELL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
BILL ROTH,
JOHN C. DANFORTH,
RUSSELL B. LONG,
LLOYD BENTSEN,
D.P. MOYNIHAN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. Standard of Review for Termination of Disability Benefits

Present law

To be eligible for disability benefits, a person must be unable, by reason of a medically determinable impairment expected to last at least 12 months or to end in death, to perform any substantial gainful activity (SGA) that exists in the national economy, considering his or her age, education and work experience. The impairment must be "demonstrable by medically acceptable clinical and laboratory diagnostic techniques." This definition applies both to new applicants and to beneficiaries whose eligibility is being reviewed. No other statutory standards exist for the review of beneficiaries.

House bill

Establishes a standard for reviewing eligibility of disability beneficiaries that allows benefits to be terminated only if there is substantial evidence that the beneficiary can perform SGA as a result of (a) medical improvement in his disabling condition, or (b) medical or vocational therapy technological or advances, as shown by new medical evidence and new assessment of residual functional capacity, or (c) vocational therapy or (d) a less disabling impairment than originally thought, as shown by new or improved diagnostic techniques or evaluations.

Benefits could also be terminated if evidence on the record at the time of the earlier determination or new evidence shows that the

prior determination was either clearly erroneous or fraudulently obtained, or that the beneficiary is performing SGA.

In cases where there is no evidence to support the prior decision (i.e. a lost file) the Secretary would not be precluded from securing additional medical reports in order to reconstruct that decision.

Title XVI is amended to provide that the same standard of review shall apply to SSI recipients (except that the exclusions which allow termination as the result of medical or vocational therapy (described in (b) and (c) above) do not apply to individuals receiving section 1619 special benefits).

No provisions for date of implementing regulations or expiration.

Effective date. Applies to all cases involving disability determinations pending in the Department or in Court on the date of enactment or initiated on or after that date.

Senate amendment

Benefits may be terminated if beneficiary can perform SGA unless the Secretary finds there has been no medical improvement. If the evidence establishes that there has been no medical improvement (other than improvement which is not related to his ability to work), benefits may be terminated only if Secretary can show (a) beneficiary has benefited from medical or vocational therapy or technology, (b) new or improved diagnostic or evaluative techniques indicate impairment(s) is not as disabling as believed at time of last decision, (c) a prior determination was fraudulently obtained, or (d) there is demonstrated substantial reason to believe a prior determination of eligibility was erroneous.

Benefits may be terminated for performance of SGA or if the individual fails, without good cause, to cooperate in the review or follow prescribed treatment, or cannot be located.

In making determination, Secretary shall consider the evidence in the file as well as any additional information concerning claimant's current or prior condition secured by Secretary or provided by claimant.

In the case of a finding relating to medical improvement, provides that burden of proof is on claimant. In other words, for benefits to be continued on this basis, individual must state and evidence in file must show that medical condition is same as or worse than at time of last decision (or, if there is medical improvement, it is not related to work ability).

Title XVI is amended to provide that the same procedures shall apply to SSI recipients (except that the provision requiring termination on the grounds that an individual is engaging in SGA does not apply to recipients of section 1619 special benefits).

Implementing regulations must be issued within 6 months of enactment. Provision expires December 31, 1987.

Effective date.—Applies to disability reviews initiated on or after date of enactment, to all individuals with claims properly pending in the administrative appeals process as of enactment, and to certain court cases. All individual litigants and named members of a class action who have cases properly pending in court as of May 16, 1984, and all individuals who properly request court review of a decision of the Secretary made during the period from March 15, 1984 until 60 days after enactment, would be remanded to the Sec-

retary for redetermination under the new standard. Also the case of any individual who exhausted the administrative appeals process, was an unnamed member of a properly pending class action certified prior to May 16, 1984, and had been notified of the Secretary's final decision on or after a date 60 days prior to the filing of the court action, would be remanded to the Secretary. The Secretary would notify the individual that he had 60 days to request review of his claim under the new standard. If the individual did not request review, the provision would not apply and the Secretary's determination would not be subject to further administrative or judicial review.

The provision would not apply to any case for which the Secretary made a final determination prior to May 16, 1984, and which was not included in the above categories. Such determination would not be subject to further administrative or judicial review.

Applies the provision authorizing payments pending appeal (See item 6) to any individual whose case is remanded by a court under this section and if applicable, who timely requested redetermination. These interim payments would begin with the payment for the month in which the individual elects continued payments. If the individual is ultimately found eligible, full retroactive benefits would be provided. If he is found ineligible, the interim payments would be subject to recovery as overpayments.

Conference agreement

(A) Standard of review

The conference agreement follows the House bill with amendments:

(a) remove causal links between change in medical condition and ability to perform SGA, as follows: the Secretary may terminate disability benefits on the basis that the person is no longer disabled only if there is substantial evidence which demonstrates that (i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work) and (ii) the individual is now able to engage in SGA. Make similar changes in wording of exception for advances in medical or vocational therapy or technology (add "related to ability to work") and exception for vocational therapy (add "related to ability to work");

(b) substitute for the House language concerning termination of benefits if evidence in the file or newly obtained shows that the prior determination was clearly erroneous, the requirement that the Secretary may terminate benefits in the absence of medical improvement if substantial evidence (which may be evidence on the record at the time any prior determination of such entitlement to disability benefits was made, or newly obtained evidence which relates to that determination) shows that a prior determination was in error;

(c) allow termination of benefits also where the individual is engaging in SGA (except where he is eligible under section 1619), cannot be located, or fails, without good cause to cooper-

ate in the review or to follow prescribed treatment which could be expected to restore his ability to engage in SGA;

(d) substitute for House language on Secretary obtaining additional medical reports, the requirement that any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary;

(e) add the requirement that any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the claimant has previously been determined to be disabled;

(f) add requirement that regulations must be promulgated within 6 months of enactment.

The conference agreement attempts to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligibility, which might make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review or some alternative standard could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls.

The conferees intend that determinations of continuing eligibility should be made on a basis which is as nearly neutral as possible. The Secretary should reach conclusions on the basis of the weight of the evidence, as applied to the statutory standards specified in this amendment, and without any preconception or presumption as to whether the individual is or is not disabled.

Under the conference agreement, the Secretary would apply the rules specified in the amendment, reaching conclusions under them on the basis of the weight of the evidence. The conference agreement eliminates language in the Senate bill referring to the burden of proof being on the claimant in the case of medical improvement determinations. It also eliminates Senate language with respect to the burden of proof on the Secretary in making other determinations under this provision. This agreement eliminates any confusion that might result from shifting burdens of proof, and is intended to subject determinations under this provision to the same requirements currently established in Section 223(d) of the Social Security Act. That is, the claimant's obligations to establish the existence of his disability with regard to the CDI proceeding are the same as his obligations with regard to an initial determination. Similarly, elimination of this language should not be interpreted as placing a burden of proof on the Secretary. Rather, the language in question was dropped solely to clarify the intent that decisions are to be made on the basis of the weight of the evidence and to avoid any misinterpretation with respect to the role of the claimant and the Secretary in pursuing evidence or with respect to the non-adversarial nature of the proceeding.

(B) Effective date

The conference agreement follows the House bill with respect to the 3-year sunset.

The conference agreement follows the Senate on formulation of effective date with amendments:

(1) The medical improvement standard in these amendments will only apply to:

(i) determinations made by the Secretary on or after the date of enactment; (ii) determinations by the Secretary not yet final on enactment and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements and other provisions of section 205 of the Act and regulations of the Secretary; (iii) determinations with respect to which a request for judicial review was pending on September 19, 1984 involving an individual litigant or a member of a class action identified by name in such pending action on such date (this section refers to individuals identified by name as members of a class action. By this, the legislation means those individuals identified in the pleadings as class representatives); (iv) determinations in which a request for judicial review is made by an individual litigant of a final decision by the Secretary made during the period beginning 60 days prior to the date of enactment and ending on the date of enactment (cases in iii and iv will be remanded to Secretary for determination); (v) unnamed plaintiffs in class action suits certified as of September 19, 1984, as follows: the cases shall be remanded to the Secretary; the Secretary shall notify all plaintiffs via certified mail that they have 120 days from the date of receiving the notice to file a request with the Secretary for review under these amendments.

(2) Add requirement that no class action shall be certified after September 19, 1984, which raises the issue of whether an individual who has had his entitlement to benefits terminated prior to September 19, 1984 should not have had such entitlement terminated without consideration of whether there has been medical improvement in such individual's condition since the time of a prior determination that the individual was under a disability.

The conference agreement provides for an opportunity for redetermination under the new standard of all claimants who are members of class actions which have been certified as of September 19, 1984. However, this is in no way intended to express a view, one way or another, as to whether those classes would otherwise have been found to be properly certified in accordance with the exhaustion and finality requirements of section 205 of the Social Security Act. The conference agreement provides that the existing certified classes will be covered by the new standard in order to resolve the existing controversy over the medical improvement issue in the courts.

This provision prohibits the certification of any class action after September 9, 1984 which raises the issue of whether a medical im-

provement standard should have been applied in a determination of eligibility made prior to the enactment of these amendments.

The section provides that certain specified court cases involving medical improvement be remanded to the Secretary for review under the medical improvement standard established in this Act. Cases pending in court which do not involve medical improvement would not, of course, be remanded to the Secretary for such a review.

The conferees recognize that there will be considerable administrative difficulty in identifying and notifying individuals who are eligible to have their cases redetermined as a result their being unnamend members of class actions certified prior to September 19, 1984. Notwithstanding the administrative difficulty of this task, the conferees expect the Secretary of Health and Human Services to act expeditiously in notifying these individuals of the provisions of this act which are applicable to them.

(C) Benefit payments during remand

The conference agreement follows the Senate amendment.

(D) Retroactive benefits

The conference agreement follows the Senate amendment.

2. Evaluation of Pain

Present law

There is no statutory provision concerning the evaluation of pain (or the use of subjective allegations of pain) in determining eligibility for disability benefits. The definition of disability requires that the person be unable to work by reason of a "medically determinable impairment"—one which results from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

By regulation, subjective allegations of symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could be reasonably expected to produce those symptoms and that is severe enough to be disabling.

House bill

Requires the Secretary to conduct a study in conjunction with the National Academy of Sciences on the use of subjective evidence of pain in making disability determinations, and on the state of the art of preventing, reducing or coping with pain. A report on the study is due to the Committees on Ways and Means and Finance no later than April 1, 1985.

Effective date.—On enactment.

Senate amendment

Requires Secretary to appoint 12-member commission consisting of a significant number of medical professionals involved in the study of pain, and representatives from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise to study the use of pain in evaluation of disabil-

ity. Report due to Committees on Ways and Means and Finance no later than December 31, 1986.

Includes in statute the present regulatory policy on the use of evidence of pain in evaluation of disability. Includes title XVI conforming amendment.

Effective date.—Statutory provision applies to determinations made prior to January 1, 1988.

Conference agreement

The conference agreement follows the Senate amendment with amendments:

(a) The study is to be done in consultation with the National Academy of Sciences, and the report is to be filed by December 31, 1985; and

(b) The statutory language providing for an interim standard for evaluation of pain is amended to more accurately reflect current policies.

Effective date.—The interim standard will be in effect only for determinations made prior to January 1, 1987.

3. Multiple Impairments

Present law

There is no statutory provision concerning the consideration of the combined effects of a number of different impairments. The definition of disability requires a finding of a medically determinable impairment of sufficient severity to prevent the person from doing not only his previous work but also any other kind of work that exists in the national economy, considering his age, education and work experience. By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs".

House bill

Requires the Secretary, in making a determination of whether a person's impairments are of such severity that he or she is unable to engage in substantial gainful activity, to consider the combined effects of all of a person's impairments, regardless of whether any impairment by itself is of such severity. Includes title XVI conforming amendment.

Effective date.—Applies to all determinations pending in the Department or in Court on the date of enactment, or initiated after that date.

Senate amendment

Same, except clarifies that the requirement applies to the determination of whether the individual has a combination of impairments which are *medically* severe without regard to age, education, or work experience. Includes title XVI conforming amendment.

Effective date.—Applies to all determinations made on or after January 1, 1985.

Conference agreement

The conference agreement substitutes alternative language for the provisions in both bills.

Under current policies, if a determination is made that a claimant's impairment is not severe, the consideration of the claim ends at that point. In cases where an individual has several impairments, none of which satisfy the standard for "severe," the individual is judged not disabled without any further evaluation of cumulative impact of his impairments. The conferees believe this policy may preclude realistic assessment of those cases involving individuals who have several impairments which in combination may be disabling. The conference agreement provides, therefore, that in determining whether an individual's impairment or impairments are so severe as to prevent him from engaging in substantial gainful activity, consideration must be given to the combined effect of all the individual's impairments without regard to whether any single impairment considered separately would limit the individual's ability.

The conferees also believe that in the interests of reasonable administrative flexibility and efficiency, a determination that an individual is not disabled may be based on a judgment that an individual has no impairment, or that the medical severity of his impairment or combination of impairments is slight enough to warrant a presumption, even without a full evaluation of vocational factors, that the individual's ability to perform SGA is not seriously affected. The current "sequential evaluation process" allows such a determination and the conferees do not intend to either eliminate or impair the use of that process. The conferees note that the Secretary has stated that it is her plan to reevaluate the current criteria for nonsevere impairments and expect that the Secretary will report to the Committees on the results of this evaluation.

Effective date.—Effective for all determinations made on or after the first day of the month beginning 30 days after the date of enactment.

4. Moratorium on Mental Impairment Reviews

Present law

Under the Disability Amendments of 1980, all DI beneficiaries with nonpermanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments.

Under a Secretarial initiative (of June 7, 1983), periodic eligibility reviews have been suspended for certain mental impairment cases involving functional psychotic disorders, pending a revision, with the help of outside mental health experts, of the criteria used for determining disability. Under a subseqent Secretarial action

(announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

House bill

Requires publication within 9 months of enactment of revised mental impairment criteria in the Listing of Impairments that are designed to realistically evaluate the person's ability to engage in SGA in a competitive workplace environment, taking account of the recommendations of the disability advisory council (section 304). Delays periodic review of mentally impaired individuals until these revisions are made. The delay would apply to cases on which an initial decision had not been made by the date of enactment and to those cases where an initial decision was made prior to the date of enactment and a timely appeal was pending on or after June 7, 1983.

Periodic reviews where (1) fraud was involved or (2) the individual was engaging in SGA, would continue to be done. SSA could continue to review medical diary cases and make initial determinations but would subsequently redetermine the cases under the revised criteria. If a new decision were favorable, it would take effect as of the time of the first determination. Mentally impaired persons who received an unfavorable initial or continuing eligibility determination between March 1, 1981 and enactment of the bill and who reapplied for benefits within 12 months of enactment would be deemed to have reapplied at the time of the unfavorable determination for the purpose of establishing a period of disability during the period covered by the prior determination, but not for benefit purposes; benefits would be payable only for the twelve months prior to the date of the new application. The provisions also apply to title XVI.

Effective date.—On enactment.

Senate amendment

Similar, except requires publication of revisions within 90 days after enactment, and reapplication provision applies to people who received an unfavorable determination since June 7, 1983 rather than March 1, 1981.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House provision with amendments to require the Secretary to publish the revised Listing of Impairments within 120 days of enactment.

5. Pre-Termination Notice and Right to Personal Appearance

Present law

A person whose initial claim for disability benefits is denied or who is determined after review not to be disabled may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record including any new evidence submitted by the claimant, conducted by the State agency. Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries determined not to be medically

eligible for benefits must be given opportunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary.

Individuals found ineligible for benefits at reconsideration may request a face-to-face evidentiary hearing before an administrative law judge. The next level of appeal is to SSA's Appeals Council, and finally, to a Federal court.

House bill

Revises determination process for beneficiaries undergoing periodic review in medical cessation cases, to provide for a face-to-face evidentiary review with State agency (upon request of the beneficiary within 30 days) after a preliminary unfavorable decision by the State. If, after the evidentiary interview (or paper review if the beneficiary requests review without the personal interview), the State agency denies benefits, the beneficiary could appeal to the ALJ and succeeding appeals levels. The reconsideration level would be abolished for these review cases.

Requires the Secretary to establish demonstration projects in at least 5 States using this same procedure for initial disability claims, with a report to the Committees on Ways and Means and Finance on the results due no later than April 1, 1985.

The provisions also apply to title XVI.

Effective date.—Revised determination process applies to periodic reviews on or after January 1, 1985; demonstration projects to be initiated as soon as practicable after enactment.

Senate amendment

Requires demonstration projects on providing pretermination face-to-face interviews in disability cessation cases in lieu of face-to-face evidentiary hearings at reconsideration. Report due to Committees on Ways and Means and Finance April 1, 1986.

Requires the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted.

The provisions also apply to title XVI.

Effective date.—On enactment. Demonstration projects to be established as soon as practicable after date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with respect to the current reconsideration hearing process, the demonstration projects concerning face-to-face pre-termination interviews for continuing disability review issues at the initial rather than the reconsideration level, and the requirement for notification of the possibility of benefit termination as a result of review with an amendment to require the report to Congress on December 31, 1986. The conference agreement follows the House bill with respect to demonstrational projects concerning face-to-face pre-denial interviews for initial disability claims, with an amendment to require the report to Congress on December 31, 1986.

Effective date.—On enactment. Demonstration projects to be established as soon as practicable after date of enactment.

6. Continuation of Benefits During Appeal

Present law

Disability benefits are payable for the month as of which the beneficiary is determined to be ineligible and for the 2 months succeeding. Benefits do not generally continue during appeal.

Under a temporary provision in P.L. 97-455 (as modified by P.L. 98-118), individuals notified of a medical termination decision could elect to have DI benefits and medicare coverage continued during appeal—through the month preceding the month of the ALJ hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld (unless they qualify for waiver under the standard provisions for waiver of overpayments). This provison does not apply to terminations made after December 6, 1983. Benefits are last payable under this provision for June 1984 (i.e., the July 1984 benefit check).

House bill

Permanently extends provision (with technical changes) for continuation of DI and SSI benefits during appeal. Requires the Secretary to report to the Committees on Ways and Means and Finance by July 1, 1986, on the impact of the provision on the OASDI trust funds and on appeals to ALJs.

Effective date.—On enactment.

Senate amendment

Extends the provision for continued payment of DI and SSI benefits during appeal to termination decisions made prior to June 1, 1986. (Last month of payments would be for January 1987, i.e., the February 1987 check.)

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill with amendments to:

(i) Make permanent the payments through the ALJ hearing for SSI recipients;

(ii) Make the payments through ALJ hearing for DI beneficiaries for termination decisions through December 1987, and benefit payments through June, 1988.

7. Qualifications of Medical Professionals Evaluating Mental Impairments

Present law

There is no statutory requirement concerning qualifications of persons making disability determinations. Under current policy, the State disability agency team making eligibility decisions must consist of a State agency medical consultant (physician) and a State agency disability examiner, both of whom must sign the disability determination.

House bill

Requires that a qualified psychiatrist or psychologist complete the medical portion of any applicable sequential evaluation and residual functional capacity assessment in cases involving mental impairments before a determination may be made that an individual is not disabled.

Effective date.—On enactment.

Senate amendment

Same except modified to require only that every reasonable effort be made to use qualified psychiatrist or psychologist. Also, specifically amends title XVI to make the provision applicable to SSI determinations.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate bill with an amendment to change the effective date to 60 days after enactment. The conferees note that if the Secretary is unable to assure adequate compensation in order to obtain the services of qualified psychiatrists or psychologists because of impediments at the State level, it would be within the Secretary's authority to contract directly for such services.

8. STANDARDS FOR CONSULTATIVE EXAMINATIONS/MEDICAL EVIDENCE

Present law

Consultative exams (CE's) are medical exams purchased by the State agency from physicians and other qualified health professionals outside the agency. By regulation, CE's may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence obtained through a CE is considered in conjunction with all other medical and nonmedical evidence submitted in connection with a disability claim.

There are currently no statutory or regulatory standards requiring CE's in particular cases, or requiring any standard procedures to be followed in the purchase of CE's.

The SSI statute includes a cross-reference to this provision. Any changes in title II will therefore also be made for SSI.

House bill

Requires the Secretary to prescribe regulations which set forth standards for when a CE should be obtained, the type of referral to be made and the procedures for monitoring CE's and the referral process. Permits non-regulatory rules and statements of policy relating to CE's to be issued if they are consistent with the regulations.

Effective date.—On enactment.

Senate amendment

Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from an individual's treating-physician prior to seeking a consultative examination.

Also, requires consideration of all evidence in the case record and development of complete medical history over at least the preceding 12-month period for individuals applying for benefits or undergoing review.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill with respect to the provisions requiring the Secretary to set forth standards for consultative examinations. The conference agreement follows the Senate amendment with an amendment requiring the Secretary to make every reasonable effort to obtain necessary medical evidence from treating physicians prior to evaluating medical evidence obtained from any other source on a consultative basis.

9. ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS

Present law

The guidelines for making social security disability determinations and all other social security eligibility determinations are contained in the Social Security Act, regulations, social security rulings and the POMS (the Program Operating Manual System):

Regulations, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication—state agencies, administrative law judges, SSA's Appeals Council, and the Federal Courts.

The Administrative Procedure Act (APA) requirements do not apply to social security programs because of a general exception for benefit programs. On a voluntary basis, however, SSA issues its regulations in accordance with the public notice and comment rulemaking requirements of the APA.

Rulings consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts, ALJs, the Appeals Council and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of administrative adjudication.

The POMS is a compilation of detailed policy instructions and step-by-step procedures for the use of State agency and SSA personnel in developing and adjudicating claims. The POMS is not binding on the Administrative Law Judges, Appeals Council or Courts.

House bill

Requires publication under APA public notice and comment rulemaking procedures of all OASDI and SSI regulations on matters relating to benefits. Requires that only those rules issued under Sections b–e of Section 553 of the APA shall be binding at any level of review.

Effective date.—On enactment.

Senate amendment

Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under APA procedures. These rules would be binding at all levels of adjudication.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment. While it is not required in the legislation, the conferees urge the Secretary to publish under APA public notice and comment rulemaking procedures all OASDI and SSI regulations which relate to benefits.

10. Acquiescence or Non-Acquiescence In Court of Appeals Decisions

Present law

Claimants for benefits under the Social Security Act may appeal State agency denials through several levels of administrative appeal. A claimant who wishes to continue to pursue appeal may next turn to the Federal district court with jurisdiction over his or her claim. The district court reviews the record as compiled by the agency to determine whether substantial evidence existed for the agency's decision. The district court's decision may be appealed, by the claimant or the Secretary, to the Circuit Court with jurisdiction, and ultimately to the Supreme Court (which may or may not agree to hear the appeal).

Under the Federal judicial system, decisions by a Circuit Court of Appeals constitute binding case law to be followed by all district courts in that circuit. (District courts are not bound by the case law of other circuits and often develop contrary case law on the same issue.)

In general, if two circuits rule differently on a particular issue, the Supreme Court will review the issue to settle the dispute, although frequently the Court will decline to review for an extended period of time if the issue is not ripe for disposition, or if it is not of sufficient importance to warrant immediate attention. If a particular policy is found by the Supreme Court to be unconstitutional, or contrary to the statute, that decision is binding on the agency.

Most social security cases decided in the Federal courts have little value as precedent for SSA decisions, since most reversals of agency determinations rest on the lack of substantial evidence for the agency's position. However, in some instances, the court's opinion is based on matter of a statutory interpretation.

The Social Security Administration abides by the final judgments of Federal courts with respect to the individuals in particular cases. It does not, however, consider itself bound with respect to nonlitigants as far as adopting as agency policy, either in the circuit or nationwide, the interpretation underlying a Circuit Court's decision. If the decision of a Circuit Court is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA, like some other Federal agencies, issues a ruling stating that it will not adopt the court's decision as agency policy. There are

currently 7 such rulings of nonacquiescence by the Social Security Administration.

House bill

Requires that a decision of a Circuit Court of Appeals interpreting title II of the Social Security Act or its regulations in a manner different from prevailing policy be appealed to the Supreme Court or the Secretary must apply the interpretation underlying that decision as agency policy in the circuit. If the Supreme Court denies review, circuit-wide acquiescence with that interpretation would be required until the Supreme Court ruled on the issue. Includes title XVI conforming amendment.

Effective date.—On enactment, with respect to all circuit court decisions made on or after the date of enactment, and with respect to circuit court decisions for which the Secretary still has an opportunity to request review by the Supreme Court.

Senate amendment

Requires SSA to notify Congress and print in the *Federal Register* (within 90 days after decision date, or on the last date available for appeal, whichever is later) an explanation of the agency's decision to acquiesce or not acquiesce in decisions of the Circuit Courts relating to interpretation of the Social Security Act or of regulations issued under the Act. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

States that nothing in the section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a circuit court.

Effective date.—Applies to Court decisions rendered after the date of enactment.

Conference agreement

The conference agreement deletes both the House and Senate language. The conferees do not intend that the agreement to drop both provisions be interpreted as approval of "non-acquiescence" by a federal agency to an interpretation of a U.S. Circuit Court of Appeals as a general practice. On the contrary, the conferees note that questions have been raised about the constitutional basis of non-acquiescence and many of the conferees have strong concerns about some of the ways in which this policy has been applied, even if constitutional. Thus, the conferees urge that a policy of non-acquiescence be followed only in situations where the Administration has initiated or has the reasonable expectation and intention of initiating the steps necessary to receive a review of the issue in the Supreme Court.

The conferees reaffirm the congressional intent that the Secretary resolve policy conflicts promptly in order to achieve consistent uniform administration of the program. This objective may be achieved in at least two ways other than non-acquiescence when the agency is faced with conflicting interpretations of the meaning and intent of the Social Security Act: either to appeal the issue to the Supreme Court, or to seek a legislative remedy from the Congress.

When there are court rulings which the Secretary believes are inconsistent with the meaning and intent of the law, the Secretary should diligently pursue appropriate appeals channels on an expeditious basis. By refusing to apply circuit court interpretations and by not promptly seeking review by the Supreme Court, the Secretary forces beneficiaries to re-litigate the same issue over and over again in the circuit, at substantial expense to both beneficiaries and the federal government. This is clearly an undesirable consequence. The conferees also feel that in addition to the practical administrative problems which may be raised by non-acquiescence, the legal and Constitutional issues raised by non-acquiescence can only be settled by the Supreme Court. The conferees therefore urge the Administration to seek a resolution of this issue.

The conferees recognize that the realities of litigation do not make it appropriate or feasible to appeal every adverse decision with which the Secretary continues to disagree. In such instances, however, the conferees strongly insist that Congress' judgment as to the appropriate policy should prevail. The conferees expect the Secretary to propose what she believes to be appropriate remedial legislation for congressional consideration.

It is clearly undesirable to have major differences in statutory interpretation between the Secretary and the courts remain unresolved for a protracted period of time. The conferees believe this legislation takes a major step toward removing the obstacles to resolution by clarifying the statutory language and congressional intent.

11. Payment of Costs of Rehabilitation Services

Present law

Presently, States are reimbursed for vocational rehabilitation (VR) services provided to DI and SSI recipients which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Sections 225(b) and/or 1631(a)(6) of the Social Security Act, work-incentive provisions enacted in 1980). The State agency is reimbursed for these VR services on the same basis as applies to other beneficiaries—only if the beneficiary is returned to SGA for 9 months.

House bill

Allows reimbursement to State agencies for costs of VR services provided to individuals receiving DI benefits under Section 225(b) who medically recover while in VR, and to those receiving SSI disability who are found ineligible for benefits by reason of medical recovery (whether or not receiving SSI under Section 1631(a)(6)). Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier, and would not be contingent upon the individual working at SGA for at least 9 months. Also provides for reimbursement in cases where DI or SSI disability recipient does not meet the requirement of successful return to SGA because

he refuses without good cause to continue in or cooperate with the VR program.

Effective date.—For individual receiving benefits as a result of section 225(b) (or who are no longer entitled to SSI benefits because of medical recovery) for months after the month of enactment.

Senate amendment

Same, except does not pay for services to those who fail to cooperate or refuse to continue participation in VR, and does not apply to SSI program.

Effective date.—For services rendered to individuals who receive benefits under Section 225(b) for months after the month of enactment.

Conference agreement

The conference agreement follows the House bill with technical amendments to correct the SSI provision, and an amendment to the effective date to apply the provision in the first month following the month after enactment.

The conferees expect that the Secretary will reimburse the State agencies for vocational rehabilitation services provided to a beneficiary who refuses without good cause to continue or to cooperate in a vocational rehabilitation program in such a way as to preclude his successful rehabilitation only in those cases in which the Secretary also suspends that person's disability benefits because of such refusal.

12. Advisory Council on Medical Aspects of Disability

Present law

Section 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the OASI, DI, HI, and SMI programs. The councils are comprised of members of the public.

The next advisory council is scheduled to be appointed in 1985 and to make its final report on December 31, 1986.

There are no requirements in the law pertaining to the creation of advisory councils to deal specifically with disability matters.

House bill

Requires the Secretary to appoint, within 60 days after enactment, a 10-member advisory council on the medical aspects of disability. This would be in addition to the regular quadrennial council. The council, to be composed of independent medical and vocational experts and the Commissioner of SSA *ex officio,* would provide advice and recommendations to the Secretary on disability policies, standards, and procedures. Any recommendations would be published in the Secretary's annual reports.

In addition, Section 307 of the bill requires this advisory council to study alternative approaches to work evaluation for SSI applicants and recipients and the effectiveness of VR services for SSI recipients.

Effective date.—On enactment. Authority for the council expires December 31, 1985.

Senate amendment

Directs next quadrennial advisory council on social security to study the medical and vocational aspects of disability using *ad hoc* panels of experts where appropriate. The study shall include: (1) alternative approaches to work evaluation for recipients of SSI; (2) the effectiveness of vocational rehabilitation programs for DI and SSI recipients; and (3) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process.

Effective date: Requires Secretary to appoint members by June 1, 1985.

Conference agreement

The conference agreement follows the Senate amendment with amendments providing in detail the issues to be studied by the Advisory Council.

13. Staff Attorneys

Present law

Qualifications for administrative law judge (ALJ) positions are set by the Office of Personnel Management (OPM). To qualify for SSA's GS–15 ALJ position, an applicant must have at least 1 year of qualifying experience at or comparable to the GS–14 grade level in Federal service. Staff attorneys in SSA's Office of Hearings and Appeals (OHA) have the appropriate type of qualifying experience. However, there are no GS–14 positions as OHA staff attorneys; GS–13 is the highest staff attorney position. Prior to a recent decision by OPM, staff attorneys did not have qualifying experience at the necessary grade level. On May 9, 1984, OPM revised this criteria to permit applicants to qualify with 2 years of qualifying experience at the GS–13 level. No GS–14 experience is necessary.

House bill

Requires the Secretary to establish enough GS–13 and GS–14 attorney advisor positions to enable otherwise qualified staff attorneys to compete for ALJ positions. A 90-day interim progress report and a 180-day final report by the Secretary would be required.

Effective date.—On enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment substituting a requirement for a report to the House Committee on Ways and Means and the Senate Committee on Finance on the actions taken by the Secretary to establish positions to enable staff attorneys to gain qualifying experience of the quality necessary to compete for ALJ positions.

In view of the recent actions by OPM and SSA, the conferees do not believe it is necessary to statutorily require that GS13 and GS14 SSA staff attorney positions be established so as to permit those attorneys to qualify for GS15 ALJ positions. Congress recognizes that such changes are critical in order to ensure the continued availability of qualified attorneys and ALJ's and urges the Secretary to take all reasonable steps to see that the OPM actions result in SSA attorneys becoming qualified for GS15 ALJ positions.

The conferees are concerned, however, upon review of the new examination announcement, that there may not exist within OHA positions in which a staff attorney can now serve and obtain the experience needed to meet the "quality of experience" requirements (in particular, the requirement that cases be listed which demonstrate knowledge, skills and abilities in the rules of evidence and trial procedures, and in decision-making ability).

The conferees expect that, if necessary, the Secretary will establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for ALJ positions.

14. SSI Benefits for Persons Working Despite Severe Impairments

Present law

Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA—$300 monthly.

Under Section 1619(a) of the Social Security Act, enacted in the Disability Amendments of 1980, severely disabled SSI recipients who work and earn more than SGA may receive a special payment and thereby maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., the "break-even" level which is currently $713 per month for an individual with earnings). Under Section 1619(b), medicaid and social services may continue beyond this level, until earnings reach a level where the Secretary finds: (1) that termination of eligibility for these benefits would not seriously inhibit the individual's ability to continue his employment, or (2) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available in the absence of earnings.

Section 1619 expired on December 31, 1983. It is being continued administratively under demonstration project authority to those people who were eligible for SSI as of that date.

House bill

Extends Sections 1619 (a) and (b) through June 30, 1986.

In addition, requires the Secretaries of HHS and Education to establish training programs for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

Effective date.—On enactment, retroactive to January 1, 1984.

Senate amendment

Same, except extended through June 30, 1987.

Conference agreement

The conference agreement follows the Senate amendment.

15. Frequency of Continuing Eligibility Reviews

Present law

Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed at least once every 3 years to assess their continuing eligibility.

Under a provision enacted in 1983 (P.L. 97-455), the Secretary is provided the authority to modify this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels.

On April 13, 1984, Secretary Heckler announced a temporary, nationwide moratorium on periodic eligibility reviews.

House bill

No provision.

Senate amendment

Requires Secretary to promulgate regulations establishing standards for determining the frequency of continuing eligibility reviews. Final regulations must be issued within 6 months of enactment. Until these regulations are issued, no individual may have more than one periodic review.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment.

16. Monitoring of Representative Payees for Social Security and SSI Beneficiaries

Present law

The Secretary may appoint a representative payee for an individual entitled to social security or SSI benefits when it appears to be in the individual's best interest. Payees must be appointed for individuals receiving SSI who are addicted to drugs or alcohol.

A payee convicted of misusing a social security beneficiary's funds is guilty of a felony, punishable by imprisonment for not more than 5 years and/or a fine of not more than $5,000. A payee convicted of misusing an SSI recipient's funds is guilty of a misde-

meanor, punishable by imprisonment for not more than 1 year and/or a fine of not more than $1,000.

There are no statutory requirements or restrictions on the selection and monitoring of payees.

House bill

No provision.

Senate amendment

Requires Secretary to: (1) evaluate qualifications of prospective payee either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than a parent or spouse living in the same household as the entitled individual, and (3) report to Congress within 6 months of enactment on implementation of the new system and report annually on the number of cases of misused funds and disposition of such cases.

The fine for a first offense by a payee convicted of misusing SSI benefits would be increased to not more than $5,000 and, for both programs, a second offense by a payee would be made a felony punishable by imprisonment for not more than 5 years and/or a fine of not more than $25,000. Individuals convicted of a felony under this provision could not be selected as a payee.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment with amendments to require a report to Congress within 270 days after the date of enactment.

While the conference agreement recognizes that it may be necessary to appoint a representative payee prior to completion of the investigation required by the provision, the managers believe that the Secretary should do so cautiously. In particular, the managers direct the Secretary to establish procedures under which large lump-sum payments of retroactive benefits will not ordinarily be paid to new representative payees until the investigation of their suitability has been successfully completed. These procedures should, however, allow for reasonable exceptions where the funds are urgently needed, for example, to avoid eviction or to meet major medical needs.

Where State institutions serve as representative payees for their residents, the annual reporting requirements of the conference agreement do not apply. This exemption, however, is not designed to shield institutional payees from accountability but rather to allow the Secretary the flexibility to establish more appropriate and effective systems of auditing the use of social security funds by such institutions. The managers wish to make clear their intention that the Secretary implement a thorough and comprehensive audit methodology to assure that Social Security Act benefits for residents of State institutions are not misused. These onsite reviews would be expected to involve, at a minimum, discussions with institution staff, an audit of a sample of residents accounts in each institution and on-ward interviews and observations to ensure that benefits are being properly used. At a minimum, each such institu-

tion should be audited once every three years. This 3-year cycle will allow the Secretary to audit one-third of such institutions each year—thus permitting a more thorough audit than would be possible on an annual basis. The managers further expect that the initial report on the implementation of this section of the bill will include a full exposition of the audit procedures which the Secretary will utilize in monitoring State institutions which act as representative payees.

17. Fail-Safe

Present law

The main source of funding for the DI program is that portion of the social security tax allocated by law for disability. At present, the disability portion of the tax is 1 percent (employee and employer combined). It is scheduled to rise to 1.2 percent in the 1990's and to 1.42 percent thereafter. If revenues from the tax exceed amounts needed for benefit payments, the excess is placed in the trust fund reserve. If revenues fall short of the amount needed, the reserve is drawn on to make up the difference. (To make timely benefit payments it is necessary to have at least one month's benefit payments in reserve at the beginning of each month—8 to 9 percent of annual expenditures. Reserves must be sufficient to meet this percentage requirement at the beginning of each month notwithstanding any decline in revenues or increase in expenditures during the year.)

To help assure continued benefit payments over the next few years in the event of adverse conditions, the social security legislation enacted in 1983 authorized interfund borrowing for calendar years 1983–1987. In addition, the 1983 legislation required the OASDI Board of Trustees, whenever it determines that trust fund reserves may become less than 20 percent, to immediately submit to Congress a report setting forth its recommendations for statutory adjustments necessary to restore the reserve ratio. This report to the Congress by the Trustees must provide specific information as to the extent to which benefits would have to be reduced, payroll taxes increased, or some combination thereof, in order to restore the trust fund reserve ratio.

House bill

No provision.

Senate amendment

Requires the Secretary to adjust disability insurance benefit increases as necessary to prevent the DI trust fund balance from falling below a defined threshold. The Secretary would be required to notify the Congress by July 1 in any year in which the amount of the DI trust fund at the start of the next year is projected to be less than 20 percent of the year's expenditures. If Congress took no action, the Secretary must scale back the next cost-of-living increase for disability insurance beneficiaries as necessary to keep the fund balance from falling below 20 percent. If further necessary to keep the fund from falling below 120 percent, the Secretary

would also be required to scale back the increase in the benefit formula used to determine new benefit awards the following year.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill.

18. MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

Present law

The States are responsible, on a voluntary basis, for determining whether individuals are disabled under the meaning of the Social Security Act. Under the law, States administering the program are required to make disability determinations in accord with Federal law and the standards and guidelines established by the Department of Health and Human Services. All benefit payments and administrative costs of the States making these determinations are financed or reimbursed by the Disability Insurance Trust Fund.

The law provides for the Secretary to commence actions to take over the disability determination process if a State fails to follow Federal rules. A series of procedural steps must be complied with before such Federal assumption can be accomplished. The Secretary may not commence making disability determinations earlier than 6 months after: (1) finding, after notice and opportunity for hearing, that a State agency is substantially out of compliance with Federal law; (2) developing all procedures to implement a plan for partial or complete assumption of the disability determinations which grants hiring preference to the State employees; and (3) the Secretary of Labor determines that the State has made fair and equitable arrangements to protect the interests of displaced employees.

Prior to the Secretary's announcement in April 1984 of a temporary nationwide moratorium on periodic reviews, several States on their own initiative were failing to conduct eligibility reviews in accordance with Federal law and standards. Eighteen States were operating under court-ordered eligibility criteria or pending court order.

House bill

No provision.

Senate amendment

Requires the Secretary to federalize disability determinations in a State within 6 months of finding that the State is not in substantial compliance with Federal law and standards. (Such finding must be made within 16 weeks of the time a State's failure to comply first comes to the attention of the Secretary. During this 16-week period, at the discretion of the Secretary, a hearing could be afforded to the State.) The Secretary would be required, to the extent feasible, to meet the requirements of present law regarding the transfer of functions. Provision expires December 31, 1987.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate bill with an amendment to require the Secretary to waive any applicable personnel ceilings and other restrictions in carrying out the provisions. Under the conference agreement, protections are being given to State agency employees. If the Secretary assumes the functions of the Disability Determinations Agency, then preference must be given in hiring to agency employees who are capable of performing the requisite duties. The conferees further intend that the Secretary should make every effort throughout the 180 day period to comply with the requirements in the law concerning the hiring of State employees and the protection of their interests in the event of the Secretary assuming the functions of the State agency.

19. Separability Clause

The Conference agreement includes a separability clause stating that the constitutional invalidity of any provision of the bill shall not affect the other provisions of the bill.

DAN ROSTENKOWSKI,
J.J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD A. GEPHARDT,
JIM SHANNON,
WYCHE FOWLER, Jr.,
HAROLD FORD,
BARBER B. CONABLE, Jr.,
BILL ARCHER,
WILLIS D. GRADISON, Jr.,
CARROLL CAMPBELL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
BILL ROTH,
JOHN C. DANFORTH,
RUSSELL B. LONG,
LLOYD BENTSEN,
D.P. MOYNIHAN,
Managers on the Part of the Senate.

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Tauke	Vucanovich	Winn
Tauzin	Walgren	Wirth
Taylor	Walker	Wise
Thomas (CA)	Watkins	Wolf
Thomas (GA)	Waxman	Wolpe
Torres	Weaver	Wortley
Torricelli	Weber	Wright
Towns	Weiss	Wyden
Traxler	Wheat	Yates
Udall	Whitehurst	Yatron
Valentine	Whitley	Young (AK)
Vander Jagt	Whittaker	Young (FL)
Vandergriff	Whitten	Young (MO)
Vento	Williams (MT)	Zschau
Volkmer	Wilson	

NOT VOTING—34

Alexander	Ferraro	Morrison (CT)
Bethune	Gingrich	Oxley
Biaggi	Gramm	Savage
Boner	Harkin	Shannon
Breaux	Latta	Shelby
Broomfield	Leath	Simon
Cheney	Lehman (CA)	Spratt
Courter	Markey	Studds
Crane, Philip	McEwen	Williams (OH)
Crockett	McGrath	Wylie
DeWine	Miller (OH)	
Edwards (OK)	Moorhead	

□ 1640

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONFERENCE REPORT OF H.R. 3755, SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

Mr. ROSTENKOWSKI submitted the following conference report and statement on the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process:

CONFERENCE REPORT (H. REPT. No. 98-1039)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".

TABLE OF CONTENTS

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

SEC. 2. (a) Section 223(f) of the Social Security Act is amended to read as follows:

"STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that—

"(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(B)(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii)(II) does not apply) a new assessment of the individual's residual functional capacity, and demonstrates that—

"(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(ii)(I) the individual is now able to engage in substantial gainful activity, or

"(II) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

"(B) demonstrates that—

"(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

"(ii) the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "The provisions set forth in section 223(f) with respect to determinations of whether entitlement to benefits under this title or title XVIII based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability

was made has ceased, does not exist, or is not disabling)."

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that—

"(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(ii) the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

"(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity, or

"(ii) demonstrates that—

"(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity; or

"(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

"(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this title is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.".

(d)(1) The amendments made by this section shall apply only as provided in this subsection.

(2) The amendments made by this section shall apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act—

(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section.

(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

(6) For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(d)(7), such payments (if elected)—

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such election.

(f) In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

(g) The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section not later than 180 days after the date of the enactment of this Act.

EVALUATION OF PAIN

SEC. 3. (a)(1) Section 223(d)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentences: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclu-

sion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability.".

(2) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act) is amended by striking out "section 221(h)" and inserting in lieu thereof "sections 221(h) and 223(d)(5)".

(3) The amendments made by paragraphs (1) and (2) shall apply to determinations made prior to January 1, 1987.

(b)(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.

MULTIPLE IMPAIRMENTS

SEC. 4. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.".

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.".

(c) The amendments made by this section shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act.

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 5. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act).

(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

NOTICE OF RECONSIDERATION; PREREVIEW NOTICE; DEMONSTRATION PROJECTS

SEC. 6. (a) Section 221(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) In any case in which the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of

the individual to provide medical evidence with respect to such review.".

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) In any case in which the Secretary initiates a review under this title, similar to the continuing disability reviews authorized for purposes of title II under section 221(i), the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 221(i)(4).".

(c) The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.

(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 7. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,"; and

(B) in clause (iii) by striking out "June 1984" and inserting in lieu thereof "June 1988".

(2) Section 223(g)(3)(B) of such Act is amended by striking out "December 7, 1983" and inserting in lieu thereof "January 1, 1988".

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

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

"(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

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

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.".

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 8. (a) Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) An initial determination under subsection (a), (c), (g), or (i) that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.".

(b) Section 1614(a)(3) of such Act (as amended by section 4 of this Act) is further amended by adding at the end thereof the following new subparagraph:

"(H) In making determinations with respect to disability under this title, the provisions of section 221(h) shall apply in the same manner as they apply to determinations of disability under title II.".

(c) The amendments made by this section shall apply to determinations made after 60 days after the date of the enactment of this Act.

CONSULTATIVE EXAMINATIONS; MEDICAL EVIDENCE

SEC. 9. (a)(1) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

(2) The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act not later than 180 days after the date of the enactment of this Act.

(b)(1) Section 223(d)(5) of the Social Security Act is amended by inserting "(A)" after "(5)" and by adding at the end thereof the following new subparagraph:

"(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.".

(2) The amendments made by this subsection shall apply to determinations made on or after the date of the enactment of this Act.

UNIFORM STANDARDS

SEC. 10. (a) Section 221 of the Social Security Act (as amended by section 9 of this Act) is further amended by adding at the end thereof the following new subsection:

"(k)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d).

"(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.".

(b) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act and amended by section 3 of this Act) is further amended by striking out "sections 221(h) and 223(d)(5)" and inserting in lieu thereof "sections 221(h), 221(k), and 223(d)(5)".

PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 11. (a)(1) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(A) by striking out "into substantial gainful activity"; and

(B) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(2) The second sentence of section 222(d)(1) of such Act is amended by striking out "of such individuals to substantial gainful activity" and inserting in lieu thereof "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

(b)(1) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1631(a)(6) (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(2) The second sentence of section 1615(d) of such Act is amended by inserting after "The determination" the following: "that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination".

(c) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

ADVISORY COUNCIL STUDY

SEC. 12. (a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Council on Social Security pursuant to section 706 of the Social Security Act prior to June 1, 1985.

(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including studies and recommendations relating to—

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(c) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 13. The Secretary of Health and Human Services shall, within 120 days after the date of enactment of this Act, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on actions taken by the Secretary to establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for the position of administrative law judge under section 3105 of title 5, United States Code.

SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 14. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1987".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.".

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

SEC. 15. The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under

section 221(i) of the Social Security Act. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

DETERMINATION AND MONITORING OF NEED FOR REPRESENTATIVE PAYEE

SEC. 16. (a) Section 205(j) of the Social Security Act is amended by inserting "(1)" after "(j)" and by adding at the end thereof the following new paragraphs:

"(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

"(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(4)(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after the date of the enactment of this paragraph.

"(B) The Secretary shall include as a part of the annual report required under section 704, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.".

(b) Section 1631(a)(2) of such Act is amended by inserting "(A)" after "(2)" and by adding at the end thereof the following new subparagraphs:

"(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

"(C)(i) In any case where payment is made under this title to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(D) The Secretary shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after the date of the enactment of this subparagraph. The Secretary shall include in the annual report required under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section 205(j)(4)(B).".

(c)(1) Section 1632 of the Social Security Act is amended by inserting "(a)" after "Sec. 1632." and by adding at the end thereof the following new subsection:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a), if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1631(a)(2) on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a)—

"(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

"(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 208 may not be certified as a payee under section 1631(a)(2).".

(2) Section 208 of such Act is amended by adding at the end thereof the following unnumbered paragraphs:

"Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).".

(d) The amendments made by this section shall become effective on the date of the enactment of this Act, and, in the case of the amendments made by subsection (c), shall apply with respect to violations occurring on or after such date.

MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

SEC. 17. (a)(1) Section 221(b)(1) of the Social Security Act is amended to read as follows:

"(b)(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

"(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

"(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assur-

ances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

"(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

"(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1), complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period. In order to carry out this subparagraph, the Secretary shall, as the Secretary finds necessary, exceed any applicable personnel ceilings and waive any applicable hiring restrictions. In addition, to the extent feasible within the 180-day period after the final determination, the Secretary, in conjunction with the Secretary of Labor, shall assure the statutory protections of State agency employees not hired by the Secretary.

"(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any case with respect to which a determination referred to in subsection (a)(1) was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.".

(2) Section 221(a)(1) of such Act is amended by striking out "subsection (b)(1)" and inserting in lieu thereof "subsection (b)(1)(C)".

(3)(A) Section 221(b)(3)(A) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(B) Section 221(b)(3)(B) of such act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(4) Section 221(d) of such Act is amended by striking out "Any individual" and inserting in lieu thereof "Except as provided in subsection (b)(1)(D), any individual".

(b) The amendments made by subsection (a) of this section shall become effective on the date of the enactment of this Act and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.

SEPARABILITY

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

And the Senate agree to the same.

That the Senate recede from its amendment to the title of the bill.

DAN ROSTENKOWSKI,
J.J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD A. GEPHARDT,
JIM SHANNON,
WYCHE FOWLER, Jr.,
HAROLD FORD,
BARBER B. CONABLE, Jr.,
BILL ARCHER,
WILLIS D. GRADISON, Jr.,
CARROLL CAMPBELL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
BILL ROTH,
JOHN C. DANFORTH,
RUSSELL B. LONG,
LLOYD BENTSEN,
D.P. MOYNIHAN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS

Present law

To be eligible for disability benefits, a person must be unable, by reason of a medically determinable impairment expected to last at least 12 months or to end in death, to perform any substantial gainful activity (SGA) that exists in the national economy, considering his or her age, education and work experience. The impairment must be "demonstrable by medically acceptable clinical and laboratory diagnostic techniques." This definition applies both to new applicants and to beneficiaries whose eligibility is being reviewed. No other statutory standards exist for the review of beneficiaries.

House bill

Establishes a standard for reviewing eligibility of disability beneficiaries that allows benefits to be terminated only if there is substantial evidence that the beneficiary can perform SGA as a result of (a) medical improvement in his disabling condition, or (b) medical or vocational therapy technological or advances, as shown by new medical evidence and new assessment of residual functional capacity, or (c) vocational therapy or (d) a less disabling impairment than originally thought, as shown by new or improved diagnostic techniques or evaluations.

Benefits could also be terminated if evidence on the record at the time of the earlier determination or new evidence shows that the prior determination was either clearly erroneous or fraudulently obtained, or that the beneficiary is performing SGA.

In cases where there is no evidence to support the prior decision (i.e. a lost file) the Secretary would not be precluded from securing additional medical reports in order to reconstruct that decision.

Title XVI is amended to provide that the same standard of review shall apply to SSI recipients (except that the exclusions which allow termination as the result of medical or vocational therapy (described in (b) and (c) above) do not apply to individuals receiving section 1619 special benefits).

No provisions for date of implementing regulations or expiration.

Effective date. Applies to all cases involving disability determinations pending in the Department or in Court on the date of enactment or initiated on or after that date.

Senate amendment

Benefits may be terminated if beneficiary can perform SGA unless the Secretary finds there has been no medical improvement. If the evidence establishes that there has been no medical improvement (other than improvement which is not related to his ability to work), benefits may be terminated only if Secretary can show (a) beneficiary has benefited from medical or vocational therapy or technology, (b) new or improved diagnostic or evaluative techniques indicate impairment(s) is not as disabling as believed at time of last decision, (c) a prior determination was fraudulently obtained, or (d) there is demonstrated substantial reason to believe a prior determination of eligibility was erroneous.

Benefits may be terminated for performance of SGA or if the individual fails, without good cause, to cooperate in the review or follow prescribed treatment, or cannot be located.

In making determination, Secretary shall consider the evidence in the file as well as any additional information concerning claimant's current or prior condition secured by Secretary or provided by claimant.

In the case of a finding relating to medical improvement, provides that burden of proof is on claimant. In other words, for benefits to be continued on this basis, individual must state and evidence in file must show that medical condition is same as or worse than at time of last decision (or, if there is medical improvement, it is not related to work ability).

Title XVI is amended to provide that the same procedures shall apply to SSI recipients (except that the provision requiring termination on the grounds that an individual is engaging in SGA does not apply to recipients of section 1619 special benefits).

Implementing regulations must be issued within 6 months of enactment. Provision expires December 31, 1987.

Effective date.—Applies to disability reviews initiated on or after date of enactment, to all individuals with claims properly pending in the administrative appeals process as of enactment, and to certain court

cases. All individual litigants and named members of a class action who have cases properly pending in court as of May 16, 1984, and all individuals who properly request court review of a decision of the Secretary made during the period from March 15, 1984 until 60 days after enactment, would be remanded to the Secretary for redetermination under the new standard. Also the case of any individual who exhausted the administrative appeals process, was an unnamed member of a properly pending class action certified prior to May 16, 1984, and had been notified of the Secretary's final decision on or after a date 60 days prior to the filing of the court action, would be remanded to the Secretary. The Secretary would notify the individual that he had 60 days to request review of his claim under the new standard. If the individual did not request review, the provision would not apply and the Secretary's determination would not be subject to further administrative or judicial review.

The provision would not apply to any case for which the Secretary made a final determination prior to May 16, 1984, and which was not included in the above categories. Such determination would not be subject to further administrative or judicial review.

Applies the provision authorizing payments pending appeal (See item 6) to any individual whose case is remanded by a court under this section and if applicable, who timely requested redetermination. These interim payments would begin with the payment for the month in which the individual elects continued payments. If the individual is ultimately found eligible, full retroactive benefits would be provided. If he is found ineligible, the interim payments would be subject to recovery as overpayments.

Conference agreement

(A) Standard of review

The conference agreement follows the House bill with amendments:

(a) remove causal links between change in medical condition and ability to perform SGA, as follows: the Secretary may terminate disability benefits on the basis that the person is no longer disabled only if there is substantial evidence which demonstrates that (i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work) and (ii) the individual is now able to engage in SGA. Make similar changes in wording of exception for advances in medical or vocational therapy or technology (add "related to ability to work") and exception for vocational therapy (add "related to ability to work");

(b) substitute for the House language concerning termination of benefits if evidence in the file or newly obtained shows that the prior determination was clearly erroneous, the requirement that the Secretary may terminate benefits in the absence of medical improvement if substantial evidence (which may be evidence on the record at the time any prior determination of such entitlement to disability benefits was made, or newly obtained evidence which relates to that determination) shows that a prior determination was in error;

(c) allow termination of benefits also where the individual is engaging in SGA (except where he is eligible under section 1619), cannot be located, or fails, without good cause to cooperate in the review or to follow prescribed treatment which could be expected to restore his ability to engage in SGA;

(d) substitute for House language on Secretary obtaining additional medical reports, the requirement that any determination under this section shall be made on the basis of all the evidence available in the individual's prior or current condition which is presented by the individual or secured by the Secretary;

(e) add the requirement that any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the claimant has previously been determined to be disabled;

(f) add requirement that regulations must be promulgated within 6 months of enactment.

The conference agreement attempts to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligibility, which might make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review or some alternative standard could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls.

The conferees intend that determinations of continuing eligibility should be made on a basis which is as nearly neutral as possible. The Secretary should reach conclusions on the basis of the weight of the evidence, as applied to the statutory standards specified in this amendment, and without any preconception or presumption as to whether the individual is or is not disabled.

Under the conference agreement, the Secretary would apply the rules specified in the amendment, reaching conclusions under them on the basis of the weight of the evidence. The conference agreement eliminates language in the Senate bill referring to the burden of proof being on the claimant in the case of medical improvement determinations. It also eliminates Senate language with respect to the burden of proof on the Secretary in making other determinations under this provision. This agreement eliminates any confusion that might result from shifting burdens of proof, and is intended to subject determinations under this provision to the same requirements currently established in Section 223(d) of the Social Security Act. That is, the claimant's obligations to establish the existence of his disability with regard to the CDI proceeding are the same as his obligations with regard to an initial determination. Similarly, elimination of this language should not be interpreted as placing a burden of proof on the Secretary. Rather, the language in question was dropped solely to clarify the intent that decisions are to be made on the basis of the weight of the evidence and to avoid any misinterpretation with respect to the role of the claimant and the Secretary in pursuing evidence or with respect to the non-adversarial nature of the proceeding.

(B) Effective date

The conference agreement follows the House bill with respect to the 3-year sunset.

The conference agreement follows the Senate on formulation of effective date with amendments:

(1) The medical improvement standard in these amendments will only apply to:

(i) determinations made by the Secretary on or after the date of enactment; (ii) determinations by the Secretary not yet final on enactment and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements and other provisions of section 205 of the Act and regulations of the Secretary; (iii) determinations with respect to which a request for judicial review was pending on September 9, 1984 involving an individual litigant or a member of a class action identified by name in such pending action on such date (This section refers to individuals identified by name as members of a class action. By this, the legislation means those individuals identified in the pleadings as class representatives); (iv) determinations in which a request for judicial review is made by an individual litigant of a final decision by the Secretary made during the period beginning 60 days prior to the date of enactment and ending on the date of enactment; (cases in iii and iv will be remanded to Secretary for determination); (v) unnamed plaintiffs in class suits certified as of September 19, 1984, as follows: the cases shall be remanded to the Secretary; the Secretary shall notify all plaintiffs via certified mail that they have 120 days from the date of receiving the notice to file a request with the Secretary for review under these amendments.

(2) Add requirement that no class action shall be certified after September 19, 1984, which raises the issue of whether an individual who has had his entitlement to benefits terminated prior to September 19, should not have had such entitlement terminated without consideration of whether there has been medical improvement in such individual's condition since that time of a prior determination that the individual was under a disability.

The conference agreement provides for an opportunity for redetermination under the new standard of all claimants who are members of class actions which have been certified as of September 29, 1984. However, this is in no way intended to express a view, one way or another, as to whether those classes would otherwise have been found to be properly certified in accordance with the exhaustion and finality requirements of section 205 of the Social Security Act. The conference agreement provides that the existing certified classes will be covered by the new standard in order to resolve the existing controversy over the medical improvement issue in the courts.

This provision prohibits the certification of any class action after September 9, 1984 which raises the issue of whether a medical improvement standard should have been applied in a determination of eligibility made prior to the enactment of these amendments.

The section provides that certain specified court cases involving medical improvement be remanded to the Secretary for review under the medical improvement standard established in this Act. Cases pending in court which do not involve medical improvement would not, of course, be remanded to the Secretary for such a review.

The conferees recognize that there will be considerable administrative difficulty in identifying and notifying individuals who are eligible to have their cases redetermined as a result of their being unnamed members of class actions certified prior to September 19, 1984. Notwithstanding the administra-

tive difficulty of this task, the conferees expect the Secretary of Health and Human Services to act expeditiously in notifying these individuals of the provisions of this act which are applicable to them.

(C) Benefit payments during remand

The conference agreement follows the Senate amendment.

(D) Retroactive benefits

The conference agreement follows the Senate amendment.

2. EVALUATION OF PAIN

Present law

There is no statutory provision concerning the evaluation of pain (or the use of subjective allegations of pain) in determining eligibility for disability benefits. The definition of disability requires that the person be unable to work by reason of a "medically determinable impairment"—one which results from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

By regulation, subjective allegations of symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could be reasonably expected to produce those symptoms and that is severe enough to be disabling.

House bill

Requires the Secretary to conduct a study in conjunction with the National Academy of Sciences on the use of subjective evidence of pain in making disability determinations, and on the state of the art of preventing, reducing or coping with pain. A report on the study is due to the Committees on Ways and Means and Finance no later than April 1, 1985.

Effective date.—On enactment.

Senate amendment

Requires Secretary to appoint 12-member commission consisting of a significant number of medical professionals involved in the study of pain, and representatives from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise to study the use of pain in evaluation of disability. Report due to Committees on Ways and Means and Finance no later than December 31, 1986.

Includes in statute the present regulatory policy on the use of evidence of pain in evaluation of disability. Includes title XVI conforming amendment.

Effective date.—Statutory provision applies to determinations made prior to January 1, 1988.

Conference agreement

The conference agreement follows the Senate amendment with amendments:

(a) The study is to be done in consultation with the National Academy of Sciences, and the report is to be filed by December 31, 1985; and

(b) The statutory language providing for an interim standard for evaluation of pain is amended to more accurately reflect current policies.

Effective date.—The interim standard will be in effect only for determinations made prior to January 1, 1987.

3. MULTIPLE IMPAIRMENTS

Present law

There is no statutory provision concerning the consideration of the combined effects of a number of different impairments. The definition of diability requires a finding of a medically determinable impairment of sufficient severity to prevent the person from doing not only his previous work but also any other kind of work that exists in the national economy, considering his age, education and work experience. By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs".

House bill

Requires the Secretary, in making a determination of whether a person's impairments are of such severity that he or she is unable to engage in substantial gainful activity, to consider the combined effects of all of a person's impairments, regardless of whether any impairment by itself is of such severity. Includes title XVI conforming amendment.

Effective date.—Applies to all determinations pending in the Department or in Court on the date of enactment, or initiated after that date.

Senate amendment

Same, except clarifies that the requirement applies to the determination of whether the individual has a combination of impairments which are *medically* severe without regard to age, education, or work experience. Includes title XVI conforming amendment.

Effective date.—Applies to all determinations made on or after January 1, 1985.

Conference agreement

The conference agreement substitutes alternative language for the provisions in both bills.

Under current policies, if a determination is made that a claimant's impairment is not severe, the consideration of the claim ends at that point. In cases where an individual has several impairments, none of which satisfy the standard for "severe," the individual is judged not disabled without any further evaluation of cumulative impact of his impairments. The conferees believe this policy may preclude realistic assessment of those cases involving individuals who have several impairments which in combination may be disabling. The conference agreement provides, therefore, that in determining whether an individual's impairment or impairments are so severe as to prevent him from engaging in substantial gainful activity, consideration must be given to the combined effect of all the individual's impairments without regard to whether any single impairment considered separately would limit the individual's ability.

The conferees also believe that in the interests of reasonable administrative flexibility and efficiency, a determination that an individual is not disabled may be based on a judgment that an individual has no impairment, or that the medical severity of his impairment or combination of impairments is slight enough to warrant a presumption, even without a full evaluation of vocational factors, that the individual's ability to perform SGA is not seriously affected. The current "sequential evaluation process" allows such a determination and the conferees do not intend to either eliminate or impair the use of that process. The conferees note that the Secretary has stated that it is her plan to reevaluate the current criteria for nonsevere impairments and expect that the Secretary will report to the Committees on the results of this evaluation.

Effective dates.—Effective for all determinations made on or after the first day of the month beginning 30 days after the date of enactment.

4. MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Present law

Under the Disability Amendments of 1980, all DI beneficiaries with nonpermanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments.

Under a Secretarial initiative (of June 7, 1983), periodic eligibility reviews have been suspended for certain mental impairment cases involving functional psychotic disorders, pending a revision, with the help of outside mental health experts, of the criteria used for determining disability. Under a subseqent Secretarial action (announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

House bill

Requires publication within 9 months of enactment of revised mental impairment criteria in the Listing of Impairments that are designed to realistically evaluate the person's ability to engage in SGA in a competitive workplace environment, taking account of the recommendations of the disability advisory council (section 304). Delays periodic review of mentally impaired individuals until these revisions are made. The delay would apply to cases on which an initial decision had not been made by the date of enactment and to those cases where an initial decision was made prior to the date of enactment and a timely appeal was pending on or after June 7, 1983.

Periodic reviews where (1) fraud was involved or (2) the individual was engaging in SGA, would continue to be done. SSA could continue to review medical diary cases and make initial determinations but would subsequently redetermine the case under the revised criteria. If a new decision were favorable, it would take effect as of the time of the first determination. Mentally impaired persons who received an unfavorable initial or continuing eligibility determination between March 1, 1981 and enactment of the bill and who reapplied would be deemed to have reapplied for benefits within 12 months of enactment would be deemed to have reapplied at the time of the unfavorable determination for the purpose of establishing a period of disability during the period covered by the prior determination, but not for benefit purposes; benefits would be payable only for the twelve months prior to the date of the new application. The provisions also apply to title XVI.

Effective date.—On enactment.

Senate amendment

Similar, except requires publication of revisions within 90 days after enactment, and reapplication provision applies to people who received an unfavorable determination since June 7, 1983 rather than March 1, 1981.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House provision with amendments to require the Secretary to publish the revised Listing of Impairments within 120 days of enactment.

5. PRE-TERMINATION NOTICE AND RIGHT TO PERSONAL APPEARANCE

Present Law

A person whose initial claim for disability benefits is denied or who is determined after review not to be disabled may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record including any new evidence submitted by the claimant, conducted by the State agency. Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries determined not to be medically eligible for benefits must be given opportunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary.

Individuals found ineligible for benefits at reconsideration may request a face-to-face evidentiary hearing before an administrative law judge. The next level of appeal is to SSA's Appeals Council, and finally, to a Federal court.

House bill

Revises determination process for beneficiaries undergoing periodic review in medical cessation cases, to provide for a face-to-face evidentiary review with State agency (upon request of the beneficiary within 30 days) after a preliminary unfavorable decision by the State. If, after the evidentiary interview (or paper review if the beneficiary requests review without the personal interview), the State agency denies benefits, the beneficiary could appeal to the ALJ and succeeding appeals levels. The reconsideration level would be abolished for these review cases.

Requires the Secretary to establish demonstration projects in at least 5 States using this same procedure for initial disability claims, with a report to the Committees on Ways and Means and Finance on the results due no later than April 1, 1985.

The provisions also apply to title XVI.

Effective date.—Revised determination process applies to periodic reviews on or after January 1, 1985; demonstration projects to be initiated as soon as practicable after enactment.

Senate amendment

Requires demonstration projects on providing pretermination face-to-face interviews in disability cessation cases in lieu of face-to-face evidentiary hearings at reconsideration. Report due to Committees on Ways and Means and Finance April 1, 1986.

Requires the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted.

The provisions also apply to title XVI.

Effective date.—On enactment. Demonstration projects to be established as soon as practicable after date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with respect to the current reconsideration hearing process, the demonstration projects concerning face-to-face pre-termination interviews for continuing disability review issues at the initial rather than the reconsideration level, and the requirement for notification of the possibility of benefit termination as a result of review with an amendment to require the report to Congress on December 31, 1986. The conference agreement follows the House bill with respect to demonstrational projects concerning face-to-face pre-denial interviews for initial disability claims, with an amendment to require the report to Congress on December 31, 1986.

Effective date.—On enactment. Demonstration projects to be established as soon as practicable after date of enactment.

6. CONTINUATION OF BENEFITS DURING APPEAL

Present law

Disability benefits are payable for the month as of which the beneficiary is determined to be ineligible and for the 2 months succeeding. Benefits do not generally continue during appeal.

Under a temporary provision in P.L. 97-455 (as modified by P.L. 98-118), individuals notified of a medical termination decision could elect to have DI benefits and medicare coverage continued during appeal—through the month preceding the month of the ALJ hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld (unless they qualify for waiver under the standard provisions for waiver of overpayments). This provison does not apply to terminations made after December 6, 1983. Benefits are last payable under this provision for June 1984 (i.e., the July 1984 benefit check).

House bill

Permanently extends provision (which technical changes) for continuation of DI and SSI benefits during appeal. Requires the Secretary to report to the Committees on Ways and Means and Finance by July 1, 1986, on the impact of the provision on the OASDI trust funds and on appeals to ALJs.

Effective dates.—On enactment.

Senate amendment

Extends the provision for continued payment of DI and SSI benefits during appeal to termination decisions made prior to June 1, 1986. (Last month of payments would be for January 1987, i.e., the February 1987 check.)

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill with amendment to:

(i) Make permanent the payments through the ALJ hearing for SSI recipients;

(ii) Make the payments through ALJ hearing for DI beneficiaries for termination decisions through December 1987, and benefit payments through June, 1988.

7. QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

Present law

There is no statutory requirement concerning qualifications of persons making disability determinations. Under current policy, the State disability agency team making eligibility decisions must consist of a State agency medical consultant (physician) and a State agency disability examiner, both of whom must sign the disability determination.

House bill

Requires that a qualified psychiatrist or psychologist complete the medical portion of any applicable sequential evaluation and residual functional capacity assessment in cases involving mental impairments before a determination may be made that an individual is not disabled.

Effective dates.—On enactment.

Senate amendment

Same except modified to require only that every reasonable effort be made to use qualified psychiatrist or psychologist. Also, specifically amends title XVI to make the provision applicable to SSI determinations.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate bill with an amendment to change the effective date to 60 days after enactment. The conferees note that if the Secretary is unable to assure adequate compensation in order to obtain the services of qualified psychiatrists or psychologists because of impediments at the State level, it would be within the Secretary's authority to contract directly for such services.

8. STANDARDS FOR CONSULTATIVE EXAMINATIONS/MEDICAL EVIDENCE

Present law

Consultative exams (CE's) are medical exams purchased by the State agency from physicians and other qualified health professionals outside the agency. By regulation, CE's may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence obtained through a CE is considered in conjunction with all other medical and non-medical evidence submitted in connection with a disability claim.

There are currently no statutory or regulatory standards requiring CE's in particular cases, or requiring any standard procedures to be followed in the purchase of CE's.

The SSI statute includes a cross-reference to this provision. Any changes in title II will therefore also be made for SSI.

House bill

Requires the Secretary to prescribe regulations which set forth standards for when a CE should be obtained, the type of referral to be made and the procedures for monitoring CE's and the referral process. Permits non-regulatory rules and statements of policy relating to CE's to be issued if they are consistent with the regulations.

Effective date.—On enactment.

Senate amendment

Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from an individual's treating-physician prior to seeking a consultative examination.

Also, requires consideration of all evidence in the case record and development of complete medical history over at least the preceding 12-month period for individuals applying for benefits or undergoing review.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill with respect to the provisions requiring the Secretary to set forth standards for consultative examinations. The conference agreement follows the Senate amendment with an amendment requiring the Secretary to make every reasonable effort to obtain necessary medical evidence from treating physicians prior to evaluating medical evidence obtained from any other source on a consultative basis.

9. ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS

Present law

The guidelines for making social security disability determinations and all other social security eligibility determinations are contained in the Social Security Act, regulations, social security rulings and the POMS (the Program Operating Manual System):

Regulations, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication—state agencies, administrative law judges, SSA's Appeals Council, and the Federal Courts.

The Administrative Procedure Act (APA) requirements do not apply to social security programs because of a general exception for benefit programs. On a voluntary basis, however, SSA issues its regulations in accordance with the public notice and comment rulemaking requirements of the APA.

Rulings consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts, ALJs, the Appeals Council and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of administrative adjudication.

The POMS is a compilation of detailed policy instructions and step-by-step procedures for the use of State agency and SSA personnel in developing and adjudicating claims. The POMS is not binding on the Administrative Law Judges, Appeals Council or Courts.

House bill

Requires publication under APA public notice and comment rulemaking procedures of all OASDI and SSI regulations on matters relating to benefits. Requires that only those rules issued under Sections b-e of Section 553 of the APA shall be binding at any level of review.

Effective date.—On enactment.

Senate amendment

Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under APA procedures. These rules would be binding at all levels of adjudication.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment. While it is not required in the legislation, the conferees urge the Secretary to publish under APA public notice and comment rulemaking procedures all OASDI and SSI regulations which relate to benefits.

10. ACQUIESCENCE OR NON-ACQUIESCENCE IN COURT OF APPEALS DECISIONS

Present law

Claimants for benefits under the Social Security Act may appeal State agency denials through several levels of administrative appeal. A claimant who wishes to continue to pursue appeal may next turn to the Federal district court with jurisdiction over his or her claim. The district court reviews the record as compiled by the agency to determine whether substantial evidence existed for the agency's decision. The district court's decision may be appealed, by the claimant or the Secretary, to the Circuit Court with jurisdiction, and ultimately to the Supreme Court (which may or may not agree to hear the appeal).

Under the Federal judicial system, decisions by a Circuit Court of Appeals constitute binding case law to be followed by all district courts in that circuit. (District courts are not bound by the case law of other circuits and often develop contrary case law on the same issue.)

In general, if two circuits rule differently on a particular issue, the Supreme Court will review the issue to settle the dispute, although frequently the Court will decline to review for an extended period of time if the issue is not ripe for disposition, or if it is not of sufficient importance to warrant immediate attention. If a particular policy is found by the Supreme Court to be unconstitutional, or contrary to the statute, that decision is binding on the agency.

Most social security cases decided in the Federal courts have little value as precedent for SSA decisions, since most reversals of agency determinations rest on the lack of substantial evidence for the agency's position. However, in some instances, the court's opinion is based on matter of a statutory interpretation.

The Social Security Administration abides by the final judgments of Federal courts with respect to the individuals in particular cases. It does not, however, consider itself bound with respect to nonlitigants as far as adopting as agency policy, either in the circuit or nationwide, the interpretation underlying a Circuit Court's decision. If the decision of a Circuit Court is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA, like some other Federal agencies, issues a ruling stating that it will not adopt the court's decision as agency policy. There are currently 7 such rulings of nonacquiescence by the Social Security Administration.

House bill

Requires that a decision of a Circuit Court of Appeals interpreting title II of the Social Security Act or its regulations in a manner different from prevailing policy be appealed to the Supreme Court or the Secretary must apply the interpretation underlying that decision as agency policy in the circuit. If the Supreme Court denies review, circuit-wide acquiescence with that interpretation would be required until the Supreme Court ruled on the issue. Includes title XVI conforming amendment.

Effective date.—On enactment, with respect to all circuit court decisions made on or after the date of enactment, and with respect to circuit court decisions for which the Secretary still has an opportunity to request review by the Supreme Court.

Senate amendment

Requires SSA to notify Congress and print in the *Federal Register* (within 90 days after decision date, or on the last date available for appeal, whichever is later) an explanation of the agency's decision to acquiesce or not acquiesce in decisions of the Circuit Courts relating to interpretation of the Social Security Act or of regulations issued under the Act. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

States that nothing in the section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a circuit court.

Effective date.—Applies to Court decisions rendered after the date of enactment.

Conference agreement

The conference agreement deletes both the House and Senate language. The conferees do not intend that the agreement to drop both provisions be interpreted as approval of "non-acquiescence" by a federal agency to an interpretation of a U.S. Circuit Court of Appeals as a general practice. On the contrary, the conferees note that questions have been raised about the constitutional basis of non-acquiescence and many of the conferees have strong concerns about some of the ways in which this policy has been applied, even if constitutional. Thus, the conferees urge that a policy of non-acquiescence be followed only in situations where the Administration has initiated or has the reasonable expectation and intention of initiating the steps necessary to receive a review of the issue in the Supreme Court.

The conferees reaffirm the congressional intent that the Secretary resolve policy conflicts promptly in order to achieve consistent uniform administration of the program. This objective may be achieved in at least two ways other than non-acquiescence when the agency is faced with conflicting interpretations of the meaning and intent of the Social Security Act: either to appeal the issue to the Supreme Court, or to seek a legislative remedy from the Congress.

When there are court rulings which the Secretary believes are inconsistent with the meaning and intent of the law, the Secretary should diligently pursue appropriate appeals channels on an expeditious basis. By refusing to apply circuit court interpretations and by not promptly seeking review by the Supreme Court, the Secretary forces beneficiaries to re-litigate the same issue over and over again in the circuit, at substantial expense to both beneficiaries and the federal government. This is clearly an undesirable consequence. The conferees also feel that in addition to the practical administrative problems which may be raised by non-acquiescence, the legal and Constitutional issues raised by non-acquiescence can only be settled by the Supreme Court. The conferees therefore urge the Administration to seek a resolution of this issue.

The conferees recognize that the realities of litigation do not make it appropriate or feasible to appeal every adverse decision with which the Secretary continues to disagree. In such instances, however, the conferees strongly insist that Congress' judgment as to the appropriate policy should prevail. The conferees expect the Secretary to propose what she believes to be appropriate remedial legislation for congressional consideration.

It is clearly undesirable to have major differences in statutory interpretation between the Secretary and the courts remain unresolved for a protracted period of time. The conferees believe this legislation takes a major step toward removing the obstacles to resolution by clarifying the statutory language and congressional intent.

11. PAYMENT OF COSTS OF REHABILITATION SERVICES

Present law

Presently, States are reimbursed for vocational rehabilitation (VR) services provided to DI and SSI recipients which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Sections 225(b) and/or 1631(a)(6) of the Social Security Act, work-incentive provisions enacted in 1980). The State agency is reim-

bursed for these VR services on the same basis as applies to other beneficiaries—only if the beneficiary is returned to SGA for 9 months.

House bill

Allows reimbursement to State agencies for costs of VR services provided to individuals receiving DI benefits under Section 225(b) who medically recover while in VR, and to those receiving SSI disability who are found ineligible for benefits by reason of medical recovery (whether or not receiving SSI under Section 163(a)(6)). Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier, and would not be contingent upon the individual working at SGA for at least 9 months. Also provides for reimbursement in cases where DI or SSI disability recipient does not meet the requirement of successful return to SGA because he refuses without good cause to continue in or cooperate with the VR program.

Effective date.—For individual receiving benefits as a result of section 225(b) (or who are no longer entitled to SSI benefits because of medical recovery) for months after the month of enactment.

Senate amendment

Same, except does not pay for services to those who fail to cooperate or refuse to continue participation in VR, and does not apply to SSI program.

Effective date.—For services rendered to individuals who receive benefits under Section 225(b) for months after the month of enactment.

Conference agreement

The conference agreement follows the House bill with technical amendments to correct the SSI provision, and an amendment to the effective date to apply the provision in the first month following the month after enactment.

The conferees expect that the Secretary will reimburse the State agencies for vocational rehabilitation services provided to a beneficiary who refuses without good cause to continue or to cooperate in a vocational rehabilitation program in such a way as to preclude his successful rehabilitation only in those cases in which the Secretary also suspends that person's disability benefits because of such refusal.

12. ADVISORY COUNCIL ON MEDICAL ASPECTS OF DISABILITY

Present law

Section 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the OASI, DI, HI, and SMI programs. The councils are comprised of members of the public.

The next advisory council is scheduled to be appointed in 1985 and to make its final report on December 31, 1986.

There are no requirements in the law pertaining to the creation of advisory councils to deal specifically with disability matters.

House bill

Requires the Secretary to appoint, within 60 days after enactment, a 10-member advisory council on the medical aspects of disability. This would be in addition to the regular quadrennial council. The council, to be composed of independent medical and vocational experts and the Commissioner of SSA *ex officio*, would provide advice and recommendations to the Secretary on disability policies, standards, and procedures. Any recommendations would be published in the Secretary's annual reports.

In addition, Section 307 of the bill requires this advisory council to study alternative approaches to work evaluation for SSI applicants and recipients and the effectiveness of VR services for SSI recipients.

Effective date.—On enactment. Authority for the council expires December 31, 1985.

Senate amendment

Directs next quadrennial advisory council on social security to study the medical and vocational aspects of disability using *ad hoc* panels of experts where appropriate. The study shall include: (1) alternative approaches to work evaluation for recipients of SSI; (2) the effectiveness of vocational rehabilitation programs for DI and SSI recipients; and (3) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process.

Effective date: Requires Secretary to appoint members by June 1, 1985.

Conference agreement

The conference agreement follows the Senate amendment with amendments providing in detail the issues to be studied by the Advisory Council.

13. STAFF ATTORNEYS

Present law

Qualifications for administrative law judge (ALJ) positions are set by the Office of Personnel Management (OPM). To qualify for SSA's GS-15 ALJ position, an applicant must have at least 1 year of qualifying experience at or comparable to the GS-14 grade level in Federal service. Staff attorneys in SSA's Office of Hearings and Appeals (OHA) have the appropriate type of qualifying experience. However, there are no GS-14 positions as OHA staff attorneys; GS-13 is the highest staff attorney position. Prior to a recent decision by OPM, staff attorneys did not have qualifying experience at the necessary grade level. On May 9, 1984, OPM revised this criteria to permit applicants to qualify with 2 years of qualifying experience at the GS-13 level. No GS-14 experience is necessary.

House bill

Requires the Secretary to establish enough GS-13 and GS-14 attorney advisor positions to enable otherwise qualified staff attorneys to compete for ALJ positions. A 90-day interim progress report and a 180-day final report by the Secretary would be required.

Effective date.—On enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment substituting a requirement for a report to the House Committee on Ways and Means and the Senate Committee on Finance on the actions taken by the Secretary to establish positions to enable staff attorneys to gain qualifying experience of the quality necessary to compete for ALJ positions.

In view of the recent actions by OPM and SSA, the conferees do not believe it is necessary to statutorily require that GS13 and GS14 SSA staff attorney positions be established so as to permit those attorneys to qualify for GS15 ALJ positions. Congress recognizes that such changes are critical in order to ensure the continued availability of qualified attorneys and ALJ's and urges the Secretary to take all reasonable steps to see that the OPM actions result in SSA attorneys becoming qualified for GS15 ALJ positions.

The conferees are concerned, however, upon review of the new examination announcement, that there may not exist within OHA positions in which a staff attorney can now serve and obtain the experience needed to meet the "quality of experience" requirements (in particular, the requirement that cases be listed which demonstrate knowledge, skills and abilities in the rules of evidence and trial procedures, and in decision-making ability).

The conferees expect that, if necessary, the Secretary will establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for ALJ positions.

14. SSI BENEFITS FOR PERSONS WORKING DESPITE SEVERE IMPAIRMENTS

Present law

Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA—$300 monthly.

Under Section 1619(a) of the Social Security Act, enacted in the Disability Amendments of 1980, severely disabled SSI recipients who work and earn more than SGA may receive a special payment and thereby maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., the "break-even" level which is currently $713 per month for an individual with earnings). Under Section 1619(b), medicaid and social services may continue beyond this level, until earnings reach a level where the Secretary finds: (1) that termination of eligibility for these benefits would not seriously inhibit the individual's ability to continue his employment, or (2) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available in the absence of earnings.

Section 1619 expired on December 31, 1983. It is being continued administratively under demonstration project authority to those people who were eligible for SSI as of that date.

House Bill

Extends Sections 1619 (a) and (b) through June 30, 1986.

In addition, requires the Secretaries of HHS and Education to establish training programs for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

Effective date.—On enactment, retroactive to January 1, 1984.

Senate amendment

Same, except extended through June 30, 1987.

Conference agreement

The conference agreement follows the Senate amendment.

15. FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

Present Law

Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed at least once every 3 years to assess their continuing eligibility.

Under a provision enacted in 1983 (P.L. 97-455), the Secretary is provided the authority to modify this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels.

On April 13, 1984, Secretary Heckler announced a temporary, nationwide moratorium on periodic eligibility reviews.

House bill

No provision.

Senate amendment

Requires Secretary to promulgate regulations establishing standards for determining the frequency of continuing eligibility reviews. Final regulations must be issued within 6 months of enactment. Until these regulations are issued, no individual may have more than one periodic review.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment.

16. MONITORING OF REPRESENTATIVE PAYEES FOR SOCIAL SECURITY AND SSI BENEFICIARIES

Present law

The Secretary may appoint a representative payee for an individual entitled to social security or SSI benefits when it appears to be in the individual's best interest. Payees must be appointed for individuals receiving SSI who are addicted to drugs or alcohol.

A payee convicted of misusing a social security beneficiary's funds is guilty of a felony, punishable by imprisonment for not more than 5 years and/or a fine of not more than $5,000. A payee convicted of misusing an SSI recipient's funds is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year and/or a fine of not more than $1,000.

There are no statutory requirements or restrictions on the selection and monitoring of payees.

House bill

No provision.

Senate amendment

Requires Secretary to: (1) evaluate qualifications of prospective payee either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than a parent or spouse living in the same household as the entitled individual, and (3) report to Congress within 6 months of enactment on implementation of the new system and report annually on number of cases of misused funds and disposition of such cases.

The fine for a first offense by a payee convicted of misusing SSI benefits would be increased to not more than $5,000 and, for both programs, a second offense by a payee would be made a felony punishable by imprisonment for not more than 5 years and/or a fine of not more than $25,000. Individuals convicted of a felony under this provision could not be selected as a payee.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate amendment with amendments to require a report to Congress within 270 days after the date of enactment.

While the conference agreement recognizes that it may be necessary to appoint a representative payee prior to completion of the investigation required by the provision, the managers' believe that the Secretary should do so cautiously. In particular, the managers direct the Secretary to establish procedures under which large lump-sum payments of retroactive benefits will not ordinarily be paid to new representative payees until the investigation of their suitability has been successfully completed. These procedures should, however, allow for reasonable exceptions where the funds are urgently needed, for example, to avoid eviction or to meet major medical needs.

Where State institutions serve as representative payees for their residents, the annual reporting requirements of the conference agreement do not apply. This exemption, however, is not designed to shield institutional payees from accountability but rather to allow the Secretary the flexibility to establish more appropriate and effective systems of auditing the use of social security funds by such institutions. The managers wish to make clear their intention that the Secretary implement a thorough and comprehensive audit methodology to assure that Social Security Act benefits for residents of State institutions are not misused. These onsite reviews would be expected to involve, at a minimum, discussions with institution staff, an audit of a sample of residents accounts in each institution and onward interviews and observations to ensure that benefits are being properly used. At a minimum, each such institution should be audited once every three years. This 3-year cycle will allow the Secretary to audit one-third of such institutions each year—thus permitting a more thorough audit than would be possible on an annual basis. The managers further expect that the initial report on the implementation of this section of the bill will include a full exposition of the audit procedures which the Secretary will utilize in monitoring State institutions which act as representative bayees.

17. FAIL-SAFE

Present law

The main source of funding for the DI program is that portion of the social security tax allocated by law for disability. At present, the disability portion of the tax is 1 percent (employee and employer combined). It is scheduled to rise to 1.2 percent in the 1990's and to 1.42 percent thereafter. If revenues from the tax exceed amounts needed for benefit payments, the excess is placed in the trust fund reserve. If revenues fall short of the amount needed, the reserve is drawn on to make up the difference. (To make timely benefit payments it is necessary to have at least one month's benefit payments in reserve at the beginning of each month—8 to 9 percent of annual expenditures. Reserves must be sufficient to meet this percentage requirement at the beginning of each month notwithstanding any decline in revenues or increase in expenditures during the year.)

To help assure continued benefit payments over the next few years in the event of adverse conditions, the social security legislation enacted in 1983 authorized interfund borrowing for calendar years 1983–1987. In addition, the 1983 legislation required the OASDI Board of Trustees, whenever it determines that trust fund reserves may become less than 20 percent, to immediately submit to Congress a report setting forth its recommendations for statutory adjustments necessary to restore the reserve ratio. This report to the Congress by the Trustees must provide specific information as to the extent to which benefits would have to be reduced, payroll taxes increased, or some combination thereof, in order to restore the trust fund reserve ratio.

House bill

No provision.

Senate amendment

Requires the Secretary to adjust disability insurance benefit increases as necessary to prevent the DI trust fund balance from falling below a defined threshold. The Secretary would be required to notify the Congress by July 1 in any year in which the amount of the DI trust fund at the start of the next year is projected to be less than 20 percent of the year's expenditures. If Congress took no action, the Secretary must scale back the next cost-of-living increase for disability insurance beneficiaries as necessary to keep the fund balance from falling below 20 percent. If further necessary to keep the fund from falling below 120 percent, the Secretary would also be required to scale back the increase in the benefit formula used to determine new benefit awards the following year.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the House bill.

18. MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

Present law

The States are responsible, on a voluntary basis, for determining whether individuals are disabled under the meaning of the Social Security Act. Under the law, States administering the program are required to make disability determinations in accord with Federal law and the standards and guidelines established by the Department of Health and Human Services. All benefit payments and administrative costs of the States making these determinations are financed or reimbursed by the Disability Insurance Trust Fund.

The law provides for the Secretary to commence actions to take over the disability determination process if a State fails to follow Federal rules. A series of procedural steps must be complied with before such Federal assumption can be accomplished. The Secretary may not commence making disability determinations earlier than 6 months after: (1) finding, after notice and opportunity for hearing, that a State agency is substantially out of compliance with Federal law; (2) developing all procedures to implement a plan for partial or complete assumption of the disability determinations which grants hiring preference to the State employees; and (3) the Secretary of Labor determines that the State has made fair and equitable arrangements to protect the interests of displaced employees.

Prior to the Secretary's announcement in April 1984 of a temporary nationwide moratorium on periodic reviews, several States on their own initiative were failing to conduct eligibility reviews in accordance with Federal law and standards. Eighteen States were

operating under court-ordered eligibility criteria or pending court order.

House bill

No provision.

Senate amendment

Requires the Secretary to federalize disability determinations in a State within 6 months of finding that the State is not in substantial compliance with Federal law and standards. (Such finding must be made within 16 weeks of the time a State's failure to comply first comes to the attention of the Secretary. During this 16-week period, at the discretion of the Secretary, a hearing could be afforded to the State.) The Secretary would be required, to the extent feasible, to meet the requirements of present law regarding the transfer of functions. Provision expires December 31,1987.

Effective date.—On enactment.

Conference agreement

The conference agreement follows the Senate bill with an amendment to require the Secretary to waive any applicable personnel ceilings and other restrictions in carrying out the provisions. Under the conference agreement, protections are being given to State agency employees. If the Secretary assumes the functions of the Disability Determinations Agency, then preference must be given in hiring to agency employees who are capable of performing the requisite duties. The conferees further intend that the Secretary should make every effort throughout the 180 day period to comply with the requirements in the law concerning the hiring of State employees and the protection of their interests in the event of the Secretary assuming the functions of the State agency.

19. SEPARABILITY CLAUSE

The Conference agreement includes a separability clause stating that the constitutional invalidity of any provision of the bill shall not affect the other provisions of the bill.

DAN ROSTENKOWSKI,
J.J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD A. GEPHARDT,
JIM SHANNON,
WYCHE FOWLER, Jr.,
HAROLD FORD,
BARBER B. CONABLE, Jr.,
BILL ARCHER,
WILLIS D. GRADISON, Jr.,
CARROLL CAMPBELL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
BILL ROTH,
JOHN C. DANFORTH,
RUSSELL B. LONG,
LLOYD BENTSEN,
D.P. MOYNIHAN,
Managers on the Part of the Senate.

Mr. ROSTENKOWSKI. Mr. Speaker, on behalf of the committee on conference, I call up the conference report on the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read the statement.

Mr. ROSTENKOWSKI (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the statement.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 30 minutes and the gentleman from Texas [Mr. ARCHER] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on H.R. 3755, the conference report under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

□ 1650

Mr. ROSTENKOWSKI. Mr. Speaker, I submit today a conference agreement on the Social Security Disability Benefits Reform Act of 1984, H.R. 3755. My remarks will be brief, because I think the situation that this bill corrects is only too well known to every Member in this Chamber: Hundreds of thousands of beneficiaries have lost their benefits, thousands of appeals are clogging our Federal court dockets, 29 States have refused to follow the administration's instructions for termination of benefits, and 200 Federal courts all over the country have threatened the Secretary of Health and Human Services with contempt of court citations for refusing to pay benefits when ordered. This chaos must end, and it will end today with the passage of H.R. 3755. Indeed, the Senate has already approved the conference report, by a vote of 99 to 0, and our action is the only step remaining before sending the bill to the President.

This conference agreement was hard fought, and took longer to reach than many here had expected, because the differences between the House and the Senate were important and sharply drawn. In the end, however, we have an agreement that preserves the basic House provision for the standard of medical improvement: The Secretary must now show that a disabled person's condition has improved before ending his eligibility for disability benefits. And we affirmed in the Statement of Managers that the Administration's policy of ignoring Federal circuit court rules of law is not condoned by the Congress, and that the Secretary should either follow such rulings or appeal the issue to the Supreme Court.

In short, in all vital respects, the conference agreement preserves the House versions of the bill that my committee labored so long to develop. The credit for achieving this victory must go to my colleague, the chairman of the Social Security Subcommittee, J.J. PICKLE. For over a year and a half, he has worked to put this bill together and get it enacted, so successfully that this body approved the bill 410 to 1 last spring. Without his tireless interest and efforts, no bill would ever have reached the House floor, no action would ever have been taken by the Senate, and no compromise would have been reached with the Senate conferees. I commend him for his leadership and determination: The disabled people of America owe JAKE PICKLE an enormous debt of gratitude.

I also commend the other House conferees, and especially JIM SHANNON, who was the other major force for action in support of the bill on my committee. He devoted many hours to ensuring that this bill protected the interests of disabled beneficiaries, and it is a tribute to his commitment and energy that we are today about to approve this agreement.

This bill has true bipartisan support, and enthusiasm, in both the Senate and the House. It is desperately needed, and I urge adoption of the conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. ARCHER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3755 with fewer misgivings than I expressed in March. I think the conference process has resulted in a better bill than the House passed earlier.

I say this even though the conference report is estimated by the Social Security Administration to cost more in the short-range than the House bill. Originally, OASDI costs for 1984–88 were projected as $2.4 billion; now SSA estimates that to be $3.5 billion. The difference is explained by the fact that the original bill was intended to be prospective, but the final measure is retroactively applied to 40,000 cases now pending in the Federal courts. While I am concerned about these added costs, I should note that I also was concerned about the reliability of

the earlier estimates. I believe the revised estimates are more reliable because the scope of retroactivity has been clearly delineated by the Congress, and not left to the whim of courts.

Philosophically, I remain opposed to a medical improvement standard, which creates a dual standard when compared to the level of severity which must be met by new applicants. However, given these reservations, I believe the standard we have developed in the conference report is a more reasonable one, because it places on the beneficiary the same obligation that an initial applicant faces in submitting medical evidence and cooperating with requests for consultative exams. Further, the final decision is to be made on the weight of that evidence. While I'm concerned that this is a fine line to adjudicate, it expresses the conferees' intent that the final decision be made on a neutral basis.

The final bill also contains more explicit language concerning pain, which we hope will resolve pending litigation until the Social Security Subcommittee reviews a mandated study and report.

Further, the bill should be somewhat easier to administer. For example, we left the fact-to-face interview for continuing disability reviews at the reconsideration level rather than requiring them at the initial review stage.

And finally, both House and Senate conferees threw in the towel and receded on nonacquiescence; that is, opinion was divided so sharply on the issue of requiring SSA to acquiesce to differing circuit court standards that we agreed to encourage SSA to litigate this issue before the Supreme Court.

On balance, I'm satisfied this is an improved bill, but still one which will be difficult to administer. With that in mind, I plan to introduce, in the next session, legislation to streamline the administration of the disability adjudication process. I'm concerned that the current appeals process not only has too many administrative layers of review, but invites conflicting court decisions. While variety may be the spice of life, I'm convinced that the OASDI program needs stability far more than spice.

For today, I support H.R. 3755, and thank my subcommittee chairman, Mr. PICKLE, and the chairman of the full committee, Mr. ROSTENKOWSKI, for listening so patiently to the views of the minority, and considering those views in negotiating the final package.

Mr. Speaker, I yield such time as he may consume to the ranking member of the Committee on Ways and Means, the gentleman from New York [Mr. CONABLE].

Mr. CONABLE. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. In March, when I spoke on behalf of the original bill, I expressed hope that the administration would support it, and work with the other body to perfect certain features, which in SSA's judgment, would be difficult to administer.

That was 6 months ago. Fortunately, because Secretary Heckler previously had imposed a moratorium on continuing disability reviews, the 6-month delay has not harmed current beneficiaries. Also, I am pleased to be able to report, the administration did cooperate with our colleagues on the Finance Committee to produce a companion bill. Our conference was fruitful, and I believe this final package of disability reforms merits our bipartisan support.

Most importantly, this bill reestablishes national standards for a national program. Among its administrative provisions, for example, is one introduced by the Senate which should deter States from running amuck in the future. Specifically, the Secretary would be required to federalize disability determinations in a State, within 6 months of finding that the State is not in substantial compliance with Federal law and standards. While the Department of Health and Human Services' experience with "substantial compliance" in the AFDC program, which is State administered, suggests that the Secretary may have difficulty enforcing this provision, I would hope the States view it as "handwriting on the wall".

Substantively, the bill's major provision, a clearly defined medical improvement standard, has been strengthened, and more explicit treatment of pending court cases has been provided. The latter was urged by the Justice Department as a way of resolving the 40,000-plus cases pending in our Federal courts.

On the other hand, the Senate's original 3 year sunset date for medical improvement was deleted, saving beneficiaries, the administration, and many of you, my friends, from revisiting the issue in the near future. That isn't to say I think we have drafted the definitive standard for medical improvement. But I do think that we should permit the new standard to be implemented and tested fully before we evaluate it in terms of: First, equity for beneficiaries; second, feasibility of administration; and third, program costs. After that, we should take a long-range approach to any modifications. Current beneficiaries and the Social Security Administration need breathing space and relief from the program turmoil which began when we enacted the Disability Insurance Amendments of 1980.

This is not to say that other disability issues won't require attention in the near future. The bill itself requires the Secretary to submit a report by December 31, 1985, concerning pain, and a second report by July 1, 1986, on the impact of the continuation of benefits during the appeal process. Both issues promise to be sensitive, complex, and expensive in terms of long-range remedies. Further, I suggest that Congress may need to address administrative issues, which simplify or expedite an adjudicative process which has in these past 4 years—with the assistance of the Federal courts—become chaotic and unmanageable.

In the meantime, H.R. 3755 incorporates features which are necessary to reestablish the credibility of the continuing disability review, and I urge bipartisan support.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the distinguished gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of the conference agreement for H.R. 3755, the Social Security Disability Amendments of 1984. And, although I don't want to take a lot of time, I feel compelled to express my admiration and respect for the chairman of the Social Security Subcommittee, JAKE PICKLE, who I know worked diligently to form a compromise on this legislation with the other body.

We need to send a strong signal to the disabled in America and pass this conference report overwhelmingly.

The bill establishes a comprehensive medical improvement standard for disability recipients that is more humane than the standard used in present law. The errors in the continuing reviews in 1981 are largely derived from, I believe, a lack of consistent, uniform medical improvement standards.

Another problem with present law is the fact that many disability recipients allege pain that cannot be found using regular medical techniques. That does not mean, however, that these people are not suffering pain, and to that end, the bill requires an evlauation of the causes of pain.

The bill also imposes a moratorium on all reviews of the mentally impaired, allows establishment of demonstration projects to provide face-to-face interviews for pretermination disability cases, provides continued disability benefits through the administrative appeals level, and requires published standards on the frequency of continuing disability reviews.

Mr. Speaker, the conference agreement is similar to legislation I have cosponsored and have sponsored in the past several months. I was proud to be a cosponsor of H.R. 3755 myself, and am pleased with the result from conference.

This legislation will help end the crisis in the disability program. It is a good bill, a bipartisan bill, fashioned as a realistic response to a serious problem. It deserves our unquestioning support.

Mr. REGULA. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Ohio.

Mr. REGULA. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the conference agreement on H.R. 3755, the Social Security disability amendments, and I would like to encourage my colleagues to do the same.

Over the last 2½ years there have been many problems which have plagued the Social Security Disability Insurance [SSDI] Program and its recipients.

It has been a hard fought battle to have this legislation brought to the House floor for a first vote and to achieve a successful conference. However, we have finally put the political games aside and concentrated on the individuals who have been harmed by the 1980 legislation.

This conference report will not alleviate all of the concerns we have with the disability program. But it will give these individuals a more fair review process as well as fairer standards of disability such as the consideration of multiple impairments.

I am pleased of the part I had along with my colleagues on the Select Committee on Aging in gaining bipartisan cosponsorship of H.R. 3755. The legislation is desperately needed and again I urge my colleagues in the House to help our disabled citizens and vote in favor of H.R. 3755.

Mr. HAMMERSCHMIDT. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the distinguished gentleman from Arkansas [Mr. JOHN PAUL HAMMERSCHMIDT].

Mr. HAMMERSCHMIDT. I thank the gentleman for yielding.

Mr. Speaker, during the last 3 years we have debated various short-term and long-term solutions to the problems that arose from the 1980 amendments to the Social Security Act. I sincerely commend the chairman of the Social Security Subcommittee, Mr. PICKLE, and the banking minority member, Mr. ARCHER, for their tenacity and for their final achievement, H.R. 3755.

Medical improvement, one of the pivotal issues in the debate, is clearly improved by the language in this bill. I hope that when this provision becomes operational, the burden of proof will fall on the Social Security Administration and not on the claimant.

I also compliment the conferees on their provision for multiple impairments. There are many individuals, particularly the elderly, who suffer from a variety of medical conditions. Though each separate impairment might not be severe enough to prohibit someone from working, the combination of conditions can be totally disabling. H.R. 3755 takes an important step in recognizing the effects of multiple impairments in the determination of disability.

Since H.R. 6181 in 1982, through the emergency disability amendments which became incorporated in the Virgin Island tax bill, I have been one of the principal sponsors of the provision to continue benefits through the administrative law judge decision for those claimants who believe that they have been wrongly terminated. With some pride and gratitude, I commend the conferees for including this provision in the final bill.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield such time as he may consume to the subcommittee chairman, the gentleman from Texas, Mr. JAKE PICKLE.

Mr. PICKLE. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise today to call on all Members to support the passage of H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. Passage of these amendments is of vital importance to the Social Security disability insurance system

The legislation before you today addresses the most critical issues facing the disability program.

First and foremost, we have provided for a medical improvement standard which spells out clearly the proper standard for continuing disability reviews. Under this conference agreement, benefits may be terminated for beneficiaries on the basis that they are no longer disabled only if there is substantial evidence that there has been any medical improvement in the individual's condition and that the individual is now able to engage in substantial gainful activity. If there has been no medical improvement, benefits may still be terminated if there is substantial evidence that the individual can perform substantial gainful activity and that he has benefited from technological advances in medical or vocational therapy. Benefits may also be terminated if there is substantial evidence that the impairment is not as disabling as originally thought, or that the original decision was reached erroneously or fraudulently.

I cover this provision in great detail because I want everyone to understand that this agreement is not intended to give a free ride to anyone. Neither does it put all the burden on anyone. It spells out the proper duties and responsibilities for both the Secretary and the disabled beneficiaries. The determination will be by weight of evidence, on a neutral basis.

This provision is close to the provision we passed in the House. We have not accepted the Senate proposal to put unfair burden of proof on the beneficiary.

Furthermore, we have responded to the concern of some that endless litigation will destroy this program. However, we have not, as the Senate proposed, denied relief in the courts for those beneficiaries who have suffered because of the faulty review process. We have, instead, stated in detail, the groups to which this standard will apply, and how they may obtain protection under it. The standard will apply to all future reviews, all cases in the administrative pipeline, and to everyone who has, in fact, turned to the Federal courts for judicial relief. Even in the case of unnamed plaintiffs in certified class actions, we are providing relief by requiring the Secretary to send notice via certified mail informing them that they have 120 days to file a request for a redetermination by the Secretary.

Second, we send a clear signal to the administration that the present policy of not acquiescing in decisions by the various U.S. circuit courts of appeals is not acceptable. Nowhere else does the Federal Government refuse in this manner to enforce the law as interpreted by the Federal circuit courts. The legal and constitutional issues raised by nonacquiescence can only be settled by the Supreme Court. However, regardless of the legal situation, the Secretary's current policies are clearly undesirable. The Secretary's refusal to broadly apply circuit court decisions forces beneficiaries to relitigate the same issue over and over, at great expense to both the beneficiaries and the Government. Such a circumstance should be avoided by the Secretary either through an appeal to the Supreme Court or through legislation from the Congress.

Third, in addition to these administrative reforms, this legislation resolves critical issues concerning disability benefits based on pain and multiple impairments.

With reference to pain, the conference agreement puts present regulatory policy into statute until January 1, 1987, and mandates that in the meantime, a study be conducted so that we might better deal with this very difficult issue. I know that many Members in both bodies are concerned about the fairness of our present policies and I would expect that as we continue to benefit from the progress of medical science, we will improve our laws in this regard.

In the area of multiple impairments, we have made real progress. Under the conference agreement, the effect of a combination of impairments, notone of which alone may be disabling, may now be considered when determining whether the person's impairment is

medically severe enough to qualify him for benefits.

These are some of the most important provisions of the bill. I included the full summary of the conference agreement in yesterday's RECORD but I wanted to take just a minute to emphasize what has been accomplished.

Let me also remind the Members that today the program is in a state of chaos and if we do not act immediately to restore order, it will utterly collapse.

Perhaps my cry of alarm sounds exaggerated. It is not.

Already in over half the States, the disability program is being run by Federal court order or by orders of the Governor in opposition to the Federal guidelines set forth by the Secretary of Health and Human Services. As a result, we have no uniform national disability program today.

Our Federal courts are being beseached and besieged. On the dockets, there are over 40,000 disability review cases affecting nearly 200,000 former beneficiaries. These appeals represent the largest part of the Federal court caseload and are costing us millions of dollars in legal fees and court costs.

All of this has come about because in the past 3 years, the cases of 1.2 million beneficiaries have been given reviews resulting in an initial termination rate of over 40 percent. Since March 1981, nearly half a million disability beneficiaries have been told they would lose all their benefits because they were no longer disabled. But when these cases are appealed, the beneficiaries have had their benefits restored over 60 percent of the time. These reviews have been hasty, harsh and, in too many cases, wrong. This wholesale removal of people from the disability rolls is unprecedented. It has caused a furor all across the country. All of my colleagues in the Congress, on both sides of the aisle, are only too sadly aware of the resulting tragedy. In every district, horror story after horror story has emerged.

Earlier this year, you joined our committee in an overwhelming vote of 410–1, passing our House bill and sending a message that this situation was intolerable.

Finally, even the administration recognized that congressional action was essential. Following our vote in the House, they imposed a moratorium on further continuing disability reviews until reform legislation could be enacted and implemented.

That legislation is before you today. Getting it here has not been easy.

It has required months of long hard work. And I want to take a moment to compliment the leadership of my chairman, DAN ROSTENKOWSKI, and of all the House conferees. They have stayed with this legislation through thick and thin. I also want to acknowledge the contributions of Senator DOLE and his colleagues in the other body. Their willingness to keep working to reach a compromise has made it possible for us all to be here today and to enact this crucial legislation.

I would be remiss if I did not give special recognition to Congressman JIM SHANNON of Massachusetts. His was the original bill which has served as the catalyst for the agreement you have before you today and he, along with Congressman BERYL ANTHONY, has been instrumental in shaping these amendments.

Finally, I cannot emphasize enough to the Members that this has been a bipartisan effort from the beginning. All my colleagues on the other side of the aisle, and especially, Mr. CONABLE, Mr. ARCHER, and Mr. GRADISON deserve tremendous credit for their contributions over the past 2 years.

So, in conclusion, because this bill is desperately needed, because it has received strong bipartisan support, and because it is the right thing to do, I strongly urge you to support its passage today.

□ 1700

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 1 minute to the gentleman from Connecticut [Mr. RATCHFORD].

Mr. RATCHFORD. Mr. Speaker, this is legislation that is critically needed. I know that there is a rush of the hour to get on with it, but for hundreds of thousands of people throughout these United States, they have faced the cruelty and inhumanity of being disqualified, not by an examination, not by face-to-face contact, but by the computer printout saying, "You are qualified to go back to work."

We need to put humanity back into the process. We need to be concerned for the human side of disability. We need to have sensitivity to people. All of this is contained in this legislation. It is the essence of compromise. It deserves our support.

Mr. ROSTENKOWSKI. Mr. Speaker, I reserve the balance of my time.

Mr. ARCHER. Mr. Speaker, I yield 5 minutes to a respected member of our committee, the gentleman from Ohio [Mr. GRADISON].

Mr. GRADISON. Mr. Speaker, I rise in support of the conference agreement on H.R. 3755, the Social Security Disability Benefits Reform Act of 1984, and I compliment my subcommittee chairman, the gentleman from Texas, on the skill and perseverance that led to this agreement.

We know only too well that the social security disability program is in disarray. Many States are imposing their own standards. Courts of appeal are producing differing opinions, creating wide disparity as to what it takes to continue to receive disability benefits. The program's central headquarters is unable to do much more than react to current decisions. The program must be turned around and pointed in a positive direction.

H.R. 3755 makes necessary reforms in the administration of the social security disability program. Many of these reforms were initiated administratively by the Secretary of Health and Human Services in June 1983, and molded into statutory form by the Social Security Subcommittee. I am hopeful that these initiatives will make significant strides toward reestablishing the integrity of the disability program and ending beneficiary trauma.

Perhaps most important, the bill attempts to recreate this as a national program by establishing uniform guidelines for determining when a person's disability status should be continued. In particular, a person could only be terminated from the rolls if medical improvement is found.

However, it is still not entirely clear how the medical improvement standard will be implemented. Despite extensive consideration by the subcommittee and by the conferees, the statutory language is vague. The ambiguity in the language could allow either continued disability or termination status for persons who can do their old jobs.

My main concern with the conference report is the possibility of creating dual standards, one set for new applicants, and a different, more lenient, set for those already on the benefit rolls. If persons capable of working are allowed to collect benefits, then Congress will have taken disability policy for a full pendulum swing: From the lax standards of the 1970's to the harsh administration that was begun with the 1980 disability amendments, and back again to standards that are too lax. The only fair place for the pendulum to rest is in the middle, where only those who deserve to receive benefits, and all those deserving, do receive benefits.

This may be our last chance to achieve uniform standards of disability determination throughout the State-Federal system of disability adjudication. If this fails to create fair and consistent guidelines, then our next step may very well have to be to federalize the administration of the program.

Mr. ARCHER. Mr. Speaker, I share the views of those who have spoken in that we do need to reform the disability review program. This bill moves in that direction. I do support the conference report.

Mr. SKELTON. Mr. Speaker, I rise today in support of H.R. 3755. I thank Mr. PICKLE and the other House conferees for their diligent effort on behalf of the many Americans who must depend on the Social Security Disability Insurance Program for their subsistence. Particularly, the House

conferees are to be commended for insisting on acceptance of the requirement that the Social Security Administration produce evidence of medical improvement before it terminates SSDI payments. I believe this requirement is the most important safeguard H.R. 3755 provides to recipients.

The final passage of H.R. 3755 will solve the problems of many Missourians who, in recent years, have brought to my attention the unfair and inequitable procedures previously applied by the administrators of the Social Security Disability Insurance Program. I testified early before the Social Security Subcommittee of the Ways and Means Committee on this program, and I am proud to be a cosponsor of this effort to establish fair procedures for those who are disabled and within the purview of the SSDI program.

But while I am pleased that we are about to pass H.R. 3755, I am disappointed that we have been forced to legislate fair procedures for terminating SSDI payments. After all, common decency alone dictates that SSDI payments should not be arbitrarily discontinued. The overwhelming support H.R. 3755 has received should be a clear message to the administrators of the SSDI program that Congress finds their attitude toward SSDI recipients totally unacceptable.

To paraphrase the late Hubert Humphrey, a man whose strong sense of compassion we all recognize and admire, one of the benchmarks by which a society is judged is the treatment it affords its less fortunate members. By that standard, the Nation can be proud that H.R. 3755 reaffirms our commitment to provide an adequate standard of living to those who cannot work because of physical or mental disabilities.

● Mr. ROYBAL. Mr. Speaker, I rise in support of the conference committee agreement on H.R. 3755, the Social Security Disability Reform Amendments of 1984, even though I am concerned that this bill will not permanently end the problems in the disability program. I commend the gentleman from Texas [Mr. PICKLE] for his strong leadership in shaping the House bill, and for his steadfast support of the House bill during conference committee negotiations.

Last spring the Aging Committee began a series of hearings to assess the reaction of State officials and Federal courts to the harsh interpretations of Federal law which SSA expected the States to carry out. The committee has documented the chaos in the program which has produced the constitutional conflict between the excecutive branch and the States and Federal courts.

Although I support the reforms encompassed in the compromise bill, I wish we were doing more for those already terminated from the program. The conference agreement provides for cases to be remanded to the reconsideration level, if they involve medical improvement, for all beneficiaries in the administrative pipeline; beneficiaries who have filed individual suits in the courts; and those beneficiaries in a certified class action suit. However, the bill does not redress the grievances of those who have accepted the government's decision due to lack of knowledge, ability, and/or funds to pursue their appeal. During the floor debate in March on the House disability bill, the late Congressman Perkins stated: "It excludes from remedial treatment that large group of persons who have suffered the most during the last three years." I am confident that if Congressman Perkins were here today, he would concur with my opinion that the compromise bill excludes a large group of disabled individuals.

The only way in which the hundreds of thousands of persons who have already suffered from the review process will be able to profit by these reforms is for the States, under their authority in current regulations and guidelines, to reopen and revise their determinations. I hope that Secretary Heckler will respond to the States valid requests to send case folders for a reevaluation.

In addition, I wish the compromise legislation included more of the House bill. SSA has a stated policy of not abiding by court decisions affecting its policies or procedures except in the specific case to which the ruling applies. The House bill would have resolved the constitutional conflict created by SSA's failure to fully implement or appeal court orders by requiring that SSA follow court rulings or appeal to the Supreme Court. Although the conference report language will criticize SSA for its policy of nonacquiesence, the bill will allow SSA to continue this unconstitutional policy. In regard to the issue of continuation of benefits through the administrative law judge [ALJ] level, all of the disability advocacy groups supported this provision on a permanent basis. The compromise bill continues benefits until December 1987 even though the financial and emotional hardships caused by the long processing time are permanent.

We have also missed an opportunity to give the Secretary of HHS more administrative flexibility to carry out the reviews than currently exists under the automatic 3-year review requirement. We should also delete the separate, more severe definition of disability established for disability widow(er)s. To encourage return to paid employment, we should provide better vocational rehabilitation and eliminate the work disincentives which keep some disabled persons on the disability rolls. In addition, there are stronger ways to assure the independence of administrative law judges than are contained in this legislation.

Despite my reservations, I do support the reform legislation. It has taken 3 years to bring us to this point and I urge all my colleagues to vote in favor of this legislation.●

● Mr. VANDERGRIFF. Mr. Speaker, I rise today in strong support of the conference agreement on H.R 3755, the Social Security Disability Reform Act of 1984, and call for its swift adoption. Each of us knows all too well the horror stories of those who have been forced off the disability rolls due to the current overzealous review process. Many of us have participated in hearings throughout the country in order to hear firsthand from former beneficiaries and State officials.

When Congress ordered a thorough review fo the disability rolls in 1980, it was anticipated that only those individuals who had adequately recuperated or who had fraudulently received benefits would be removed from the rolls. Congress most certainly did not anticipate that almost 500,000 people would be cut from the rolls in a period of 3 years. The fact that almost two-thirds of those who appealed were returned to the rolls after administrative review leads me to surmise that the cutoffs were made far too hastily or with disregard to congressional intent.

I was extremely pleased to see that we, in the House, voted so overwhelmingly to adopt disability reform legislation. I was pleased that the Senate followed our lead, although I do think our bill was superior. I was gratified that the administration finally took notice of the gravity of this situation and issued a moratorium on the review process this past April.

Mr. Speaker, it is high time we enact a legislative remedy. We have before us a good compromise which does not seek to expand the disability program. It will not jeopardize the solvency of the Social Security program. It simply seeks to ensure that those who are truly disabled do not unfairly lose their benefits. The disability program is almost 30 years old—and it is still a valid expression of this country's compassion for those who are unable to care for themselves.

Those of us who firmly believe in, and are committed to the continuance of Social Security, wish to commend all members of the conference committee. I personally wish to thank my colleague from Texas, The chairman of the Social Security Subcommittee, JAKE PICKLE, and the chairman of the Select Committee on Aging, ED ROYBAL, for their efforts in focusing in on the problem and finding a solution. I appreciate the fact that they were responsive to our concerns.

Again, I urge unanimous support for this legislation and am hopeful that it

will be swiftly signed into law. Thank you.●

● Mr. SHANNON. Mr. Speaker, this legislation—the Social Security Disability Benefits Reform Act of 1984—is urgently needed, and I hope that it can be sent to the White House and signed into law as soon as is possible.

Had the Social Security Disability Insurance Program been administered in a fair and effective manner over the past 3 years, much of this legislation would not be necessary.

It is necessary because there are those in Government who made the egregious mistake of putting spending cuts before fairness and compassion.

That so many disabled Americans have been so unfairly and harshly treated by their government over the past 3 years is a national tragedy. With this legislation, we have a chance to undo some of the harm and put some fairness and humanity back into the process.

The provisions in this agreement—particularly those dealing with medical improvement, multiple impairments, revised standards for the mentally impaired, extension of benefits pending appeal, frequency of reviews, uniform standards, and other areas—will go a long way toward assuring that disabled workers receive the protection they need and are entitled to.

Other provisions—those requiring demonstration projects of face-to-face hearings at the initial stage of the appeals process, and a study of pain as a disabling condition—will set the stage for further improvements in the years ahead.

Given the major differences which existed between the House- and Senate-passed bills, I believe this conference agreement represents a good compromise package. I want to commend my colleagues on the Ways and Means Committee and those who served in conference for their hard work and dedication over the past 18 months. In particular, I want to express my deep appreciation for the effective leadership on this legislation provided by J.J. PICKLE, Chairman of the House Ways and Means Committee's Subcommittee on Social Security.

This conference agreement represents a solid achievement for those in Congress, on both sides of the aisle, in both the House and the Senate, who have worked long and hard in the effort to improve the Social Security Disability Insurance Program.

But the real victory and achievement belong to the hundreds of thousands of disabled workers in Massachusetts and across the country who want only to be treated fairly under the law.

In particular, it belongs to Damien Ivanof and Judy Fittery, both from Massachusetts. Mr. Ivanof and Ms. Fittery, were two of the first disabled workers to be improperly thrown off the rolls under the accelerated review of the disabled. They found out first hand how flawed the standards and procedures used by the Social Security Administration in assessing ability to work were, and they committed themselves to fixing a good program gone awry.

It is a tribute to their determination and persistence that we have a chance to send this major reform bill to the President.

And it is their determination and persistence which will prevent this administration—or any administration—from abusing the disabled and denying them what is their right in the future.

I urge all my colleagues to strongly support this measure.●

Mr. ARCHER. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PICKLE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 402, nays 0, not voting 30, as follows:

[Roll No. 404]

YEAS—402

Ackerman	Bosco	Coyne	Edwards (OK)	Lantos	Ratchford
Addabbo	Boucher	Craig	Emerson	Leach	Ray
Akaka	Boxer	Crane, Daniel	English	Lehman (FL)	Regula
Albosta	Britt	Crockett	Erdreich	Leland	Reid
Anderson	Brooks	D'Amours	Erlenborn	Lent	Richardson
Andrews (NC)	Brown (CA)	Daniel	Evans (IA)	Levin	Ridge
Andrews (TX)	Brown (CO)	Dannemeyer	Evans (IL)	Levine	Rinaldo
Annunzio	Broyhill	Darden	Fascell	Levitas	Ritter
Anthony	Bryant	Daschle	Fazio	Lewis (CA)	Roberts
Applegate	Burton (CA)	Daub	Feighan	Lewis (FL)	Robinson
Archer	Burton (IN)	Davis	Fiedler	Lipinski	Rodino
Aspin	Byron	de la Garza	Fields	Livingston	Roe
AuCoin	Campbell	Dellums	Fish	Lloyd	Roemer
Badham	Carney	Derrick	Flippo	Loeffler	Rogers
Barnard	Carper	Dickinson	Florio	Long (LA)	Rose
Barnes	Carr	Dicks	Foglietta	Long (MD)	Rostenkowski
Bartlett	Chandler	Dingell	Foley	Lott	Roth
Bateman	Chappell	Dixon	Ford (MI)	Lowery (CA)	Roukema
Bates	Chappie	Donnelly	Ford (TN)	Lowry (WA)	Rowland
Bedell	Clarke	Dorgan	Fowler	Lujan	Roybal
Beilenson	Clay	Dowdy	Frank	Luken	Rudd
Bennett	Clinger	Downey	Franklin	Lundine	Russo
Bereuter	Coats	Dreier	Frenzel	Lungren	Sabo
Berman	Coelho	Duncan	Frost	Mack	Savage
Bevill	Coleman (MO)	Durbin	Fuqua	MacKay	Sawyer
Bilirakis	Coleman (TX)	Dwyer	Garcia	Madigan	Schaefer
Billey	Collins	Dymally	Gaydos	Marlenee	Scheuer
Boehlert	Conable	Dyson	Gejdenson	Marriott	Schneider
Boggs	Conte	Early	Gekas	Martin (IL)	Schroeder
Boland	Conyers	Eckart	Gephardt	Martin (NC)	Schulze
Bonior	Cooper	Edgar	Gibbons	Martin (NY)	Schumer
Bonker	Corcoran	Edwards (AL)	Gilman	Martinez	Selberling
Borski	Coughlin	Edwards (CA)	Glickman	Matsui	Sensenbrenner
			Gonzalez	Mavroules	Sharp
			Goodling	Mazzoli	Shaw
			Gore	McCain	Shumway
			Gradison	McCandless	Shuster
			Gray	McCloskey	Sikorski
			Green	McCollum	Siljander
			Gregg	McCurdy	Sisisky
			Guarini	McDade	Skeen
			Gunderson	McHugh	Skelton
			Hall (IN)	McKernan	Slattery
			Hall (OH)	McKinney	Smith (FL)
			Hall, Ralph	McNulty	Smith (IA)
			Hall, Sam	Mica	Smith (NE)
			Hamilton	Michel	Smith (NJ)
			Hammerschmidt	Mikulski	Smith, Denny
			Hance	Miller (CA)	Smith, Robert
			Hansen (ID)	Mineta	Snowe
			Hansen (UT)	Minish	Snyder
			Harrison	Mitchell	Solarz
			Hartnett	Moakley	Solomon
			Hatcher	Molinari	Spence
			Hawkins	Mollohan	Spratt
			Hayes	Montgomery	St Germain
			Hefner	Moody	Staggers
			Heftel	Moore	Stangeland
			Hertel	Morrison (WA)	Stark
			Hightower	Mrazek	Stenholm
			Hiler	Murphy	Stokes
			Hillis	Murtha	Stratton
			Holt	Myers	Stump
			Hopkins	Natcher	Sundquist
			Horton	Neal	Swift
			Howard	Nelson	Synar
			Hoyer	Nichols	Tallon
			Hubbard	Nielson	Tauke
			Huckaby	Nowak	Tauzin
			Hughes	O'Brien	Taylor
			Hunter	Oakar	Thomas (CA)
			Hutto	Oberstar	Thomas (GA)
			Hyde	Obey	Torres
			Ireland	Olin	Torricelli
			Jacobs	Ortiz	Towns
			Jeffords	Ottinger	Traxler
			Jenkins	Owens	Udall
			Johnson	Packard	Valentine
			Jones (NC)	Panetta	Vander Jagt
			Jones (OK)	Parris	Vandergriff
			Jones (TN)	Pashayan	Vento
			Kaptur	Patman	Volkmer
			Kasich	Patterson	Vucanovich
			Kastenmeier	Paul	Walgren
			Kazen	Pease	Walker
			Kemp	Penny	Watkins
			Kennelly	Pepper	Waxman
			Kildee	Petri	Weaver
			Kindness	Pickle	Weber
			Kleczka	Porter	Weiss
			Kogovsek	Price	Wheat
			Kolter	Pritchard	Whitehurst
			Kostmayer	Pursell	Whitley
			Kramer	Quillen	Whittaker
			LaFalce	Rahall	Whitten
			Lagomarsino	Rangel	Williams (MT)

Williams (OH)	Wolf	Yatron
Wilson	Wolpe	Young (AK)
Winn	Wortley	Young (FL)
Wirth	Wyden	Young (MO)
Wise	Yates	Zschau

NOT VOTING—30

Alexander	Ferraro	Miller (OH)
Bethune	Gingrich	Moorhead
Biaggi	Gramm	Morrison (CT)
Boner	Harkin	Oxley
Breaux	Latta	Shannon
Broomfield	Leath	Shelby
Cheney	Lehman (CA)	Simon
Courter	Markey	Studds
Crane, Philip	McEwen	Wright
DeWine	McGrath	Wylie

□ 1720

Mr. PENNY changed his vote from "no" to "aye."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

EMERGENCY WETLANDS RESOURCES ACT OF 1983

The SPEAKER pro tempore. Pursuant to House Resolution 579 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3082).

□ 1724

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3082) to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat, and for other purposes, with Mr. MCCURDY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from North Carolina [Mr. JONES] will be recognized for 30 minutes, the gentleman from Alaska [Mr. YOUNG] will be recognized for 30 minutes, the gentleman from Ohio [Mr. SEIBERLING] will be recognized for 15 minutes, the gentleman from Alaska [Mr. YOUNG] will be recognized for 15 minutes, the gentleman from New Jersey [Mr. ROE] will be recognized for 15 minutes, and the gentleman from Minnesota [Mr. STANGELAND] will be recognized for 15 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 3082, the Emergency Wetlands Resources Act is designed to encourage active conservation of migratory waterfowl and to deter and stop further loss of wetlands by increasing the price of the duck stamp, and allowing the Fish and Wildlife Service to charge entrance fees in certain refuges.

Title II of the legislation establishes a "Wetlands Conservation Fund," transfers $75 million from the Land and Water Conservation Fund to this new fund annually for a 10-year period, and authorizes $75 million for appropriation from this fund each year through 1994.

Title III of the legislation accelerates the national wetlands inventory and authorizes an additional $14.5 million for each fiscal year through 1987 and $6.75 million annually from fiscal years 1988 through 1999 in order to complete the inventory.

The Wetlands Acquisition Act is amended to forgive the debt, and the land and water conservation fund is amended to allow moneys to be expended for wetlands acquisition.

Title IV of the legislation allows the Army Corps of Engineers to use the necessary land from the Cape Hatteras National Seashore and the Pea Island National Wildlife Refuge to carry out the Manteo (Shallowbag) Bay project, commonly called the Oregon Inlet project. Title IV also states that no moneys can be expended for construction of the project until a favorable cost/benefit ratio is published.

I would like to emphasize that title IV is not an authorization for the project. The project was authorized in 1970. Title IV does not appropriate any money. Even if this legislation is enacted into law, I would still have to go to the Appropriations Committee and make a case for the money. Title IV permits the corps to use the land necessary to anchor the jetties and that is all.

Mr. Chairman, this legislation—and Title IV in particular—has been extensively reviewed and favorably reported by three committees, including the Committee on Merchant Marine and Fisheries, which—I might add—reported the bill by unanimous voice vote, the Committee on Public Works and Transportation, and the Committee on Interior and Insular Affairs. The Merchant Marine and Fisheries Committee held hearings on title IV in early August 1983 and reported H.R. 3082 on October 25, 1983. The other two committees were given a sequential referral for a period ending no later than March 6, 1984. This whole process took approximately 8 months. My point is that each committee thoroughly considered the pros and cons of this legislation, and each committee favorably reported the bill. I would like to add that this legislation is the outgrowth of a strong bipartisan coalition including the entire North Carolina House delegation, Senator JESSE HELMS, Senator JOHN EAST, Governor Jim Hunt, and all the local government officials. The State and the citizens of North Carolina are very strongly behind the passage of title IV of H.R. 3082.

The U.S. Coast Guard advised the Merchant Marine and Fisheries Committee that it handled some 100 cases related to groundings and search and rescue operations in the immediate area of Oregon Inlet during fiscal year 1983. In connection with these cases, ten lives were saved, 394 other persons were assisted, about $4 million in property loss was prevented, property valued at about $22 million was assisted, and the Coast Guard managed to hold property damages to a minimum of $118,000.

Since 1971, nine people have been killed in that inlet. The fishermen of this area are being asked to risk their lives to make a living. They are forced to land their catches at other ports many miles distant and pay the costs in time and money when the inlet is too rough to cross. A modern commercial seafood complex to accommodate large scale seafood handling and processing operations for both domestic and foreign markets has been developed at Wanchese, NC, at a cost of nearly $8 million in Federal and State moneys, yet this facility stands virtually idle because businessmen cannot afford to locate where they cannot depend on a regular supply of fish. Stabilization of the inlet would provide the assurances necessary to make this a going concern and to open up more than 600 jobs in a chronically underemployed area. A reliable navigation channel at Oregon Inlet will produce economic benefits for a broad area in northeastern North Carolina.

The fishermen of this area are a very independent breed of people. Their families have lived on these outer banks for generations. They welcomed passage of the Fishery Conservation Management Act of 1976, which established a 200-mile zone and offered the American fisherman an opportunity to compete with the heavily subsidized foreign fishing fleets. Such competition required that they go farther out to sea, stay longer at sea, and catch more fish. It was also necessary that these fishermen upgrade their equipment and build larger boats to accommodate the increased demands. The fishermen of North Carolina met these challenges but now find that, despite their best efforts, the instability of Oregon Inlet makes it increasingly difficult for them to make a livelihood.

Mr. Chairman, the bill before us today will not resolve these problems but it is an important step toward stabilizing Oregon Inlet and the economy of northeastern North Carolina and I ask the assistance of my colleagues in making this possible.

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PAGE

situation. Ambassador Brock will be here, I think within the next hour or so. I hope that Ambassador Brock, I, and the Senator from Arkansas would have the opportunity to sit down. I think we can provide about as close to an ironclad guarantee as possible that this problem will be taken care of to his satisfaction without the necessity of resorting to too many rice recipes.

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT—CONFERENCE REPORT

Mr. BAKER. Mr. President, while we see if we can work out a time agreement, I think it might be appropriate to go to the conference report. May I inquire, are the conference documents here now?

The PRESIDING OFFICER. The conference report is here.

Mr. BAKER. Mr. President, I submit a report of the committee of conference on H.R. 3755 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I am pleased to bring to the Senate for consideration the conference report on H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. As my colleagues will recall, the Senate bill was approved on May 22 by an overwhelming vote of 96 to 0. The House bill, although different in several major respects, had been approved by a similarly impressive vote of 410 to 1. The legislation we have before us now makes significant changes in the Social Security disability review process, and includes a series of provisions designed to improve the accuracy of disability determinations, the uniformity of decisions between the different levels of appeal, and the consistency of such decisions with Federal law and standards. It has the support of every conferee on the House and Senate side.

In my view, the conference report is a major accomplishment, representing the culmination of more than 2 years of congressional deliberation on the very difficult and emotional issue of disability insurance reform. It responds to many of the problems we have seen in the disability program since periodic eligibility reviews commenced in 1981, and is intended to clear up the chaotic situation in the State disability agencies and the Federal courts.

As my colleagues are well aware, the legislation mandating periodic eligibility reviews of disability beneficiaries was passed by Congress and signed into law by President Carter in 1980. The task on conducting these reviews, however, fell upon the current administration, but with no special legislative provisions for assessing the continuing eligibility of people already on the rolls. More than 2 million people, many of whom had been on the rolls for many years, became subject to the 3-year eligibility review requirement.

The requirement was well-conceived. I think we have an obligation not to only those in this program but also to taxpayers generally to review programs to make certain those who are receiving benefits deserve to receive those benefits. But, while the requirement was well-conceived, its implementation resulted in some significant problems and dislocations which were not anticipated and which have contributed to an unprecedented degree of confusion in the operation of the program. Over 1 million people have been reviewed in the past 3 years, about half of whom were found ineligible by the State disability agencies administering the reviews. Among those who appealed their termination decisions to an administrative law judge, some 60 percent had benefits reinstated. Obviously, some people were removed from the rolls who should not have been. The disparity between the decisions of the States and the administrative law judges, though long standing, has also been a major concern.

Other concerns stemmed from the fact that under present law, individuals who have been on the rolls, possibly for many years, are reviewed as if they were new applicants. The only relevant issue in an eligibility determination is whether or not the individual can engage in substantial gainful activity. As a result, people can be—and have been—terminated from the rolls who have not medically improved since the time they were initially granted benefits. While there may be many proper reasons for this to happen, such as when an individual is erroneously allowed benefits in the first place, serious questions were nevertheless raised.

During this entire period, the administration endeavored to improve the quality of the review process. Among other important changes, face-to-face interviews were introduced in district offices for individuals preparing to undergo eligibility reviews; all medical evidence available over a 12-month period must now be examined; more detailed explanations of decisions are required; a larger proportion of the beneficiary population has been classified as permanently impaired as thus exempted from the 3-year review requirement; and a temporary moratorium was placed on the review of two-thirds of all mental impairment cases pending a revision of the criteria used for determining eligibility. This was initiated prior to the nationwide suspension of periodic reviews announced last spring.

Notwithstanding these efforts by the administration, problems remained that required legislative remedies. It is unfortunate for all concerned that these problems were not anticipated when the original legislation was enacted in 1980.

To ensure that disability determinations were made in a nationally uniform manner and consistent with congressional intent as embodied in the Social Security Act, it was first necessary to develop legislation to deal with the standards of review used for people on the rolls. In addition, it was necessary to take steps to improve the uniformity of decisions between the various levels of decisionmaking and appeal. And, it was necessary to clarify and make more explicit certain key aspects of the disability determination, for example, in the area of evaluating the disabilities of people with more than a single impairment and those suffering from pain. These and other issues have been addressed in the pending conference report.

This conference agreement makes major changes in the way disability reviews are conducted. For the first time, a clear standard of review for people on the rolls will be spelled out in the law. A finding of medical improvement or some other change in the beneficiary's condition will be required along with ability to work in order for benefits to be terminated. In addition, clear standards of rulemaking will be spelled out for the Social Security Administration with the goal of reducing some of the confusion surrounding the criteria being used by the State agencies, administrative law judges and the Federal courts. It is my hope that these and many other provisions of the conference agreement will restore the confidence of the disabled in the accuracy and fairness of the disability review process. And this is critical because, in my view, we must continue the eligibility reviews. We ought to make certain we are not turning back the clock as far as making sure, as we do in other programs, that only the deserving are on the benefit rolls. At the same time, great care must be exercised to protect those disabled

people who have every right to remain on the rolls.

Reaching this consensus has been a long and difficult process as we endeavored to find ways to protect the interests of the disabled without promoting runaway growth in the disability insurance program. All of us would like to have been able to reach a speedier resolution, but that was not possible. The problems were complex and without obvious solutions. Also views varied widely on the best course of action. Fortunately, these were not partisan differences and most of these differences have been resolved, or at least accommodated, in the pending conference report.

To achieve this consensus, concessions were required on the part of both the House and Senate; on net, I believe, the product is a good compromise. In the area of medical improvement, the conference report contains a middle position between the House and Senate bills, with the standard of review in the House bill being clarified and made more workable, the Senate effective date expanded to ensure that people in already certified class actions are covered by the new standard, and the burden of proof requirements in the Senate bill—which created some real confusion—are carefully laid out and explained in the statement of managers. The Senate receded on its position of sunsetting the medical improvement standards and including a financing fail-safe. On the other hand, the Senate position generally prevailed in the area of the evaluation of pain and multiple impairments. The House receded on its provision to require the Secretary to adopt as agency policy those U.S. Court of Appeals decisions which conflict with her interpretation of Federal law. Each of the agreements are summarized at the end of this statement.

This legislation is not perfect, of course. But in my view, this is a good compromise that balances the various interests. The basic eligibility criteria for disability benefits have been clarified and made more explicit. This should allow the reviews, which were suspended by the administration last spring, to be resumed in an orderly way and conducted on a uniform, nationwide basis.

There have been nearly an equal number of Senators on both sides of the aisle who have had a deep interest in this legislation, and many people who are to be commended for their role in the development of this legislation. The Senate conferees—Senators PACKWOOD, ROTH, DANFORTH, LONG, BENTSEN, and MOYNIHAN—and other of my colleagues—Senators COHEN, HEINZ, LEVIN, DURENBERGER, and METZENBAUM, RIEGLE, SASSER, and HELMS, to name a few—have worked diligently to help resolve this difficult issue. I might add that Senator HELMS, introduced one of the first pieces of legislation on this issue.

Of course, I would be remiss without extending my thanks to a distinguished Member of Congress from Texas, Congressman PICKLE, chairman of the Social Security Subcommittee, who has done an outstanding job and provided a great deal of leadership in this area.

Even before you thank other Members you ought to thank the staff. We have had staff working on these problems on both sides of the aisle for months. I do not know how many meetings Carolyn Weaver has conducted along with Mike Stern and Joe Humphreys of Senator LONG's staff, but there have been many. They had only one purpose in mind, that was to find an objective answer to some of the difficult problems we have seen in the disability insurance program in the past few years.

I want to thank the staff for all their efforts. Certainly, many people who may never know about how the changes were made will be indebted to the staff who gave a lot of their time and a lot of their talent to bring this matter to fruition.

Finally, I'd like to note the support we have received from the administration in helping to develop this compromise agreement. I commend Secretary Heckler, Secretary of HHS; the Justice Department; OMB; and the other Federal agencies that have been working with us over the past few years.

In my view, the Reagan administration has been very forthcoming. As I mentioned earlier, this law was passed in the Carter administration. The responsibility for conducting the reviews fell to the Reagan administration. I cannot seem to get that straight for Spencer Rich, the Washington Post, and the New York Times, but sooner or later they will get it right. If they do report the facts, they will report that the review bill was passed in 1980 and Ronald Reagan was not the President in 1980. Today, the Congress is acting to revise the 1980 law.

In closing, I urge my colleagues to support the conference report on H.R. 3755. It is a good, solid piece of legislation that ought to have unanimous support.

Mr. President, I have attached a summary of the conference agreement at the end of my statement. There are several points I would like to clarify about this agreement.

First, the conference report does not contain the express provision contained in the Senate bill that the burden of proof in the medical improvement standard rests with the recipient and not the Secretary. I want to make it clear that the recipient continues to bear the burden of proof in establishing the existence of his disability, just as is the case for people applying for benefits. The Senate language on burden of proof was eliminated because it was seen as unnecessary and potentially confusing. The conference report also changes the language of the "no presumption" in the Senate bill to make it clearer that we do not intend for the Secretary or the courts to draw any initial inference of the presence or absence of continuing disability from the fact that the recipient was found to be under a disability in a prior determination.

I would like to note that the Supreme Court held in Matthews versus Eldridge that the burden of proof lies with the recipient.

Second, the conference report eliminates portions of the language in the effective date of the Senate bill relating to the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary. These provisions are critical to the orderly administration of the program, and nothing in this legislation should be interpreted as detracting from their broad applicability. The effective date provision does, however, permit all class members of certified class actions to seek review of their cases under the medical improvement standard establishment by this act, even where they may not have pursued their appeal rights in accordance with section 205 and the Secretary's regulations. This is intended to help resolve the existing controversy over the medical improvement issue in the courts and is justified on the grounds that many class members of certified class actions may have formed reasonable expectations from the fact of certification that they would receive further review of their cases. Accordingly, the bill gives them the opportunity to receive such further review. But this should in no way be interpreted as a judgment by the conferees that these individuals have claims properly pending in court or that these classes were properly certified. The conference bill's treatment of these cases should be given no broader reading, and certainly should not be used as a precedent.

Third, the Senate bill expressly provides that the medical improvement standard established by the bill does not apply to unnamed putative members of uncertified class actions, and that such individuals, to the extent they have not individually sought judicial or further administrative review of their cases, will not have any further administrative review of the determination of the Secretary. The House bill is silent on the matter. The conferees, after carefully considering this matter, have concluded that the best approach is to prohibit any further certifications of class actions that raise the issue of whether a medical improvement standard should have been applied to individuals terminated

from the rolls prior to the enactment of this legislation. This approach, which more directly addresses the nature of the problem this legislation seeks to correct, is designed to accomplish the same result as the related provision in the Senate bill. Accordingly, the rationale set forth in the Finance Committee report for why such determinations will not be reviewed under the medical improvement standard, directly applies to the provision agreed to by the conferees. The Senate report gives four reasons for this approach: First, because of the highly speculative nature of class certification, putative members of an uncertified class action—unlike members of a certified class action—have no reasonable expectation of obtaining judicial review of their determinations by way of the class action; second, these putative class members have already decided not to pursue their appeal remedies under the act, and therefore are left in the same position under this provision; third, the number of people which might be remanded to the Secretary were these individuals to be treated similarly to members of certified class actions is literally unknowable since these actions have not yet been certified, presenting serious adverse consequences for the orderly administration of the program as well as its ultimate cost; and fourth, there is a pressing need to end the acrimonious litigation that has engulfed this program. I might add that the Congress has the power to prohibit such certifications since it is by way of the Federal Rules of Civil Procedure, which Congress has the option to amend, that these class actions would be certified.

Fourth, the conference report has deleted both the House and Senate provisions regarding nonacquiescence by the Secretary with certain U.S. Court of Appeals interpretations of the Social Security Act. While some of the conferees have expressed strong reservations regarding this practice, it should be made clear for the record that it is not the position of the Senate that the practice is unconstitutional as exercised by the Department of Health and Human Services or as by any other Federal agency. In this regard, I would like to make a part of the RECORD a letter by the Solicitor General of the United States stating that nonacquiescence is constitutionally proper, and that a prohibition of nonacquiescence would have serious adverse implications for the Government's litigation in the Social Security area.

Mr. President, I ask unanimous consent that the Solicitor General's letter be printed in the RECORD along with the summary of the conference report.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR GENERAL,
Washington, DC, May 7, 1984.

Hon. ROBERT DOLE,
Chairman, Senate Finance Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DOLE: I am writing to express the Department of Justice's strong opposition to the provision in Section 234 of H.R. 3755 requiring the Social Security Administration (SSA) to follow adverse court of appeals decisions in calculating payments to beneficiaries who were not parties to the adverse decisions but whose cases would arise within the jurisdiction of that court of appeals. The Department of Justice previously commented on this proposal in a letter to you dated September 30, 1983, and in testimony given by Deputy Assistant Attorney General Carolyn B. Kuhl on January 25, 1984. I will not repeat the arguments raised in those statements. However, I wish to reemphasize our serious objection to this provision.

This provision represents an unprecedented interference with the ability of the Justice Department to determine the cases it will appeal. In practical terms the bill would require the Department to consider seeking Supreme Court review of the first adverse decision on a point in any court of appeals. This will significantly restrict the prerogative of the executive to decide which cases should be appealed and, by forcing the government to take more cases to the Supreme Court, will increase the Supreme Court's already heavy workload. (Of course, the most likely result is that the Supreme Court will refuse to hear most of these cases, because it rarely grants review on issues of statutory construction absent a conflict among the circuit courts.) Moreover, the bill's consequences may spill over to unrelated areas of government litigation since its intent appears to be to require the government to urge the Supreme Court to hear more Social Security cases at the expense of other programs that have cases meriting Supreme Court review. There also would be significant practical problems in administering the provision, because it often is difficult to ascertain the precise scope of a particular appellate decision until subsequent cases arise on somewhat different facts and a court is asked to distinguish prior precedent. Finally, the provision would have the effect of rigidly freezing the law in a particular circuit and thereby foreclosing the Secretary from asking an appellate court to reconsider the particular holding in light of experience or changed circumstances, including contrary holdings by other courts of appeals.

The government must be accorded great discretion to choose the cases it will appeal. As the Supreme Court recently recognized in *United States* v. *Mendoza*, No. 82-849 (Jan. 10, 1984), the "Government is not in a position identical to that of a private litigant" (at p. 5). In that case a unanimous Supreme Court decided that the government could not be foreclosed from relitigating a legal issue it had previously litigated unsuccessfully in another action against a different party, even within the same judicial circuit. The Court's decision rested on many of the same considerations we have relied on in objecting to Section 234 of H.R. 3755. The Court observed (at p. 6; emphasis added):

"Government litigation frequently involves legal questions of substantial public importance; indeed, because the proscriptions of the United States Constitution are so generally directed at governmental action many constitutional questions can arise only in the context of litigation to which the government is a party. Because of those facts the government is more likely than any private party to be involved in lawsuits against different parties which nonetheless involve the same legal issues.

"A rule allowing nonmutual collateral estoppel against the government in such cases could substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue. *Allowing only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants certiorari.* * * * Indeed, if nonmutual estoppel were routinely applied against the government, this Court would have to revise its practice of waiting for a conflict to develop before granting the government's petitions for certiorari."

Thus, strong policy reasons counsel against a departure by Congress from what the Supreme Court has recognized as the established principle that "the United States, like other parties, is entitled to adhere to what it believes to be the correct interpretation of a statute, and to reap the benefits of that adherence if it proves to be correct, except where bound to the contrary by a final judgment in a particular case." *United States* v. *Estate of Donnelly*, 397 U.S. 286, 294-295 (1970). That is especially so in the massive Social Security disability program, because Congress by statute has directed the Secretary "to assure effective and uniform administration of the disability insurance program throughout the United States." 42 U.S.C. (Supp. V) 421(a)(2). Indeed, although Section 234 of H.R. 3755 undoubtedly is motivated by considerations of fairness, the provision actually is quite unfair to the litigating interests of the United States. It would, in effect, make every case a circuit-wide class action, contrary to Rule 23 of the Federal Rules of Civil Procedure, whenever the government loses a Social Security case in a court of appeals—but not when it wins one.

In sum, Section 234 of H.R. 3755 has serious adverse implications for the conduct of the government's litigation in the Social Security context. At the same time, we recognize that SSA's decision not to acquiesce in a particular decision has on occasion led to results that might be perceived as inequitable. There are, however, far less drastic responses to this perceived problem, such as the provision in the Levin-Cohen bill that would require the Secretary to publish a notice in the Federal Register and to notify Congress whenever she does not intend to acquiesce in a particular appellate decision. In these circumstances, we urge that no legislation be adopted that would damage the conduct of the defense of government programs and policies and would provide an exceptionally troublesome precedent.

Very truly yours,

REX E. LEE,
Solicitor General.

SUMMARY OF CONFERENCE AGREEMENT ON H.R. 3755, THE SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

1. Medical Improvement Standard

Establishes a medical improvement standard under which the Secretary may terminate disability benefits on the basis that the person is no longer disabled only if

(1) there is substantial evidence demonstrating that (a) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the person's ability to work) and (b) the individual is now able to engage in substantial gainful activity (SGA); or

(2) there is substantial evidence consisting of new medical evidence and a new assessment of RFC which demonstrates that although there is no medical improvement, (a) the person has benefited from advances in medical or vocational therapy or technology related to ability to work, and (b) that he or she is now able to peform SGA; or

(3) there is substantial evidence that although there is no medical improvement (a) the person has benefited from vocational therapy and (b) the beneficiary can now perform SGA; or

(4) there is substantial evidence that, based on new or improved diagnostic techniques or evaluations, the person's impairment or combination of impairments is not as disabling as it was considered to be at the time of the prior determination, and that therefore the individual is able to peform SGA; or

(5) there is substantial evidence either in the file at the original determination or newly obtained showing that the prior determination was in error; or

(6) there is substantial evidence that the original decision was fraudently obtained; or

(7) if the individual is engaging in SGA (except where he or she is eligible under Section 1619), fails without good cause to cooperate in the review or follow prescribed treatment or cannot be located.

In making the determination, the Secretary shall consider the evidence in the file as well as any additional information concerning the claimant's current or prior condition secured by the Secretary or provided by the claimant.

Determinations under this provision must be made on the basis of the weight of the evidence, and on a neutral basis with regard to the individual's condition, without any inference as to the present or absence of disability based on the previous finding of disability.

Regulations must be issued within 6 months.

Effective date: Applies only with respect to the following categories:

(1) Determinations by the Secretary made after date of enactment;

(2) Cases pending at any level of the administrative process on the date of enactment;

(3) Cases of individual litigants pending in Federal court on the date the conference report is filed;

(4) Cases of named plaintiffs in class action suits pending on that date;

(5) Cases of unnamed plaintiffs in class action suits certified prior to that date; and

(6) Cases where a request for judicial review was made within 60 days prior to enactment;

Cases in categories (3), (4), (5) and (6) will be remanded to the Secretary for review under this standard. Individuals in (5) will be sent a notice via certified mail informing them that they have 120 days after the date of receipt of the notice to request a review under the medical improvement standard.

No class action may be certified after the date the conference report is filed which raises the issue of medical improvement with respect to an individual whose benefits were terminated prior to that date.

Persons whose cases are remanded to the Secretary will receive benefits pending the Secretary's decision and appeal of that decision if they so elect. If found eligible, any person whose case was remanded under this provision will receive benefits retroactive to the date they were last found ineligible.

2. Evaluation of Pain

Requires the Secretary of HHS, in conjunction with the National Academy of Sciences, to conduct a study concerning the questions of using subjective evidence of pain in determining whether a person is under a disability, and the state of the art of preventing, reducing or coping with pain. This study is due to the House Committee on Ways and Means and the Senate Committee on Finance by December 31, 1985.

Establishes the following statutory standard to be in effect until December 31, 1986:

"An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques which show the existence of a medical impairment that results from anatomical, physiological or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue), must be considered in reaching a conclusion as to whether the individual is under a disability.

3. Multiple Impairments

Provides that in determining whether a person's impairment or impairments are of a sufficient medical severity to be the basis of a finding of eligibility for benefits, the Secretary must consider the combined effect of all of the person's impairments, whether or not any one impairment would alone be severe enough to qualify the person for benefits. Provision applies to all determinations made on or after 30 days after enactment.

4. Moratorium on Mental Impairment Reviews

Provides for a moratorium on reviews of all cases of mental impairment disability until the mental impairment criteria in the Listing of Impairments are revised to realistically evaluate the person's ability to engage in SGA in a competitive workplace environment. The revised criteria are to be published within 120 days of the date of enactment. The moratorium applies to all cases on which an administrative or judicial appeal was pending on or after June 7, 1983. All persons claiming benefits based on mental impairment disability who received an unfavorable initial or continuing disability decision after March 1, 1981 could reapply for benefits within 12 months of enactment.

5. Pre-Termination Notice

Requires the Secretary to initiate demonstration projects on providing face-to-face interviews for (1) pre-termination continuing disability cases and (2) for all initial denial cases, in lieu of face-to-face evidentiary hearings at reconsideration, to be done in at least 5 States with a report due to the Committees on Ways and Means and Finance April 1, 1986. Also requires Secretary to notify individuals upon initiating a periodic eligibility review that termination of benefits could be the result of the review, and that medical evidence may be provided.

6. Continuation of Benefits During Appeal

Provides for continuation of benefits during appeal for all continuing disability review cases through the decision of the administrative law judge, at the election of the individual. Where the ALJ's decision is adverse to the individual, these benefits would have to be repaid. The provision is permanent for SSI disability recipients, and will apply to Title II disability beneficiaries through December 1987. The Secretary is required to report to Congress on the impact of this provision by July 1, 1986.

7. Qualifications of Medical Professionals

Requires the Secretary to make every reasonable effort in cases based on mental impairments to insure that a qualified psychiatrist or psychologist complete the medical portion of the case review and of the residual functional capacity assessment before any determination may be made that an individual is not disabled. The statement of managers will state that the Secretary has the authority to contract directly for such services if the State agency is unable to do so.

8. Standards for Consultative Examinations/Medical Evidence

Requires the Secretary to promulgate regulations regarding consultative examinations, including when they should be obtained, the type of referral to be made and the procedures for monitoring the referral process. The Secretary must make every effort to obtain necessary medical evidence from the treating physician before evaluating medical evidence from any other source. The Secretary must also consider all evidence in the case record and development of complete medical history over at least the preceding 12-month period.

9. Administrative Procedure and Uniform Standards

Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under section 553 of the Administrative Procedures Act, to be binding at all levels of adjudication.

10. Non-Acquiescence

No statutory provision is included in the conference agreement. The statement of managers of the conference agreement states that the agreement to drop both the House and Senate provisions is not to be interpreted as approval of the practice of "non-acquiescence", that the conferees note that questions have been raised about the constitutional basis of the practice, that many of the conferees have strong concerns about the current application of the practice, and that a policy of non-acquiescence should be followed only where steps have been taken or are intended to be taken to receive a review of the disputed issue in the Supreme Court. The conferees also urge the Secretary to seek a resolution of the non-acquiescence issue in the Supreme Court.

11. Payment of Costs of Rehabilitation Services

Allows reimbursement to State agencies for costs of VR services provided to individuals receiving DI benefits under section

225(b) of the Social Security Act who medically recover while in VR, whether or not the person worked at SGA for 9 months, and whether or not the person failed to cooperate in the program.

12. Direction for Quadrennial Social Security Advisory Council

Directs next quadrennial advisory council (as required in the Social Security Act) to study the medical and vocational aspects of disability using ad hoc panels of experts where appropriate. The study must include alternative approaches to work evaluation for SSI recipients, effectiveness of VR programs, and other disability program policies, standards and procedures. The Secretary must appoint the members by June 1, 1985.

13. Staff Attorneys

Directs the Secretary to report, within 120 days of enactment, to the Committees on Ways and Means and Finance, on the actions taken by the Secretary to establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for ALJ positions. Statement of managers states that it is assumed, given recent OPM actions, that statutory requirements for establishing specific positions are not required, and that the Secretary is urged to take all reasonable steps to see that the OPM actions result in SSA staff attorneys becoming qualified for GS-15 ALJ positions.

14. SSI Benefits for Persons Working Despite Impairment (1619)

Extends Sections 1619 (a) and (b) through June 30, 1987, and requires the Secretaries of HHS and Education to establish training programs for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations. Effective retroactive to January 1, 1984.

15. Frequency of Continuing Eligibility Reviews

Requires the Secretary to promulgate regulations establishing standards for determining the frequency of continuing eligibility reviews. Final regulations must be issued within 6 months; until that time, no individual may be subject to more than one periodic review.

16. Representative Payees for Social Security and SSI Beneficiaries

Requires the Secretary to (1) evaluate qualifications of prospective payees prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring where payments are made to someone other than a parent or spouse living in the same household with the beneficiary, and (3) report to Congress on implementation, and annually on the number of cases of misused funds and disposition of such cases.

17. Measures To Improve Compliance with Federal Law

Requires the Secretary to federalize disability determinations in a State within 6 months of finding that a State is not in substantial compliance with Federal law and standards. Such a finding must be made within 16 weeks of the time a State's failure to comply first comes to the attention of the Secretary, during which period a hearing could be afforded to the State. The Secretary is directed to comply with current law requirements protecting employment of current State employees to the extent feasible, and is directed in order to accomplish that end, to exceed any applicable personnel ceilings and to waive any applicable hiring restrictions. The statement of managers directs the Secretary to give preference in hiring to agency employees capable of performing the requisite duties.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I greet the conference report on the Social Security disability reform legislation with a sense of great relief. Relief for those beneficiaries who have been terminated and who are now challenging those terminations through the administrative process or the courts who will now have their matters remanded to the Social Security Administration [SSA] for a redetermination of eligibility based on a medical improvement standard; relief for the current beneficiaries who have not yet been terminated but who have lived under the threat that upon review they could be terminated even though their condition is the same as or worse than when they were initially found eligible; relief for those new applicants for Social Security disability benefits who will now face fairer treatment and consideration by SSA of all of their impairments and not just one that must be deemed to be severe; relief for the recipients of SSI benefits who will now have payment of those benefits through appeals fixed in law; relief for those disabled by pain who may soon enjoy a more humane and realistic response by the SSA to their plight.

I also feel relief, personally, Mr. President, because agreeing to the conference report on H.R. 3755 today represents the culmination of over 2 years of continuous effort on the part of myself, Senator COHEN, and the other Members of Congress who have worked so hard to bring the injustices and problems of the Social Security Disability Program to the attention of Congress and the President.

It started for Senator COHEN and me at the oversight hearing we held on disability terminations in May 1982 when we learned that almost one-half of the persons reviewed by SSA for their continuing eligibility were being terminated. Of those terminated, 50 percent appealed that decision and an amazing two-thirds of those who appealed were being reinstated. The appeals process usually cost the beneficiary a substantial sum of money for attorneys fees—approximately 25 percent of the benefit amount—and took at least 9 months to 1½ years to complete during which time the person was not receiving disability benefits and was no longer eligible for medicare coverage.

At that time we estimated that some quarter of a million disabled persons would eventually make up what we called the injustice index—those persons who were wrongfully terminated only to be later reinstated after great personal hardship and expense. We were not far from wrong. SSA reports now that approximately 200,000 persons have been through such an unjust process, terminated only to be reinstated, and the figure would have been far greater but for the moratorium on further continuing disability review imposed by SSA in April of this year.

Senator COHEN and I were able to win a reprieve for the disability beneficiaries in the fall of 1982 with passage of legislation requiring the payment of benefits through appeal for terminations made through December 7, 1983. We also held another hearing that year in which we uncovered evidence to show that SSA was attempting to reduce the number of allowance decision by administrative law judges through indirect pressures of review and harassment. Passage of this reform legislation was expected by the time the payment of benefits provision expired, but the legislative process was not so easy or so quick. Senator COHEN and I went to the floor on November 17, 1983, with an amendment similar to the conference report we are agreeing to today, during Senate consideration of the fiscal year 1984 supplemental appropriations bill. We came very close to victory at that time, losing on a motion to table by a vote of 49 to 46. On March 27, 1984, the House then passed its bill by the overwhelming vote of 410 to 1. The Senate followed suit, after much deliberation and negotiation, on May 22, 1984, with a unanimous vote of 96 to 0.

Mr. President, in my almost 6 years of service in this body, I have never witnessed a social program in such chaos and disarray as the Social Security Disability Insurance Program over the past 3 years. It has been so poorly and callously administered, with no thought to our basic rules of reason, fairness and compassion.

Because the fairness, order, and consistency which this bill will now bring to the disability program is so long in coming, it is the more welcome. I commend the chairman of the Finance Committee, BOB DOLE, the ranking minority member of the Finance Committee, RUSSELL LONG, and their excellent staff. I also congratulate and commend the chairman of the Social Security Subcommittee of the House Ways and Means Committee, JAKE PICKLE, and the ranking minority member of that subcommittee, WILLIAM ARCHER, for their hard work and willingness to reach consensus on this vitally important legislation. I also commend the work of the other conferees and congratulate them all on the quality of the final product. Implementation of the conference report will bring fairness and order not only to the continuing disability review process but to the

overall management of the disability program as well.

I particularly thank my good friend and colleague, BILL COHEN of Maine, for his outstanding work and dedication on this issue. The bipartisanship we brought to this issue was an important factor in our success in the Senate. His staff, particularly Susan Collins, always provided great support.

My own staff, particularly Linda Gustitus and Cassandra Woods, made my contribution possible. I know of no better staffer on the Hill than Linda Gustitus.

My staff person in Detroit, MI, Cassandra Woods, has pursued this issue with perception and determination on the front lines for the last several years. I thank them both for their good work on behalf of the disabled residents of Michigan and America.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. HUMPHREY). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. LONG. Mr. President, the pending disability conference agreement represents, like most conference agreements, a compromise between differing Senate and House positions on a number of issues.

As I have stated previously, I do have concerns about the disability bill, and in particular about its medical improvement standard. But on balance, I believe the bill should be enacted because of a number of important improvements it makes in the law. Let me discuss those first.

UNIFORM STANDARDS

Since the beginning of the disability insurance program, a major problem has been the question of how to apply such a program in a nationally uniform manner. There has not been a comparable problem with the general social security program in which the basic causes of benefit eligibility are the attainment of a statutory retirement age or the death of the insured individual. These are factors which can be determined, except in the rarest of cases, on the basis of objective and uniform evidentiary rules.

It is not so easy to find clear-cut, uniform standards of evidence for deciding whether or not an individual is so seriously impaired for medical reasons as to be unable to engage in any significant work activity. Each individual's particular medical circumstances are likely to differ in many respects from those of any other individual. And the importance of a given set of impairments in limiting employability may differ according to the age and vocational background of different individuals. Moreover, different medical experts may not agree as to the degree of restriction on activity that can be presumed from particular medical findings. Even if Congress could write into law a comprehensive set of criteria for sorting out evidence of disability, advances in medical science and rehabilitation therapy could make those criteria obsolete.

For all these reasons, it is difficult to apply the concept of disability on a consistent basis. Yet, it is not acceptable to the Congress that a national program of social security disability benefits should be run in such a way that each individual's eligibility will depend on which administrator happens to decide his case or on which medical theories, economic conditions, or judicial sentiments happen to be prevalent in his region of the country. Time and again, Congress has insisted, and attempted to insure, that the Social Security Disability Program would be operated on a consistent, nationally uniform basis.

In 1967, for example, Congress rewrote elements of the definition of disability to make clear that objective evidence of physical or mental abnormalities must be provided and to require that ability to work be considered in the context of the national economy. In 1980, Congress attempted to improve uniformity by requiring greatly increased Federal review of State agency determinations. The 1980 law also mandates review by the Secretary of findings by individual administrative law judges.

In the context of the current legislation, the problem of uniformity has again arisen. There have been allegations of conflicting guidelines used at different levels of adjudication. There have been questions of the extent to which administrative law judges must follow the policy guidance of the Secretary. And again, this legislation weighs in on the side of a more uniform and consistent program. The Secretary is directed to establish by regulation the standards for determining disability. Those standards are to be applied at all levels of determination and review. Thus, while adjudicators and administrative law judges and, in some cases, Federal district judges may decide whether an individual is disabled for Social Security purposes, Congress intends that they do so according to uniform standards promulgated by the Secretary and not according to their own personal preferences as to how best to decide the issue.

PAIN

The conference agreement adopted, with minor clarifications, the Senate provision relating to the evaluation of pain and other subjective symptoms. This incorporates into the statute the existing policy under which purely subjective allegations of pain or other symptoms cannot be the basis for a finding of disability. This is a good example of the problems faced by the program in maintaining uniformity of standards. The 1967 amendments plainly expressed congressional intent that disability findings be supported by objective medical evidence. The Secretary correctly adopted a policy which allows for consideration of subjective allegations of pain, but only if one of two specific conditions are also met. There must be some objective medical evidence pointing to a medical condition which could reasonably explain the pain and its alleged severity, or there must be actual objective medical evidence, such as muscle deterioration, which demonstrates the existence of severe pain.

Instead of granting deference to the Secretary's inherent regulatory authority to determine the criteria for establishing disability, a number of courts have chosen to substitute their policy judgment that subjective allegations must be considered even in the absence of objective evidence of the type required by regulation. Ultimately, this would mean that eligibility would depend upon the subjective credibility judgement made by each individual adjudicator of claims. This is not much different from turning over the trust funds to the judges and letting them hand out the funds on a case-by-case basis as they see fit.

There are some strong statistical indications that much of the lack of uniformity in the disability program can be attributed to issues like the evaluation of pain—that is, issues where courts and administrative law judges have tended to ignore the criteria established by the Secretary for evaluating evidence of disability. The conference agreement will provide a specific statutory confirmation of the existing regulatory requirement. The administration should undertake appropriate reviews of those categories of decisions which are likely to involve such issues so as to bring about, in practice, a more uniform application of these standards.

MULTIPLE IMPAIRMENTS

Both the Senate and House bills included requirements that the combined impact of multiple impairments must be considered in determining whether an applicant is sufficiently disabled to qualify for benefits. The House formulation of this rule, however, might have been misinterpreted so as to raise questions about the ability of the Department to deny benefits at the initial stage of evaluation on the basis that there is no severe medical impairment.

The Social Security Disability Program is intended to be limited to cases where the fundamental cause of inability to work is a significant medical impairment. It is not intended to remedy vocational handicaps for individuals who do not have seriously disabling medical conditions. In evaluating eligibility, the Department first

determines whether a seriously limiting medical condition exists. If it does not, the claim can be denied without further evaluation—including evaluation of vocational capacity. Some courts, however, have ruled that the Secretary cannot deny claims solely on the basis that the individual has no severe medical condition but must always make an evaluation of vocational capacities.

The Senate bill was carefully drawn to reaffirm the authority of the Secretary to limit benefits to only those individuals with conditions which can be shown to be severe from a strictly medical standpoint—that is, without vocational evaluation. It requires, however, that the combined impact of all medical impairments be considered in making this decision.

The conference agreement, with minor language changes of a technical nature, follows the Senate approach. This language clearly indicates that Congress envisions a sequential approach to evaluating disability. The individual must first demonstrate the existence of an impairment or combination of impairments which are sufficiently severe from a medical standpoint as to meet the Secretary's criteria as to what could potentially be a disabling condition. If, and only if, the individual meets this test, there would be a further evaluation as to whether that condition or combination of conditions does in fact preclude him from engaging in substantial work activity in the light of his age, education, and work experience.

CIRCUIT COURT INTERPRETATIONS

The House bill had proposed to require the Department to adopt the interpretations of statute underlying circuit court decisions whenever it was unable to immediately appeal such a decision to the Supreme Court. The Senate bill simply required the Department to notify Congress of such instances. The Conference agreement includes no statutory language on this issue, but the conferees did include a statement of opinion in the report.

For a variety of reasons, it may not always be possible to immediately initiate an appeal of an adverse circuit court decision. In such a situation, the administration should do what the court orders it to do in that case, unless it is able to obtain a stay of the court's order. If the case involves a court interpretation of the statute that might affect other cases, this situation becomes more complex. The Secretary should not be in a position of administering a program which applies one definition of disability in New York, a second in California, and a third somewhere else. Moreover, even within a given circuit, there may be circuit court decisions which are not entirely consistent with each other or which leave some doubt as to just what the court's interpretation was. Courts deal with individual cases. They are not regional legislatures charged with spelling out general policy of a statutory nature.

On the other hand, the Secretary should not simply disregard a circuit court decision which involves a significant statutory interpretation. It is undesirable to simply proliferate law suits and to litigate the same question over and over again. It is undesirable to have a difference in statutory interpretation among different branches of Government remain outstanding for a protracted period. The administration has a responsibility to obtain a resolution of such issues. Appropriate cases should be appealed, and the administration also should consider asking for clarifying legislation.

The statement of managers in the conference report provides a balanced approach to this problem. It recognizes that immediate appeals are not always possible. It also reaffirms the obligation of the Department to support what it believes to be the policy judgment of the Congress as reflected in the statutes. At the same time, it urges that the practice of nonacquiescense be used only in conjunction with a continuing good faith effort of the administration to obtain a resolution of the outstanding issue.

COMPLIANCE WITH FEDERAL STANDARDS

The disability program has proven difficult to administer with any degree of consistency. One structural problem in maintaining national uniformity is that the actual operations of the program are largely carried out by individuals who are employed by the States. Even though all the costs of benefits and administration are supplied from the Federal Social Security trust funds, the power to hire and fire those who hand out those funds rests with the Governors of the States.

Reports by the General Accounting Office during the 1970's showed that this administrative structure was a major barrier to nationally uniform application of the Federal disability program. As a result, the 1980 amendments included changes designed to permit closer control of the program by the Federal Government. Unfortunately, the 1980 amendments did not have the desired result. In the past couple of years, some States have begun to challenge outright the authority of the Secretary to exercise policy guidance over the program. For example, one Governor recently told a House committee that his State has "fashioned and tailored Social Security policy" to conform to the State's philosophy of how the program should be run. Unfortunately, the administration did not move vigorously to deal with those States which chose to defy Federal authority over this program.

I am pleased that the conference agreement includes a Senate provision designed to better deal with this problem. Under this provision, the discretion of the Secretary to allow protracted State defiance of Federal authority would be eliminated. A strict timetable is established for investigating and acting on any indication of State failure to comply with Federal rules. If that investigation confirms a continuing state of nonconformity, the operations of the program in that State must be placed under direct Federal administration.

Mr. President, I have discussed what I consider the positive features of the conference report. I also wish to talk about two features of the report which I find disappointing.

MEDICAL IMPROVEMENT

The major element in both bills was the establishment of a medical improvement standard in reviewing continuing eligibility. The conference agreement is, in many respects, closer to the House than the Senate version on this item, but this is a matter of degree. I continue to have serious reservations about any medical improvement standard, since the essence of such a standard is to continue benefit payments to people who are found not able to work. Where there are handicapped people who have the capacity for work, we should—for their sake as well as the taxpayers'—be restoring them to productive self-support. We should not write them off to a life of dependency on Government benefit payments.

FAIL-SAFE FINANCING

I am disappointed that the House, for the second time in this Congress, has refused to accept a Senate provision designed to improve the financial soundless of the Social Security Program—the fail-safe financing provision. The fundamental theory of Social Security trust fund programs is that they are to be self-financing. They enjoy the security of an earmarked source of revenues—the Social Security payroll tax—and they are also subject to the discipline of living within that revenue source. If the payroll taxes should fall short of meeting benefit obligations, there is no legal authority to continue benefit payments.

In the earlier years of the program, the trust funds always maintained an adequate reserve so that any financial imbalance could be dealt with in an orderly manner and in an atmosphere where Congress could thoughtfully assess the policy choices. This assured ample time to implement any revenue or benefit changes that might be found appropriate.

In recent years, however, the trust fund balances have declined sharply, sometimes coming perilously close to the point of exhaustion. Consequently, Congress has been faced with the need to act on a precipitous basis and to choose among very limited and un-

desirable options. In the 1983 amendments, for example, to keep the program afloat, Congress voted to infuse massive amounts of general fund subsidies—clearly an undesirable method, which is foreign to the basic nature of the program.

The purpose of the fail-safe proposal was to slow down the rate of decline in fund reserves once they have fallen to near-dangerous levels. This would be done by suspending those features which automatically increase benefit payments until the funds are restored to safer levels or until Congress has had the opportunity to implement measures to deal with the financial problems.

I think the Senate wisely incorporated a fail-safe mechanism in its version of the 1983 general Social Security amendments. I was disappointed that this element of prudence was deleted by the House-Senate conference on that legislation.

In the current disability bill, there were at least equally valid reasons for incorporating a fail-safe financing provision. Historically, the outgo of the disability program has fluctuated much more widely than that of the general Social Security system. The pending legislation makes a significant change in disability standards, particularly by establishing the new medical improvement standard of review. While it is to be hoped that this can be carefully administered within the cost now estimated by the actuaries, the accuracy of similar projections on previous occasions gives little reason for relying heavily on such a hope.

Given this situation and the continuing precarious state of the Social Security trust funds, the Senate again made the right and prudent decision by inorporating a fail-safe financing mechanism in the bill we sent to the House. Again, however, the House has refused to agree to such a provision. I certainly hope that, as a practical matter, the mechanism turns out not to be needed. But I am disappointed that it was dropped. If the current projections prove wrong again, the absence of this feature will force us to deal with the system's next financial difficulties in an atmosphere of crisis rather than in an orderly manner. Moreover, eliminating this provision also removes a necessary Congressional statement of concern over the prospect that this program could double in cost if it is not carefully administered.

SUMMARY

Mr. President, I continue to believe that a medical improvement standard is unwise. There should not be a double standard of eligibility depending on whether you are an initial applicant or a beneficiary being reviewed. In either case, the question of eligibility for this program ought to resolved on the basis of whether or not the individual has the ability to work.

However, it is clear that a medical improvement standard will become law. I hope it can be carefully administered, and that it will not lead to a new round of runaway growth in program costs.

The best hope for bringing this program under control is the kind of careful administration that was mandated by the 1980 amendments. Good administration, of course, depends upon good administrators more than it depends upon the language in the statute. There are, however, several elements in the pending legislation which should help the administrators of the program to do a better job. The authority of the Secretary to establish the criteria for applying the definition of disability is made very specific. Current issues before the courts in the area of pain and medical severity are clarified. The bill spells out the right and duty of the Secretary to federalize administration of the program in the face of State failure to follow Federal rules. On balance, therefore, despite my reservation about some features of this bill and my disappointment that it no longer contains a fail-safe financing mechanism, I signed the conference agreement, and I will vote for the approval by the Senate of that agreement. I recommend that the Senate agree to the conference report.

Mr. President, there are other Senators who desire to speak on this subject, or at least who have led me to believe that they would like to make a speech on this subject. In order that they may have the opportunity to know that this measure is being considered, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SASSER. Mr. President, I commend the managers of this bill for their efforts in reaching agreement on what many consider to be one of the most pressing social matters to come before this Congress over the past 3 years.

I first became involved in the Social Security disability issue back in January 1982. Since that time, I have spent a great amount of time attempting to remedy the serious inequities and injustices inherent in the administration of this program.

I believe that the history of the problems affecting the program and consequently the hundreds of thousands of beneficiaries dependent upon it have been elaborated repeatedly over the past 2½ years. No further elaboration is needed here.

The conference report before us today significantly addresses many of the structural deficiencies that are existent in the current system. In particular, I refer to the provisions stipulating the use of a medical improvement standard, payments pending appeal to the administrative law judge, a study on the evaluation of pain, and last, special provisions on multiple impairments.

Unfortunately, there is one provision which is not included in this agreement which I must say I am disappointed not to see included, and that is the provision dealing with the so-called "nonacquiescence" policy followed by the Social Security Administration. Although the language contained in the statement of managers does sufficiently address this problem, it is unfortunate that it is not spelled out in statutory fashion, in this Senator's opinion.

Indeed, a recently released internal report by a Social Security Administration task force pinpointed the problems facing the Federal courts and their efforts to enforce or deal with this nonacquiescence policy. That report stated that there are now 50,000 Social Security cases pending in the Federal courts and that is expected that an additional 28,000 new court cases will arise in fiscal year 1984.

It is my sincere hope that the Social Security Administration will abide by the strong language contained in the conference report. If the Social Security Administration continues to follow the "nonacquiescence" policy which they have adhered to to date, then I shall be prepared to introduce at the earliest possible date legislation which will require the Social Security Administration to follow the legal process which prescribes that if they do not agree with Federal court decisions in a particular circuit then they should appeal the decision to the Supreme Court and get a ruling once and for all.

Mr. President, I applaud the efforts of those who have been involved in this issue over the past 2 years. Indeed, the conference report before us today represents the culmination of many, many hours of negotiation and deliberation.

I might say, parenthetically, that this conference report is indeed welcome news to the thousands of disabled beneficiaries who will face periodic reviews in the future.

It is also welcome news to the thousands of disabled beneficiaries who will no longer have to suffer the injustices created by the Reagan administration's hasty, unwise, and ill-advised acceleration of these periodic reviews in March 1981.

It was really administrative folly which precipitated these wholesale terminations and the cruel injustices that were worked on literally thousands of disabled Americans. It is hoped that this legislative remedy, albeit long overdue, will redress these injustices.

I will support the conference report before us today and I urge my colleagues to support it. I doubt that there will be a single dissenting vote cast against this conference report. When this legislation is sent to the President, I would urge him to sign it. After 2½ years, it appears we are finally close to putting the Social Security disability system back on the right track. The track of serving the disabled citizens of this country who comply with the prescription of the statute and should be eligible for Social Security disability benefits.

Mr. President, I suggest the absence of a quorum.

Mr. COHEN. Mr. President, will the Senator withhold the request.

Mr. SASSER. Mr. President, I am delighted to withhold the request and yield to the Senator from Maine.

Mr. COHEN. I thank the Senator for yielding.

Mr. President, this matter has been pending in one form or another before this body for well over 2 years and so I do not intend to make a long explanatory statement. I think most of the membership is aware of the genesis of the difficulties.

We passed in I think the year 1980 a measure to try to correct what we saw were some of the deficiencies in the Social Security disability program and I think the last 2½ years do in fact serve to remind not only this Senate and the House of Representatives, but also the country of the kind of conflict that is presented to Members of this body. On the one hand, the taxpayers demand and we have an obligation to be efficient, to spend hard-earned tax dollars efficiently, and that was the basis for the original reform calling for periodic reviews of those who are on the Social Security disability program. By the same token, we also have an obligation to be fair. And it seems to me it has been that essential conflict between the duty to be efficient and the duty to be fair that has presented us with the last 2½ years of debate on how best to pursue the reform of the Social Security disability program.

What took place immediately after the passage of the original legislation was an effort by the administration to implement congressional mandate. They did so with a fervor that was not matched with capability. And they called for the review of cases before there were adequate staffs. They called for reviews of cases when people were not well trained. They called for review of cases under circumstances in which there was an inadequate notice extended to the beneficiaries. A postcard was sent out, "Dear Beneficiary, this is to notify you that your case is coming up for review," with nothing further, no further indication that that individual would then have the burden of proof of coming forward and showing that he or she was still disabled, with no indication in that notice that prior medical evidence would not be considered, with no indication in that notice that those individuals would have to present new medical evidence and carry the burden of proof. That they were still disabled. So time after time thousands upon thousands of individuals were terminated without having been adequately notified as to the consequences of the review procedure itself. Moreover, it was done in a way that certainly does not speak well of our proclamation that we have a humane system of government. It was done basically by computers. There was virtually no human contact between the beneficiaries and the Social Security Administration itself.

So these determinations were made based upon medical charts and the record, determinations made by people removed from the process and out of the fear that if the individuals making the decisions to terminate or to perpetuate the disability relief, that those individuals might be overcome with compassion. Their objectivity and neutrality might somehow be compromised by having to look at the individuals who were being reviewed.

As a result of that sort of objective noninterrelationship with the beneficiaries, the recipients, we had a number of horror stories which have been printed in newspapers across the country, people who were in body casts being terminated from disability, people in iron lungs being terminated from disability. There is one case cited by Senator LEVIN, who has worked so hard to secure the passage of this legislation, from his own State of Michigan, and one of the major cases that we reviewed, in which we had an individual who was a diabetic from the age of 13, as I recall, who was blind in one eye and had tunnel vision in the other, could not walk without assistance from his wife because he had no sense of equilibrium, and yet he was terminated. He went to the hospital and was having some toes amputated because he had gangrene and in the process he suffered a massive heart attack, which doctors later stated was due to the anxiety caused by the termination of disability, only to find out that his wife, 6 months later, received a notice from the Social Security Administration saying, "Sorry, we made a mistake. Your husband's benefits were not properly terminated."

We had cases of people committing suicide and attempting to commit suicide, a desperation from among a large segment of our population who had no other place to turn.

So that is the reason why it had taken so long to reform this situation, because we had these conflicting obligations, the duty to be efficient and duty to be fair. In the process of trying to resolve those conflicting duties, I believe we have come out with a compromise which is acceptable—it does not go as far as Senator LEVIN and I would liked to have had it go, but it does embrace the essential ingredients of efficiency and equity. And I would like to put the stress upon the equitable side of it.

It is going to change the notification requirement. It is going to introduce human contact. It is going to include pain as a factor to be considered, which had been excluded by the Social Security Administration.

We are setting forth some fairly clear-cut standards where those standards were vague and perhaps even nonexistent before. We are going to insist upon the establishment of medical improvements and there will be a continuation, at least on an experimental basis, the continuation of loss of benefits during appeal.

One of the most difficult things about this entire procedure was that many individuals were being terminated and then had the burden of appealing. Then the appeals process would take anywhere from a year to 18 months, during which time individuals had no source of relief or compensation and they lost their homes, sold their cars, and had tremendous physical and psychological burdens placed upon them, only to wait 18 months and then have an administrative law judge make a finding that the administration was in error. That is the sort of thing that this legislation seeks to, and I believe will, eliminate.

So I think what we have today is a compromise thanks to the hard work of Senator LEVIN—and I do not know of anyone who has been more committed to seeing to it that we revise, reform our system than Senator LEVIN. I also want to extend my thanks to Senator DOLE, the chairman of the Finance Committee, for his work in trying to negotiate some very long hours of complex issues between us, Members of this body and the other body and the administration.

I also want to extend my thanks to the Senator from Louisiana who, during the course of these deliberations, raised a number of legitimate issues and who felt as strongly as we did about the need to have a system which was efficient and equitable. As a result of these efforts throughout these negotiations, we have something which is acceptable to the overwhelming majority of the people. I might say that this would not have been possible

without his aid and assistance and we would not be here today without his involvement. I want to extend my thanks and congratulations to him, as well.

Mr. President, I am delighted that the Senate today is taking final action on legislation which Senator LEVIN and I sponsored to reform the Social Security Disability Program.

Although the conference agreement on S. 476 does not reflect every reform that we have advocated, it is a worthwhile compromise deserving of support. The bill will protect disabled workers from arbitrary decisions to curtail their benefits, strengthen the administration of the disability program, and promote uniformity in decisionmaking.

At the heart of the bill are the criteria it establishes for assessing the continued eligibility of individuals receiving benefits. In 1980, when Congress mandated periodic reviews of disability beneficiaries, we neglected to set forth standards for determining whether or not benefits should be continued. This legislation remedies that fundamental omission. By establishing clear criteria for disability reviews, this bill will provide disabled workers, their attorneys, State claims examiners, and administrative law judges with an understanding of the grounds for terminating benefits. These standards, including the medical improvement rule, will correct the problems in the current process which have caused hundreds of thousands of severely disabled people to lose their benefits.

Since the disability reviews began in March 1981, State agencies, which apply Social Security Administration guidelines, have disqualified more than 491,000 beneficiaries. Yet, more than 200,000 individuals have been reinstated after appealing to administrative law judges who ruled that they, in fact, remained disabled and thus were entitled to benefits. Thousands of others have been restored to the program as a result of court orders.

The hardships imposed on the truly disabled have been chronicled in countless hearings, studies, court decisions, press reports, and personal experiences. The reviews have spawned an overwhelming number of court challenges, an unprecedented rebellion by State governments, and pleas for justice from the disabled, their families, and their advocates.

Under this legislation, individuals who have recovered will be eliminated from the disability rolls, but those who remain disabled will continue to receive their benefits. These reforms, in my judgment, will ensure an equitable disability program and end the chaos that has troubled the system for the past 3 years.

Other important provisions of the conference agreement will extend the law allowing benefits to be continued pending appeal; mandate more careful consideration of individuals with multiple impairments; and require the standards used to adjudicate disability claims to be issued as regulations subject to public notice and comment.

The Social Security Administration also will be required to conduct a five-State demonstration in which a claimant will have a personal interview with a State claims examiner at the first stage of review. This approach, I believe, holds great promise for improving the accuracy of initial determinations by giving the State adjudicator a more complete picture of the claimant's condition. I hope that a personal interview eventually will be incorporated into the system on a nationwide basis.

Mr. President, several months ago, a Maine woman whose husband lost his battle with cancer as he fought to get his disability benefits wrote to me:

> The emotional stress of living with cancer, knowing your husband may die, is in itself overwhelming, but to have one's own Government not care because first comes the paperwork and redtape, then come people, makes it even worse.

Her words are eloquent testimony on the need for this legislation. By adopting this conference report, Congress can reform the disability program so that its hallmarks are compassion and equity, rather than indifference and injustice.

Mr. President, this legislation is the product of more than 2 years of work. It would not have been possible without the dedication and persistence of Senator LEVIN and the leadership and patience of Senator DOLE, who had been unceasing in his efforts to hammer out responsible legislation. Senator HEINZ, as chairman of the Senate Aging Committee and a member of the Finance Committee, also contributed greatly to this effort. I also want to thank the distinguished Senator from Louisiana whose cooperation was essential to a fair resolution of this problem.

I urge the adoption of the conference report.

Mr. LONG. Mr. President, I want to thank the Senator from Maine for the gracious reference he made to me and others who were involved in this legislation along with him. The Senator from Maine, along with the Senator from Michigan, have been tireless, have been indefatigable, in seeking to provide sympathetic treatment for those who were disabled and who must seek assistance from the Government or wherever it may be available.

Mr. President, I also want to congratulate the Senator from Kansas [Mr. DOLE], the able chairman of the committee, for the very fine work that he has done to resolve this issue in ways that take into consideration the various and broad swath of problems that are involved in the program.

I do think, Mr. President, in discussing a major program of this sort, that from time to time we ought to give some consideration to the cost of it, and at least some consolation to the taxpayers who have to pay for all of the program. I think now and then we should make it clear to them that we are aware of the pain of paying all the taxes that Government levies on its citizens, and also we are aware of the fact the Government has a very large deficit and that there is a need to economize wherever we can and to contain the costs of all Government spending, be it defense, social welfare, law enforcement, or any other Federal program.

The Finance Committee did not merely by accident become the committee of jurisdiction for the Social Security Program—at least I would like to think it did not become the committee of jurisdiction by any accident.

Mr. President, the Social Security Program went into effect under a Finance Committee bill because it involved a major tax levied on the people of the United States to provide a benefit which was to be generally available to vast numbers of people. Today the program is approaching universality. The program ensures almost all working people, other than those who are Government employees, of a degree of protection against poverty in their declining years. The extension of the program to include disability benefits was a measure which the Senator from Louisiana was privileged to sponsor.

In 1956, Mr. President, the Senator from Louisiana was approached by a number of outstanding people, some of them associated with the labor movement, but all of whom had a long and compelling interest in the welfare of the working population of America. They urged this Senator to sponsor the proposed disability amendment.

The Senator from Louisiana agreed to be a cosponsor of that proposal, and five of us on the Committee on Finance sponsored it at that time. We had a rather extended and heated debate in the Senate. Under the leadership of the late Walter George, who was the chairman emeritus of the committee at that point—he was then chairman of the Committee on Foreign Relations—we adopted the amendment sponsored by five of us, members of the Finance Committee, who were privileged to join in starting the Government in the direction of caring for the disabled.

At that time, Mr. President, the Senator from Georgia, Mr. George, spelled out what he estimated to be the cost of the program. And I would urge students social welfare programs to read the speech Walter George gave at that time, because he spelled out the esti-

mate and explained why he thought this was a carefully drawn proposal and it would carefully control the costs.

There has been no Senator even in more complete sincerity in proposing an amendment, or in seeking to assure the Senate and the public in general that this would be a cost that the Government could well afford to bear. I regret to say, Mr. President, that those of us who supported the program and who are very concerned about the cost of Government are somewhat apologetic to the taxpayers to see that the cost does greatly exceed the estimates given at that time. Those estimate were given in complete good faith. It was estimated that this program by now would be costing us about $5 billion a year in 1984 dollars. Yet, Mr. President, by 1978 the program had grown so much that it was estimated to cost in its long-term projections about $40 billion per year, again, in 1984 dollars.

That, Mr. President, amounts to about eight times the cost that we estimated when we voted to start the program. We gave those estimates in complete good faith.

The cost grew until under the administration of President Carter, the President of the United States recommended that Congress enact legislation in 1980 whose implementation has brought down the projections to a current, long-range estimate of $23 billion per year, again measured in 1984 dollars. This, of course, is 4½ times what the cost was originally estimated to be.

When one seeks explanations as to how the cost of the program increased so much, there are a number of explanations. One of them is that the very existence of a program of this sort does provide a disincentive to some handicapped people who otherwise would have been more or less forced to undertake a very difficult program of rehabilitation to try to reach independence.

The existence of the program would also, Mr. President, tend to ease the pressure on those of us who are not handicapped or disabled to either aid in rehabilitation or to provide employment opportunities for those who clearly would have to undergo rehabilitation.

Mr. President, I emphasize that there is a great void in our disability program, and that void has to do with the fact that we have not given adequate attention to our need of having the most forward-looking program that we are capable of devising to help people to overcome their handicaps and their limitations, and to obtain employment once they have done so. We have to go no further than the Netherlands to see what is in store for us if we fail to contain the cost of the program, or to adequately avail ourselves of the potential of rehabilitation for persons who are handicapped, to be sure, but who are not totally disabled.

For example, in the Netherlands, the program has led to a situation in which one out of every six persons of the working age population is on the benefit rolls.

Mr. President, when one looks at the deficit that the Government faces today and ponders the cost of doing for our population what is done in the Netherlands, it provides a fiscal headache to think of the cost of it. Against a projected cost of $23 billion, one could look at a potential cost of well over $100 billion per year.

As a member of what I regard as the most responsible committee in the Senate from the fiscal point of view, the Senate Committee on Finance, I shudder to think of the burden we would have to put upon our taxpayers in order to provide the same expansive and extensive program that they have in the Netherlands. Far better, Mr. President, that we seize upon the advances of medical science to help those who are handicapped to restore their working capabilities, to make the adjustments that would make it possible for them to obtain certain types of employment, and that we call upon the business community to join with Government in giving the people who are handicapped a preference in doing the kind of work which they are capable of doing. Failure to do that means that the handicapped would have little choice but to seek the aid of a Government. Instead, the objective should be, if possible, to help those individuals to become self-sustaining, proud, self-reliant, and taxpaying American citizens. In my judgment, the prime example of what is capable or what is possible for a citizen is the example set by a former President of the United States, the late Franklin Delano Roosevelt.

Mr. President, if such a person were living today, handicapped as he was, it is easy to see how such a person might very well have qualified for our disability insurance program, and perhaps spend a life living on the Social Security rolls rather than performing as a great leader of the Nation—or even a self-sustaining person. Yet, that man, handicapped for a period of three terms and the beginning of a fourth term as President, had carried the burdens of one of the most demanding jobs in the entire world.

When one looks at the enormous accomplishments of Franklin Delano Roosevelt one could look at the kind of handicaps that would cause us as people to lean upon fellow human beings for support rather than providing leadership, hope, and opportunity for millions, not only in this country but around the world.

Mr. President, we cannot afford to relegate to dependency millions of Americans who have the potential of being enormously useful and productive.

While we move to care for those who need and those who through no fault of their own must call upon their Government for its assistance and its cooperation, I hope that we very much keep in mind that this is not the answer for those who have the potential of being useful leaders among our society or of carrying their share of the burden. We have too many examples of what can be done by Americans who are determined to overcome adversity to overcome their handicaps, and to carry their share of the burden—and even more—as self-reliant Americans.

● Mr. MOYNIHAN. Mr. President, at long last, the Senate is asked to give final approval to legislation to reform the review process for Americans receiving Social Security disability benefits. Our action today—an effort to establish fair, responsible, and equitable standards for the review of Social Security disability recipients, is one long overdue. No one is more acutely aware of the desparate need for this legislation than the hundreds of thousands of disabled Americans whose benefits—benefits they have earned—have been wrongfully terminated.

As ranking minority member of the Finance Committee's Subcommittee on Social Security and Income Maintenance, I have been involved in the development of this legislation for some considerable time. On October 26, 1983, I introduced S. 2002, the companion measure to H.R. 3755, Representative J.J. PICKLE's legislation that passed the House of Representatives on March 27, 1984, by an overwhelming margin, 410–1.

On May 22, 1984, the Senate unanimously approved a measure incorporating many provisions contained in my legislation. The conference committee, on which I served, labored for nearly 2 months to fashion an acceptable resolution of the differences between the House and the Senate versions of the bill. The product of these negotiations is before us today. It does not contain all the features for which we might have hoped, but it does represent an important achievement in reforming the disability redetermination program and protecting the benefits of hundreds of thousands of disabled Americans. I am pleased that the basis for the conference agreement is the legislation Representative PICKLE and I introduced in the Senate.

This measure represents a critical step in improving and refining the redetermination process. The single most important element is a new medical improvement standard, for termination of a recipient's eligibility.

Under this standard, we have required the Social Security Administration to first determine whether a disabled beneficiary's medical condition has actually improved since he or she was declared eligible for disability benefits, before the SSA can terminate those benefits.

The absence of a medical improvement standard during the continuing eligibility review has provided the Social Security Administration with grounds to terminate the disability benefits of nearly 500,000 Americans since 1981—the year SSA accelerated the mandated review of disability insurance recipients. In the past 3 years, SSA has reviewed the cases of nearly 1 million Americans receiving disability benefits; as a result, SSA terminated the benefits of nearly 500,000 people. A Federal judge in Minnesota described these procedures as "arbitrary, capricious, irrational, and an abuse of discretion." In human terms, what happened is that the Social Security Administration tried to reduce program costs by terminating support for hundreds of thousands of disabled Americans. Nearly 50 percent of all those terminated had their benefits reinstated after appeal.

In response to the thousands of tragic instances of wrongful terminations, Governors from 10 States, including New York, have refused to administer the reviews as directed by SSA. Citizens throughout the country have filed class action suits against SSA, challenging the standards by which their disability benefits were terminated. Circuit courts throughout the Nation have ruled against SSA, and ordered reevaluation of thousands of disabled individuals under a medical improvement standard.

Last April, in recognition of the disarray and injustice plaguing the redetermination process for the past 3 years, Secretary of Health and Human Services Margaret M. Heckler suspended all further reviews of disabled beneficiaries. Despite this action, the inequities did not cease.

Since July 26, the date the conference on H.R. 3755 convened, additional events have demonstrated the pressing, urgent need for this legislation. On August 28, in my own State of New York, a Federal appeals court ordered the Social Security Administration to restore terminated benefits to some 4,000 mentally disabled New York State residents and to reconsider its rejection of applications by 50,000 to 60,000 others. This decision upheld the ruling in January by the distinguished Federal judge for the southern district of New York, Jack B. Weinstein. In his ruling, Judge Weinstein cited a series of internal memoranda circulated within SSA, directing the denial of benefits to mentally ill applicants who could not meet a different, more stringent set of criteria than that mandated by Congress. He termed this a "fixed, clandestine policy against those with mental illness," and ordered the Government to reconsider the eligibility of more than 54,000 New Yorkers.

Indeed, SSA's policies have provoked a rash of court cases involving individuals suing the Government to overturn their termination decisions. This situation, in the words of SSA, is a "major crisis in litigation," and has led to a huge volume of adverse court decisions. At the present time, 48,000 Social Security cases are pending in Federal courts around the country—up from 19,600 cases at the end of 1981. Just last year, 26,798 new cases were filed in Federal court—an average of nearly 100 new cases each working day.

I offer the simple observation that in the half century history of the Social Security Act, there have never been a situation in which Governors and U.S. attorneys have refused to follow or defend the Government's administration of the act. It was the judgment of these public officials that the administrators in Washington were so distorting the intent of the law and the purposes of the act, as to make it a question of elemental justice and, indeed, a crisis in federalism.

It is our responsibility to insure that only the genuinely disabled receive Social Security disability insurance benefits. I supported adoption of the Disability Insurance Amendments of 1980, requiring SSA to reexamine everyone receiving DI benefits. But, it is also the responsibility of the Congress to ensure that these reexaminations are conducted in a manner that is both fair and judicious. The administration of the periodic reviews since March 1981 has been neither fair nor judicious.

It is this shameful situation that had produced this legislation to reform the disability reexamination process. In addition to the adoption of the new medical improvement standard, this legislation would mandate payment of benefits while a recipient is appealing a termination decision to an administrative law judge. It also would establish uniform standards for all disability decisions and maintain the current moratorium on review of mentally impaired recipients.

This legislation also contains an important proposal, establishing a 12 member Commission to conduct a study, in consultation with the National Academy of Science, of the evaluation of pain in determining eligibility for disability benefits. The need for this study is apparent: quite often, an individual may suffer from excruciating, debilitating pain that is impossible to measure through existing medical techniques.

Medical science by definition is the quest for knowledge, which is to say an effort to learn that which is not known. Typically this process begins by the identification of symptoms, followed by a slow process of tracing symptoms to causes. Even when causes are discovered, cures do not always follow. Correspondingly, over the long history of medicine any number of effective treatments have developed in the absence of complete or even partial knowledge of the etiology of the disease or condition involved. A commonplace example is aspirin, which has been in use for almost a century. It relieves certain types of pain, but medical research has only the dimmest clues as to how. More recently, the discovery of steroids has made possible the treatment of many thoroughly disabling diseases of which little if anything is known except that they respond to treatment by steroids. In most—but by no means all—such illnesses and afflictions the most significant symptom is pain. This is where the physician typically begins in the search for a diagnosis and treatment. It is not merely useful clinical evidence, it is often the only, or the predominant evidence.

Upon review of the Commission's report, due on December 31, 1985, it is my hope that we can develop new legislative language and regulations reflecting the Commission's findings on the procedures and methods to establish the existence of disabling pain in the absence of concrete laboratory tests confirming the existence of illnesses already known.

I do not suggest that the measure before us is ideal. In but a few years, the Congress once again will be required to act to ensure that individuals appealing a termination decision will continue to receive disability benefits during appeal. All told, however, the measure before us does represent a significant achievement. It will protect the benefits of hundreds of thousands of disabled Americans. Despite the reluctance of many to consider this legislation, and the efforts of many more to prevent its consideration, I believe we have crafted a measure that will produce more fair, equitable and judicious review of the continuing eligibility of Social Security disability insurance recipients. I urge, in the strongest terms I can, its prompt enactment.●

Mr. HEINZ. Mr. President, I strongly support the conference agreement on H.R. 3755, the Social Security Disability Reform Act. Passage of this legislation will end the nightmare of 3 long years of injustice, uncertainty, and abuse for the nearly 4 million people who rely on the disability program for basic support. The conference agreement before us represents a major legislative achievement, one that will restore fairness, integrity,

and human decency to the disability review process.

Ever since I conducted an investigation into the case of Kathleen McGovern, a mentally impaired woman in Philadelphia who committed suicide in 1982 after the Social Security Administration [SSA] notified her that her disability benefits were to be terminated, I have concluded that the entire disability review process was in need of comprehensive reform. The more deeply I looked into the manner in which SSA was administering the continuing disability investigations, the more clear it became to me that an enormous number of innocent Americans were being needlessly and wrongfully denied their disability benefits.

The national statistics on the magnitude of this tragedy are astounding. Since 1981, nearly half a million disability beneficiaries have been told by SSA that they no longer qualify for benefits. For those with the resources and fortitude to appeal to an administrative law judge, two-thirds have had their benefits restored. Almost 50,000 have taken their cases to the Federal courts, and well over 100,000 are members of class action suits already certified by Federal judges. Twenty-nine States have either refused to process claims under the inhumane standards set by SSA or are under court order to revise their review procedures. Overall, we have a program in a state of shambles.

The human dimension of this crisis—the unnecessary suffering, anxiety, and turmoil—has been graphically exposed by dozens of congressional hearings and in newspaper articles all across the country. People clearly unable to work found themselves stripped of the monthly income upon which they depended, and were forced to resort to State and local welfare programs. Many have ended up living on the streets.

A General Accounting Office [GAO] study I requested last year sheds a great deal of light on the quality of the review process, and its implications for human lives. GAO found that for every 28 cases SSA reviewed, SSA told 13 they were no longer eligible for benefits. Seven of this group were eventually reinstated on appeal; four ended up on welfare. Only 1 of every 28 was able to achieve self-support through employment. These statistics describe a program both deeply flawed and completely out of control.

The legislation before us will return order, equity, and national uniformity to the disability review process. It will provide relief for many of those who have been hurt by the continuing reviews, and it will build into the law structural safeguards to protect current and future disability beneficiaries.

Most importantly, this legislation establishes medical improvement as the primary criterion for the review of disability cases. This means that if SSA is going to terminate eligibility for disability benefits, the weight of evidence in the file must show both that the individual's medical condition has improved and that he or she is now capable of working.

The rationale for a medical improvement standard is simple—you should only be denied continuing eligibility for disability benefits if there is some reason why you are now more able to work than when you were admitted to the disability rolls. This should be the standard irrespective of whether the eligibility standards have subsequently been arbitrarily changed. This seems only fair, and should prevent the unreasonable terminations witnessed all too frequently since 1981.

The medical improvement standard in this bill is very tightly drawn, and is qualified by a number of exceptions that allow for flexibility in applying it. For instance, where improved medical or vocational technology allow a person to work despite an unchanged medical condition, or where new diagnostic techniques show an impairment less disabling than originally thought, the medical improvement standard is waived. These provisions assure consideration of advances in medical and rehabilitation technology in the disability review process.

One of my greatest concerns about the continuing disability reviews is that mentally disabled beneficiaries have been singled out for particularly unfair treatment by the Social Security Administration, and that this group has suffered most from the excesses of the past 3 years. In April 1983, the Special Committee on Aging, which I chair, held hearings on this issue, and the General Accounting Office reported that, although the mentally disabled account for only one-tenth of the total disability caseload, they represented almost a third of all those terminated. Many witnesses, including mentally impaired beneficiaries themselves, testified to the cruel human effects of this process, of which suicide is the most extreme expression.

Following these hearings, I introduced legislation to provide special safeguards for the mentally disabled, and I am happy similar provisions are incorporated into the conference agreement. Specifically, the legislation mandates that SSA revise the antiquated criteria it uses to evaluate the nature and severity of mental impairments. Further, the agency must now utilize qualified psychiatrists or psychologists in reviewing the mentally disabled. I am confident these reforms will serve to protect the most vulnerable of the disabled, those whose very disability leaves them defenseless to abuse by the Government.

The legislation before us includes a number of other noteworthy provisions. SSA will now be required to consider the combined effects of multiple impairments upon an individual's capacity to work. Due to regulatory and administrative changes in the past 5 years, a person with 10 "nonsevere" impairments could be denied benefits, despite the interactive effects these impairments may produce. This provision to require the combined evaluation of multiple impairments, like many others in this package, underscores the longstanding intent of Congress that every person should receive a comprehensive, realistic, and individualized assessment of his or her ability to work.

One problem that has plagued this program is the lack of consistency in standards among various levels of adjudication. Currently, State agencies receive their instructions from SSA through a detailed and elaborate program operations manual system [POMS]. Administrative law judges on the other hand are bound only to the law and published regulations. Instances in which SSA incorporates into the POMS administrative policy at variance with the law and regulations, as interpreted by administrative law judges, leads to widely different decisions on eligibility at different levels of the review process.

This legislation will establish uniform standards binding on all levels of decisionmaking process thus bringing SSA under the rulemaking requirements of the Administrative Procedures Act. This means that if SSA is going to revise basic review criteria, it has to publish the proposed rule changes and allow for public comment.

The legislation will extend the provision of continued benefits through the adminstrative law judge level for those who choose to appeal initial termination decisions through December 1987. "Aid-paid-pending" appeal will be made permanent for recipients of supplemental security income, to protect those with very limited income from losing their benefits until they have exhausted all administrative channels.

One provision in this legislation that I have reservations about is the section on pain. In this bill, we basically confirm in the statute the current regulatory policy of not considering pain unless a medically determinable condition can be identified that can be expected to cause the pain. It seems to me that this standard may be too narrow, and out of touch with the state of the art of scientific knowledge on pain. Pain is an extraordinary complex phenomenon, and real, disabling pain can exist without anyone understanding what impairment causes it to occur. I suspect we may want to revise this standard in the future.

Overall, this conference agreement reflects a finely crafted compromise, incorporating the diverse views of a

plethora of advocacy groups for the disabled, the administration, and many Members of Congress. After 3 years of struggle and controversy, we have finally constructed legislation everyone can support. Though there are areas where I do not think the legislation goes far enough, it is a fair compromise, worthy of enactment.

From my standpoint as chairman of the Aging Committee, I want to emphasize how important the disability program is to the elderly. Almost 75 percent of all disability beneficiaries are over age 50, and this program has to be understood in the context of a broader policy of guaranteeing income security for older Americans. It is important to note that the original disability insurance program established in 1956 was designed to provide income to workers who became disabled after age 50. The disability program was a way of insuring that older persons who became disabled maintained their economic security until reaching the age of eligibility for Social Security retirement benefits.

The legislation under consideration is designed to restore proper administration to the disability program and does not change the basic mission or structure of the program. However, as we increase the retirement age for Social Security, we may in the future want to rethink our basic policy on the disability program, and perhaps focus more attention on the adequacy of the program as a targeted means of supporting older people no longer capable of working, but too young to retire.

Mr. President, I conclude by stating that the Social Security Disability Insurance Program is just that, an insurance program. What Congress has finally accomplished in this legislation is to restore the protection of a fair and consistently administrated program to the millions of American workers who finance that protection with their every paycheck. They have earned nothing less, and I urge my colleagues to support the conference report.

Mr. DOMENICI. Mr. President, I rise in support of the conference agreement on H.R. 3755, the Social Security Disability Amendments of 1984.

By my count, this is the fifth time in the past 16 months that I have supported a measure to correct problems in the way the Social Security Administration reviews the eligibility for benefits of disabled Americans. We have, at last, found a bipartisan solution to these problems that is permanent, fair to beneficiaries, and financially responsible.

But before we congratulate each other for our work, we should pause for a moment to consider the plight of many of America's most vulnerable citizen's, the disabled. It is these people who should be congratulated. They are the ones who have shouldered the burden of an overzealous review process, who too often were removed from the rolls after no more than a "paper" examination, who were unnecessarily frightened, and who, in many cases, were unfairly deprived of benefits.

In my own State of New Mexico, I know of a man who had received benefits since 1977 because of a heart condition. He was removed from the program in 1982. He appealed this decision for 12 months and was still waiting for some action when stricken with a massive heart attack and died outside of my New Mexico office. Six months after he died, his widow received a notice that his benefits would be restored.

Mr. President, this bill improves the disability review process by: Ensuring that an individual has medically improved before he or she stops receiving benefits; providing more face-to-face contact between program officials and beneficiaries; and allowing the disabled to continue to receive benefits while they appeal a decision to remove them from the program.

These changes will make the Social Security disability review process a more fair and compassionate process. These changes are long overdue, and I hope that we can pass this conference report without delay.

Mr. MITCHELL. Mr. President, I rise today to express my support for the conference agreement on H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. This report is the culmination of over 2 years of debate and compromise on how best to resolve the tragic and needless confusion which has beset the Social Security Disability Insurance Program since 1981. Mr. President, since the beginning of the Reagan administration, nearly 500,000 recipients of Social Security disability insurance have had their benefits cut off while having their cases reviewed; more than 40 percent of these persons were reinstated upon appeal. We have listened to the stories of many disabled persons who suffered severe hardship because of this unfair review process. Under the conference agreement, the Government could remove a recipient from the rolls only if it is proven that his or her medical condition had improved. I believe this agreement will be a major step toward correcting the unfairness which existed in the earlier review process and administration of this vital program. The bill will protect the interests of those already on the rolls and of taxpayers in assuring that benefits are paid only to those in need of them.

In May of this year, when the Senate approved its version of the Social Security Disability Benefits Reform Act, I expressed my concern about the antideficiency provision contained in the bill which would have required the Secretary of Health and Human Services to scale back the cost-of-living increase in disability benefits if the disability insurance trust fund was projected to fall below 20 percent of expected annual benefit payments. If this action were not enough, the Secretary could further act to reduce the benefit schedules for new entrants into the system. I stated at that time that this provision was particularly unfair to those relying on disability benefits for their sole source of income who would not have been responsible for the conditions that might lead to a funding reserve shortfall. I am pleased that the conferees agreed to drop this provision in conference.

The conference agreement requires publication of regulations setting forth uniform standards for Social Security disability determinations under section 553 of the Administrative Procedures Act which will be binding at all levels of adjudication. In my view, this is the critical element in reforming the Social Security Disability Program. I hope that a set of uniform regulations will serve to end the painful and unnecessary chaos which has plagued the disability program since 1981. Uniform standards supply a solid base on which the administrative law judges can fairly and efficiently gauge the merits of cases before them. I worked hard to make sure that this provision of the bill remained strong and I am encouraged to note that the conference agreement is also firm on this point.

I will vote for the conference agreement because it is a long overdue correction of a situation which brought undue pain and hardship to thousands of disabled Americans. I hope the legislation will assure the fair and equitable treatment of those persons who are entitled to benefits under the Social Security Disability Program.

Thank you, Mr. President.

Mr. RIEGLE. Mr. President, after years of struggle, the Congress is finally acting to put an end to the needless hardships and suffering by hundreds of thousands of our Nation's disabled citizens. The enactment of this legislation should end the chaos that has resulted in the administration of the Social Security Disability Insurance Program ever since the administration implemented the continuing disability investigations [CDI's] several months prior to the time mandated by law.

The final action we are taking today is long overdue. I think it is instructive to look at how long it has taken the Congress to finally pass this critical legislation, that could have, and should have been enacted during the 97th Congress. Many of the individuals who were the victims of the careless and at times cruel treatment by the Social Security Administration

were unable to speak for themselves due to extreme physical and emotional hardships they have experienced as a result of a severe disability. It was our job here in Congress to recognize the problem and swiftly and effectively correct the problem. Today, over 2½ years after the Congress initially started examining this program, we are at last enacting this needed Social Security reform. The basic outline of the legislation we are giving final approval here today was contained in the legislation I introduced on July 26, 1982 (S. 2776) during the 97th Congress. It is truly sad that it has taken this institution so long to respond to this vital need.

Finally, Mr. President, I would like to commend those of my colleagues who presided with great vigilance over this matter and without whose continued persistence we might not have even gotten where we are today. In particular, I want to single out my friend and colleague from Michigan, Senator LEVIN, whose efforts in this area have been truly exceptional. I urge all of my colleagues to join with us in unanimously adopting this conference report.

Mr. BENTSEN. Mr. President, I am pleased to lend my support to the conference agreement on H.R. 3755, the Social Security Disability Benefits Reform Act of 1984. For more than 2 years, many Members have worked diligently toward the resolution of some very thorny issues that developed with implementation of the disability amendments of 1980. Reaching agreement was a lengthy and sometimes ardous process, but I believe that with enactment of this compromise, the Congress will send a strong signal to beneficiaries and program administrators that we intend to protect the disabled from unjustified loss of benefits, but that we are equally committed to ensuring the integrity of the trust funds is not jeopardized by permitting ineligible individuals to receive benefits.

I am particularly gratified that this bill includes my provision designed to insure that benefits intended for those unable to care for themselves are not misused. This provision, directed at persons who act as agents for Social Security recipients, establishes a system for auditing expenditures by representative payees. While the caring individual who accepts responsibility to act on behalf of another deserves to be commended, it is a disgrace that some have abused this trust to their own advantage.

According to agency records, there are approximately 5.5 million representative payees nationwide. Some 1.5 million are not members of the families of individuals who they represent. General Accounting Office data and studies conducted internally by the Social Security Administration have documented over 1,400 cases of misuse of funds since 1974, yet only 122 were referred to the Department of Justice for prosecution—and only 29 convictions were actually obtained.

The provisions included in this bill instruct the Secretary of Health and Human Services to develop and present to the Congress, within 9 months, a plan to tighten procedures for auditing representative payees. Parents or spouses are specifically exempt from extensive scrutiny in order to protect families from excessive governmental intrusion. However, the Secretary retains the authority to review even familial accounts if she finds there is reason to believe funds have been diverted from the beneficiary and misused by the representative payee. In the event a representative payee is convicted of willfully cheating the Social Security recipient of his or her benefits, the judge will be able to assess a more appropriate and stiffer penalty—up to 1 year in prison and a $5,000 fine for first offenders, and up to 5 years imprisonment and $25,000 for second offenses. Should the representative payee be convicted for a second time, his or her ability to function in this capacity in the future will be permanently revoked.

Mr. President, I commend the chairman and ranking member of the Finance Committee for their extraordinary efforts in reaching agreement on this compromise, and I thank my colleagues Senators LEVIN and COHEN for their diligence in developing legislation that will accomplish the difficult task of balancing sensitivity toward the beneficiaries with legitimate restraints on unbridled growth in the disability program. In particular, I would like to congratulate my colleague from Texas, Congressman JAKE PICKLE, whose initiative coupled with grace in the face of sometimes trying negotiations, played a major role in crafting a more fair and workable review process.

I urge my colleagues to join with me in support of the pending conference report.

BETTER LATE THAN NEVER ON SOCIAL SECURITY DISABILITY INSURANCE REFORM

Mr. BYRD. Mr. President, we have before us something for which many of us have been working—and waiting—for many, many months. In 1980, the Congress ordered a review of the disabled individuals who are on the rolls of the Social Security disability insurance program. From the time it took office in 1981, the Reagan administration has used this review as an opportunity to purge beneficiaries from the rolls. As a result, caring people of every description have cried foul and sought to repair the damage that was being inflicted. Democrats, Republicans, conservatives, moderates, and liberals, Northerners, Southerners, Westerners—the cries have come from all quarters as the administration purged the rolls of this program, and, in the process, sacrificed the well-being of some of our least fortunate citizens—those who are physically or mentally disabled.

The facts of this matter have been stated and restated before this body. Since the administration began the disability purge in 1981, nearly half a million persons have received initial termination notices. Initially, payments to these beneficiaries were halted abruptly even when they felt confident that an appeal would reinstate their eligibility—and even in those cases where there was no real possibility that the individuals would be able in the meantime to derive enough income from other sources to meet their fundamental needs. Later, due to legislation the Congress found it necessary to pass, benefits were extended for terminated beneficiaries who appeal their terminations until administrative law judges return judgments on those appeals.

By last spring, more than 200,000 of the disabled who had been cut from the rolls in fact were reinstated upon appeal. But during the course of proving their eligibilty, they were confronted with untold anxiety over the possible loss of their benefits and with inconvenience and sometimes even physical pain during lengthy hearings and consultations with attorneys and agency personnel. There were press reports of suicides and other deaths of disabled persons who simply were incapable of contending with this kind of disruption of their lives. Simple respect for human life, dignity, and fairness required the correction of this situation.

But the beneficiaries were not the only ones to suffer. The eligibility review caseworkers, who had been given inadequate explanation and training concerning their case review responsibilities, were seriously overworked and demoralized. The administrative law judges were overwhelmed with unprecedented numbers of appeals. Allegations surfaced in lawsuits and elsewhere that the administration was connecting personnel performance reviews of those judges to their record of appeals rejections.

And the problem did not stop even there. Over 40,000 of these appeals reached the Federal courts, adding to their already troubling burden.

Many State governments—which under Federal law have the responsibility for determining eligibility for this program—rebelled at what they viewed as the inexcusable harshness of the administration's approach to this issue. Over half of the States, either of their own accord—as was the case with my own State of West Virginia—or upon orders from the courts, ceased

enforcing the Federal review and termination requirements.

Finally, even the administration concluded that the situation could not be allowed to persist. The Secretary of Health and Human Service, facing a political nightmare, was forced to suspend the reviews nationwide to await congressional passage of legislation to return order to the chaos.

Fortunately, through all this turmoil, several compassionate and determined Senators and Representatives never let up in their efforts to gain enactment of fair, effective remedial legislation. While any attempt to list all such Senators likely would inadvertently omit the name of one or more who invested themselves in this effort, any list must include the names of Senators SASSER, PRYOR, MOYNIHAN, COHEN, and HEINZ. But the real champion of the disabled has been the distinguished junior Senator from Michigan, Senator LEVIN. He, as ranking member of the Subcommittee on Oversight, along with subcommittee Chairman COHEN, held hearings on this matter, introduced remedial legislation which forms in large measure the basis for the final product that is before us today, and refused to let the issue be forgotten.

I commend these Senators, and their counterparts on the House side, Mr. President, for their long, difficult, tiring efforts. Even when the outlook appeared bleak for this legislation, they never let up. They knew, and felt acutely, the degree to which the disabled of this Nation were depending on them—and they took it as a personal affront that a Federal law designed to help the disabled should be used by the uncaring to harm the disabled.

Mr. President, the conference report—like most conference reports—is not perfect from anyone's perspective. But I believe it resolves the issues of difference acceptably—in a manner that is simultaneously fiscally responsible, humane, and programmatically sound. The enactment of this bill will return rationality to this program—for the benefit, first, of the disabled, but also for their family members; for Federal and State government caseworkers; for administrative law judges, for Federal courts; and for virtually all others who have had to deal with this mistreated system during the past 4 years. I only regret that this day could not have come sooner. I am sincerely hopeful that the Reagan administration will move as rapidly and with as much force and enthusiasm to implement the provisions of this legislation as it mover to purge the disability rolls in 1981.

Mrs. HAWKINS. Mr. President, I am pleased that the House-Senate conference committee has completed action on the Social Security disability review amendments. I have many constituents in Florida who are anxiously awaiting the enactment of this legislation.

The Social Security Disability Program was enacted to provide aid to disabled Americans and the SSI disability reviews undertaken by the Department since 1981 was undertaken with the same noble purpose, to maximize aid to those with genuine needs and to minimize the amount of inefficiencies and cheating within the program. Unfortunately, because of the flawed review process, severe hardships have been imposed on the disabled. The most dramatic indication of the flaws in the current disability review system is that more than 160,000 disabled individuals have had their SSI eligibility reinstated after appealing to administrative law judges.

Clearly, we must improve our SSI disability review procedure to ensure that it is equitable as well as efficient. We must correct the flaws of inadequate notice, lack of face-to-face interviews, conflicting standards regarding disability, confusion over the evaluation of pain, inadequate medical evidence and failure of SSA to apply circuit court decisions to its policies if the agencies happen to disagree with the decision.

The conference report we are considering today would rectify many of these flaws and restore fairness to the Social Security disability review process. As we strive to eliminate waste and inefficiency in the Social Security Disability Program, we must remember that these are not merely numbers, they are people. People who are dependent upon the disability program for survival. Since a worker does not have to be permanently disabled in order to receive SSI benefits, I support periodic review of individuals receiving disability to ensure that only those who remain disabled continue to collect disability checks. But the review process that determines eligibility must be fair and provide due process protections to the affected individuals.

Mr. President, I would like to compliment Senators HEINZ, LEVIN, COHEN, DOLE, and others who have taken such an active role in this issue. Their diligent efforts have resulted in the legislation that is before us today.

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

Mr. CRANSTON. Mr. President, I am delighted to join in urging Senate passage of the conference report on H.R. 3755, the Social Security Disability Benefits Reform Act of 1984.

I was also pleased to be a cosponsor of the original Senate version of this legislation, S. 476, and amendments to it and to join in the overwhelming 96–0 vote by which the Senate passed its version on May 22, 1984. However, since the House version of this legislation contained a number of provisions that I favored over the corresponding provisions in the Senate-passed measure, I wrote to the distinguished chairman of the Finance Committee [Mr. DOLE] on June 25, 1984, urging resolution of certain issues generally along the lines of the results in the conference report.

Mr. President, I ask unanimous consent that that letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CRANSTON. Mr. President, as many of my colleagues know, this legislation has had a painstakingly slow evolution. Over the past 3 years, in the absence of legislation providing for a comprehensive reform of the Social Security disability insurance [SSDI] review process, we have received one report after another documenting the chaos and inequities that have resulted from this administration's conduct of continuing disability investigations—CDI's.

Thus far, Congress has enacted legislation that treated only the symptoms of the problems created by the CDI's without addressing the underlying flaws in the disability review process. With final action today—3½ years after the Reagan administration made the decision to accelerate precipitously the congressionally mandated reviews of SSDI beneficiaries—some measure of consistency and equity will be restored to a chaotic review system that has caused needless suffering to many disabled beneficiaries.

Mr. President, it is especially noteworthy that the conference agreement establishes a medical-improvement standard setting forth specific guidelines under which the Secretary generally must consider an SSDI recipient's ability to return to work as well as any medical improvement which may have occurred since the initial finding of eligibility.

I am also pleased that the conference report includes a provision requiring the Secretary of HHS, along with the National Academy of Sciences, to conduct a study—due to Congress by December 31, 1985—relating to determining the presence of pain for SSDI eligibility purposes.

The legislation also requires that multiple impairments be considered in determining eligibility and that a moratorium on reviews of persons with mental impairments be instituted pending revision of the current, unrealistic criteria for determining the individuals' ability to perform substantial gainful activity in a competitive workplace, and provides for continued payment of benefits through the appeals process, subject to forfeiture if the appeal fails.

Mr. President, I also note with interest and approval a provision allowing

reimbursement to State agencies for the cost of vocational rehabilitation services provided to beneficiaries who recover medically while in a vocational rehabilitation program, regardless of whether the recipient performed substantial gainful activity for 9 months or cooperated in the program.

CONCLUSION

Mr. President, several of my colleagues have worked relentlessly toward the comprehensive reform which we are now considering. In particular, I would like to note the efforts of the Senator from Michigan [Mr. LEVIN], the Senator from Maine [Mr. COHEN], and the Senator from Pennsylvania [Mr. HEINZ], on behalf of these reforms and the disabled persons who will be assisted through them. I would also like to thank the Senator from Kansas [Mr. DOLE] for his efforts and cooperation in the development of the agreement on this legislation.

Mr. President, the chaos, the inequities, and the disruption in the lives of countless disabled beneficiaries has plagued the review process for far too long. I am delighted to join my colleagues in urging that the Senate adopt the conference report, and in so doing, help to restore equity, fairness, and compassion to the review process and, I sincerely hope, the peace of mind that SSDI recipients deserve.

EXHIBIT 1

U.S. SENATE,
Washington, DC, June 25, 1984.

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

DEAR BOB: I understand that you received a June 18, 1984, letter from the authors and a number of the cosponsors of S. 476, the proposed "Social Security Disability Reform Amendments of 1984", alerting you to their concerns about three provisions in the Senate version of H.R. 3755, the House-passed bill to make reforms in the social security disability insurance (SSDI) program.

As a cosponsor of S. 476, I share my colleagues' concerns expressed in that letter and wish to associate myself with the positions they expressed in that letter with respect to the Senate provisions to "sunset" the so-called "medical-improvement standard", to codify the regulatory standard for evaluating pain, and to reduce SSDI benefits in certain circumstances.

Regarding the provision to terminate the medical-improvement standard on December 31, 1987, the need for this standard arose in response to concerns about persons being terminated, through the retroactive application of new rules for determining disability, even though their physical conditions had not changed since they were put on the rolls. I am aware of no evidence to suggest that the need for this standard would cease to exist on December 31, 1987, and thus urge that the Senate accept the House position that it not be subject to a sunset provision.

As to the provision that would codify the Social Security Administration's pain standard, I totally agree with the discussion in the June 18 letter and urge that no statutory standard be established at this point and that the deadline for the proposed study be one year rather than three years.

In addition, I am concerned about the provision that could result in lower benefit levels for new beneficiaries when the disability trust fund is projected to decline to less than 20 percent of a year's benefits at the beginning of any given year.

Bob, I appreciate your attention to these matters of mutual concern.

With warm regards,

Cordially,

ALAN CRANSTON.

Mr. BINGAMAN. Mr. President, I am very happy to support the conference agreement on H.R. 3755, the Social Security Disability Reform Act. Few social problems have touched us more than the thousands of handicapped and disabled Americans whose benefits were unfairly taken away as a result of a flawed review process. This legislation will end the uncertainty and unfairness that disability beneficiaries have suffered as a result of the disability review process.

I am personally aware of the tragedies that have been caused as a result of this flawed "disability review process." The volume of Social Security disability casework by my field offices has been greater than any other issue. On October 8, 1983, I was pleased to hold a field hearing of the U.S. Senate Committee on Governmental Affairs in Santa Fe on the subject of Social Security disability reviews. Firsthand testimony was heard from a cross-section of New Mexicans who told of their painful experiences caused by an insensitive, inefficient, and dehumanizing process. Testimony was also received from doctors who treated claimants, attorneys who represented claimants, the State of New Mexico Disability Determination Unit Director, an administrative law judge who heard their appeals, and a representative from the Governor's office. They all told the same tragic story that the claimants were wrongfully denied their disability benefits.

The magnitude of this tragedy is enormous. Since 1981, nearly half a million disabled beneficiaries have been told by SSA that they no longer qualify for benefits. For those with resources and fortitude to appeal to an administrative law judge, two-thirds have had their benefits restored. Almost 50,000 have taken their cases to the Federal courts, and well over 100,000 are members of class action suits already certified by Federal judges. Twenty-nine States have either refused to process claims under the inhumane standards set by SSA or are under court order to revise their review procedures. Overall, the program was a disaster.

The flood of terminations stemmed largely from two factors. One was the act of Congress, the so-called Bellmon amendment, which mandated in 1980 that disability recipients be reviewed every 3 years to determine if they were still eligible for benefits. These reviews, called continuing disability investigations, or CDI's, were scheduled by Congress to begin in January 1982. The second factor behind the great number of terminations was an administration bent on reducing Government spending regardless of human costs. Wielding the Bellmon amendment, the Reagan administration decided to accelerate the implementation date to March 1981, and began ordering disability reviews at an alarming rate.

None of us condone allowing people who are not disabled to receive Social Security or supplemental security disability benefits. But just as we are repulsed by disability benefit fraud and seek its elimination, we should not permit any administration to terminate disability benefits for literally thousands who were truly disabled.

Because of the abrupt acceleration of the reviews, many individual cases received only the most cursory examination. State disability determination offices were forced to accept a threefold increase in their workloads without an increase in funding or support. Many reviews were accomplished simply on paper, without ever seeing another human being, or by a 5-minute examination by a physician who had never seen the recipient before. Often the statements of personal physicians were either never sought or simply disregarded. Most reviews centered on a profile of disabled persons who were thought most likely to be able to go back to work. Several days of hearings before the Senate Special Committee on Aging, the Senate Governmental Affairs Committee and other groups have documented irrefutable patterns of unfairness and improper denials of disability benefits to individuals, particularly those suffering from severe psychiatric problems.

Mr. President, my strong support for this legislation comes from the review of hundreds of cases in my State, where disabled constituents wait over 2 years for favorable reviews. This legislation will return fairness, order and uniformity to the disability review process. I am hoping it will provide relief for many who have been hurt by the continuing reviews, and it will build into the law structural safeguards to protect current and future disability beneficiaries.

Most importantly, this legislation establishes a medical improvement as the primary criterion for the review of disability cases. This means that if SSA is going to terminate eligibility for disability benefits, the weight of evidence in the file must show both that the individual's medical condition has improved and that he or she is now capable of working.

The rationale for a medical improvement standard is simple—the recipient could only be denied continuing eligibility for disability benefits if there is some reason why he/she is now more able to work than when he/she was admitted to the disability rolls, other than that the eligibility standards have been arbitrarily changed over time. This seems to be fair, and should prevent the unreasonable terminations witnessed all too frequently since 1981.

The medical improvement standard in this legislation is qualified by a number of exceptions that allow for flexibility in applying it. For example, where improved medical or vocational technology allow a person to work despite an unchanged medical condition, or where new diagnostic techniques show an impairment less disabling than originally thought, the medical improvement standard is waived. These provisions assure consideration of advances in medical and rehabilitation technology in the disability review process.

I am pleased to note that Senator HEINZ has incorporated legislation affecting the mentally disabled recipients. The guidelines provide special safeguards for the mentally disabled. Specifically, the legislation mandates that SSA revise the antiquated criteria it uses to evaluate the nature and severity of mental impairments. Further, the agency must now utilize qualified psychiatrists or psychologists in reviewing the mentally disabled. I am hopeful that these reforms will protect the most vulnerable of the disabled, those whose disability leaves them defenseless to abuse by the Government.

Other provisions include the following: SSA will now be required to consider the combined effects of multiple impairments upon an individual's capacity to work. Due to regulatory and administrative changes in the past 5 years, a person with 10 nonsevere impairments could be denied benefits, despite the interactive effects these impairments may produce. This provision to require the combined evaluation of multiple impairments, like many others in this package, underscores the longstanding intent of Congress that every person should receive a comprehensive, realistic, and individualized assessment of his or her ability to work. This legislation will also establish uniform standards binding on all levels of decisionmaking process bringing SSA under the rulemaking requirements of the Administrative Procedures Act. This means that if SSA is going to revise basic review criteria, it has to publish the proposed rule changes and allow for public comment.

The legislation will extend the provision of continued benefits through the administrative law judge level for those who choose to appeal initial termination decisions through December 1987. "Aid-Paid-Pending" appeal will be made permanent for recipients of SSI, to protect those with very limited income from losing their benefits until they have exhausted all administrative channels.

Overall, this conference agreement reflects a finely crafted compromise, incorporating the diverse views of many groups. I am unhappy, however, that the conference report language does not fully address the issue of compliance with court orders; the so-called nonacquiescence issues. This is one of the most crucial issues in the debate over disability reform. The primary point of contention involves the policy of nonacquiescence practiced by the SSA in disability reviews. Under this policy, SSA does not consider the decisions of circuit courts of appeal binding, except for the plaintiffs in the individual cases, when the ruling and interpretation conflict with the agency's regulations and policies.

What this effectively amounts to is the making of new law in each individual case. This practice disregards the basic notion of precedent and judicial interpretation.

Administrative law judges across the country have indicated time and again before congressional hearings that this policy significantly hampers their ability to utilize these court interpretations and subsequently works great hardships on individual claimants because they must go to the expense of reestablishing a new point of law in each case.

I am sorry that the language contained in the House version which requires that SSA either apply circuit court decisions to all cases within the circuit or appeal the decisions to the Supreme Court has not been made a part of the final bill. This is the normal legal procedure and should be followed.

Mr. President, in spite of this oversight, I am happy to go on record as a supporter of this legislation.

Mr. PELL. Mr. President, for the past 3 years Members of Congress and the American people have read almost daily news stories about the unwarranted termination of Social Security disability benefits for persons who were clearly disabled and dependent on benefit payments.

I have heard from numerous individuals in my own State who have found themselves suddenly, and I believe mistakenly deprived of disability benefits and forced into unnecessary hardship while they sought to reverse arbitrary, bureaucratic decisions.

Upon becoming aware of the unfair treatment given to disability recipients, I, along with my colleagues in the Senate, proposed legislation to bring an end to this arbitrary treatment of disability recipients.

Mr. President, it was necessary for this body to take legislative action and eliminate this unjust situation because the executive branch in its blind persistence ignored court orders directing it to cease and desist from taking these illegal actions. The administration in ignoring court directives ordering it to comply with the law also ignored the human misery it was inflicting on disability recipients and their families. Instead of correcting its illegal and unfair actions, the administration accelerated the review process, conducting hasty and inadequate case reviews to meet arbitrary quotas. In 1982, some 497,000 recipients, or about 18 percent of all disability recipients, were subjected to review before termination decisions were rendered. Needless to say with this type of review process, many of the termination decisions were later found to be incorrect. From this brief description, it is clear that the disability review process was being conducted in a manner contrary to the intent of Congress, in defiance of court mandates and without any regard for the pain and hardship that was being placed upon the disability recipient. Confronted with this unfair and unjust situation, I, along with my colleagues, took action to bring the administration's practices to a standstill.

Mr. President, I support the efforts of my colleagues in the House and in the Senate to finally develop legislation that will restore a fair and just review procedure to the disability review process. It is sad, however, that it has taken Congress nearly 3 years to put an end to the administration's actions and to ensure that the disability review process will be carried out in a nonarbitrary and, ultimately, more humane manner.

Mr. HELMS. Mr. President, the nearly 3 million disabled Americans and their families can rest much easier today, knowing the Senate and House of Representatives have agreed on a plan that will prevent any arbitrary cuts in their Social Security disability benefits. I am confident that the Senate will overwhelmingly vote in favor of this agreement because it illustrates our commitment to citizens who are disabled.

This conference report agreement does not change the basic eligibility requirements for disability relief. Nor does it change the law passed by Congress in 1980 and signed by former President Carter, which mandated a 3-year review of every disability case. It simply clarifies the procedures for that review.

Early last year, Mr. President, I proposed S. 541, a comprehensive bill to reform and strengthen our Nation's retirement system. A cornerstone of that proposal was a section pertaining to disability reform. I suggested that Congress insure due process to every

individual receiving disability benefits before any benefits could be cut. S. 541 established that each beneficiary should be entitled to a full and fair hearing before an administrative law judge prior to any adjustment in benefits.

Although Congress approved 11 of the 20 sections of S. 541, it did not enact the disability portion. I reintroduced that section in September 1983 as S. 1888.

Mr. President, S. 1888, like the comprehensive proposal, placed the burden of proof on the Social Security Administration to show either an improvement in medical condition, or a mistake or fraud in the original determination.

Mr. President, this conference report agreement embodies those same principles. I commend the able Senator from Kansas, Senator DOLE, and others who spent much of this year working to resolve the serious problems facing disabled citizens.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee, the majority leader.

ORDER OF PROCEDURE

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, under the order previously entered, the Senate at 2 o'clock is to go to the consideration of a nomination. It is clear that a vote to occur now on the conference report would intrude on the hour provided for debate on that nomination.

Let me make this request for the consideration of the minority leader and all Senators:

Mr. President, I ask unanimous consent that at the hour of 3 o'clock the Senate proceed to vote on the Beaudin nomination, and that the Senate then immediately return to legislative session and vote without further debate on the disability conference report.

The PRESIDING OFFICER. Is there objection?

Mr. ROTH. I object. My problem, I say to the majority leader, is that we have rescheduled the Finance Committee at 2:30 on the Superfund, which is a matter of great importance to me. I want to be there for those hearings. Is it possible to complete the nomination by 2:30? We have postponed the Finance Committee because Senator LONG had to be on the floor for the debate. I also want to be there during the next panel. I am on the nub of a problem because we have the Beaudin nomination at 2 o'clock.

Mr. BAKER. Do I understand the Senator is suggesting, then, that we reduce the time for debate on Beaudin to 30 minutes and begin that vote at 2:30?

Mr. ROTH. Yes. Can we do that by 2:30?

Mr. LONG. Might I just suggest that we go ahead and vote now on this measure and delay the time to resume the Superfund hearing by 15 minutes or whatever it takes, or whatever it takes to accommodate the Beaudin nomination?

Mr. ROTH. I understand that Senator STEVENS, who is also on Governmental Affairs, is willing to take over at 2:30.

Mr. BAKER. Mr. President, if no agreement is reached when this little colloquy stops, we will be on the Beaudin nomination. Why not just do that at this time, Mr. President.

Mr. ROTH. Mr. President, with that understanding, I will withdraw my objection.

Mr. BYRD. Will the Senator yield?

Mr. BAKER. Yes.

Mr. BYRD. There are Senators who did not anticipate a rollcall vote coming at this time on this conference report. They do anticipate a rollcall commencing at 3 o'clock on the nomination. I would hope that we could avoid having a vote before 3 o'clock. We have one Senator on this side who has to go to the doctor about a serious back problem, but he will be back at 3 o'clock. Without any agreement at all, we could make it 3 o'clock, I say to the distinguished Senator from Delaware. As the majority leader has said, the Chair should be putting us in executive session right now. We have an agreement for 1 hour on the nomination. There are enough of us here who could talk to make it last that long.

Mr. BAKER. Mr. President, I do not think we are ready. Maybe this is the best thing to do.

I ask the Chair to execute the unanimous-consent order.

EXECUTIVE SESSION

NOMINATION OF BRUCE D. BEAUDIN, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER (Mr. EVANS). Under the previous order, the hour of 2 p.m. having arrived, the Senate will now go into executive session to consider the nomination of Bruce D. Beaudin, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia.

Mr. BAKER. Now, Mr. President, I understand that the distinguished chairman of the Governmental Affairs Committee, the originating committee, will proceed to manage the nomination on this side and I will pursue the idea of setting a vote on the conference report.

Let me say for the benefit of the Senate we are a little backed up here, but it is still the intention of the leadership to finish this nomination, finish the conference report, and still get back to the trade bill. Mr. President, I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, President Reagan submitted Mr. Bruce Beaudin's name to the Senate on June 29, 1983, to be an associate judge of the Superior Court of the District of Columbia. Under procedures established by my Committee on Governmental Affairs for the consideration of nominees, a detailed biographical and financial information questionnaire was submitted to be completed by Mr. Beaudin.

On July 6, 1983, the committee received Mr. Beaudin's responses to the questionnaire and shortly thereafter the nominee's FBI file was reviewed by both Senator MATHIAS and Senator EAGLETON on behalf of the committee. The FBI report contains a summary of the background investigation conducted on each nominee by the Bureau. The report required updating by the FBI, which was completed in mid-July and reviewed again by both Senators.

Our committee's rules also require each nominee to be personnally interviewed by committee staff investigators. In that interview, the nominee attested to the accuracy and completeness of all written responses to the committee's questions. The nominee also addressed in greater depth a number of matters raised by both the FBI report and his written responses to the committee.

The committee held a hearing on the nomination and it was considered at a committee business meeting on March 29, 1984. The committee voted 9 to 4 to recommend the nomination favorably to the Senate.

Mr. President, the committee spent a great deal of time reviewing Mr. Beaudin's nomination. Bruce D. Beaudin was graduated with a juris doctor degree from Georgetown University Law Center in 1964. He holds a bachelor of arts from Fairfield University. He is a member of the District of Columbia bar, and has been since 1965.

Mr. Beaudin has substantial legal experience and is well acquainted with the local criminal justice system in the District of Columbia. In law school he was employed as a staff interviewer with the DC Bail Project. From 1963 until 1968, Mr. Beaudin was associated with the DC Public Defender Service. His positions included investigator, staff attorney, deputy director, and agency director. In 1968, he moved to the DC Pretrial Services Agency, serving as its director.

Mr. President, during the committee's investigation on this nomination a number of questions were raised regarding Mr. Beaudin's fitness to assume the duties of a judge. The com-

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think we would have had enough good sense to do so.

If you do not know better than to hang out in a pornographic establishment time and time again and to do frequent business deals with a known pornographer, how do you have enough common sense to sit on the bench in the District of Columbia?

The action of Mr. Beaudin was indiscrete in the extreme, and I think it forbids him being put on the Superior Court of the District of Columbia.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, Mr. Beaudin is being nominated for a judicial position. He should be judged based on his entire record, not on three events which took place 10 years ago or more where he received no benefit and no profit from a man who was being represented by his mentor. That is it.

The 1981 event which my friend talks about is Mr. Beaudin being listed—not at his request, not with his consent, not at his initiative—as a reference by two people.

He had nothing to do with that in all fairness. We have to be fair to Beaudin. That is the issue. We have to be fair to Beaudin. In the 1981 most recent event he is listed by others as a reference—two people who beat up somebody else, if my memory is correct. He did not initiate that listing as a reference. You cannot stop being listed by people as a reference. I do not even know who these people are. He did not ask these people to list him. He did not give his reference. He did not say these people were good. He was listed. I think that we owe him a fair judgment. We do not owe Mr. Epstein anything. I share a distaste for Epstein and his kind as deeply as my friend from Missouri.

I also have a sense of fairness which I know my friend from Missouri has, too, which has led us to different conclusions. But my sense of fairness leads me to the conclusion that as a man who has served with this distinction as head of the pretrial services of the DC Bar since 1967 he should not be disqualified for three events which took place in the early seventies or the late sixties. I do not know Bruce Beaudin from a bale of hay. I would not know him if he walked in this Chamber today, although I have met him. I met him only at the hearing. I saw him in the hearing. I thought he was going to make a good judge. That is the only thing that brings me to the floor today; is I think we owe him a judgment on him and not on Epstein—on him.

Mr. STEVENS. Mr. President, we yield back the remainder of our time.

The PRESIDING OFFICER (Mr. NICKLES). All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Bruce D. Beaudin, to be an associate judge of the Superior Court of the District of Columbia? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Connecticut [Mr. DODD] and the Senator from Massachusetts [Mr. TSONGAS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 242 Ex.]

YEAS—57

Abdnor	Gorton	Murkowski
Andrews	Grassley	Packwood
Armstrong	Hatfield	Percy
Baker	Hecht	Pressler
Baucus	Heflin	Proxmire
Biden	Heinz	Pryor
Boschwitz	Huddleston	Quayle
Chafee	Humphrey	Roth
Cochran	Jepsen	Rudman
Cohen	Kassebaum	Simpson
Danforth	Kasten	Specter
Dole	Laxalt	Stafford
Domenici	Leahy	Stevens
Durenberger	Levin	Symms
Evans	Lugar	Thurmond
Exon	Mathias	Tower
Garn	Matsunaga	Wallop
Glenn	McClure	Weicker
Goldwater	Metzenbaum	Wilson

NAYS—41

Bentsen	East	Mitchell
Bingaman	Ford	Moynihan
Boren	Hart	Nickles
Bradley	Hatch	Nunn
Bumpers	Hawkins	Pell
Burdick	Helms	Randolph
Byrd	Hollings	Riegle
Chiles	Inouye	Sarbanes
Cranston	Johnston	Sasser
D'Amato	Kennedy	Stennis
DeConcini	Lautenberg	Trible
Denton	Long	Warner
Dixon	Mattingly	Zorinsky
Eagleton	Melcher	

NOT VOTING—2

Dodd Tsongas

So the nomination was confirmed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

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

LEGISLATIVE SESSION

Mr. BAKER. I ask, Mr. President, that the Senate now return to legislative session.

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

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT—CONFERENCE REPORT

Mr. BAKER. Now, Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

The conference report on H.R. 3755.

VOTE

Mr. BAKER. Mr. President, as far as I know, we are ready to vote on the conference report. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. BAKER. I yield the floor, Mr. President.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the conference report. The clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Massachusetts [Mr. TSONGAS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 243 Leg.]

YEAS—99

Abdnor	Garn	Metzenbaum
Andrews	Glenn	Mitchell
Armstrong	Goldwater	Moynihan
Baker	Gorton	Murkowski
Baucus	Grassley	Nickles
Bentsen	Hart	Nunn
Biden	Hatch	Packwood
Bingaman	Hatfield	Pell
Boren	Hawkins	Percy
Boschwitz	Hecht	Pressler
Bradley	Heflin	Proxmire
Bumpers	Heinz	Pryor
Burdick	Helms	Quayle
Byrd	Hollings	Randolph
Chafee	Huddleston	Riegle
Chiles	Humphrey	Roth
Cochran	Inouye	Rudman
Cohen	Jepsen	Sarbanes
Cranston	Johnston	Sasser
D'Amato	Kassebaum	Simpson
Danforth	Kasten	Specter
DeConcini	Kennedy	Stafford
Denton	Lautenberg	Stennis
Dixon	Laxalt	Stevens
Dodd	Leahy	Symms
Dole	Levin	Thurmond
Domenici	Long	Tower
Durenberger	Lugar	Trible
Eagleton	Mathias	Wallop
East	Matsunaga	Warner
Evans	Mattingly	Weicker
Exon	McClure	Wilson
Ford	Melcher	Zorinsky

NOT VOTING—1

Tsongas

So the conference report was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I am advised by the minority leader that on behalf of another Senator it would be necessary to interpose an objection to proceed to the consideration of the trade bill. I understand the reasons for that and I respect them.

In order to start the machinery running to get back to the trade bill in a moment I am going to make a motion that we proceed to the consideration of the trade bill with the full understanding that no effort will be made on this side to get a vote on that motion for the time being but at least then we will have a vehicle before the Senate to allow Senators to make statements on the trade bill, perhaps to discuss but not dispose of the amendments, so at least we can make some progress, I hope, toward final resolution of this matter.

On that basis, then, Mr. President, and having advised in advance the minority leader and the managers of this technique, I now move that the Senate move to the consideration of Calendar Order No. 559, H.R. 3398.

Mr. BYRD. Mr. President, I have to ask for a quorum call. I, therefore, suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HECHT). Without objection, it is so ordered.

MISCELLANEOUS TARIFF, TRADE, AND CUSTOMS MATTERS

Mr. DANFORTH. Mr. President, I ask unanimous consent that the pending motion to proceed be withdrawn and I ask unanimous consent that the Senate proceed to the consideration of H.R. 3398.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senate resumed consideration of the bill.

Mr. GORTON. Mr. President, I call up my amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

Mr. GORTON. Mr. President, I will defer to the Senator from New Hampshire.

Mr. BYRD. Mr. President, what is the Senator doing?

The PRESIDING OFFICER. The Senator called up an amendment which the clerk was directed to report.

Mr. GORTON. Mr. President, I yield the floor.

Mr. HUMPHREY. Mr. President, what is the parliamentary situation? Am I free to offer an amendment?

The PRESIDING OFFICER. The Senator from Washington is offering an amendment which the clerk was directed to report.

Mr. GORTON. Mr. President, I yielded the floor.

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

The Senator from New Hampshire.

AMENDMENT NO. 4278

(Purpose: To provide a user fee for customs services at certain small airports)

Mr. HUMPHREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. HUMPHREY) proposes an amendment numbered 4278.

On page 41, between lines 18 and 19, insert the following:

SEC. . USER FEE FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS.

(a) The Secretary of the Treasury shall make customs services available and charge a fee for the use of such customs services at—

(1) the airport located at Lebanon, New Hampshire, and

(2) any other airport designated by the Secretary of the Treasury under subsection (c).

(b) The fee which is charged under subsection (a) shall be paid by each person using the customs services at the airport and shall be in an amount equal to the expenses incurred by the Secretary of the Treasury in providing the customs services which are rendered to such person at such airport (including the salary and expenses of individuals employed by the Secretary of the Treasury to provide such customs services).

(c) The Secretary of the Treasury may designate 4 airports under this subsection. An airport may be designated under this subsection only if—

(1) the Secretary of the Treasury has made a determination that the volume or value of business cleared through such airport is insufficient to justify the availability of customs services at such airport, and

(2) the governor of the State in which such airport is located approves such designation.

(d) Any person who, after notice and demand for payment of any fee charged under subsection (a), fails to pay such fee shall be guilty of a misdemeanor and if convicted thereof shall pay a fine that does not exceed an amount equal to 200 percent of such fee.

(e) Fees collected by the Secretary of the Treasury under subsection (a) with respect to the provision of services at an airport shall be deposited in an account within the Treasury of the United States that is specially designated for such airport. The funds in such account shall only be available, as provided by appropriation Acts, for expenditures relating to the provision of customs services at such airport (including expenditures for the salaries and expenses of individuals employed to provide such services.)

Mr. HUMPHREY. I am offering this amendment to provide customs service at certain small airports on a user fee basis.

This amendment has been reported out of the Finance Committee as part of the customs reauthorization bill, and is based on a bill I introduced earlier this year, S. 2495.

The legislation arises out of the plight of several airports facing closure of Customs service, an important aspect of airport service. It authorizes the Secretary of the Treasury to establish user-financed service at five airports. This demonstration program would not affect or harm operation of existing service locations.

Lebanon Municipal Airport, located in my State, offers a fine example of the importance of airports to our communities. The airport in Lebanon, NH, services many growing communities in New Hampshire and Vermont. It provides access to many businesses located in the upper Connecticut River Valley, as well as Dartmouth College and its important medical center. Also, it accommodates a substantial amount of general and commercial aviation.

Although the number of international flights arriving at Lebanon Municipal Airport is insufficient to establish a port of entry [POE], the ability to land at Lebanon is crucial for those businesses traveling regularly from Canada or overseas. The ability for international flights to land at Lebanon Airport rests on the availability of Customs services to clear personnel for arrival in the United States.

Currently, Customs service is provided at Lebanon from the POE at Derby Line, VT. This is accomplished on an on-call basis through the out-of-port service concept. Parties requesting clearance at Lebanon are required to contact the Derby Line office at least 3 hours in advance of arrival so that an officer can be sent to clear the aircraft and its passengers at Lebanon. The parties requesting clearance are responsible for reimbursing Customs for travel and per diem expenses. The Federal Government assumes responsibility for the salary of the Customs official.

The present method has proven both costly and ineffective. A Customs review of service at Lebanon reported that during a 6-month period in 1983, the net cost incurred by Customs was

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LEGISLATIVE Bulletin

SOCIAL SECURITY ADMINISTRATION

mber 98-53 September 19, 1984

Yesterday, September 18, the House and Senate conferees reached agreement on H.R. 3755, the "Social Security Disability Benefits Reform Act of 1984." The House and Senate are expected to complete action on the bill this week.

Attached is a House Ways and Means Committee summary of the conference agreement.

SUMMARY OF CONFERENCE AGREEMENT ON H.R. 3755
THE SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

1. Medical Improvement Standard

Establishes a medical improvement standard under which the Secretary may terminate disability benefits on the basis that the person is no longer disabled only if

(1) there is substantial evidence demonstrating that
    (a) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the person's ability to work) and
    (b) the individual is now able to engage in substantial gainful activity (SGA); or

(2) there is substantial evidence consisting of new medical evidence and a new assessment of RFC which demonstrates that although there is no medical improvement,
    (a) the person has benefited from advances in medical or vocational therapy or technology related to ability to work, and
    (b) that he or she is now able to perform SGA; or

(3) there is substantial evidence that although there is no medical improvement
    (a) the person has benefited from vocational therapy and
    (b) the beneficiary can now perform SGA; or

(4) there is substantial evidence that, based on new or improved diagnostic techniques or evaluations, the person's impairment or combination of impairments is not as disabling as it was considered to be at the time of the prior determination, and that therefore the individual is able to perform SGA; or

(5) there is substantial evidence either in the file at the original determination or newly obtained showing that the prior determination was in error; or

(6) there is substantial evidence that the original decision was fraudently obtained; or

(7) if the individual is engaging in SGA (except where he or she is eligible under Section 1619), fails without good cause to cooperate in the review or follow prescribed treatment or cannot be located.

n making the determination, the Secretary shall consider the vidence in the file as well as any additional information concern- ng the claimant's current or prior condition secured by the ecretary or provided by the claimant.

Prepared by the staff of the Committee on Ways and Means
September 18, 1984

Determinations under this provision must be made on the basis of the weight of the evidence, and on a neutral basis with regard to the individual's condition, without any inference as to the present or absence of disability based on the previous finding of disability.

Regulations must be issued within 6 months.

Effective date: Applies only with respect to the following categories:

(1) Determinations by the Secretary made after date of enactment;
(2) Cases pending at any level of the administrative process on the date of enactment;
(3) Cases of individual litigants pending in Federal court on the date the conference report is filed;
(4) Cases of named plaintiffs in class action suits pending on that date;
(5) Cases of unnamed plaintiffs in class action suits certified prior to that date; and
(6) Cases where a request for judicial review was made in the period beginning March 15, 1984 and 60 days after enactment;

Cases in categories (3), (4), (5) and (6) will be remanded to the Secretary for review under this standard. Individuals in (5) will be sent a notice via certified mail informing them that they have 120 days after the date of receipt of the notice to request a review under the medical improvement standard.

No class action may be certified after the date the conference report is filed which raises the issue of medical improvement with respect to an individual whose benefits were terminated prior to that date.

Persons whose cases are remanded to the Secretary will receive benefits pending the Secretary's decision and appeal of that decision if they so elect. If found eligible, any person whose case was remanded under this provision will receive benefits retroactive to the date they were last found ineligible.

2. Evaluation of Pain

Requires the Secretary of HHS, in conjunction with the National Academy of Sciences, to conduct a study concerning the questions of using subjective evidence of pain in determininng whether a person is under a disability, and the state of the art of preventing, reducing or coping with pain. This study is due to the House Committee on Ways and Means and the Senate Committee on Finance by December 31, 1985.

Establishes the following statutory standard to be in effect until December 31, 1986:

"An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by

medically acceptable clinical or laboratory diagnostic techniques which show the existence of a medical impairment that results from anatomical, physiological or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue), must be considered in reaching a conclusion as to whether the individual is under a disability.

3. Multiple Impairments

Provides that in determining whether a person's impairment or impairments are of a sufficient medical severity to be the basis of a finding of eligibility for benefits, the Secretary must consider the combined effect of all of the person's impairments, whether or not any one impairment would alone be severe enough to qualify the person for benefits. Provision applies to all determinations made on or after 30 days after enactment.

4. Moratorium on Mental Impairment Reviews

Provides for a moratorium on reviews of all cases of mental impairment disability until the mental impairment criteria in the Listing of Impairments are revised to realistically evaluate the person's ability to engage in SGA in a competitive workplace environment. The revised criteria are to be published within 120 days of the date of enactment. The moratorium applies to all cases on which an administrative or judicial appeal was pending on or after June 7, 1983. All persons claiming benefits based on mental impairment disability who received an unfavorable initial or continuing disability decision after March 1, 1981 could reapply for benefits within 12 months of enactment.

5. Pre-Termination Notice

Requires the Secretary to initiate demonstration projects on providing face-to-face interviews for (1) pre-termination continuing disability cases and (2) for all initial denial cases, in lieu of face-to-face evidentiary hearings at reconsideration, to be done in at least 5 States with a report due to the Committees on Ways and Means and Finance April 1, 1986. Also requires Secretary to notify individuals upon initiating a periodic eligibility review that termination of benefits could be the result of the the review, and that medical evidence may be provided.

6. Continuation of Benefits During Appeal

Provides for continuation of benefits during appeal for all continuing disability review cases through the decision of the administrative law judge, at the election of the individual. Where the ALJ's decision is adverse to the individual, these benefits would have to be repaid. The provision is permanent for SSI disability recipients, and will apply to Title II disability beneficiaries through December, 1987. The Secretary is required to report to Congress on the impact of this provision by July 1, 1986.

7. Qualifications of Medical Professionals

Requires the Secretary to make every reasonable effort in cases based on mental impairments to insure that a qualified psychiatrist or psychologist complete the medical portion of the case review and of the residual functional capacity assessment before any determination may be made that an individual is not disabled. The statement of managers will state that the Secretary has the authority to contract directly for such sservies if the State agency is unable to do so.

8. Standards for Consultative Examinations/Medical Evidence

Requires the Secretary to promulgate regulations regarding consultative examinations, including when they should be obtained, the type of referral to be made and the procedures for monitoring the referral process. The Secretary must make every effort to obtain necessary medical evidence from the treating physician before evaluating medical evidence from any other source. The Secretary must also consider all evidence in the case record and development of complete medical history over at least the preceding 12-month period.

9. Administrative Procedure and Uniform Standards

Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under section 553 of the Administrative Procedures Act, to be binding at all levels of adjudication.

10. Non-Acquiescence

No statutory provision is included in the conference agreement. The statement of managers of the conference agreement states that the agreement to drop both the House and Senate provisions is not to be interpreted as approval of the practice of "non-acquiescence", that the conferees note that questions have been raised about the constitutional basis of the practice, that many of the conferees have strong concerns about the current application of the practice, and that a policy of non-acquiescence should be followed only where steps have been taken or are intended to be taken to receive a review of the disputed issue in the Supreme Court. The conferees also urge the Secretary to seek a resolution of the non-acquiescence issue in the Supreme Court.

11. Payment of Costs of Rehabilitation Services

Allows reimbursement to State agencies for costs of VR services provided to individuals receiving DI benefits under section 225(b) of the Social Security Act who medically recover while in VR, whether or not the person worked at SGA for 9 months, and whether or not the person failed to cooperate in the program.

12. Direction for Quadrennial Social Security Advisory Council

Directs next quadrennial advisory council (as required in the Social Security Act) to study the medical and vocational aspects of disability using ad hoc panels of experts where appropriate. The study must include alternative approaches to work evaluation for SSI recipients, effectiveness of VR programs, and other disability program policies, standards and procedures. The Secretary must appoint the members by June 1, 1985.

13. Staff Attorneys

Directs the Secretary to report, within 120 days of enactment, to the Committees on Ways and Means and Finance, on the actions taken by the Secretary to establish positions which enable staff attornies to gain the qualifying experience and quality of experience necessary to compete for ALJ positions. Statement of managers states that it is assumed, given recent OPM actions, that statutory requirements for establishing specific positions are not required, and that the Secretary is urged to take all reasonable steps to see that the OPM actions result in SSA staff attorneys becoming qualified for GS-15 ALJ positions.

14. SSI Benefits for Persons Working Despite Impairment (1619)

Extends Sections 1619(a) and (b) through June 30, 1987, and requires the Secretaries of HHS and Education to establish training programs for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations. Effective retroactive to January 1, 1984.

15. Frequency of Continuing Eligibility Reviews

Requires Secretary to promulgate regulations establishing standards for determining the frequency of continuing eligibility reviews. Final regulations must be issued within 6 months; until that time, no individual may be subject to more than one periodic review.

16. Representative Payees for Social Security and SSI Beneficiaries

Requires Secretary to (1) evaluate qualifications of prospective payees prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring where payments are made to someone other than a parent or spouse living in the same household with the beneficiary, and (3) report to Congress on implementation, and annually on the number of cases of misused funds and disposition of such cases.

17. Measures to Improve Compliance with Federal Law

Requires the Secretary to federalize disability determinations in a State within 6 months of finding that a State is not in substantial compliance with Federal law and standards. Such a finding must be made within 16 weeks of the time a State's failure to comply first comes to the attention of the Secretary, during which period a hearing could be afforded to the State. The Secretary is directed to comply with current law requirements protecting employment of current State employees to the extent feasible, and is directed in order to accomplish that end, to exceed any applicable personnel ceilings and to waive any applicable hiring restrictions. The statement of managers directs the Secretary to give preference in hiring to agency employees capable of performing the requisite duties.

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Public Law 98-460
98th Congress

An Act

Oct. 9, 1984
[H.R. 3755]

To amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process.

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

Social Security Disability Benefits Reform Act of 1984.
42 USC 1305 note.

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".

TABLE OF CONTENTS

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

97 Stat. 134.
42 USC 423.

SEC. 2. (a) Section 223(f) of the Social Security Act is amended to read as follows:

"Standard of Review for Termination of Disability Benefits

42 USC 1395.

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that—

"(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(B)(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or 42 USC 402.

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii)(II) does not apply) a new assessment of the individual's residual functional capacity, and demonstrates that—

"(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(ii)(I) the individual is now able to engage in substantial gainful activity, or

"(II) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

"(B) demonstrates that—

"(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

"(ii) the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or

"(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

"(A) the individual is able to engage in substantial gainful activity, or

"(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

"(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the 42 USC 1395.

case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.".

42 USC 416.

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "The provisions set forth in section 223(f) with respect to determinations of whether entitlement to benefits under this title or title XVIII based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling)."

Ante, p. 1794.

42 USC 1395.

42 USC 1382c.

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that—

"(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(ii) the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

42 USC 1382h.

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

"(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity, or

"(ii) demonstrates that—

"(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity; or

"(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

"(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this title is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.".

(d)(1) The amendments made by this section shall apply only as provided in this subsection. Effective date. 42 USC 423 note.

(2) The amendments made by this section shall apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary; 42 USC 405.

(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act— 42 USC 401, 1381, 1395.

(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify 42 USC 1305. that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of 42 USC 405. section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section.

(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

(6) For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

42 USC 423 note. (e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance 42 USC 423. with section 223(g) or 1631(a)(7) of the Social Security Act, to have *Post*, p. 1803. payments made beginning with the month in which he makes such

election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)— 42 USC 423. *Post*, p. 1803.

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such election.

(f) In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied. 42 USC 423 note.

(g) The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section not later than 180 days after the date of the enactment of this Act. Regulations. 42 USC 423 note.

EVALUATION OF PAIN

SEC. 3. (a)(1) Section 223(d)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentences: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability.". 42 USC 423.

(2) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act) is amended by striking out "section 221(h)" and inserting in lieu thereof "sections 221(h) and 223(d)(5)". *Post*, p. 1804.

(3) The amendments made by paragraphs (1) and (2) shall apply to determinations made prior to January 1, 1987. Effective date. 42 USC 423 note.

(b)(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences. Commission on the Evaluation of Pain. 42 USC 423 note. 42 USC 401, 1381.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of 5 USC app.

the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.

Termination date.

MULTIPLE IMPAIRMENTS

42 USC 423.

SEC. 4. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.".

42 USC 416.

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

42 USC 1382c.

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.".

(c) The amendments made by this section shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act. Effective date. 42 USC 423 note.

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 5. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act. 42 USC 421 note. Regulations.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if— 42 USC 421. 42 USC 1381.

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202 (e) and (f) of such Act). 42 USC 1382h. 42 USC 402.

(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act 42 USC 401, 1381.

in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

Claims.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

42 USC 401, 1381.

NOTICE OF RECONSIDERATION; PREREVIEW NOTICE; DEMONSTRATION PROJECTS

42 USC 421.

SEC. 6. (a) Section 221(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) In any case in which the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.".

42 USC 1383b.

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) In any case in which the Secretary initiates a review under this title, similar to the continuing disability reviews authorized for purposes of title II under section 221(i), the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 221(i)(4).".

42 USC 401.

Supra.

42 USC 421 note.

(c) The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.

42 USC 421 note.

(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

42 USC 405.

42 USC 1381.

Report.

(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986. 42 USC 421 note. 42 USC 421. 42 USC 1381. Report.

CONTINUATION OF BENEFITS DURING APPEAL

SEC. 7. (a)(1) Section 223(g)(1) of the Social Security Act is amended— 42 USC 423.

(A) in the matter following subparagraph (C), by striking out "and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)," and inserting in lieu thereof ", the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,"; and 42 USC 1395.

(B) in clause (iii) by striking out "June 1984" and inserting in lieu thereof "June 1988".

(2) Section 223(g)(3)(B) of such Act is amended by striking out "December 7, 1983" and inserting in lieu thereof "January 1, 1988". 97 Stat. 803. 42 USC 423.

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph: 42 USC 1383.

"(7)(A) In any case where—

"(i) an individual is a recipient of benefits based on disability or blindness under this title,

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

"(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

"(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period)

shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

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

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.".

Study.
42 USC 423 note.

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

42 USC 423.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

42 USC 421.

SEC. 8. (a) Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) An initial determination under subsection (a), (c), (g), or (i) that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.".

Ante, p. 1800.

(b) Section 1614(a)(3) of such Act (as amended by section 4 of this Act) is further amended by adding at the end thereof the following new subparagraph:

"(H) In making determinations with respect to disability under this title, the provisions of section 221(h) shall apply in the same manner as they apply to determinations of disability under title II.".

Supra.
42 USC 401.

Effective date.
42 USC 421 note.

(c) The amendments made by this section shall apply to determinations made after 60 days after the date of the enactment of this Act.

CONSULTATIVE EXAMINATIONS; MEDICAL EVIDENCE

42 USC 421.

SEC. 9. (a)(1) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a

consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.".

(2) The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act not later than 180 days after the date of the enactment of this Act. Regulations. 42 USC 421 note. *Ante*, p. 1804.

(b)(1) Section 223(d)(5) of the Social Security Act is amended by inserting "(A)" after "(5)" and by adding at the end thereof the following new subparagraph: 42 USC 423.

"(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.".

(2) The amendments made by this subsection shall apply to determinations made on or after the date of the enactment of this Act. Effective date. 42 USC 423 note.

UNIFORM STANDARDS

SEC. 10. (a) Section 221 of the Social Security Act (as amended by section 9 of this Act) is further amended by adding at the end thereof the following new subsection: 42 USC 421.

"(k)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d). 42 USC 416, 423.

"(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.".

(b) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act and amended by section 3 of this Act) is further amended by striking out "sections 221(h) and 223(d)(5)" and inserting in lieu thereof "sections 221(h), 221(k), and 223(d)(5)". *Ante*, p. 1804.

PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 11. (a)(1) The first sentence of section 222(d)(1) of the Social Security Act is amended— 42 USC 422.

(A) by striking out "into substantial gainful activity"; and

(B) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i)

in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

42 USC 425.

(2) The second sentence of section 222(d)(1) of such Act is amended by striking out "of such individuals to substantial gainful activity" and inserting in lieu thereof "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

Ante, p. 1805.

(b)(1) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1631(a)(6) (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

42 USC 1382d.

42 USC 1383.

(2) The second sentence of section 1615(d) of such Act is amended by inserting after "The determination" the following: "that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination".

(c) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

Effective date.
42 USC 422 note.

ADVISORY COUNCIL STUDY

42 USC 907 note.

SEC. 12. (a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Council on Social

Security pursuant to section 706 of the Social Security Act prior to June 1, 1985. 42 USC 907.

(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including studies and recommendations relating to— Report.

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination; 42 USC 1381.

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally

impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(c) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues.

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

Report.

SEC. 13. The Secretary of Health and Human Services shall, within 120 days after the date of enactment of this Act, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on actions taken by the Secretary to establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for the position of administrative law judge under section 3105 of title 5, United States Code.

SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

42 USC 1382h note.

SEC. 14. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1987".

42 USC 1382h.

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.".

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

Regulations.
42 USC 421 note.

SEC. 15. The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under section

42 USC 421.

221(i) of the Social Security Act. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

DETERMINATION AND MONITORING OF NEED FOR REPRESENTATIVE PAYEE

SEC. 16. (a) Section 205(j) of the Social Security Act is amended by inserting "(1)" after "(j)" and by adding at the end thereof the following new paragraphs: 42 USC 405.

"(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

"(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

"(4)(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after the date of the enactment of this paragraph. Report.

"(B) The Secretary shall include as a part of the annual report required under section 704, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.". 42 USC 904.

(b) Section 1631(a)(2) of such Act is amended by inserting "(A)" after "(2)" and by adding at the end thereof the following new subparagraphs: 42 USC 1383.

"(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse

entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

"(C)(i) In any case where payment is made under this title to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

"(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

"(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

"(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

"(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

Report. "(D) The Secretary shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after the date of the enactment of this subparagraph. The Secretary shall include in the annual report required 42 USC 904. under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section *Ante*, p. 1809. 205(j)(4)(B).".

42 USC 1383a. (c)(1) Section 1632 of the Social Security Act is amended by inserting "(a)" after "Sec. 1632." and by adding at the end thereof the following new subsection:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a), if such violation is committed by such person or entity in his role as, 42 USC 1383. or in applying to become, a payee under section 1631(a)(2) on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a)—

"(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

"(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such

person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 208 may not be certified as a payee under section 1631(a)(2).". 42 USC 408. *Ante*, p. 1810.

(2) Section 208 of such Act is amended by adding at the end thereof the following unnumbered paragraphs: 42 USC 408.

"Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee. *Ante*, p. 1809.

"Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).". *Ante*, p. 1810.

(d) The amendments made by this section shall become effective on the date of the enactment of this Act, and, in the case of the amendments made by subsection (c), shall apply with respect to violations occurring on or after such date. Effective date. 42 USC 405 note.

MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

SEC. 17. (a)(1) Section 221(b)(1) of the Social Security Act is amended to read as follows: 42 USC 421.

"(b)(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

"(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

"(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

"(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for

which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

"(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1), complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period. In order to carry out this subparagraph, the Secretary shall, as the Secretary finds necessary, exceed any applicable personnel ceilings and waive any applicable hiring restrictions. In addition, to the extent feasible within the 180-day period after the final determination, the Secretary, in conjunction with the Secretary of Labor, shall assure the statutory protections of State agency employees not hired by the Secretary.

"(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any case with respect to which a determination referred to in subsection (a)(1) was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.".

42 USC 421.

(2) Section 221(a)(1) of such Act is amended by striking out "subsection (b)(1)" and inserting in lieu thereof "subsection (b)(1)(C)".

(3)(A) Section 221(b)(3)(A) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(B) Section 221(b)(3)(B) of such Act is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary".

(4) Section 221(d) of such Act is amended by striking out "Any individual" and inserting in lieu thereof "Except as provided in subsection (b)(1)(D), any individual".

Effective date.
42 USC 421 note.

(b) The amendments made by subsection (a) of this section shall become effective on the date of the enactment of this Act and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.

42 USC 1305.

SEPARABILITY

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby. 42 USC 1303 note.

Approved October 9, 1984.

LEGISLATIVE HISTORY—H.R. 3755 (S. 476):

HOUSE REPORTS: No. 98-618 (Comm. on Ways and Means) and
No. 98-1039 (Comm. of Conference).
SENATE REPORT No. 98-466 accompanying S. 476 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Mar. 27, considered and passed House.
May 22, considered and passed Senate, amended, in lieu of S. 476.
Sept. 19, House and Senate agreed to Conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 41 (1984):
Oct. 9, Presidential statement.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 9, 1984

STATEMENT BY THE PRESIDENT

I am pleased to sign into law H.R. 3755, the "Social Security Disability Benefits Reform Act of 1984." This legislation, which has been formulated with the support of the Administration and passed by unanimous vote in both Houses of Congress, should restore order, uniformity, and consensus in the disability program. It maintains our commitment to treat disabled American citizens fairly and humanely while fulfilling our obligation to the Congress and the American taxpayers to administer the disability program effectively.

When I took office on January 20, 1981, my Administration inherited the task of implementing the continuing disability reviews required by the 1980 Disability Amendments which had been enacted and signed into law during the previous administration. Soon after the Department of Health and Human Services began the mandatory reviews, we found that trying to implement the new law's requirements within the framework of the old, paper-oriented review process was causing hardships for beneficiaries. Accordingly, back in 1982, the Department began a long series of administrative reforms designed to make the disability review process more humane and people-oriented. These reforms included providing face-to-face meetings between beneficiaries and Social Security Administration (SSA) claims representatives at the very start of the review process.

These initial steps were followed by further important reforms announced by Secretary Heckler in June of 1983, including:

- o classifying additional beneficiaries as permanently disabled, thus exempting them from the 3-year review;
- o temporarily exempting from review two-thirds of cases of individuals with mental impairments while the decision-making standards were being revised; and
- o accelerating a top-to-bottom review of disability policies by SSA and appropriate outside experts.

While those June 1983 reforms went a long way towards humanizing the process, by the spring of 1984, it became apparent that legislation was needed to end the debate and confusion over what standard should be used in conducting continuing disability reviews. The Administration worked with the Congress to develop this consensus legislation and, in the interim, took the additional step of suspending the periodic disability reviews pending implementation of new disability legislation.

more

(OVER)

One indication of the complexity of the issues involved is the fact that Congress held more than 40 hearings on the disability review process over a three-year period before arriving at a consensus on this legislation.

One significant provision of H.R. 3755 is the so-called "medical improvement standard" that sets forth the criteria SSA must apply when deciding whether a disability beneficiary is still disabled. The standard this new legislation would establish for future determinations will restore the uniformity that is so essential to a nationwide program.

Another provision in H.R. 3755 would extend temporarily the ability of a Social Security disability beneficiary who has decided to appeal a decision that his disability has ended to have benefits continued up to the decision of an administrative law judge. This will prevent undue hardship to beneficiaries who are found on appeal to be still disabled while the new law is being put in place.

In addition, the legislation places a desirable moratorium on reviews to determine whether individuals with mental impairments are still disabled until revised criteria for evaluating these impairments are published. The Department of Health and Human Services has been working with mental health experts on these criteria.

Several other changes are written into this new law that will clarify and expedite the administration of the disability program.

I have asked Secretary Heckler to implement the provisions of this legislation as speedily and as fairly as possible. The Department of Health and Human Services will act promptly in reviewing individual cases so that no disabled beneficiary has to wait any longer than necessary for the proper decision on his or her case.

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LEGISLATIVE REPORT

FROM THE
DIRECTOR,
OFFICE OF LEGISLATIVE AND REGULATORY
POLICY

SOCIAL SECURITY
ADMINISTRATION

98th Congress

Number 2

September 21, 1984

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

On September 19, 1984, the Congress passed and sent to the President H.R. 3755, the "Social Security Disability Reform Amendments of 1984." H.R. 3755 makes a number of changes in the Social Security and SSI disability programs. A summary of the provisions of the bill is attached.

John Trout
Director
Office of Legislative and
Regulatory Policy

Attachment

SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984--H.R. 3755

Table of Contents

SUMMARY OF PROVISIONS

Section 2 -- Standard of Review for Termination of Disability Benefits and Periods of Disability

Permits the Secretary to terminate a beneficiary's entitlement to Social Security disability or SSI disabled or blind benefits (hereafter referred to as SSI disability benefits) (or Medicare benefits based on the disability of an individual), or to determine that a period of disability has ended on the basis that the impairment has ceased, no longer exists, or is not disabling only if there is substantial evidence of at least one of the following:

(1) That the individual has medically improved (other than improvement not related to his ability to work) and is now able to engage in substantial gainful activity (SGA);

(2) That (except for SSI recipients eligible to receive benefits under section 1619) new medical evidence and a new assessment of the individual's residual functional capacity demonstrate that, although the individual has not improved medically, (a) he is a beneficiary of advances in medical or vocational therapy or technology, related to his ability to work, and is now able to perform SGA, or (b) he has undergone vocational therapy, related to his ability to work, and is now able to perform SGA;

(3) That, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment is not as disabling as it was considered to be at the time of the most recent prior disability determination and that therefore the individual is able to engage in SGA; or

(4) That, as demonstrated on the basis of evidence on the record at the time of any prior determination or newly obtained evidence relating to that determination, a prior determination was in error.

Regardless of the new standard, disability benefits can be terminated if the prior determination was fraudulently obtained or if the beneficiary is engaged in SGA, cannot be located, or fails, without good cause, to cooperate in the continuing disability review (CDR) or to follow prescribed treatment which would be expected to restore his ability to engage in SGA.

Provides that any determination under this standard should be made neutrally--without any initial inference as to the presence or absence of disability--on the basis of all evidence (both prior

and new) available in the case file concerning the individual's prior or current condition.

Applies similar provisions, modified to rely on the concept of ability to perform gainful activity, to widows, widowers, and surviving divorced spouses.

Regulations for the standard of review are required to be in place within 6 months after enactment.

The standard of review applies automatically only--

- o when a determination is made by the Secretary on or after enactment;
- o when a final decision of the Secretary has not been made as of the date of enactment and a request for further administrative review is timely and properly made;
- o when a request for judicial review was pending on September 19, 1984 involving either individual litigants or class action members identified by name in the pending action on that date; or
- o when an individual has made or makes a timely request for judicial review of a final decision of the Secretary which was made within 60 days prior to enactment.

Courts are required to remand the judicial review cases described above to the Secretary for redetermination under the new standard only if the court actions raise a medical improvement question.

Courts are also required to remand cases of individuals whose impairments were found not to exist, to have ceased, or not to be disabling and who are members of a class action relating to medical improvement certified on or before September 19, 1984, and pending on that date, but who were not identified by name. The new standard of review does not apply automatically to these cases; these individuals must be notified by the Secretary by certified mail that they may request a review of their case under the new standard within 120 days of the receipt of the notice.

Any individual whose case is remanded by the court (providing he requests review timely if he is an unidentified member of a class) may elect to have benefits continued beginning with the month of election and ending as provided in section 7, except that payment will be made at least until the new initial determination. If the new determination is a finding of disability, retroactive benefits will be paid beginning with the month of the most recent termination of benefits.

No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement, or a period of disability, made by the Secretary prior to September 19, 1984.

New determinations under this provision may be appealed in accordance with appeal rights under present law and regulations.

The provision is intended to promote administration of the program in a uniform manner nationwide by making explicit to the State agencies administering the program and to the courts the standards to be applied in determining continuing eligibility for benefits--the standards as set forth in national policy by the Congress. The provision also represents a response to broad-based concerns that the continuing disability review requirements of the 1980 amendments resulted in unforeseen hardships to beneficiaries whose benefits were terminated even though their conditions were unchanged from the time they were awarded benefits. Additionally, however, the provision is intended to avoid unnecessary program expenditures by assuring that benefits can be terminated when warranted.

The conference report noted that the agreement reached was an attempt "to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligibility, which might make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review...could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls."

Section 3 -- Evaluation of Pain

Provides a temporary statutory standard (through December 31, 1986) for using subjective and objective evidence in evaluating cases involving pain or other symptoms. This standard reflects SSA's current policy for evaluating symptoms, including pain.

Also requires the Secretary to appoint a Commission on the Evaluation of Pain to conduct a study, in consultation with the National Academy of Sciences, concerning the evaluation of pain in determining whether a person is disabled under the Social Security Act. The commission must be appointed within 60 days of enactment and will have at least 12 members from the fields of medicine, law, and disability program administration. The Secretary must submit the results of the study and any recommendations to the House Ways and Means Committee and the Senate Committee on Finance by December 31, 1985.

The study is intended to address concerns about the use of evidence of pain, particularly subjective evidence, in making disability determinations. The interim statutory standard is to assure that SSA's current policy for evaluating pain is adhered to until the study report can be completed and evaluated; some courts have used their own standards in evaluating pain.

Section 4 -- Multiple Impairments

Requires the Secretary, in determining whether a person's impairment or impairments are of such medical severity as to prevent SGA, to consider the combined effect of all impairments without regard to whether any one impairment, if considered separately, would be severe. If the combined effect of multiple impairments is determined to be severe, the combined effect will be considered throughout the sequential evaluation process. Effective for determinations made on or after the first day of the first month beginning after 30 days after enactment.

The conferees state that they do not intend to eliminate or impair the current sequential evaluation process under which a determination may be made that a person is not disabled if his impairment or combination of impairments is not severe without considering vocational factors. However, the conferees request that the results of the planned reevaluation by HHS of the current criteria for nonsevere impairments be reported to the House Ways and Means Committee and the Senate Committee on Finance.

This provision is intended to ensure that the combined effect of multiple impairments is considered in determining whether a person's impairment(s) is severe and that when the combined effect is found to be severe, the full sequential evaluation process (including, if appropriate, the consideration of vocational factors) will be followed.

Section 5 -- Moratorium on Mental Impairment Reviews

Delays periodic review of mentally impaired individuals until criteria for evaluating mental disorders are revised to realistically evaluate the ability of a mentally impaired person to engage in SGA in a competitive workplace. Requires the revised criteria to be published in regulations within 120 days after enactment. The delay applies to Social Security or SSI mental impairment cases on which an initial CDR decision is not made prior to the date of enactment and to those cases where an intitial decision is made prior to the date of enactment but a timely appeal was pending on or after June 7, 1983. The delay does not apply to CDRs involving medical diaries or where fraud was involved in the prior determination or the individual is

engaging in SGA (except for individuals eligible for SSI benefits under section 1619).

Initial disability determinations on applications involving mental impairments (and reconsideration or hearing decisions on such determinations) can be made; however, any unfavorable decisions made after enactment must be reviewed as soon as possible after the regulations are published. If a new decision under the revised criteria is favorable, it will take effect as of the time of the earlier determination.

Unfavorable determinations of disability or continuing disability not pending on or after June 7, 1983 are not required to be reviewed under the revised criteria. However, any individual with a mental impairment who receives an unfavorable initial or continuing eligibility determination between March 1, 1981 and enactment and who reapplies for benefits within 1 year after enactment will be deemed to have reapplied at the time of the unfavorable determination for the purpose of establishing a period of disability during the period covered by the prior determination. However, benefits will be payable only for a maximum of 12 months prior to the date of the new application (that is, any retroactive benefits will be payable as under current law and regulations).

The provision reflects the concern of the Congress that some claims involving mental impairments were not adjudicated properly in the last few years and that the criteria for evaluating mental impairments require updating to make them consistent with present-day diagnosis, treatment, and evaluation of mental impairments.

Section 6 -- Notice of Reconsideration; Prereview Notice; Demonstration Projects

Requires the Secretary to notify a Social Security or SSI disability beneficiary whose case is selected for periodic review as to the nature of the review, the possibility that the review could result in the termination of benefits and his right to provide medical evidence to be used in the review.

Also requires the Secretary to implement demonstration projects in at least five States in which an opportunity for a personal appearance by the claimant prior to a Social Security or SSI disability cessation decision will be substituted for the reconsideration evidentiary hearing that is now applicable when disability benefits are terminated for medical reasons. If the initial decision was unfavorable (regardless of whether the claimant chose to make a personal appearance), the claim can then be appealed to the administrative law judge (ALJ) level.

Similarly, requires the Secretary to implement in at least five States demonstration projects in which the opportunity for a personal appearance will be provided an applicant for Social Security or SSI disability benefits prior to any initial disability determination. Effective as soon as practicable after enactment.

Requires the Secretary to report to the House Ways and Means Committee and the Senate Committee on Finance on the demonstration projects, including any recommendations, by December 31, 1986.

The demonstration projects will test whether a face-to-face meeting between the claimant and the decisionmaker at the initial stage in the adjudicative process will permit the decisionmaker to better evaluate the claimant's condition and simplify and expedite the decisionmaking process.

Section 7 -- Continuation of Benefits During Appeal

Extends the temporary provision (in P.L. 97-455 and P.L. 98-118) for Social Security disability insurance benefit continuation up to the ALJ decision to disability cessation determinations made prior to January 1, 1988. Benefits can begin with the first month after January 1983 for which such benefits are not otherwise payable and a timely request for administrative review or hearing is pending. Benefits cannot be continued for months after June 1988. (Retains provisions of P.L. 97-455 on month benefit continuation ends, overpayments and waiver consideration.)

Permanently provides that SSI disability recipients whose impairments are determined to have ceased, not to have existed or to be no longer disabling may elect benefit continuation up to the ALJ decision. Benefits can begin with the first month beginning after the date of enactment for which benefits are not otherwise payable (and a timely request for review or hearing is pending) and end with the earlier of the month preceding the month in which either (1) a decision is made after hearing or (2) no request for review or hearing is pending. Provides that if the final decision of the Secretary is that the individual is not disabled, any benefits paid under benefit continuation are overpayments. If the Secretary determines that the appeal was made in good faith, the overpaid benefits will be subject to waiver consideration.

The provision is effective upon enactment.

Also, requires the Secretary to conduct a study on the effect of this provision on the Social Security trust funds and on the rate of appeals to the ALJ level and to report the results of this study to the House Ways and Means Committee and the Senate Committee on Finance by July 1, 1986.

The intent of the provision is to prevent undue hardship to b ·iciaries who are found on appeal to be still disabled. The S 1 Security provision is temporary because other reforms in this bill should improve the quality and accuracy of determinations made at adjudicatory levels below the ALJ level, enhance the uniformity of decisions at different levels of appeal, and reduce the number of appeals and the rate of reversals by ALJs.

Section 8 -- Qualifications of Medical Professionals Evaluating Mental Impairments

Requires the Secretary to make every reasonable effort to ensure that a qualified psychiatrist or psychologist complete the medical portion of the case review and any residual functional capacity assessment, if evidence indicates the existence of a mental impairment, before determining that an individual is not disabled. Effective for initial Social Security or SSI determinations made after 60 days after the date of enactment.

Conference report language states that if the Secretary cannot assure adequate compensation to obtain the services of qualified psychiatrists or psychologists because of impediments at the State level, it would be within the Secretary's authority to contract directly for such services.

The purpose of the provision is to have qualified medical s alists evaluate mental impairment cases to help to assure a ate decisions.

Section 9 -- Consultative Examinations; Medical Evidence

Requires the Secretary to prescribe within 6 months after enactment regulations covering: (1) standards for deciding when a consultative examination should be obtained, (2) standards for the type of referral to be made, and (3) monitoring procedures for the consultative examinations and the referral process.

Also requires that the Secretary make every reasonable effort to obtain evidence from a treating physician before evaluating medical evidence obtained on a consultative basis. Requires complete medical history, covering at least the prior 12 months, to be developed before determining that an individual is not disabled. Requires that all evidence available in an individual's case record be considered in making a disability determination. These medical evidence provisions are effective on enactment.

Requiring the standards for consultative examinations to be included in regulations is intended to provide greater direction on the use of consultative examinations by State agencies,

including the use of volume providers. Requiring reasonable efforts to obtain evidence from a treating physician is intended to underscore the importance of such evidence, since the treating physician is likely to be the medical professional most able to provide a detailed, longitudinal picture of the individual's medical condition.

Section 10 -- Uniform Standards

Requires publication of regulations setting forth uniform standards for Social Security and SSI disability determinations under the Administrative Procedure Act (APA) rulemaking procedure, which would be binding at all levels of adjudication. (The APA generally requires a notice of proposed rulemaking to be published in the Federal Register, and an opportunity for public comment during a period of at least 30 days prior to the effective date of the rule.) Effective on enactment.

In the conference report, the conferees urge but do not require that all Social Security and SSI regulations relating to benefits be published under APA notice and comment rulemaking procedures.

The provision is intended to ensure public participation in the disability policymaking process (although HHS now voluntarily complies with the APA rulemaking process) and uniform decisionmaking at all levels of the disability adjudication process. The provision is not intended to affect the exception in the APA that informal policy clarifications can be issued through nonregulatory statements (such as the Social Security Rulings and the Program Operations Manual System).

Section 11 -- Payment of Costs of Rehabilitation Services

Provides several additional circumstances under which States are reimbursed for vocational rehabilitation (VR) services provided to Social Security and SSI disability beneficiaries. Reimbursement would be provided in the case of beneficiaries: (1) who medically recover but continue to receive disability benefits because they are participating in a VR program that increases the probability that they will be permanently removed from the disability rolls (reimbursement in these cases would not be contingent on the beneficiary performing SGA for at least 9 months), or (2) who refuse, without good cause, to continue to accept VR services or fail to cooperate and thus preclude successful rehabilitation. The costs of VR services provided to a beneficiary after he engages in SGA for 9 months or after his entitlement to disability ends, whichever is earlier, will not be reimbursed. Effective with respect to individuals who receive benefits (or for refusal to accept services or failure to cooperate which occurs) in or after the month of enactment.

The conference report states that reimbursement should be made in cases in which the beneficiary refuses to continue or to cooperate in a VR program only when his disability benefits are stopped because of such refusal.

By removing certain restrictions on reimbursement, the provision is intended to give assurance to providers of VR services that they will be reimbursed.

Section 12 -- Advisory Council Study

Requires the next Advisory Council on Social Security to study and make recommendations on the medical and vocational aspects of disability, using task forces of experts where appropriate. Studies must include: (1) alternative approaches to work evaluation, the feasibility of providing work evaluation stipends, screening criteria for work evaluation referrals and criteria for rehabilitation services referral under the SSI program; (2) the effectiveness of vocational rehabilitation programs for Social Security and SSI beneficiaries; and (3) the question of using specialists to complete medical and vocational evaluations at the State agency disability decisionmaking level, including the question of requiring medical specialists to complete the medical portion of each case review and any assessment of residual functional capacity in other than mental impairment cases. The Council must be appointed prior to June 1, 1985. The reporting date for the council, as provided in current law, is no later than January 1, 1987.

The provision will assure that further study is made of several important aspects of the disability programs.

Section 13 -- Qualifying Experience For Appointment of Certain Staff Attorneys to Administrative Law Judge Positions

Requires the Secretary to submit a report to the House Ways and Means Committee and the Senate Committee on Finance within 120 days of enactment on actions taken by the Secretary to establish positions to enable SSA staff attorneys to acquire sufficient qualifying experience to compete for ALJ positions.

The conference report states that it is critical to ensure that staff attorneys can qualify for ALJ positions in order to ensure the continued availability of qualified attorneys and ALJs.

Section 14 -- Supplemental Security Income Benefits for Individuals Who Perform Substantial Gainful Activity Despite Severe Medical Impairment

Extends through June 30, 1987, the temporary authority in section 1619 of the Social Security Act that continues SSI benefits and Medicaid for disabled recipients who engage in SGA despite their impairments. The temporary authority expired on December 31, 1983 and this provision is retroactive to that date. Also, requires the Secretaries of HHS and Education to establish training programs with respect to section 1619 provisions for staff personnel in SSA district offices and State VR agencies and to disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

The original section 1619 temporary authority was enacted as part of the 1980 disability amendments in order to gather information on whether the 1619 provision would lessen the work disincentives for an SSI disabled recipient who could otherwise risk the loss of SSI and Medicaid when he increased his work efforts and earnings despite his disability. The intent of continuing the authority through June 1987 is to collect additional data on the effects of the provision.

Section 15 -- Frequency of Continuing Eligibility Reviews

Requires that the Secretary promulgate regulations within 6 months after enactment which establish the standards to be used in determining the frequency of periodic eligibility reviews. Until final regulations are issued, no individual's eligibility may be reviewed under periodic review more than once.

The intent of the provision is to clarify through regulations the criteria to be used in scheduling CDR's in situations where the beneficiary has recently been found eligible for benefits after lengthy administrative appeals, or the individual has been classified administratively as being permanently disabled, or the individual's case is diaried and he is expected to recover in less than 3 years.

Section 16 -- Determination and Monitoring of Need for Representative Payee

Requires the Secretary to (1) evaluate the qualifications of prospective representative payees either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than either the entitled individual or his parent or spouse living in the same household, and (3) periodically verify that parent and spouse payees who have been living in the same

household as the beneficiary continue to do so. The conference agreement directs the Secretary to establish procedures under which large lump-sum payments will not ordinarily be paid to new representative payees until the required investigation of their suitability has been completed.

Permits the Secretary to establish a separate accounting system for State institutions for the mentally ill and mentally retarded which serve as payees and exempts Federal institutions which serve as payees from accounting. The conference agreement clarifies that all State institutions subject to onsite review are to be audited at least once every 3 years; current practice is to audit only a sample of the institutions in each State.

Also, increases the penalties for misuse of benefits by representative payees and prohibits certifying as payee any individual convicted of a felony under either title II or title XVI. Requires the Secretary to report to Congress within 9 months of enactment on implementation of this provision and annually on the number and disposition of cases of misused funds and, when feasible, other appropriate information.

Effective on enactment; for penalties, effective with respect to violations occurring on or after enactment.

The purpose of the provision is to protect beneficiaries with representative payees by requiring payees who are not close relatives or who do not live with the beneficiaries to account annually for the use made of the benefits. Additionally, requiring that spouse and parent payees verify custody rather than account avoids unnecessary intrusion in private family affairs.

Section 17 -- Measures to Improve Compliance with Federal Law

Requires the Secretary to assume the functions of a State Disability Determination Service (DDS) within 6 months of finding that the State is failing to follow Federal law and agency guidelines in making disability determinations. Such a finding would have to be made within 16 weeks of the time that the State's failure to comply first came to the attention of the Secretary. If the Secretary assumes the functions of a DDS, the Secretary would be authorized to exceed Federal personnel ceilings and waive hiring restrictions, and be required to assure, to the extent feasible, in conjunction with the Secretary of Labor, statutory protections of DDS employees not hired by the Secretary of HHS. The conference report directs the Secretary to give preference to hiring qualified DDS employees in the event that the Secretary must assume the functions of a DDS. Effective on enactment and expires on December 31, 1987.

The purpose of the provision is to provide a means to assure that the Secretary takes prompt and effective action to maintain uniform, national administration of the disability programs in the event of a State failing to make determinations in a manner consistent with law and regulations.

Section 18 -- Separability

Provides that the constitutional invalidity of any provision of the bill does not affect the other provisions of the bill.

Nonacquiescence: Statement of Managers

Currently, when a case is appealed to the courts, SSA abides by all final judgments with respect to individuals named and classes certified in an action unless and until the judgments are reversed on appeal or a stay is entered. However, we do not apply a court decision to nonlitigants when it is contrary to the Secretary's interpretation of the law and regulations. The reason for this policy is that it would be impossible to administer the nationwide Social Security program in a uniform manner if conflicting court decisions had to be applied in different jurisdictions.

Although there is no provision in the bill, the conferees included a statement in the conference report dealing with the issue of nonacquiescence. First, the conferees stated that the absence of a provision in the bill is not to be interpreted as approval of nonacquiescence as a general policy. The conferees noted that by refusing to apply circuit court interpretations and by not promptly seeking review by the Supreme Court, the Secretary forces beneficiaries to relitigate the same issue over and over again in the circuit, at substantial expense to both beneficiaries and the Federal government. The conferees urged that the policy of nonacquiescence be followed only where the administration intends to take the steps necessary to get the issue reviewed by the Supreme Court. Alternatively, the administration could seek a legislative remedy from the Congress. The conferees also said that the legal and constitutional issues raised by nonacquiescence can only be settled by the Supreme Court and urged the administration to seek a resolution of this issue.

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Social Security Disability Benefits Reform Act of 1984: Legislative History and Summary of Provisions

by Katharine P. Collins and Anne Erfle*

This article describes the legislative history of the Social Security Disability Benefits Reform Act of 1984 (Public Law 98-460), and contains a summary of the provisions in the new law. Major provisions include: standards for continuing disability reviews (CDR's) of disability insurance (DI) beneficiaries and supplemental security income (SSI) recipients who get payments based on disability or blindness; the right of a DI beneficiary or an SSI recipient to have payments continued during appeal of a CDR decision to an administrative law judge that disability or blindness has ceased; and suspension of CDR's of mentally impaired persons until the evaluation criteria for mental impairments are revised. The new law was enacted in response to problems that arose as a result of the implementation by the Social Security Administration (SSA) of a provision in the 1980 disability amendments that required periodic CDR's. In enacting the new law, Congress intended to assure more accurate, consistent, and uniform disability decisions at all levels and equitable and humane treatment not only to beneficiaries who must undergo CDR's but also to new applicants for DI benefits or SSI payments based on disability or blindness.

On October 9, 1984, President Reagan signed into law H.R. 3755 (Public Law 98-460), the Social Security Disability Benefits Reform Act of 1984. The President's signing statement noted: "This legislation, which has been formulated with the support of the Administration and passed by unanimous vote in both Houses of Congress, should restore order, uniformity, and consensus in the disability program. It maintains our commitment to treat disabled American citizens fairly and humanely while fulfilling our obligation to the Congress and the American taxpayers to administer the disability program effectively."

The first section of this article summarizes the provisions of P.L. 98-460; the second section discusses the background (the enactment and implementation of and reaction to the 1980 periodic review provision); the third section describes legislative activities during the 97th Congress (1981-82); the fourth section describes legislative activities and Administration initiatives during the 98th Congress, First Session (1983); and the fifth section describes legislative activities and Administration initiatives during the 98th Congress, Second Session (1984).

*Office of Legislative and Regulatory Policy, Office of Policy, Social Security Administration.

Summary of Provisions of Public Law 98-460

Standard of Review for Termination of Disability Benefits and Periods of Disability (Section 2)

Permits the Secretary of Health and Human Services (HHS) to terminate a beneficiary's entitlement to social security disability insurance (DI) or supplemental security income (SSI) disabled or blind benefits (hereafter referred to as SSI disability benefits), or Medicare benefits based on the disability of an individual, or to deter-

mine that a period of disability has ended on the basis that the impairment has ceased, no longer exists, or is not disabling, only if there is substantial evidence of at least one of the following:

(1) That the individual has medically improved (other than improvement not related to his or her ability to work) and is now able to engage in substantial gainful activity (SGA);

(2) That (except for SSI recipients eligible under section 1619) new medical evidence and a new assessment of the individual's residual functional capacity (RFC) demonstrate that, although the individual has not improved medically, (a) he or she has benefited from advances in medical or vocational therapy or technology, related to the ability to work, and is now able to perform SGA, or (b) he or she has undergone vocational therapy, related to the ability to work, and is now able to perform SGA;

(3) That, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment is not as disabling as it was considered to be at the time of the most recent previous disability determination and that therefore the individual is able to engage in SGA; or

(4) That, as demonstrated on the basis of evidence on the record at the time of any previous determination or newly obtained evidence relating to that determination, an earlier determination was in error.

Regardless of the new standard, benefits can be terminated if the prior determination was fraudulently obtained or if the beneficiary is engaging in SGA, cannot be located, or fails, without good cause, to cooperate in the continuing disability review (CDR) or to follow prescribed treatment that would be expected to restore his or her ability to engage in SGA.

Provides that any determination under this standard should be made neutrally—without initial inference of the presence or absence of disability—on the basis of all evidence (both past and new) available in the case file concerning the individual's past or current condition. Applies similar provisions, modified to rely on the concept of ability to perform gainful activity, to widows, widowers, and surviving divorced spouses.

Regulations for the standard of review are required to be in place within 6 months after enactment. The standard of review applies automatically only when: a determination is made by the Secretary on or after enactment; a final decision of the Secretary has not been made as of the date of enactment and a request for further administrative review is timely and properly made; a request for judicial review was pending on September 19, 1984, involving either individual litigants or class action members identified by name in the pending action on that date; or an individual has made or makes a timely request for judicial review of a final decision of the Secretary made within 60 days before enactment.

Courts are required to remand the judicial review cases described above to the Secretary for redetermination under the new standard only if the court actions raise a medical improvement question.

Courts are also required to remand cases of individuals whose impairments were found not to exist, to have ceased, or not to be disabling and who are members of a class action relating to medical improvement certified on or before September 19, 1984, and pending on that date, but who were not identified by name. The new standard of review does not apply automatically to these cases; these individuals must be notified by the Secretary by certified mail that they may request a review of their case under the new standard within 120 days of the receipt of the notice.

Any individual whose case is remanded by the court (providing he or she requests timely review, if the individual is an unidentified member of a class) may elect to have benefits continued beginning with the month of election and ending as provided in section 7, except that payment will be made at least until the time of an initial redetermination. If the new determination is a finding of disability, retroactive benefits will be paid beginning with the month of the most recent termination of benefits.

No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement, or a period of disability, made by the Secretary prior to September 19, 1984.

New determinations under this provision may be appealed in accordance with appeal rights under the present law and regulations.

The provision is intended to promote administration of the DI and SSI disability programs in a uniform manner nationwide by making explicit to the State agencies administering the programs the standards to be applied in determining continuing eligibility for benefits—the standards as set forth in national policy by Congress. The provision also represents a response to broad-based concerns that the continuing disability review requirements of the 1980 amendments resulted in unforeseen hardships to beneficiaries whose benefits were terminated even though their conditions may have been unchanged from the time they were awarded benefits. Additionally, however, the provision is intended to avoid unnecessary program expenditures by assuring that benefits can be terminated when such action is warranted.

The conference report notes that the agreement reached was an attempt "to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligi-

bility, which might make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review . . . could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls."

Evaluation of Pain (Section 3)

Provides a temporary statutory standard (through December 31, 1986) for using subjective and objective evidence in evaluating cases involving pain or other symptoms. This standard reflects the current policy of the Social Security Administration (SSA) for evaluating symptoms, including pain.

Also requires the Secretary to appoint a Commission on the Evaluation of Pain to conduct a study, in consultation with the National Academy of Sciences, concerning the evaluation of pain in determining whether or not a person is disabled under the Social Security Act. The commission must include at least 12 members from the fields of medicine, law, and disability program administration. The Secretary must submit the results of the study and any recommendations to the House Committee on Ways and Means and the Senate Committee on Finance by December 31, 1985.

The study is intended to address concerns about the use of evidence of pain, particularly subjective evidence, in making disability determinations. The interim statutory standard is to assure that SSA's current policy for evaluating pain is adhered to until the study report can be completed and evaluated; some courts have used their own standards in evaluating pain.

Multiple Impairments (Section 4)

Requires the Secretary, in determining whether a person's impairment or impairments are of such medical severity as to prevent SGA, to consider the combined effect of all impairments without regard to whether any one impairment, if considered separately, would be severe. If the combined effect of multiple impairments is determined to be severe, the combined effect will be considered throughout the sequential evaluation process. Effective for determinations made on or after December 1, 1984.

The conferees stated that they did not intend to eliminate or impair the sequential evaluation process under which a determination may be made that a person is not disabled if the impairment or combination of impairments is not severe without considering vocational factors. However, the conferees requested that the results of the planned HHS reevaluation of the criteria for nonsevere impairments (announced by Secretary Margaret M. Heckler on June 7, 1983, as part of a package of disability reform proposals) be reported to the House Committee on Ways and Means and the Senate Committee on Finance.

Moratorium on Mental Impairment Reviews (Section 5)

Delays periodic review of mentally impaired individuals until criteria for evaluating mental disorders are revised to realistically evaluate the ability of a mentally impaired person to engage in SGA in a competitive workplace. Requires the revised criteria to be published in regulations within 120 days after enactment. (A notice of proposed rulemaking was published on February 4, 1985.) The delay applies to DI or SSI mental impairment cases on which an initial CDR decision was not made before the date of enactment and to those cases where an initial decision was made before the date of enactment but a timely appeal was pending on or after June 7, 1983. The delay does not apply to CDR's involving medical diaries or where fraud was involved in the previous determination or the individual is engaging in SGA (except for individuals eligible for SSI benefits under section 1619).

Initial disability determinations on applications involving mental impairments (and reconsideration or hearing decisions on such determinations) can be made; however, any unfavorable decisions made after enactment must be reviewed as soon as possible after the regulations are published. If a new decision under the revised criteria is favorable, it will take effect as of the time of the earlier determination.

Unfavorable determinations of disability or continuing disability not pending on or after June 7, 1983, are not required to be reviewed under the revised criteria. However, any individual with a mental impairment who received an unfavorable initial or continuing eligibility determination between March 1, 1981, and enactment and who reapplies for benefits within 1 year after enactment will be deemed to have reapplied at the time of the unfavorable determination for the purpose of establishing a period of disability during the period covered by the earlier determination.

The provision reflects the concern of Congress that some claims involving mental impairments were not adjudicated properly in the last few years and that the criteria for evaluating mental impairments require updating to make them consistent with present-day diagnosis, treatment, and evaluation of mental impairments.

Notice of Reconsideration, Prereview Notice, and Demonstration Projects (Section 6)

Requires the Secretary to notify a DI or SSI disability beneficiary whose case is selected for periodic review as

to the nature of the review, the possibility that the review could result in the termination of benefits, and the right to provide medical evidence to be used in the review.

Also requires the Secretary to implement demonstration projects in at least five States in which an opportunity for a personal appearance by the beneficiary before a DI or SSI disability cessation decision will be substituted for the reconsideration evidentiary hearing that is now applicable when DI benefits are terminated for medical reasons. If the initial decision is unfavorable (whether or not the claimant chose to make a personal appearance), the claim may be appealed to an administrative law judge (ALJ).

Similarly, requires the Secretary to implement in at least five States demonstration projects in which the opportunity for a personal appearance will be provided to an applicant for DI or SSI disability benefits before any initial disability determination is made. Effective as soon as practicable after enactment.

Requires the Secretary to report about those projects, including any recommendations, to the House Committee on Ways and Means and the Senate Committee on Finance by December 31, 1986.

The demonstration projects will test whether a face-to-face meeting between the claimant and the decisionmaker at the initial stage in the adjudicative process will permit a better evaluation of the claimant's condition and simplify and expedite the decisionmaking process.

Continuation of Benefits During Appeal Process (Section 7)

Extends the temporary provision (in P.L. 97-455, as amended by P.L. 98-118) for DI benefit continuation up to the time of ALJ decision to disability cessation determinations made prior to January 1, 1988. Benefits can begin with the first month after January 1983 for which such benefits are not otherwise payable and a timely request for administrative review or hearing is pending. Benefits cannot be continued for months after June 1988. (Retains provisions of P.L. 97-455 on the month benefit continuation ends, overpayments, and waiver consideration.)

Permanently provides that SSI disability recipients whose impairments are determined to have ceased, not to have existed, or to be no longer disabling may elect benefit continuation up to the time of the ALJ decision. Benefits can begin with the first month beginning after the date of enactment for which benefits are not otherwise payable (and a timely request for review or hearing is pending) and end with the earlier of the month preceding the month in which either (1) a decision is made after hearing or (2) no request for review or hearing is pending. Provides that if the final decision of the Secretary is that the individual is not disabled, any benefits paid under benefit continuation are overpayments. If the Secretary determines that the appeal was made in good faith, the overpaid benefits will be subject to waiver consideration. Before enactment of this provision, SSI payments were continued through the ALJ hearing—based on a Supreme Court decision, **Goldberg** v. **Kelley**, which held that the benefits of a welfare recipient cannot be terminated without providing the opportunity for an evidentiary hearing. The provision is effective upon enactment.

Also, requires the Secretary to conduct a study on the effect of this provision on the social security trust funds and on the rate of appeals to the ALJ level and to report the results of this study to the House Committee on Ways and Means and the Senate Committee on Finance by July 1, 1986.

The intent of the provision is to prevent undue hardship to beneficiaries who, on appeal, are found to be still disabled. The DI provision is temporary because other reforms in this bill should improve the quality and accuracy of determinations made at adjudicatory levels below the ALJ level, enhance the uniformity of decisions at different levels of appeal, and reduce the number of appeals and the rate of reversals by ALJ's.

Qualifications of Medical Professionals Evaluating Mental Impairments (Section 8)

Requires the Secretary to make every reasonable effort to ensure that a qualified psychiatrist or psychologist completes the medical portion of the case review and any residual functional capacity assessment, if evidence indicates the existence of a mental impairment, before determining that an individual is not disabled. Effective for initial DI or SSI determinations made after 60 days after the date of enactment.

Conference report language states that if the Secretary cannot assure adequate compensation to obtain the services of qualified psychiatrists or psychologists because of impediments at the State level, it would be within the Secretary's authority to contract directly for such services. The purpose of the provision is to have qualified medical specialists evaluate mental impairment cases to help to assure accurate decisions.

Consultative Examinations and Medical Evidence (Section 9)

Requires the Secretary to prescribe, within 6 months after enactment, regulations covering: (1) standards for deciding when a consultative examination (CE) should be obtained, (2) standards for the type of referral to be made, and (3) monitoring procedures for the CE's and the referral process.

Also requires the Secretary to make every reasonable effort to obtain evidence from a treating physician

before evaluating medical evidence obtained on a consultative basis. Requires that a complete medical history, covering at least the last 12 months, be developed before determining that an individual is not disabled. Requires that all evidence available in an individual's case record be considered in making a disability determination. These medical evidence provisions are effective on enactment.

Requiring that the standards for CE's be included in regulations is intended to provide greater direction on the use of CE's by State agencies. Requiring that reasonable efforts be made to obtain evidence from a treating physician is intended to underscore the importance of such evidence, since the treating physician is likely to be the medical professional most able to provide a detailed, longitudinal picture of the individual's medical condition.

Uniform Standards (Section 10)

Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under the Administrative Procedure Act (APA) rulemaking procedure, which will be binding at all levels of adjudication. (The APA rulemaking procedures generally require a notice of proposed rulemaking to be published in the **Federal Register**, allowing an opportunity for public comment before final publication.) Effective on enactment. The conferees' report urges, but does not require, that all social security and SSI regulations relating to benefits be published under APA notice and comment rulemaking procedures.

The provision is intended to ensure public participation in the disability policymaking process (although HHS now voluntarily complies with the APA rulemaking process) and uniform decisionmaking at all levels of the disability adjudication process. The provision is not intended to preclude nonregulatory issuances (such as the **Social Security Rulings** and the **Program Operations Manual System** (POMS)).

Payment of Costs of Rehabilitation Services (Section 11)

Provides two additional circumstances under which States will be reimbursed for vocational rehabilitation (VR) services provided to DI beneficiaries and disabled or blind SSI recipients. Reimbursement will be provided in the case of beneficiaries or recipients: (1) who medically recover but continue to receive disability benefits or payments because they are participating in a VR program that increases the probability that they will be permanently removed from the disability rolls, or (2) who refuse, without good cause, to continue to accept VR services or fail to cooperate and thus preclude successful rehabilitation. Reimbursement in these two situations will not be contingent on the beneficiary performing SGA for at least 9 months. However, the costs of VR services provided to a beneficiary or recipient after he or she engages in SGA for 9 months or after his or her entitlement to disability benefits or payments ends, whichever is earlier, will not be reimbursed.

For a VR agency to be paid under the first of the above two circumstances, the beneficiary or recipient must have received payment, based on continued participation in a VR program, in or after November 1984. Under the second circumstance, the beneficiary or recipient must, without good cause, have refused to continue to participate in a VR program or failed to cooperate in such a manner as to preclude successful rehabilitation in a month after October 1984.

The conference report states that reimbursement should be made in cases in which the beneficiary or recipient refuses to continue to participate or to cooperate in a VR program only when his or her benefits or payments are stopped because of such refusal. By removing certain restrictions on reimbursement, the provision is intended to assure providers of VR services that they will be reimbursed.

Advisory Council Study (Section 12)

Requires the next Advisory Council on Social Security to study and make recommendations on the medical and vocational aspects of disability, using task forces of experts where appropriate. Studies must include: (1) alternative approaches to evaluating the ability to work of SSI applicants and recipients, the feasibility of providing work evaluation stipends to those applicants and recipients, screening criteria for work evaluation referrals, and criteria for rehabilitation services referral under the SSI program; (2) the effectiveness of VR programs for DI beneficiaries and SSI recipients; and (3) the question of using specialists to complete medical and vocational evaluations at the State agency disability decisionmaking level, including the question of requiring medical specialists to complete the medical portion of each case review and any assessment of residual functional capacity in other than mental impairment cases. The Council must be appointed prior to June 1, 1985. The reporting date for the Council, as provided in current law, is no later than January 1, 1987. The provision will assure that further study is made of several important aspects of the disability programs.

Qualifying Experience for Appointment of Certain Staff Attorneys to ALJ Positions (Section 13)

Requires the Secretary to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance, within 120 days of enactment,

on actions taken by the Secretary to establish positions to enable SSA staff attorneys to acquire sufficient qualifying experience to compete for ALJ positions. The conference report states that it is critical to ensure that staff attorneys can qualify for ALJ positions in order to ensure the continued availability of qualified attorneys and ALJ's.

SSI Benefits for Individuals Who Perform SGA Despite Severe Medical Impairment (Section 14)

Extends through June 30, 1987, the temporary authority in section 1619 of the Social Security Act that continues SSI payments and Medicaid for disabled recipients who engage in SGA despite their severe impairments. The temporary authority expired on December 31, 1983, and this provision is retroactive to that date. Also, requires the Secretaries of HHS and Education to establish training programs with respect to section 1619 provisions for staff personnel in SSA district offices and State VR agencies and to disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

The original section 1619 temporary authority was enacted as part of the 1980 disability amendments in order to gather information on whether or not that provision would lessen the work disincentives for an SSI disabled recipient who would otherwise risk the loss of SSI and Medicaid when work efforts and earnings were increased despite the disability. The intent of continuing the authority through June 1987 is to collect additional data on the effects of the provision.

Frequency of Continuing Eligibility Reviews (Section 15)

Requires that the Secretary promulgate regulations within 6 months after enactment that establish the standards to be used in determining the frequency of periodic eligibility reviews. Until final regulations are issued, no individual's eligibility may be reviewed more than once under periodic review.

The intent of the provision is to clarify, through regulations, the criteria to be used in scheduling CDR's in situations where the beneficiary has recently been found eligible for benefits after lengthy administrative appeals, or the individual has been classified administratively as being permanently disabled, or the individual's case is diaried and he is expected to recover in less than 3 years.

Determination and Monitoring of Need for Representative Payee (Section 16)

Requires the Secretary to: (1) evaluate the qualifications of prospective representative payees either before or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than either the entitled individual or his parent or spouse living in the same household, and (3) periodically verify that parent and spouse payees who have been living in the same household as the beneficiary continue to do so. The conference agreement directs the Secretary to establish procedures under which large lump-sum payments will not ordinarily be paid to new representative payees until the required investigation of their suitability has been completed.

Permits the Secretary to establish a separate accounting system for State institutions that serve as payees for the mentally ill and mentally retarded, and exempts from accounting Federal institutions that serve as payees. The conference agreement clarifies that all State institutions subject to onsite review are to be audited at least once every 3 years; current practice is to audit only a sample of the institutions in each State.

Also, increases the penalties for misuse of benefits by representative payees and prohibits certifying as payee any individual convicted of a felony under either title II or title XVI. Requires the Secretary to report to Congress about implementation of this provision within 9 months of enactment and annually on the number and disposition of cases of misused funds and, when feasible, other appropriate information. Effective on enactment; for penalties, effective with respect to violations occurring on or after enactment.

The purpose of the provision is to protect beneficiaries with representative payees by requiring payees who are not close relatives or who do not live with the beneficiaries to account annually for the use made of the benefits. Additionally, requiring that spouse and parent payees verify custody, rather than account, avoids unnecessary intrusion in private family affairs.

Measures to Improve Compliance With Federal Law (Section 17)

Requires the Secretary to assume the functions of a State Disability Determination Service (DDS) within 6 months of finding that the State is substantially failing to follow Federal law and agency guidelines in making disability determinations. Such a finding would have to be made within 16 weeks of the time that the State's failure to comply first came to the attention of the Secretary. If the Secretary assumes the functions of a DDS, the Secretary would be authorized to exceed Federal personnel ceilings and waive hiring restrictions, and be required to assure, to the extent feasible, in conjunction with the Secretary of Labor, statutory protections of DDS employees not hired by the Secretary of HHS. The conference report directs the Secretary to give preference to hiring qualified DDS employees in the event that

the Secretary must assume the functions of a DDS. Effective on enactment and expires on December 31, 1987. The purpose is to provide a means to assure that the Secretary takes prompt and effective action to maintain uniform, national administration of the disability programs in the event of a State failing to make determinations in a manner consistent with law and regulations.

Separability (Section 18)

Provides that the constitutional invalidity of any provision of the bill does not affect the other provisions of the bill.

Nonacquiescence: Statement of Managers

Although P.L. 98-460 contains no provision dealing with the issue of SSA nonacquiescence with certain court decisions, the conferees included a statement on this subject in the conference report.

Currently, when a case is appealed to the courts, SSA abides by all final judgments with respect to individuals named and classes certified in an action, unless and until the judgments are reversed on appeal or a stay is entered. However, SSA does not apply a court decision to nonlitigants when it is contrary to the Secretary's interpretation of the law and regulations. One reason for this policy is that it would be impossible to administer the nationwide social security program in a uniform manner if conflicting court decisions had to be applied in different jurisdictions.

In the conference report, first, the conferees stated that the absence of a provision is not to be interpreted as approval of nonacquiescence as a general policy. They noted that by refusing to apply circuit court interpretations and by not promptly seeking review by the Supreme Court, the Secretary forces beneficiaries to relitigate the same issue over and over in the circuit, at substantial expense to both beneficiaries and the Federal Government. The conferees urged that the policy of nonacquiescence be followed only where the Adminstration intends to take the steps necessary to have the issue reviewed by the Supreme Court. Alternatively, the Administration could seek a legislative remedy from the Congress. The conferees also said that the legal and constitutional issues raised by nonacquiescence can only be settled by the Supreme Court and urged the Administration to seek a resolution of this issue.

Background: Enactment, Implementation, and Reaction to 1980 Periodic Review Provision

Enactment

The last major enacted disability legislation was the Social Security Disability Amendments of 1980 (P.L. 96-265), which was signed into law by President Carter on June 9, 1980.[1]

The provisions of the 1980 amendments reflected a number of concerns of the Congress and the Executive Branch that related primarily to the rapid growth in the DI benefit rolls in the early 1970's. The President's signing statement described the legislation as "a balanced package, with amendments to strengthen the integrity of the disability programs, increase equity among beneficiaries, offer greater assistance to those who are trying to work, and improve administration."

One provision—section 311—was aimed at improving program administration by assuring that only those who meet the definition of disability in the law continued to receive benefits. Section 311 requires that, beginning in January 1982, the Secretary of HHS review the status of all nonpermanently disabled DI beneficiaries every 3 years. The Secretary is required to review the status of permanently disabled beneficiaries at such times as the Secretary considers appropriate.

Before enactment of this provision, SSA had reviewed only a small percentage of disability cases (about 150,000 a year). It had reviewed only cases in which: (1) at the time of the initial determination, it was expected that the beneficiary's medical condition would improve; (2) the beneficiary's earnings record indicated work activity; or (3) a beneficiary voluntarily reported work activity or medical improvement. The previous review process failed to identify other cases where the beneficiary had medically improved as well as cases in which the initial determination of disability was incorrect or those in which the impairment might no longer be considered disabling because of medical advances.

Implementation of Periodic Review

In March 1981, SSA began implementing the periodic reviews, 9 months before implementation was required by the 1980 disability amendments. (It already had the authority under pre-1980 law to review the continuing disability status of beneficiaries.) A major reason for the decision to begin the reviews in March 1981 was a draft report by the General Accounting Office (GAO) indicating that as many as 1 in 5 workers on the disability rolls might be ineligible for benefits and that the payment of benefits to ineligible persons might be costing the social security disability insurance trust fund $2 billion per year. The draft GAO report urged SSA to redirect all available resources toward removing ineligible individuals from the DI benefit rolls. Studies by SSA also had indicated that a significant number of beneficiaries on the rolls did not meet the legal definition of disability.

[1] See "Social Security Disability Amendments of 1980: Legislative History and Summary of Provisions," **Social Security Bulletin**, April 1981, pages 14-31.

Another reason for accelerating the reviews was to ease the administrative burden. If SSA had started the reviews in January 1982, the State agencies would have had to do about 500,000 periodic reviews in fiscal year 1982 in addition to regular reviews. Instead, by starting in March 1981, there were 18 months in which to spread the first year periodic review workload, thus ameliorating its impact on the State agencies.

It was also decided by SSA that implementation of the periodic review process would be more effective if the cases selected for review were those of beneficiaries most likely not to be disabled. Therefore, SSA developed a case selection system based on specific profiles using such characteristics as current age of the beneficiary, date of entitlement, total amount of benefits paid, numbers and kinds of auxiliary beneficiaries, and age of the beneficiary when he or she first claimed benefits.

Reaction

Shortly after implementation, periodic review began to be criticized by the public and Congress. The major reasons for the adverse reaction were the great increase in the number of cases subjected to CDR's; the large number of persons dropped from the DI rolls, many of whom had been on the rolls for a number of years and had not expected their cases to be reviewed; and the public attention given to a number of cases in which beneficiaries were erroneously dropped from the rolls. The public criticism of the harsh effects of periodic review was heightened by the fact that more than half of those removed from the rolls were reinstated upon appeal. Advocacy groups for the disabled raised questions about SSA's termination policies and procedures and petitioned Congress for legislative relief.

One result of the widespread concern about the DI program was that a large number of congressional hearings were held. The Administration was asked to testify at an unusually large number of them—including field hearings and hearings by committees other than the House Committee on Ways and Means and the Senate Committee on Finance, which have general jurisdiction over legislation relating to the social security program. In all, 27 hearings were held: 14 in Washington, D.C., and 13 throughout the country. (See appendix A for a list of hearings.)

Later, concerns about the disability process were raised by the Federal courts and the States. The major issues related to: requiring medical improvement before benefits could be terminated, the criteria for disability decisions in mental impairment cases, and SSA's policy of nonacquiescence in certain court decisions. (See appendix B for a summary of major litigation and appendix C for a chronology of major State actions relating to the DI program.)

The events that led to enactment of the 1984 disability legislation were also unusual. Because many of the criticisms of the CDR program involved administrative policies, a great many administrative changes were made beginning in 1982 to deal with these criticisms. Thus, the disability legislation as finally enacted reflects, in part, the evolution of the CDR administrative process since 1981.

Activities During the 97th Congress (1981-82)

Subcommittee on Social Security, House Committee on Ways and Means

On April 9, 1981, Representative J.J. Pickle (D., TX), Chairman of the Subcommittee on Social Security of the House Committee on Ways and Means, introduced H.R. 3207, which was primarily intended to address social security financing problems. However, the bill included five provisions related to making social security disability determinations: (1) including in the law an explicit statement of SSA's policy on pain; (2) requiring own-motion review of a specific percentage of ALJ disability awards (the 1980 disability amendments provision sponsored by Senator Bellmon required no specific percentage to be reviewed); (3) providing that disability determination guidelines in the regulations, the **Social Security Rulings**, and the POMS would apply at all levels of the adjudicative process; (4) automatically increasing the SGA and trial-work monthly dollar amounts; and (5) authorizing trust fund monies to pay for certain medical education and establishing a permanent Advisory Council on the Medical Aspects of Disability. The provisions did not relate to problems with the CDR process since these had not yet become evident.

On July 24, 1981, during the subcommittee markup of H.R. 3207, the subcommittee approved all the abovementioned disability provisions, but the bill was never reported out of the subcommittee. However, on November 4, Representative Pickle and Representative Barber B. Conable, Jr. (R., NY), the ranking minority member of the Ways and Means Committee, offered an amendment in the committee to H.R. 4331 (a bill relating to the restoration of the minimum benefit). The amendment included the five disability provisions previously approved by the subcommittee. Also included in the amendment was a provision to eliminate, in 1983 and thereafter, the requirement that SSA do a 65-percent preeffectuation review of State agency allowances. (The 1980 amendments had required SSA to review, before effectuating payment of benefits, 15 percent of all favorable determinations in fiscal year 1981, 35 percent in fiscal year 1982, and 65 percent in 1983 and there-

after.) The amendment was not adopted by the committee. No further action was taken in 1981 on the disability provisions by either the subcommittee or the full committee.

On March 3, 1982, Representative Pickle and Representative Bill Archer (R., TX), the ranking minority member of the subcommittee, introduced H.R. 5700, the Disability Amendments of 1982. In introducing the bill, Representative Pickle indicated that he and many subcommittee members were concerned about what appeared to be precipitous terminations of benefits of individuals who had been on the disability rolls for some time, the need for some special adjustments and allowances for these individuals, and the disparity of adjudicative standards used by the State agencies and the ALJ's. The bill included the following provisions:

(1) **Continued payment of DI benefits during appeal**—would allow a DI beneficiary whose benefits were terminated on medical grounds to elect to have benefits continued through the reconsideration level of appeal.

(2) **Adjustment bénefits**—would provide through 1984 an additional 4 months of benefits in cases of medical termination for individuals who had been on the DI rolls at least 36 months.

(3) **Benefit payments not to be treated as overpayments**—would provide that any benefits paid before the month a DI beneficiary was notified that his or her benefits were being terminated on medical grounds would not be considered overpayments unless the termination was delayed due to the beneficiary's willful neglect to report his or her medical condition. This provision was intended to protect the beneficiary against large overpayments on the grounds that it was not his or her fault that SSA had failed to review the beneficiary's continuing eligibility in the past.

(4) **Closing of the record on applications involving determinations of disability**—
   (a) Would close the record for purposes of introducing evidence after the reconsideration level of appeal. If the claimant who appealed beyond the reconsideration level had additional evidence concerning the impairment considered at reconsideration, the case would be remanded to the State agency for additional review. (If the evidence related to a new impairment or a worsening of the original impairment after reconsideration, the claimant would have to file a new claim for DI benefits.) This provision was intended to strengthen reconsideration, which many claimants and their attorneys considered a rubber-stamp process. The provision would place full responsibility for documenting cases on the State agencies and would enable ALJ's to decide cases on the record.
   (b) Would lengthen the time in which a DI claimant could request a reconsideration from 60 days to 6 months. This provision was also intended to make reconsideration more meaningful. Chairman Pickle said that within the 6-month period the case could become more developed and evidence might be presented showing a changed medical condition.
   (c) Would provide a face-to-face evidentiary hearing at reconsideration (through SSA employees if the State agency wished) for DI medical termination cases beginning in January 1984. This provision was intended to make the reconsideration level of appeal more meaningful and to extend the due process hearing requirement for the termination of SSI disability benefits to DI beneficiaries.

(5) **Own-motion review**—would require the Secretary to conduct an own-motion review of 15 percent of ALJ allowances in fiscal year 1982 and 35 percent thereafter.

(6) **Additional insured-status requirement**—would require that for a worker to be insured for DI benefits, the worker must have 8 quarters of coverage (QC's) in the 24-quarter period before the onset of disability. This requirement would be in addition to the present requirement that the worker be fully insured and have 20 QC's in the 40-quarter period before disability. This provision was intended to provide a better measure than the 20/40 test of whether a disabled person left the workforce because of his or her disability rather than for some other reason.

(7) **Establishment of Social Security Court**—would establish a Social Security Court to replace the existing Federal district court review of social security claims. This provision was intended to address the problems of: (a) inconsistent judicial precedents that sometimes led HHS to issue social security rulings of nonacquiescence in the decisions; and (b) growing backlogs of disability cases in the already overburdened Federal courts.

(8) **Attorney fees**—
   (a) Would prohibit social security trust fund expenditures for the fixing of attorney fees for representation of claimants before the Secretary of HHS and the certification from the social security claimant's past-due benefits of payments to an attorney for representing the claimant before the Secretary or a court. This provision was introduced for study only; the Administration had included the provision as appropriations language in the fiscal year 1983 budget in order to permit SSA to devote more resources to reducing heavy hearing and postadjudicative workloads and claims processing times and to largely eliminate Federal involvement in private contracts between claimants and their representatives.
   (b) Would exempt social security administrative adjudications and court cases from the provisions of the Equal Access to Justice Act (EAJA). (The EAJA legislation provides that the Federal Government will pay legal costs of adversary administrative actions or judicial proceedings to a party who prevails against the Government, unless the Government's position was substantially justified.)

(9) **Prohibition against interim benefits**—would emphasize that the Social Security Act does not permit SSA to pay benefits before a final determination of entitlement is made. Some courts had established time limits for the adjudication of social security cases and had ordered SSA to pay benefits if the limits were not met.

(10) **Amendments relating to the reduction of DI benefits to offset other related payments**—would make minor and technical changes in the workers' compensation offset and public benefit offset provisions.

(11) **Payment for medical examinations in making disability determinations**—would require provider reimbursement payments for purchased CE's to be determined under the reimbursement principles used in the Medicare program. Would remove States from any payment involvement; payment would be made by a private SSA "carrier" selected through competitive bidding. This provision was intended to ensure that the fees for CE's would keep pace with increases in fees for comparable services so that State agencies would be able to maintain adequate sources of CE's and would not have to rely on volume providers for CE's.

(12) **Payment of costs of rehabilitation services from trust funds; experiments and demonstration projects**—

(a) Would establish a new VR program in fiscal years 1983-84 to provide evaluation and placement services for beneficiaries whose benefits were terminated on medical grounds.

(b) Would provide additional reimbursement from social security trust funds to States and other public or private sources for the cost of evaluation services provided to DI beneficiaries and the cost of VR services provided to a social security DI beneficiary who refused VR or failed to cooperate and thus precluded successful rehabilitation. Also, would permit SSA to continue to use State VR services or to contract with private or other public agencies.

(c) Would require the Secretary to undertake in five States within 18 months of enactment at least 10 experiments designed to demonstrate how best to use public or private agencies to provide VR services to disabled beneficiaries.

This provision was intended to "revitalize" the program of using social security trust fund monies for VR services.

(13) **Evaluation of pain**—would provide an explicit statement in the law of SSA's policy on pain—that is, a claimant's testimony as to pain and other symptoms would not alone permit a finding of disability unless medical signs and findings established by medically acceptable clinical or laboratory diagnostic techniques showed a medical condition that could reasonably be expected to produce the pain or other symptoms. The provision was intended to remove a chronic problem: that State agencies, ALJ's and Federal courts use different standards for evaluating pain.

(14) **Guidelines for disability determinations**—would provide that the regulations, the **Social Security Rulings**, and the adjudicative standards in part 4 of the POMS, which govern the adjudication of disability cases by the State agencies, would apply to all levels of adjudication of disability determinations. The provision was intended to promote uniformity in decisionmaking by assuring that State agencies and ALJ's use the same standards.

(15) **Substantial gainful activity and trial work**—would make the monthly SGA level (the amount of earnings from work that is considered to show that a DI beneficiary is able to perform SGA and is therefore not disabled—$300 in 1981) the same as the monthly equivalent of the earnings test exempt amount for people younger than age 65 (the amount of earnings a nondisabled social security beneficiary can earn from work without losing any benefits—$340 in 1981) and provide that the SGA level would be automatically adjusted, as is the earnings test amount, to keep up with increases in wages. Also, would similarly automatically increase the monthly amount of earnings that causes a month to be counted under the 9-month trial work provision for DI beneficiaries ($75 in 1981). The intent of the provision was to ensure that both these amounts were kept up-to-date with wage increases. Under present law, the Secretary of HHS has the authority to set the SGA and trial work period levels; the levels had not been increased since January 1980 and January 1979, respectively.

(16) **Medical school courses and continuing education in disability**—would authorize social security trust fund monies to: (a) pay the cost of courses in medical schools to provide instruction to medical students in evaluating medical impairments; (b) pay for the continuing education of physicians participating in the disability determination process; and (c) establish an Advisory Council on the Medical Aspects of Disability to give the Secretary of HHS advice on medical and certain other aspects of the disability determination process and to oversee the education referred to in (a) and (b) above. This provision was intended to improve the quality of medical evidence used in disability claims and enhance the evaluation of disability.

On March 16 and 17, 1982, the subcommittee held hearings on H.R. 5700. In his testimony, Social Security Commissioner John A. Svahn said that SSA had been moving aggressively to find administrative solutions to problems with the DI program. He described various administrative initiatives: (1) no longer determining that a person had medically recovered in the past and must repay benefits when the delay in the determination was SSA's fault; (2) expanding the use of **Social Security Rulings** to assure uniform application of disability standards at all levels of adjudication; (3) doing sample reviews of initial denials (as well as allowances) on a preeffectuation basis; (4) expanding the ALJ corps and

support staff to reduce the hearings backlog and speed up case processing; and (5) increasing productivity in hearings offices by efficient use of resources.

Commissioner Svahn said that while some legislative changes were desirable, he would not at that point take a position either on the individual provisions of H.R. 5700 or on the bill as a whole. However, he stated that the bill addressed serious problems in the DI program and offered some constructive approaches to dealing with those problems.

Other witnesses said that since more than two-thirds of those whose benefits were terminated later returned to the DI rolls, the CDR process created unnecessary hardship for beneficiaries. They also said that the medical evidence used to make decisions was inadequate, and that the disability criteria used in mental impairment cases were not related to employability. Most of the testimony from advocacy groups for the disabled and attorneys who represented the disabled generally supported the provisions of H.R. 5700 that revised the CDR process, but more far-reaching reforms were urged.

Testimony also generally opposed the provisions closing the record at reconsideration (because most claimants do not secure representation until after reconsideration), applying the POMS to ALJ's (because the witnesses believed that State agencies, not ALJ's, were making incorrect decisions), changing the attorney fee provisions (because the witnesses feared that claimants for DI benefits would be less likely to be able to secure the services of an attorney if the fee were not withheld from past-due benefits), and exempting social security cases from the EAJA (because the witnesses believed that often SSA's position was not substantially justified). Many witnesses opposed any tightening of the insured-status requirements.

On March 23, 24, and 25, 1982, the subcommittee marked up H.R. 5700 and made the following major changes: (1) would not close the record after reconsideration if there was good cause for the evidence not having been submitted; (2) required the Secretary to ensure that uniform disability standards are used at all adjudicative levels; and (3) modified the own-motion review provision to require a 15-percent review of favorable ALJ decisions in fiscal year 1982 and a 25-percent review for fiscal years 1983–86, plus a 10-percent review of all State agency decisions in the same period with five-sixths of the cases reviewed to be allowances. Two amendments by Representative James M. Shannon (D., MA) were adopted: (1) requiring that experience as a GS-12 staff attorney in SSA's Office of Hearings and Appeals count toward qualifying as an ALJ; and (2) stating in law that the APA applies to ALJ decisions. Dropped from the bill were provisions relating to the Social Security Court, attorney fees, the EAJA, medical courses and continuing education on disability, reimbursement for CE's, and disability insured status. H.R. 5700 was reported to the full Committee on Ways and Means on April 1, 1982.

On April 28, 1982, HHS Secretary Richard S. Schweiker and Commissioner Svahn announced that "The Reagan Administration wishes to be fair to people whose cases are being reviewed, and to prevent financial hardship for persons who appeal their removal from the disability rolls during the time their appeals are pending . . . We support the provision in H.R. 5700 . . . permitting beneficiaries to continue receiving payments during the first level of the appeal process. We agree, too, with the section of the legislation allowing face-to-face contact during the initial appeals process to help assure that decisions on appeals are made correctly."

House Committee on Ways and Means

On April 28, 1982, the committee began to mark up H.R. 5700 and made decisions on every provision of the bill except the one closing the record at reconsideration. After the committee completed this action, Representative Pickle introduced a new disability bill, H.R. 6181, which contained the provisions of H.R. 5700 as modified by the committee to make certain provisions applicable to the SSI program and to make minor and technical changes in the workers' compensation offset and the public disability offset.

At Representative Pickle's request, the committee deferred consideration of H.R. 6181 until he could reach agreement with the members on the closed record provision. On May 19, the committee again took up H.R. 6181 and approved an amendment offered by Representative Pickle that would close the record at reconsideration only in cases where the claimant had been offered a face-to-face evidentiary hearing reconsideration, require the evidentiary hearing to be reasonably accessible to the claimant, and permit States to begin to hold the hearings before the 1984 effective date, if they so elected. An amendment offered by Representative Harold Ford (D., TN) to drop the closed record provision was narrowly defeated. At the request of the Committee on the Judiciary, which wanted to consider it, the committee dropped the provision relating to counting SSA staff attorney experience toward qualifying as an ALJ.

The committee then ordered H.R. 6181 favorably reported to the full House. Representative Dan Rostenkowski (D., IL), Chairman of the Committee on Ways and Means, said that he would request the Committee on Rules to provide that H.R. 6181 be considered on the House floor under a modified closed rule, with only an amendment to delete the closed record provision being in order. In mid-July, the Committee on Ways and Means withdrew H.R. 6181 from consideration by the

Rules Committee because of serious disagreements in the House over the closed rule.

Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs

On May 25, 1982, the subcommittee held an oversight hearing to consider the problems with the CDR process. In his testimony, Paul B. Simmons, Deputy Commissioner of Social Security, detailed the steps SSA was taking to improve the disability process. In addition to the SSA initiatives described by Commissioner Svahn at the March 16 hearing, Mr. Simmons noted that SSA was: (1) classifying more beneficiaries as permanently disabled so that they are exempt from the 3-year CDR process; (2) requiring State agencies to furnish more detailed explanations of decisions to terminate benefits; (3) improving decisionmaking by physicians employed by SSA and the State agencies through special training; (4) requiring that State agencies attempt to get all medical evidence of record for the previous 12 months; and (5) doubling the number of quality reviews of cases of benefit termination and studying terminations to determine which kinds are especially error-prone.

Several witnesses at the hearing testified in favor of a medical improvement standard. Many statements were submitted for the record by advocacy groups for the disabled, attorneys, and representatives of mental health groups. In general, the statements: criticized SSA's CDR procedures (especially inadequate development of medical evidence and failure to take into account allegations of pain and vocational factors); said SSA was emphasizing State agency speed over accuracy; and highlighted the special difficulties of the mentally ill under the paper review process and SSA's overly stringent standards for the mentally ill to qualify for benefits. Many of these statements opposed the provisions in H.R. 6181 closing the record at reconsideration and applying the POMS to ALJ's.

Gregory J. Ahart, Director, Human Resources Division, General Accounting Office (GAO), submitted a statement for the record identifying problems with the CDR process. Mr. Ahart stated that many of those losing benefits had been on the rolls for years, still have severe impairments and have experienced little or no medical improvement. He said the primary reason for this situation was that CDR cases were being adjudicated as if they were new disability claims with no presumptive effect given to the previous finding of disability or to the length of time the individual had been receiving benefits. In many cases, benefits had been awarded years ago under a more liberal, less objective evaluation process, but the CDR decision was being made under more stringent guidelines in a tougher adjudicative climate.

Mr. Ahart noted that SSA had used a medical improvement standard from 1969 until 1976 and that several court decisions suggested that some form of such a standard be used. He said that Congress should state whether a medical improvement standard should be used and how CDR cases should be dealt with where there is no medical improvement but the initial award was clearly erroneous or the case was reviewed under changed eligibility criteria.

On June 24, 1982, Subcommittee Chairman William S. Cohen (R., ME) and Senator Carl Levin (D., MI) introduced S. 2674 to reform the CDR process by: (1) requiring the Secretary to show before terminating DI benefits that the beneficiary had medically improved or was working, or that the earlier decision was based on fraud or clear error; (2) including SSA's policy on evaluating pain in the law; (3) requiring State agency face-to-face interviews at the initial level of review with beneficiaries whose benefits were likely to be terminated; (4) eliminating reconsideration in medical cessation cases; (5) allowing a disability beneficiary to elect continued benefits through the ALJ appeals level in medical cessation cases, subject to overpayment recovery if the cessation was upheld; and (6) imposing uniform standards on all disability decisionmakers with the standards being published under the APA public notice and comment requirements.

On July 13, 1982, Senators Cohen and Levin introduced S. 2725, which permitted continuation of benefits during appeal to the ALJ level and directed the Secretary to modify the 3-year periodic review process as necessary to ensure that sufficient staff and time were available to conduct high quality reviews. The two Senators stated that they intended to offer the legislation as a floor amendment at the earliest opportunity in order to provide immediate relief to beneficiaries and to give Congress enough time to consider the more comprehensive measures in S. 2674.

Senate Committee on Finance

On August 18, 1982, the committee met to hear testimony on the CDR process and to assess the overall operation of the disability determination process since the 1980 amendments. Deputy Commissioner Simmons reviewed the many administrative actions that had been taken over the last several months: doubling the number of reviews of unfavorable State agency decisions; requiring that State agencies review all medical evidence available during the past year; developing plans for face-to-face evidentiary hearings at reconsideration; considering providing a face-to-face interview in the district office at the beginning of each CDR; broadening the definition of permanently disabled, which was expected to exempt an additional 165,000 beneficiaries from the CDR process during the next

fiscal year; and exercising a selective moratorium in August and September 1982 on sending CDR cases to States with unusually large backlogs. He reiterated that the Administration supported most of the provisions of H.R. 6181.

Representatives of the Pennsylvania, Minnesota, and New York State agencies testified about their problems with large CDR caseloads and about the adverse effects on beneficiaries when benefits are terminated abruptly. All these witnesses mentioned the large proportion of mentally ill beneficiaries who were found no longer disabled. Many advocacy groups submitted testimony for the record generally supporting legislation to: slow down CDR's; impose a medical improvement standard; publish uniform disability standards subject to the APA rulemaking requirements; pay benefits through the ALJ level; require better development of medical evidence; and require regulation of the CE process.

The Administration had indicated that it could not accept some of the more far-reaching and costly provisions of H.R. 6181 and had expressed a willingness to work with the committee toward acceptable compromises. One area that was particularly difficult related to the development of a medical improvement standard that would assure that individuals who continued to be disabled would not have their benefits terminated, and, at the same time, permit termination of benefits to persons who were not disabled. It did not prove possible in the fall of 1982 to develop a mutually satisfactory solution to this problem. Therefore, on September 28, 1982, the Senate Committee on Finance marked up S. 2942, introduced by Senator Cohen and 19 cosponsors on September 22, 1982, which provided for continued benefit payments throughout the administrative appeals process and allowed the Secretary to slow down the periodic review process. By voice vote, the committee modified S. 2942 to permit continued payment through the ALJ decision on a temporary basis only and to permit slowdown of periodic review on a State-by-State basis. Two provisions were added to require the Secretary to: (1) obtain all relevant medical evidence for the past 12 months before making a CDR termination decision and (2) make semiannual reports to the Congress on the results of CDR's.

Senator Robert Dole (R., KS), Chairman of the committee, asked that S. 2942 as marked up by the committee be added to a House-passed bill, H.R. 7093, which concerned taxes in the Virgin Islands. Thus, H.R. 7093, with an amendment containing the provisions of S. 2942, was reported by the committee on October 1, 1982.

Senate Action

Under a Senate floor amendment offered by Senator Dole and 29 cosponsors, the continued payment provision in H.R. 7093 was modified and a provision was added to require the Secretary, when making a CDR determination, to consider all evidence in an individual's case record relating to the impairment and to discuss the evidence in the denial notice if the decision was unfavorable. On December 3, the Senate passed H.R. 7093 by a vote of 70 to 4.

Subcommittee on Social Security, House Committee on Ways and Means

On December 8, 1982, the subcommittee held an oversight hearing concerning Administration initiatives to improve the CDR process. Deputy Commissioner Simmons outlined the steps SSA was taking to improve the CDR process. Mr. Simmons expressed the Administration's support for continuing payment of DI benefits through reconsideration; closing the record at the reconsideration level; and requiring a face-to-face evidentiary hearing at the reconsideration level of appeal.

Action in Both Houses—Enactment of H.R. 7093 (P.L. 97-455)

On December 14, 1982, the House amended H.R. 7093 as passed by the Senate and passed it by unanimous consent. The House deleted the Senate provision relating to consideration of medical evidence in CDR cases and added an amendment requiring the Secretary to provide an opportunity for a face-to-face hearing at reconsideration in disability cessation cases. A House-Senate Conference Committee met on December 21, 1982, and resolved differences between the House- and Senate-passed versions of H.R. 7093. The bill as agreed to by the conferees was identical to the House-passed bill, except for modifications in the pension offset provision. On December 21, 1982, the House passed H.R. 7093 as agreed to in conference by a vote of 259 to 0 and the Senate agreed to the bill by voice vote.

On January 12, 1983, President Reagan signed H.R. 7093 (P.L. 97-455). He said "This bill enhances the quality and fairness of the social security disability insurance system. It also helps us to maintain the integrity of the disability rolls while protecting the legitimate rights of both beneficiaries and contributors . . . . Over the past year-and-a-half, the Department of Health and Human Services has improved the administrative processes for determining who should receive disability benefits. . . . With the signing of this bill today, I am pleased to add some useful statutory changes to the administrative initiatives that have already been taken." The disability-related provisions of the law follow:

(1) **Continued payment of benefits**—Permits, on a temporary basis, a DI beneficiary to elect to have

benefits and Medicare coverage continued up to the ALJ decision. The continued benefits would be treated as overpayments and subject to the waiver requirements of present law. This would be effective for benefits beginning January 1983 with respect to termination decisions made by State agencies between enactment and October 1983, but the last month for which payment could be continued would be June 1984. (Cases pending a reconsideration or an ALJ decision would also be covered by this provision, although retroactive payments would not be authorized.)

(2) **Evidentiary hearing at reconsideration**—Requires the Secretary to provide the opportunity for a face-to-face evidentiary hearing during reconsideration of any DI cessation decision. The reconsideration could be made by HHS or by the State agency that made the finding that disability ceased. The provision would be effective with respect to reconsiderations requested on or after a date to be specified by the Secretary, but no later than January 1, 1984.
Requires the Secretary to take steps necessary to assure public understanding of the importance Congress attaches to the face-to-face reconsiderations discussed above—including advising beneficiaries of the procedures during the reconsideration, of their opportunity to introduce evidence and to be represented by counsel at the reconsideration, and of the importance of submitting all evidence at the reconsideration level.

(3) **CDR case flow to State agencies**—Permits the Secretary of HHS to reduce, on a State-by-State basis, the flow of periodic review cases sent to State agencies, if appropriate, based on State workloads and staffing requirements, even if this means that the initial periodic review of the rolls cannot be completed within 3 years.

(4) **CDR reports to Congress**—Requires the Secretary to make semiannual reports to the Senate Committee on Finance and the House Committee on Ways and Means about the results of CDR's, including the number of such investigations that result in termination of benefits, the number of terminations appealed to the reconsideration or hearing levels or both, and the number of reversals on those appeals.

Activities During the First Session, 98th Congress, 1983

Senate Action

During the first few months of 1983, in both the House and Senate several bills were introduced to reform the disability process or to impose a moratorium on CDR's. The most comprehensive and significant was S. 476, the Disability Amendments of 1983, introduced by Senators Cohen and Levin on February 15, 1983. The provisions were:

(1) **Termination of benefits based on medical improvement**—would provide that DI benefits could not be terminated because disability had ceased unless the Secretary made a finding that the individual was significantly more able to engage in SGA because of medical improvement or advances in medical or vocational therapy or technology. This medical improvement standard would not apply if the most recent past disability decision was clearly erroneous under the standards in effect at the time or new or improved diagnostic techniques or evaluations demonstrated that the impairment was not as disabling as it was considered at the time of the most recent past disability decision.

(2) **Evaluation of pain**—would provide an explicit statement in law of SSA's current policy on pain.

(3) **Pretermination notice and right to personal appearance**—would eliminate reconsideration in disability determination cases. Instead, if the disability determination was unfavorable, the State agency would make a preliminary unfavorable decision and send the individual a statement of the case, which would include the right to request a review (including the right to a personal appearance) within 30 days. Also, would require the Secretary to initiate each CDR by notifying the individual of the nature of the review and of the fact that it could result in termination of benefits.

(4) **Payment of disability benefits during appeal**—would make permanent the provision permitting an individual to elect to have benefits continued up until the month before the hearing decision.

(5) **Case development and medical evidence**—similar to the medical evidence requirement in section 9 of P.L. 98-460.

(6) **Uniform standards for disability determinations**—similar to section 10 of P.L. 98-460.

(7) **Termination date for disability benefits**—would provide that benefits in medical cessation cases would terminate as under present law or, if later, in the month in which a pretermination review decision was made or in the month the period for requesting such a review expired.

(8) **Mandatory appeal by Secretary of certain court decisions**—would provide that if a U.S. Court of Appeals decision required HHS to carry out a policy different from the usual HHS policy, the Secretary would have to either acquiesce and apply the policy generally or request review by the Supreme Court.

Senate Special Committee on Aging

On April 7 and 8, 1983, the committee held oversight hearings on CDR's in cases involving mental impairments. Deputy Commissioner Simmons testified that SSA was exploring the need for reexamination of the criteria for evaluating mental impairments contained in the Listing of Impairments in the regulations. He said that SSA representatives and representatives of the American Psychiatric Association had agreed to set up a blue-ribbon panel to review the listings.

Mr. Simmons cited other steps taken by SSA to improve the disability process, particularly in mental impairment cases, including: (1) issuance of instructions

emphasizing the need for longitudinal development in mental impairment cases; (2) testing the usefulness of a second CE in such cases; (3) meeting with mental health advocacy groups and State agency personnel to obtain their input on the program; (4) expansion of the definition of permanent impairments; and (5) implementation of the initial face-to-face interview in CDR cases.

Peter J. McGough, Associate Director, Human Resources Division, GAO, said that agency's survey of the CDR process in cases of mental impairments revealed the following weaknesses:

- State agencies were using an overly restrictive interpretation of the criteria to meet the Listing of Impairments for mental impairments, resulting principally from narrow assessments of an individual's daily activities. State agencies' conclusions that individuals did not meet the listings were based on very brief descriptions of only rudimentary daily activities, such as watching television and fixing basic meals.
- Residual functional capacity (RFC) and vocational characteristics were not appropriately considered. When a mentally impaired person did not meet the medical listings, SSA's policy guidance to the State agencies resulted in a virtual presumption that the individual had the RFC to do basic work activities or unskilled work and therefore the chance of a younger individual being determined disabled was extremely slim.
- State agencies were not developing the full medical history in mental impairment cases and were ordering CE's before securing existing medical evidence.
- Because the mental impairment disability decision is highly complex, a qualified psychiatrist or psychologist should be involved; however, neither the State agencies nor SSA had adequate resources to meet this need.

Other witnesses, including several State officials, criticized SSA's procedures for dealing with the mentally ill. Several beneficiaries told of hardships stemming from benefit terminations.

On April 26, 1983, Senator John Heinz, Chairman of the Special Committee on Aging, and 22 cosponsors introduced S. 1144, which provided for:

(1) **Revision of regulatory criteria relating to mental impairments**—similar to section 5 of P.L. 98-460 except, the moratorium would not apply to CDR's being appealed (although these would have to be redetermined under the revised criteria) and the Secretary would have to appoint a panel of mental health experts to recommend revisions in the regulations.

(2) **Evaluation by psychiatrist or psychologist in mental impairment cases**—similar to section 8 of P.L. 98-460, except there was no provision that the Secretary need only make every reasonable effort—the qualified psychiatrist or psychologist would have to participate in every case.

House Action

In May 1983, several bills were introduced in the House to reform the CDR process or to place a moratorium on CDR's. The most comprehensive bill was H.R. 2987, the Social Security Disability Benefits Reform Act of 1983, which was introduced by Representatives Shannon and Fortney H. Stark (D., CA) on May 11, 1983. The bill included the following provisions:

(1) **Standard of review**—Would require the Secretary to show by clear and convincing evidence that one or more of the following conditions was met before a beneficiary's entitlement could be terminated on the basis that the disability no longer existed: (a) a significant improvement in the beneficiary's condition; (b) in the absence of improvement, demonstration that the beneficiary was able to perform SGA due to advances in medical or vocational therapy or technology; (c) clear error or fraud involved in the previous determination of entitlement; or (d) performance of SGA by the beneficiary.

(2) **Evaluation of pain**—would provide that subjective evidence of pain or other symptoms could lead to a finding of disability, even when medical findings failed to fully corroborate the pain or symptoms.

(3) **Multiple impairments**—would require the Secretary, in making disability determinations, to consider the combined effect of all of an individual's impairments, regardless of whether or not each impairment, considered separately, was so severe that the person was unable to engage in SGA.

(4) **Moratorium on mental impairment reviews**—same as S. 1144.

(5) **Disability determination review procedure; pretermination notice; right to personal appearance**—same as S. 476.

(6) **Continuation of benefits during appeal**—would permanently provide for the right of a beneficiary appealing a medical cessation decision to elect benefit continuation through the level of the final decision of the Secretary (Appeals Council).

(7) **Qualifications of DDS medical professionals**—would require a physician who was qualified in the appropriate specialty to complete the medical portion of any applicable sequential evaluation and RFC assessment before a disability determination could be made. Also would require a qualified psychiatrist or psychologist to complete the medical portion of any applicable evaluation and assessment in the case of determinations relating to mental impairments.

(8) **Regulatory standards for CE's**—would require the Secretary to issue detailed regulations setting forth: (a) standards to be used by disability adjudicators in determining when a claimant should be referred for a CE; (b) standards for the type of referral to be made; (c) standards to ensure that those performing CE's were professionals qualified in the appropriate specialty; and (d) mechanisms for monitoring the referral process and the quality of CE's.

(9) **Case development and medical evidence**—would require SSA to: (a) consider the complete medical and vocational history, including all evidence from past evaluations, when reviewing a beneficiary's eligibility for benefits; (b) develop a complete medical history covering the 12 months before the review; and (c) exert every reasonable effort to obtain information from the treating physician before ordering a CE.

(10) **Uniform standards**—would apply the APA requirements of public notice and comment before publication of a final rule to the social security program. Moreover, only published rules promulgated pursuant to the APA would be binding at all levels of decisionmaking in DI cases.

(11) **Continued benefits for persons in VR programs**—would repeal the provision that permits SSI payments to be continued only if the Commissioner determines that the individual's completion of an approved VR program would increase the likelihood that the person would be permanently removed from the DI benefit rolls. The SSI payments would be continued as long as the individual was participating in an approved VR program.

(12) **Advisory Council on Medical Aspects of Disability**—would provide for a permanent 20-member advisory council on disability. Members would be appointed by the Secretary for 4-year terms and would be designees of specified professional organizations and organizations representing the disabled, prominent individuals in hospital and health fields, and State agency administrators, staff physicians, or providers of CE's.

Functions of the council would include: evaluating the process of acquiring medical evidence and establishment of standards governing the purchase of CE's; advising the Secretary on the level of documentation needed to adjudicate claims and on standards for determining RFC; making recommendations for revision of the Listing of Impairments; developing instructional courses for use in schools of medicine and osteopathy in the evaluation of medical impairments to determine eligibility for DI benefits; studying the feasibility of making DI awards on a time-limited basis and based on the rehabilitation potential of given conditions; and providing advice to the Secretary on general disability policy. The council would be required to report biannually to the Congress on council activities.

(13) **Qualifying experience for appointment of certain staff attorneys to ALJ positions**—would require the Secretary to establish within 6 months a sufficient number of positions (at GS-13 and GS-14 levels) to enable Office of Hearings and Appeals staff attorneys to advance to successively higher positions to achieve the experience necessary to qualify for ALJ positions.

(14) **Evaluation of ability to work**—would require that a determination of whether or not a person could engage in substantial gainful work be based on a realistic evaluation of the person's remaining capacity to meet the demands of competitive work on a substantial basis. Also, would require the Secretary to consider the individual's past work successes and failures and evidence of relevant functional limitations contained in a medical history or physician's report or obtained from a vocational or other nonmedical source. Would require a work evaluation before a person with a severe mental impairment could be found not to be disabled.

(15) **Consideration given noncompetitive work**—would provide that an individual working in a sheltered work setting or other noncompetitive work environment could not be regarded, solely on the basis of that work, as having demonstrated an ability to engage in SGA.

(16) **Assistance with reviews of continuing eligibility**—would require the Secretary or the State agency to ascertain through personal contact if an individual whose disability was based, in whole or in part, on a mental impairment required assistance in complying with instructions for a CDR. If assistance was needed or requested, the Secretary would have to provide it or refer the person to an agency or organization that could do so.

(17) **Accessibility and reimbursement requirement for hearings**—would require SSA to hold any hearings at a location and in a building reasonably accessible to the disabled applicant. Would also require SSA to reimburse the applicant, in advance if necessary, for the expenses of obtaining and presenting necessary medical evidence, costs of travel, attendants, and witnesses, if evidence of financial need was presented.

(18) **Payment for CE's**—would require the Secretary to establish payment rates for CE's that were consistent with the Medicare Part B rate for comparable physician services.

(19) **Compliance with certain court orders**—would provide that if a U.S. Court of Appeals rendered a case decision that required HHS to carry out a policy different from the usual HHS policy, the Secretary would either have to acquiesce and apply the policy generally or request review by the Supreme Court. If the Supreme Court did not accept review, the decision of the circuit court would apply only in the States within the circuit until the Supreme Court eventually ruled on the issue involved and reached a different or contrary result.

(20) **Continued assistance for potential concurrent beneficiaries**—would require the Secretary to mail notices to all title II beneficiaries informing them of the availability of SSI payments and of assistance, upon request, in the completion of claims and the establishment of eligibility for benefits.

(21) **Trial work**—would provide that: (a) periods of work by a disabled individual would be counted towards the 9-month trial work period only if performed in the 15 months immediately preceding the month in which SSA began a review of the individual's disability; (b) periods of work shorter than 3 consecutive months would not count towards the trial work period; and (c) SSA could not terminate benefits based on a beneficiary's completion of a trial work period unless the beneficiary was still working at the time of the termination decision and had been working for the previous 6 consecutive months.

Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs

On June 8, 1983, the subcommittee held a hearing to examine the role of the ALJ in the disability program. Chairman Cohen summarized the issues to be addressed: (1) the decisional independence of SSA's ALJ's and the effect, if any, of Bellmon own-motion review on that independence; (2) the incorporation of the POMS into the **Social Security Rulings**; and (3) SSA's practice of nonacquiescence in certain decisions of lower Federal courts. Senator Cohen also said that legislation might be necessary to correct what appeared to be an inappropriate attempt by SSA to interfere with the independence of its ALJ's.

Louis B. Hays, Associate Commissioner for Hearings and Appeals, and Acting Deputy to the Deputy Commissioner for Programs and Policy, SSA, testified that SSA had never improperly exerted pressure on ALJ's to deny claims, nor had the agency ever established any production goals or quotas for ALJ's. He said that SSA's implementation of the Bellmon review of ALJ decisions was never intended to threaten the decisional independence of ALJ's, but rather was designed to improve the quality and consistency of ALJ decisions. Mr. Hays said that SSA initially chose to review only favorable decisions of ALJ's with high allowance rates because early Bellmon review data showed that ALJ's with high allowance rates had a greater likelihood of error than ALJ's with lower allowance rates. He emphasized that once SSA had data on ALJ error rates under the Bellmon review, the allowance rate became irrelevant and errors were the only consideration in placing ALJ's on review or removing them from review.

Associate Commissioner Hays added that the publication of certain disability policy statements as **Social Security Rulings** was in response to the lack of uniform guidelines for decisionmaking among the various levels of adjudication. He also stated that SSA does not acquiesce in certain decisions of the lower Federal courts so that the agency can continue to administer the social security program nationwide in a uniform and consistent manner.

In October 1983, the subcommittee published a report of its findings from the hearing. The principal finding was that SSA was pressuring its ALJ's to reduce their disability allowance rates and was doing so by several means, including targeting only allowance decisions and high allowance ALJ's for review and the use of minimum production quotas and productivity goals.

Administration Initiatives

On June 7, 1983, Secretary Margaret M. Heckler announced a package of major reforms in the CDR process to make sure the DI program was as fair and compassionate as possible. She said that the reforms responded to the concerns of members of Congress, medical and mental health professional groups, State agencies, and beneficiaries. The reforms were:

(1) Expanding by 200,000 the number of beneficiaries exempted from the CDR process (by classifying additional individuals as permanently disabled), bringing the total so exempted to 37 percent of the disabled workers on the benefit rolls, thus easing the workload of the State agencies and giving them more time to review each case.
(2) Temporarily exempting from review two-thirds of all mental impairment cases (those involving functional psychotic disorders), until SSA and outside experts had thoroughly reviewed the standards in this area. Once acceptable standards were adopted, SSA would re-review those cases in which benefits were terminated under existing standards.
(3) Selecting CDR cases for review on a more random basis (instead of using a profile), which should sharply reduce the number of initial decisions to stop benefits as well as the growing backlog of cases under appeal, thus freeing staff resources for closer review of the most difficult cases.
(4) Proposing legislation to remove the built-in bias against beneficiaries that forces SSA to review two-thirds of State agency decisions to allow benefits but does not mandate a review of decisions to deny benefits.
(5) Proposing legislation to make permanent the payment of benefits through the first opportunity for a face-to-face hearing to individuals appealing a decision to terminate benefits.
(6) Ordering SSA to accelerate its top-to-bottom review, in consultation with appropriate outside experts and the States, of disability policies and procedures. The areas under study included updating eligibility criteria involving all medical and mental impairment cases, reexamining the issue of whether or not an acceptable medical improvement standard could be developed, and reviewing the issue of whether or not an improved standard of "nonsevere impairment" could be developed to better ensure that a marginally disabled person was accorded a review of his or her age, education, and work history before any decision was made.

Senate Action

On June 16, 1983, the Senate passed (by a vote of 64–33) H.R. 3069, a supplemental appropriations bill, which included a Senate floor amendment offered by Senator Heinz on June 15, 1983, that was essentially the same as S. 1144. In introducing his amendment, Senator Heinz said that he welcomed the moratorium on the reviews of the mentally disabled announced by Secretary Heckler on June 7, but that the moratorium did not go far enough because it excluded persons with nonpsy-

chotic disabilities and had not indicated any willingness to revise the criteria used to assess RFC in mental impairment cases.

On June 20, 1983, Chairman Pickle wrote to Chairman Jamie L. Whitten (D., MS) of the House Committee on Appropriations urging the conferees on H.R. 3069 to strike the Heinz amendment from the bill because it would bypass the Committee on Ways and Means, which had the clear authorizing responsibility in this area, and because it undermined the efforts of the Social Security Subcommittee to develop comprehensive legislation to reform the entire disability adjudicative process. On July 20, 1983, the conferees on H.R. 3069 dropped the disability provisions.

On June 29, 1983, Senator Levin submitted an amendment to S. 476 intended to be proposed by him and Senator Cohen. The amendment was to clarify and improve the bill and also added a new provision. The new provision would require the Secretary, in determining whether an individual's impairment(s) was so severe that he or she was unable to engage in SGA, to consider the combined effect of all impairments, without regard to whether or not any individual impairment was of such severity.

House Select Committee on Aging

On June 20, 1983, the committee held a hearing on the problems encountered by States in administering the DI program and on the impact of CDR terminations. In opening the hearing, Chairman Edward Roybal (D., CA) said the hearing would focus on four major concerns: (1) the effect of CDR's on beneficiaries; (2) the States' discontent with SSA's operating guidelines; (3) the fact that SSA's implementation of CDR's went beyond congressional intent; and (4) the June 7 initiatives announced by Secretary Heckler.

Deputy Commissioner Simmons cited SSA's efforts to change the disability review process from a paper-oriented to a people-oriented one and summarized Secretary Heckler's June 7 initiatives. He noted that some States had experienced considerable problems in processing the cases and consequently had large backlogs (for example, due to insufficient staffing as a result of State hiring freezes). He said that SSA was closely monitoring the situation in these States and had taken many steps to ease the workloads, including adjusting the flow of cases to States to ensure each State agency's ability to produce consistent and high quality CDR determinations.

Subcommittee on Social Security, House Committee on Ways and Means

On June 30, 1983, the subcommittee held a hearing on the DI program. In his opening statement, Chairman Pickle said that Congress must strengthen its role in setting policy for the program, and that he hoped the subcommittee would be able to draft legislation and move it through the House before the August recess. Deputy Commissioner Simmons testified that the Administration did not favor a legislative moratorium on periodic review of all mental impairment cases because it was unnecessary, that publication of the **Social Security Rulings** in the **Federal Register** was inappropriate because the rulings merely explain what is contained in the regulations, and that the burden of proof to show continuing eligibility is properly with the beneficiary.

On July 15, 25, 28, and August 3, the subcommittee marked up the disability reform proposals developed by subcommittee staff, largely based on H.R. 2987. Upon completion of the markup, the bill was introduced on August 3 by Representative Pickle as H.R. 3755. The bill included the following provisions:

(1) **Standard of review for termination of disability benefits**—would provide that the Secretary could terminate a beneficiary's entitlement to DI benefits on the basis that the disability no longer existed only if there was substantial evidence that: (a) due to medical improvement the individual now was able to engage in SGA; (b) new medical evidence and a new assessment of the individual's RFC demonstrated that, although he or she had not improved medically, the individual was able to perform SGA due to advances in medical or vocational therapy or technology; or (c) because of new or improved diagnostic techniques or evaluations, the individual's impairment was not as disabling as it was considered to be at the time of the most recent earlier disability determination, so that he or she now was able to engage in SGA. Regardless of these standards, DI benefits could be terminated if the beneficiary was engaging in SGA, or if evidence on the face of the record showed that the earlier determination of disability was clearly erroneous or fraudulently obtained.

(2) **Study concerning evaluation of pain**—would require the Secretary to study, in conjunction with the National Academy of Sciences, the issue of using subjective evidence of pain in determining disability.

(3) **Multiple impairments**—would require the Secretary in determining whether an individual's impairment(s) was so severe that he or she was unable to engage in SGA to consider the combined effect of all impairments, without regard to whether or not any individual impairment was of such severity.

(4) **Moratorium on mental impairment reviews**—similar to section 5 of P.L. 98-460, except that in making the revisions the Secretary would have to consult with the advisory council established under another provision of H.R. 3755 and the regulations would have to be published by April 1, 1984.

(5) **Review procedure governing disability determinations affecting continued entitlement to DI benefits; demonstration projects relating to re-**

view of denials of DI benefit applications—would eliminate reconsideration in medical cessation cases effective January 1, 1985, and instead provide that in these cases the State agency would send the beneficiary a preliminary notice of a cessation determination. The beneficiary would then have 30 days to request a review (including a face-to-face hearing) before a formal cessation determination was made. Would also require the Secretary to conduct demonstration projects on using the same procedure in initial disability cases. The projects would have to be conducted in at least five States and a report to the Congress made by April 1, 1985.

(6) **Continuation of benefits during appeal**—would make permanent the temporary provision in P.L. 97-455 that DI benefits be continued up to the ALJ decision. Would also require the Secretary to report to Congress by July 1986 on the impact of this provision on the rate of appeals to ALJ's and on the financing of the DI program.

(7) **Qualifications of medical professionals evaluating mental impairments**—similar to section 8 of P.L. 98-460, except there was no provision that the Secretary need only make every reasonable effort—the psychiatrist or psychologist would have to participate in every case.

(8) **Regulatory standards for CE's**—similar to section 9 of P.L. 98-460, except no deadline for publication of the regulations.

(9) **Administrative procedure and uniform standards**—similar to section 10 of P.L. 98-460, except would apply to all title II benefit programs.

(10) **Benefits for individuals participating in VR programs**—similar to section 11 of P.L. 98-460.

(11) **Advisory Council on Medical Aspects of Disability**—would create a 10-member Advisory Council on the Medical Aspects of Disability to be appointed by the Secretary within 30 days of enactment and to terminate December 31, 1985. The council would be composed of independent medical and vocational experts and the Commissioner of SSA *ex officio*. It would provide to the Secretary advice and recommendations on DI policies, standards, and procedures. The council recommendations would be conveyed to Congress in an expanded SSA annual report.

(12) **Qualifying experience for appointment of certain staff attorneys to ALJ positions**—would require the Secretary to establish, within 180 days of enactment, a sufficient number of attorney advisor positions in HHS at the GS-13 and GS-14 levels to enable SSA's Office of Hearing and Appeals staff attorneys to advance to successively higher positions to achieve the experience necessary to qualify for ALJ positions. Within 90 days of enactment, the Secretary would also be required to submit an interim report to the Committees on Ways and Means and on Finance about the progress in meeting these requirements and within 6 months, a final report setting forth the manner and extent of compliance with the requirements.

(13) **Compliance with certain court orders**—would require the Secretary either to recommend appeal or to acquiesce in the decisions of the circuit courts of appeal and to apply them to at least all beneficiaries whose appeals were within the jurisdiction of the circuit court, until or unless the decision was overruled by the Supreme Court.

(14) **Effective date**—the provisions would apply to disability determinations pending in HHS or in court on the date of enactment, except as otherwise provided in respective sections.

Subcommittee on Public Assistance and Unemployment, House Committee on Ways and Means

On August 3, 1983, the subcommittee held a hearing to discuss the SSI disability proposals in H.R. 3074, introduced by Representative Stark and 16 cosponsors on May 19, 1983. The H.R. 3074 provisions were:

(1) **Revision of regulatory criteria relating to mental impairments**—essentially the same as H.R. 3755, but applicable to SSI recipients.

(2) **Continued payment, on a permanent basis, of SSI disability benefits through the ALJ hearing level.**

(3) **Requirement for evaluation by psychiatrist or psychologist**—essentially the same as H.R. 3755, but applicable to SSI recipients.

(4) **SSI benefits for individuals who perform SGA despite severe medical impairments**—similar to section 14 of P.L. 98-460, except that extension would have been permanent.

(5) **Requirement of specific annual authorizations of funds for reviews involving disabilities based on mental impairment under the SSI program.**

(6) **Assistance to disabled individuals in complying with requirements and procedures under the SSI program.**

House Committee on Ways and Means

On September 20, 1983 the committee began its mark-up of H.R. 3755 and took the following actions:

(1) **Medical improvement standard**—agreed to an amendment by Representative William M. Thomas (R., CA) permitting SSA to secure evidence needed to reconstruct a case when no evidence was in the beneficiary's file. Also agreed to an amendment by Representative Andy Jacobs, Jr. (D., IN) permitting termination of DI benefits, in the absence of medical improvement, if any vocational therapy resulted in a beneficiary's ability to engage in SGA.

Rejected by a vote of 21 to 12 an amendment by Representative Archer that would obviate the need to show medical improvement in cases in which the beneficiary could do the work he or she was doing before he or she became disabled. Representative Bill Gradison (R., OH) stated that the Archer amendment involved such a significant policy issue that it should be debated by the full House. Chairman Rostenkowski agreed to ask the Rules Committee for a modified closed

rule permitting consideration of the amendment (with one-half hour of debate) on the House floor.

(2) **Study on pain**—adopted an amendment by Representative Thomas that the study also consider the question of how a person could prevent, reduce, or cope with pain. Also agreed to an amendment by Representative Pickle to delay the report on the study from January 1, 1985, to April 1, 1985.

(3) **Moratorium**—agreed to an amendment by Representative Thomas to require that the regulations establishing revised criteria and listings for mental impairments be published no later than 9 months following enactment (rather than by April 1, 1984).

(4) **Face-to-face hearing on termination determinations**—rejected by voice vote an amendment by Representative Thomas to repeal the provision in P.L. 97-455 requiring evidentiary hearings in reconsiderations of DI benefit terminations effective December 31, 1983, since H.R. 3755 would eliminate the reconsideration level of appeal in disability cessation cases just 1 year later.

(5) **Qualifications of medical professionals evaluating mental impairments**—rejected an amendment by Representative Thomas that would have permitted a qualified mental heath professional, such as a psychiatric social worker, to complete the medical portion of the disability case review and to make the assessment of the RFC in an unfavorable determination involving a mental impairment.

(6) **Advisory Council on Medical Aspects of Disability**—agreed to an amendment by Representative Thomas to allow the Secretary 60 days after enactment (rather than 30 days) to appoint the members of the Advisory Council on the Medical Aspects of Disability.

The committee adopted without amendment the following provisions—multiple impairments, continuation of benefits during appeal, regulations pertaining to CE's, administrative procedure and uniform standards, compliance with certain court orders, reimbursement for VR services, staff attorneys, and effective date. The committee added an amendment to H.R. 3929 (an unemployment compensation bill) to extend the provision of continued benefits through the ALJ decision for 45 days so that it would apply to all cessation decisions made before November 16, 1983. (The provision in P.L. 97-455 applied only to determinations made prior to October 1, 1983.)

Subcommittee on Public Assistance and Unemployment Compensation, House Committee on Ways and Means

On September 22, 1983, the subcommittee marked up H.R. 3755 and ordered it favorably reported to the Committee on Ways and Means. The markup entailed making most of the DI program provisions in H.R. 3755 applicable to the SSI program.

The subcommittee also mentioned, in its report to the committee, two other proposals that were discussed but not finally decided by the subcommittee. One was Chairman Harold Ford's (D., TN) amendment to permanently provide SSI payments to individuals who perform SGA despite severe medical impairments and the second was an amendment by Representative Robert T. Matsui (D., CA) to the provision in H.R. 3755 establishing an advisory council. The amendment would require the council to look into: (1) the development of alternative approaches to work evaluations of SSI applicants; (2) a review of SSA's policies related to work evaluations; (3) establishing new criteria for assessing SSI applicants' potential for VR services; and (4) determining the feasibility of providing work evaluation stipends for certain SSI recipients.

House Committee on Ways and Means

On September 27, the committee completed markup of H.R. 3755 and ordered the bill reported to the House. The committee agreed that several amendments by Representative Ford, on behalf of the Subcommittee on Public Assistance and Unemployment Compensation, would be offered as committee amendments on the House floor, including: (1) making the provisions of H.R. 3755 applicable to the SSI program; (2) extending the provisions of section 1619 through June 30, 1986; and (3) requiring the advisory council to study several SSI issues (essentially the amendment offered by Representative Matsui on September 22, 1983).

Action in Both Houses—Enactment of H.R. 4101 (P.L. 98-118)

By this time, it was clear that no major comprehensive DI legislation would be enacted before October when the continued payment provision would no longer apply to new continuing disability review decisions, and Congress took action to extend the provision. On September 22, 1983, the Senate Committee on Finance objected to an amendment to H.R. 3959, a supplemental appropriations bill, which would have extended the continued payment provision by 6 months.

On September 29, 1983, H.R. 3929, a supplemental unemployment compensation bill with an amendment providing a 45-day extension for continuing benefits up to the ALJ decision, was passed by the House. On the same day Senators Cohen and Levin and 38 cosponsors offered a Senate floor amendment to S. 1887, a supplemental unemployment compensation bill, that would have extended the continued payment provision by 2 months. Senator Cohen said that a 60-day extension would give the Congress time to enact comprehensive disability reform legislation before adjournment. Senator Dole said that he preferred a 6-month extension but

offered a 90-day extension as a compromise. The amendment to S. 1887 was so modified and agreed to by the Senate.

On September 30, 1983, the Senate passed (by vote of 89-0) H.R. 3929, after amending it to extend the continued payment provision for 90 days. House and Senate conferees of H.R. 3929 then tentatively agreed to a 67-day extension (applicable to determinations made prior to December 7, 1983). The last possible month of continued payment would be June 1984. The compromise provision was added to H.R. 4101, another supplemental unemployment compensation bill, which was passed by both the House and Senate on October 6, 1983, and signed by President Reagan on October 11, 1983 (P.L. 98-118).

House Action

On October 20, 1983, the House Committee on Ways and Means agreed to include the provisions of H.R. 3755 in an omnibus tax bill that was introduced by Representatives Rostenkowski and Conable that day (H.R. 4170, The Tax Reform Act of 1983). The disability provisions were under title IX of H.R. 4170. On October 21, 1983, the committee reported H.R. 4170 with the three amendments that the committee had previously agreed could be offered on the House floor as committee amendments.

On November 17, 1983, the House voted 214 to 204 not to consider H.R. 4170. The defeat was on a vote on the rule for floor consideration of a bill and related primarily to the handling of the major tax provisions.

Senate Action

On November 17, 1983, Senators Cohen and Levin and 26 cosponsors offered an amendment with disability reform provisions to H.R. 3959, a fiscal year 1984 supplemental appropriations bill. Senator Levin, in his introductory remarks, characterized the provisions as a trimmed-down version of S. 476 resulting from months of work with members of the Senate Finance Committee. He said that the provisions would cost about a billion dollars less over 5 years than Representative Pickle's bill (the disability provisions in H.R. 4170). He said prompt enactment of the provisions was urgent because about 30 States were either stopping CDR's entirely or following rules other than the rules of SSA. The provisions were:

(1) **Standard of review for termination of disability benefits**—same as the provision in H.R. 4170, except that benefits could also be terminated if the individual could do his or her previous work.
(2) **Evaluation of pain**—incorporated the provisions of S. 476 (as amended on June 29, 1983) and H.R. 4170.
(3) **Multiple impairments**—same as the provisions in S. 476 and H.R. 4170.
(4) **Moratorium on mental impairment reviews**—same as the provision in H.R. 4170.
(5) **Personal appearance demonstration projects**—would require demonstration projects on providing pretermination face-to-face interviews by State agencies in disability cessation cases in lieu of face-to-face, evidentiary hearings at reconsideration. A report would be due to Congress on April 1, 1985.
(6) **Pretermination notice**—same as the provision in S. 476.
(7) **Continuation of benefits during appeal**—would extend the temporary provision to disability cessation determinations made prior to January 1, 1986; payments could be made only through June 1986. The report requirement would be the same as H.R. 4170.
(8) **Qualifications of medical professionals evaluating mental impairments**—same as the provision in H.R. 4170.
(9) **Uniform standards for disability determinations**—same as the provision in S. 476.
(10) **Case development and medical evidence**—same as the provision in S. 476.
(11) **Payment of costs of rehabilitation services**—same as the provision in H.R. 4170.
(12) **Advisory Council on Medical Aspects of Disability**—same as the provision in H.R. 4170.
(13) **SSI benefits for individuals who perform SGA despite severe medical impairment**—same as the provision in H.R. 4170.
(14) **Response by Secretary to court decisions**—would require SSA to notify Congress and print in the **Federal Register** an explanation of the agency's decision to acquiesce or not acquiesce in decisions of the circuit courts. Would state that nothing in the provision should be interpreted as sanctioning nonacquiescence with circuit court decisions.
(15) **Effective date**—same as the effective date in H.R. 4170.

Both Senator Dole and Senator Russell B. Long (D., LA), ranking minority member of the Finance Committee, opposed the amendment on the grounds that the Finance Committee should have time to consider the provisions. Senator Dole also said that the Senate should extend the continued payment provision (due to expire on December 6, 1983). The Senate voted, 49 to 46, to table the amendment.

On November 18, 1983, the Senate passed (80-0) H.R. 3391, a House-passed trade adjustment bill, to which the Senate had attached an amendment offered by Senators Dole and Long and 11 cosponsors to: provide a 6-month extension of the continued payment provision and a 3-year extension of the section 1619 provision permitting SSI payments and Medicaid benefits for severely disabled individuals who work.

House Action

On November 18, 1983, the House considered H.R. 3391 as passed by the Senate. Representative Shannon

proposed that the House concur with the section 1619 provision added by the Senate but not with the continued payment extension, which he said could be dealt with when the Congress returned next year. Representative William E. Dannemeyer (R., CA) objected to Representative Shannon's request and the Congress adjourned without taking further action on the bill.

Administration Action

Because the continued payment provision was expiring on December 7, 1983, SSA, in December 1983, instructed State agencies, effective for CDR decisions made on or after December 7, 1983, to continue processing CDR's to the point of determining if a cessation notice was appropriate but not to prepare or release a cessation notice.

Activities During the Second Session, 98th Congress, 1984

Senate Committee on Finance

On January 25, 1984, the committee held a hearing on the DI program. Martha A. McSteen, Acting Commissioner of Social Security, testified that the Administration opposed enactment of disability legislation because the administrative and legislative reforms already accomplished made further legislative reforms unnecessary. She stated that the high costs of the disability provisions of H.R. 4170—about $6 billion in the first 5 years—were unacceptable, especially because the safety margins of the old-age, survivors, and disability insurance trust funds were now relatively small. She reiterated Administration support for congressional action to authorize continued benefit payment through the first evidentiary hearing in the appeals process. She noted that the provision to continue payment up to the ALJ decision had expired on December 6 and that, as a result, SSA had temporarily directed States to hold termination notices but the States would be directed to resume processing terminations beginning in February. Mrs. McSteen then discussed the Administration's reasons for opposing a number of legislative proposals concerning the DI program.

Carolyn Kuhl, Deputy Assistant Attorney General, Department of Justice, stated that the Department of Justice supported the policy of nonacquiescence and opposed legislation to curtail its use.

Representatives of advocacy groups for the disabled testified in favor of comprehensive disability legislation such as H.R. 4170. Governor Bill Clinton of Arkansas, speaking on behalf of the National Governors Association, recommended enactment of legislation to: make permanent benefit continuation through the ALJ appeal in CDR terminations; mandate a medical improvement standard; provide for pretermination evidentiary hearings; impose a moratorium on mental impairment reviews; require SSA to acquiesce in circuit court decisions; and publicly promulgate DI policies.

House Action

On February 2, 1984, in floor action on H.R. 3391, the House agreed to the section 1619 amendment, struck the amendment extending continued payment, passed the bill, and returned it to the Senate for further consideration.

House Select Committee on Aging

On February 28, 1984, the committee held a hearing during which testimony was given by representatives of State governments, members of Congress, and the legal services community. The hearing focused on: (1) the reaction of the States to January 24 letters from Secretary Heckler directing States to resume processing CDR cessations; (2) rulings of Federal courts striking down SSA's DI policies; and (3) the program costs of various court decisions and State moratoria on processing cessations. Representative Roybal, chairman of the committee, said he intended to recommend a nationwide moratorium on the CDR process either through authorizing legislation or the appropriations process.

House Action

On March 5, 1984, the House Committee on Ways and Means reported H.R. 4170. On March 7, the House Committee on Rules agreed to a modified closed rule for floor consideration of H.R. 4170, which provided for a committee amendment in the nature of a substitute deleting from H.R. 4170 the disability provisions (title IX). On March 14, the House Committee on Ways and Means reported to the House H.R. 3755 with amendments conforming the bill to the former title IX of H.R. 4170. On March 27, the House passed H.R. 3755 by a vote of 410–1.

Senate Action

On March 15, 1984, Senator Levin submitted an amendment intended to be proposed by him to S. 476. The amendment differed from the amendment to H.R. 3959 offered by Senators Levin and Cohen on November 17, 1983, as follows:

(1) **Standard of review for termination of disability benefits**—would omit the past work exception to the medical improvement standard.
(2) **Continuation of benefits during appeal**—would extend the continued payment provision to decisions made before June 1, 1986, rather than be-

fore January 1, 1986, and make the last month of continued payment January 1987, rather than June 1986. Also, would omit the requirement that the Secretary report on the effects on the trust funds and on the rates of appeal to ALJ's of continued payment.

(3) **Case development and medical evidence**—would provide that a complete medical history of at least the last 12 months would have to be obtained only in unfavorable disability determination cases.

(4) **Advisory Council on Medical Aspects of Disability**—would extend the life of the Council through 1986 rather than through 1985.

(5) **SSI benefits for individuals who perform SGA despite severe medical impairment**—similar to section 14 of P.L. 98-460.

(6) **Frequency of continuing eligibility reviews**—similar to section 15 of P.L. 98-460.

(7) **Secretarial review of ALJ determinations**—would repeal the provision in the 1980 amendments requiring the Secretary to institute a program of reviewing ALJ decisions (the Bellmon amendment).

On April 12, 1984, Senators Levin, Cohen, Dole, Long, Heinz, Daniel Patrick Moynihan (D., NY), and John H. Chafee (R., RI) had a colloquy on the Senate floor during which Senators Cohen and Levin agreed not to offer their disability reform package as an amendment to H.R. 2163, a Federal boat safety bill that contained the deficit reduction proposals of the Senate Committee on Finance. In return, Senator Dole agreed that the Senate Committee on Finance would mark up S. 476 and report it to the full Senate by May 7. Senator Dole noted that Senator Howard H. Baker, Jr. (R., TN), the majority leader, had agreed that the bill would be scheduled for floor action during May.

Administration Action

On April 13, 1984, Secretary Heckler announced that she was imposing a nationwide moratorium on periodic CDR's until DI program legislation could be enacted and effectively implemented. The Secretary said, "Although we have made important progress in reforming the review process within Social Security, the confusion of differing court orders and State actions persists. The disability program cannot serve those who need its help when its policies are splintered and divided. For that reason, we must suspend the process and work together with Congress to regain order and consensus in the disability program." The moratorium also applied to cases properly pending at all levels of administrative review; in these cases, SSA would rescind cessation decisions and restore benefits to prevent such beneficiaries from losing benefits after June 1984, when the continued payment provision expired.

At the time the moratorium went into effect, 26 States were processing CDR's as required by SSA, 2 States were processing medical reexams only, 9 States were processing CDR's under court-ordered medical improvement standards, 7 States were not processing CDR's because of State agency or gubernatorial actions, 7 States were not processing CDR's because of court orders, and 2 States were not processing CDR's pending court orders. (These numbers include the District of Columbia, Guam, and Puerto Rico.) (See appendix C for a chronology of State actions concerning the processing of CDR's.)

Senate Committee on Finance

On May 15 and 16, the committee marked up a DI reform bill offered by Chairman Dole as an amendment in substitute for S. 476, and voted 18-0 to report the bill on May 16. The provisions of the bill were:

(1) **Medical improvement**—would provide that DI benefits could be terminated if the beneficiary could perform SGA, unless the beneficiary could show that the condition was the same as or worse than at the time of the earlier determination. If the beneficiary could show that he or she had not medically improved, the DI benefits could be terminated only if the Secretary could show that one of the following occurred and if the beneficiary was determined to be able to perform SGA: (a) the individual had benefited from medical or vocational therapy or technology; (b) new or improved diagnostic or evaluative techniques indicated that his or her impairment(s) was not as disabling as believed at the time of the earlier determination; (c) the earlier determination was fraudulently obtained; or (d) there was substantial reason to believe that the earlier determination was erroneous. If the beneficiary had not medically improved and none of the foregoing conditions was met, DI benefits would have to be continued whether or not the individual would have been found to be able to perform SGA.

Such benefits would also be terminated if the beneficiary was engaging in SGA, could not be located, or failed, without good cause, to cooperate in the CDR or to follow prescribed treatment that could be expected to restore the ability to work.

The new standard would apply to future CDR's and to all individuals who currently had claims properly pending in the administrative appeals process. The CDR cases properly pending in the courts on May 16, 1984, would be remanded to the Secretary for review under the new standard. The individuals would not have had to request the review if they were individual litigants, members of class actions identified by name, or had completed the administrative appeals process during the period between March 15, 1984, and 60 days after enactment. The case of an unnamed member of a class action certified before May 16, 1984, who had completed the administrative appeals process on or after a

date 60 days before the filing of the court action would also be remanded to the Secretary but would not automatically receive a review under the medical improvement standard. The Secretary would have to notify such an individual that he or she had 60 days within which to request a review under the new standard. If a timely request was not made, no further administrative or judicial review of the case would occur. Cases of unnamed members of class actions other than those described above would not be remanded and would not be subject to any further administrative or judicial review. If, on review, a person was found to be disabled under the medical improvement standard, full retroactive benefits would be paid.

An individual whose case was remanded by a court (providing the request for review was received timely if the individual was an unidentified member of a class) could elect to have benefits continued beginning with the month of election. Regulations implementing the provision would have to be issued no later than 6 months after enactment and the provision would sunset on December 31, 1987.

(2) **Evaluation of pain**—similar to section 3 of P.L. 98-460, except the statutory standard would sunset on December 31, 1987, the commission would not be required to consult with the National Academy of Sciences, and the report to the Congress would be due December 31, 1986.

(3) **Multiple impairments**—same as the provision in H.R. 4170, except would clarify that the requirement would apply to the determination of whether or not an individual had a combination of impairments that was medically severe without regard to age, education, or work experience.

(4) **Moratorium on mental impairment reviews**—similar to section 5 of P.L. 98-460, except it would require publication of regulations within 90 days after enactment and the reapplication provision would apply to persons who received unfavorable determinations after June 7, 1983.

(5) **Modification of reconsideration prereview notice**—similar to section 6 of P.L. 98-460, except the demonstration projects would be done in periodic review cases only and the report to Congress would be due by April 1, 1986.

(6) **Continuation of payments during appeal**—would extend the temporary provision to include payment up to the ALJ decision when the disability cessation determination was made prior to June 1, 1986; payments could be made only through January 1987.

(7) **Qualifications of medical professionals**—similar to section 8 of P.L. 98-460, except it would be effective on enactment.

(8) **Consultative exams; medical evidence**—same as the provision in S. 476.

(9) **Uniform standards**—same as section 10 of P.L. 98-460.

(10) **Vocational rehabilitation**—similar to section 11 of P.L. 98-460, except it would not pay for services to those who failed to cooperate or who refused to continue participation in VR, and it would not apply to the SSI program.

(11) **Advisory Council**—similar to section 12 of P.L. 98-460.

(12) **Special benefits for individuals who perform SGA despite severe medical impairment**—same as section 14 of P.L. 98-460.

(13) **Frequency of periodic reviews**—same as section 15 of P.L. 98-460.

(14) **Monitoring of representative payees**—same as section 16 of P.L. 98-460, except the report to Congress would be due within 6 months of enactment.

(15) **Measures to improve compliance with Federal law**—same as section 17 of P.L. 98-460, except there was no provision requiring the Secretary to waive any applicable personnel ceilings and to give preference to State employees.

(16) **Nonacquiescence in court orders**—would require the Secretary to notify Congress and publish in the **Federal Register** (within 90 days after the decision date, or on the last date available for appeal, whichever is later) a statement of the Secretary's decision to acquiesce or not acquiesce in circuit court decisions affecting the Social Security Act or SSA regulations, and the reasons in support of the Secretary's decision. In cases in which the Secretary acquiesced, the reporting requirement would apply only to significant decisions. Would also state that nothing in the section should be interpreted as sanctioning nonacquiescence with circuit court decisions.

(17) **Fail safe**—would require the Secretary to adjust DI benefit increases to prevent the DI trust fund balance from going below a defined threshold. Would require the Secretary to notify the Congress by July 1 in any year in which the amount of the DI trust fund for the second following year was projected to decline to less than 20 percent of the year's benefits. Would provide that, if Congress took no action, the Secretary would have to scale back, as necessary to keep the fund balance above 20 percent, (a) the next cost-of-living increase for DI beneficiaries, and, if further necessary, (b) the benefit formula used to determine benefit levels for persons newly disabled in the following year.

Action in Both Houses—Enactment of H.R. 3755 (P.L. 98-460)

On May 22, 1984, the Senate passed (96-0) H.R. 3755 after substituting for the House-passed version the language of S. 476 as reported by the Committee on Finance.

A House-Senate Conference Committee met on July 26 and tentatively agreed on all but seven provisions of the bill (the most controversial items). The provisions agreed to were:

(1) **Moratorium on mental impairment reviews**—adopted the House provision but required publication of revised criteria for evaluating mental impairments within 120 days of enactment.

(2) **Qualification of medical professionals evaluating mental impairments**—adopted the Senate provision but changed the effective date to 60 days after enactment.

(3) **Standards for consultative examinations and medical evidence**—adopted the House provision with respect to standards for CE's. Adopted and amended the Senate provision with regard to obtaining medical evidence from treating physicians.

(4) **Uniform standards**—adopted the Senate provision and conference report language.

(5) **Payment of costs of rehabilitation services**—adopted the House provision but made technical amendments and changed the effective date.

(6) **Advisory Council study**—adopted the Senate provision but included in the law details of the issues to be studied.

(7) **Qualifying experience for appointment of certain staff attorneys to ALJ positions**—replaced the House provision with a requirement that the Secretary report to the Congress within 120 days on the actions taken by the Secretary to establish positions to enable staff attorneys to gain the qualifying experience.

(8) **SSI benefits for individuals who perform SGA despite severe medical impairment**—adopted the Senate provision.

(9) **Frequency of continuing eligibility reviews**—adopted the Senate provision.

(10) **Determination and monitoring of need for representative payee**—adopted Senate provision but required a report to Congress within 270 days after enactment.

(11) **Measures to improve compliance with Federal law**—adopted the Senate provision but required the Secretary to waive any applicable personnel ceilings and other restrictions in carrying out the provisions and to give preference to hiring State employees if the Secretary assumed the functions of a State agency.

From July 26 until September 14, no formal meetings of the conferees occurred although several compromise offers were exchanged informally. On September 18, the conferees reached agreement on the remaining provisions:

(1) **Standard of review of termination of DI benefits and periods of disability**—adopted House provision but: (a) removed the causal links between all but one of the conditions for termination and the ability of the person to engage in SGA and related the conditions to the individual's ability to work; (b) substituted for the House language on error the requirement that substantial evidence shows previous error; (c) allowed termination of benefits where the person was engaging in SGA (except where he or she was eligible under the section 1619 provision), could not be located, or failed without good cause to cooperate in the review or to follow prescribed treatment which would be expected to restore the ability to engage in SGA; (d) substituted for the House language on the Secretary obtaining additional medical reports, the requirement that any CDR should be made on the basis of all evidence available on the individual's past or current condition as presented by the individual or secured by the Secretary; (e) added the requirement that any CDR should be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the claimant has previously been determined to be disabled; and (f) added the requirement that the regulations must be promulgated within 6 months of enactment.

Adopted the Senate provision dealing with benefit payments during remand and retroactive benefits. Their agreement on the effective date followed the House provision with regard to no 3-year sunset and followed the Senate provision otherwise except: (a) changed the date on which a judicial action had to be pending for an individual litigant or a named member of a class action from March 15, 1984, to September 19, 1984, and deleted the requirement that such cases be "properly pending;" (b) clarified that the pending judicial actions had to relate to medical improvement; (c) changed the date on which a class action had to be certified from May 16, 1984, to September 19, 1984, and deleted the requirement that an unnamed member of the class action had to have been notified of the Secretary's decision on or after a date 60 days before the filing of the court action; (d) added a new provision that no class in a class action relating to medical improvement may be certified after September 19, 1984, if the action seeks judicial review of a CDR decision made by the Secretary before September 19, 1984, and (e) provided that unnamed members of class actions whose cases were remanded to the Secretary would have 120 days (rather than 60 days) to request a review under the new standards.

(2) **Evaluation of pain**—adopted Senate provision but: (a) required the study to be done in consultation with the National Academy of Sciences and the report to be sent to Congress by December 31, 1985; (b) made the interim standard more accurately reflect the current SSA policy on pain; and (c) sunsetted the interim standard on January 1, 1987.

(3) **Multiple impairments**—substituted alternative language for the provisions in both bills. The new language provided that: (a) in determining whether an individual's impairment(s) was of a sufficient medical severity that such impairment(s) could be the basis of eligibility, the Secretary must consider the combined effect of all impairments without regard to whether any impairment considered separately would be of such severity; and (b) if the Secretary found a medically severe combination of impairments, the combined impact of the impairments would be considered throughout the disability determination process.

(4) **Notice of reconsideration, prereview notice, and demonstration projects**—adopted the Senate provision with regard to retaining the current reconsideration process and CDR demonstration

projects, but required the report to Congress on December 31, 1986, and a notice at the start of a CDR. Adopted the House provision with regard to demonstration projects in initial disability cases, but required the report to Congress on December 31, 1986.

(5) **Continuation of benefits during appeal**—adopted the House provision but: (a) extended the continued payment provision in DI cases to termination decisions made through December 1987 with benefits last payable for June 1988, and (b) permanently extended the continued payment provision to SSI cases.

(6) **Compliance with court orders**—deleted both the House and Senate provisions.

(7) **Fail-safe**—deleted provision.

On September 19, 1984, the House, by a vote of 402–0, and the Senate, by a vote of 99–0, approved the conference report on H.R. 3755; the President signed the bill into law (P.L. 98–460) on October 9, 1984.

Appendix A: Congressional Hearings on the Social Security and SSI Disability Programs (1982–84)

Washington, D.C.

House Committee on Ways and Means, Subcommittee on Social Security; March 16–17, 1982.

House Select Committee on Aging; May 21, 1982.

Senate Committee on Governmental Affairs, Subcommittee on Oversight of Governmental Management; May 25, 1982.

Senate Committee on Finance; August 18, 1982.

House Committee on Ways and Means, Subcommittee on Social Security; December 8, 1982.

Senate Special Committee on Aging; April 7–8, 1983.

Senate Committee on Governmental Affairs, Subcommittee on Oversight of Governmental Management; June 8, 1983.

House Select Committee on Aging; June 20, 1983.

House Committee on Ways and Means, Subcommittee on Social Security; June 30, 1983.

House Committee on Ways and Means, Subcommittee on Public Assistance and Unemployment; August 3, 1983.

Senate Committee on Finance; January 25, 1984.

House Select Committee on Aging; February 28, 1984.

Field Locations

House Select Committee on Aging, Subcommittee on Retirement Income and Employment; Hauppauge, N.Y., July 19, 1982.

Senate Special Committee on Aging and Senate Committee on Governmental Affairs, Subcommittee on Civil Service, Post Office, and General Services; Fort Smith, Ark., November 19, 1982.

House Select Committee on Aging; Charleston, W.Va., May 20, 1983.

House Committee on Ways and Means, Subcommittee on Public Assistance and Unemployment Compensation; Hayward, Calif., June 6, 1983.

House Select Committee on Aging, Subcommittee on Retirement Income and Employment; Burlington, Vt., July 22, 1983.

House Select Committee on Aging; Portsmouth, Va., September 12, 1983.

House Committee on Ways and Means, Subcommittee on Social Security, and Senate Special Committee on Aging:

—Chicago, Ill., February 16, 1984,
—Dallas, Tex., February 17, 1984,
—Boston, Mass., February 24, 1984, and
—Hot Springs, Ark., March 24, 1984.

House Committee on Ways and Means, Subcommittee on Social Security; Atlanta, Ga., March 23, 1984.

House Select Committee on Aging, Subcommittee on Health and Long-Term Care; Miami, Fla., April 30, 1984.

House Select Committee on Aging, Subcommittee on Retirement Income and Employment; Boston, Mass., May 31, 1984.

Appendix B: Summary of Major Litigation Relating to the Social Security and SSI Disability Programs (1982–84) [1]

Introduction

During the 1982–84 period, about 62,000 new disability cases were filed in Federal courts. The pending court caseload rose from about 22,000 at the end of fiscal year 1982 to almost 50,000 at the end of fiscal year 1984, as is shown in the tabulation that follows.

Fiscal year	New cases filed	Affirmations	Reversals	Dismissals	Pending, end of period
1982	11,632	4,068	1,081	388	21,707
1983	23,288	3,699	1,680	338	35,771
1984 [1]	27,322	2,320	4,216	377	49,824

[1] Preliminary data.

Summary of Litigation Issues

Medical improvement. Prior to the enactment of P.L. 98–460, the regulations provided that disability benefits were terminated when the definition of disability in the law was not met. However, most of the courts of ap-

[1] Includes title II, title XVI, and titles II/XVI concurrent disability cases for 1982 up to enactment of P.L. 98–460, which was signed by the President on October 9, 1984.

peals have ruled that SSA must apply some form of a medical improvement standard or apply a presumption of continuing disability before benefits could be terminated. Included among such rulings in 1982–84 were:

Second circuit	: **De Leon**	v. **Secretary**	(1984)
	Parente	v. **Heckler**	(1984)
Third circuit	: **Kuzmin**	v. **Schweiker**	(1983)
	Daring	v. **Heckler**	(1984)
Fourth circuit	: **Dotson**	v. **Schweiker**	(1983)
	Johnson	v. **Heckler**	(1984)
Fifth circuit	: **Babineaux**	v. **Secretary**	(1984)
	Buckley	v. **Heckler**	(1984)
Sixth circuit	: **Burnett**	v. **Secretary**	(1982)
	Haynes	v. **Secretary**	(1982)
	Gist	v. **Secretary**	(1984)
Eighth circuit	: **Lee**	v. **Heckler**	(1984)
	Rush	v. **Secretary**	(1984)
Ninth circuit	: **Iida**	v. **Heckler**	(1982)
	Lopez et al.	v. **Heckler**	(1982)
	Patti	v. **Schweiker**	(1982)
Tenth circuit	: **Byron**	v. **Heckler**	(1984)
Eleventh circuit	: **Simpson**	v. **Schweiker**	(1982)
	Vaughn	v. **Heckler**	(1984)

During 1982–84, there were 20 class-action cases, certified by Federal district courts, that involved medical improvement—18 involved State-wide classes and two involved circuit-wide classes.

Evaluation of pain. Before enactment of P.L. 98–460, the social security law did not state how symptoms, such as pain, were to be evaluated in determining disability. Regulations provide that allegations of pain must be considered, providing there are medical signs and findings that show the existence of a medical condition that can be reasonably expected to produce the pain. During the first half of 1984, three class-action decisions were issued that required SSA to evaluate allegations of pain regardless of whether or not the subjective complaints are supported by medical evidence. The decisions were:

Hyatt et al. v. **Heckler** (Western District of North Carolina)

Aldrich et al. v. **Heckler** (District of Vermont)

Polaski et al. v. **Heckler** (Eighth circuit)

Disability standards in mental impairment cases. In **Mental Health Association of Minnesota** v. **Heckler** (1983) the Eighth Circuit Court of Appeals (in a Chicago region-wide class action) ordered SSA to cease using a standard for evaluating the disabilities of mentally ill claimants that presumed that a person retained the capacity to perform unskilled work if he was under age 50 and had an impairment that did not meet the criteria for a mental impairment in the Listing of Impairments in the regulations. In August 1984, in **City of New York et al.** v. **Heckler** (1984) the Second Court of Appeals (in a State-wide class action) upheld the district court finding that SSA used an improper standard from 1978 through at least the early months of 1983 in evaluating the impairments of young workers with mental illnesses. A rehearing is pending.

SSA rulings of nonacquiescence. In **Lopez et al.** v. **Schweiker** (1984) the Ninth Circuit Court of Appeals (in a circuit-wide class action) affirmed the district court's preliminary injunction requiring SSA to follow the ninth circuit in two opinions—**Finnegan** v. **Mathews** and **Patti** v. **Schweiker**. In **Finnegan**, the circuit court had ruled that SSA could not terminate the benefits of an SSI disability recipient who had been grandfathered into the program from State disability rolls, unless SSA established that either the recipient's medical condition had materially improved or that there was clear and specific error in the original finding of disability. In **Patti**, the circuit court ruled that to terminate disability payments to a nongrandfathered SSI recipient, SSA must show improvement or other changes in the recipient's condition. In both **Finnegan** (SSR 82–10c) and in **Patti** (SSR–82–49c), SSA issued a ruling of nonacquiescence.

Medical-vocational factors regulations. The Supreme Court in **Heckler** v. **Campbell** (1983) unanimously upheld the validity of SSA's medical-vocational guidelines—the so-called "grid" regulations—used in evaluating claims for disability in which vocational factors must be considered. A second circuit decision in **Campbell** had required SSA, in lieu of using the grid regulations, to name suitable jobs, allegedly available under the guidelines, that a claimant could perform in the national economy. A claimant would then have an opportunity to show that he was incapable of performing those jobs.

Own-motion review of ALJ decisions. Several issues concerning the manner in which SSA implemented own-motion review were raised in **Association of Administrative Law Judges, Inc.** v. **Heckler et al.** On September 10, 1984, the District Court of the District of Columbia denied the plaintiff's request for injunctive relief. However, the court noted in its opinion that SSA's focus on

allowance rates in implementing the individual ALJ portion of the own-motion review created an atmosphere of tension and unfairness that violated the spirit of the APA. The court concluded that SSA had shifted its focus, obviating the need for any injunctive relief, and that the present system of selecting cases for review from a national sample was a more equitable and conciliatory means of accomplishing the same purpose and did not compromise ALJ independence by focusing excessively on allowance rates. A motion for reconsideration was pending as of September 20, 1984.

Appendix C: Chronology of Major State Actions Relating to the Social Security and SSI Disability Programs (1983–84)

Massachusetts. On March 8, 1983, Governor Dukakis ordered the Massachusetts State agency to ensure that the disability standards used in CDR cases were consistent with the First Circuit Court of Appeals standards set forth in **Miranda** v. **Secretary of HEW**, 514 F.2d 996 (1st Cir. 1975), which Massachusetts officials interpreted as requiring a medical improvement standard. On February 7, 1984, the Governor ordered the Massachusetts State agency to stop processing CDR terminations.

Arkansas. On July 14, 1983, Governor Clinton ordered the Arkansas State agency to follow the termination standards of the Eighth Circuit Court of Appeals in processing CDR's. On December 5, 1983, the Governor placed a moratorium on CDR terminations until the Congress took action on CDR problems.

New York. On July 22, 1983, New York State Social Services Commissioner Cesar Perales ordered the New York State agency to stop CDR terminations until the Federal Government established a medical improvement standard.

West Virginia. On August 12, 1983, Governor Rockefeller ordered the West Virginia State agency to develop, within 6 weeks, CDR policies and procedures consistent with Federal court decisions favorable to disability claimants. On September 26, the State agency stopped processing CDR terminations.

North Carolina. In early September 1983, Governor Hunt ordered the North Carolina State agency to stop processing CDR terminations (unless fraud was involved) until a medical improvement standard was adopted.

Alabama. On September 19, 1983, Governor Wallace ordered the Alabama State agency to stop processing CDR terminations.

Virginia. On September 28, 1983, Governor Robb ordered the Virginia State agency to stop processing CDR terminations.

Maryland. On October 4, 1983, the head of the parent agency informed Secretary Heckler that the Maryland State agency was holding CDR terminations.

Pennsylvania. In early October 1983, Governor Thornburgh ordered the Pennsylvania State agency to hold CDR terminations until a medical improvement standard was adopted.

Vermont. On October 7, 1983, Vermont Social Rehabilitation Services Commissioner John Burchard ordered the Vermont State agency to hold all CDR termination cases.

Ohio. On October 8, 1983, Governor Celeste ordered the Ohio State agency to hold CDR terminations for a period of 150 days and appointed a task force to review the CDR process and make recommendations to improve it.

New Jersey. On October 14, 1983, Governor Kean ordered the New Jersey State agency to hold CDR terminations.

New Mexico. Effective in late October 1983, Governor Anaya ordered the New Mexico State agency to hold CDR terminations.

Maine. In October 1983, Governor Brennan announced that the Maine State agency would stop processing CDR terminations immediately.

Michigan. In mid-November 1983, Governor Blanchard ordered the Michigan State agency to stop processing CDR terminations until reform legislation was enacted.

Illinois. In late December 1983, Governor Thompson ordered a moratorium on processing CDR terminations.

Idaho. On February 10, 1984, Governor Evans imposed a moratorium on CDR terminations until Congress acted on disability legislation.

Texas. In March 1984, Governor White advised the Texas State agency that if it started releasing CDR termination notices, he would impose a formal moratorium. Consequently, the Texas State agency did not process CDR terminations.