Social Security Disability Amendments of 1980: Legislative History and Summary of Provisions*

This article describes the legislative history of Public Law 96–265, the Social Security Disability Amendments of 1980, and contains a summary of the provisions of the new law. In passing these major disability insurance and supplemental security income provisions, the Congress hoped to improve the equity of the program, remove disincentives to rehabilitation and work, increase positive work incentives, and strengthen program administration. Other provisions were intended to strengthen and improve the administration of both the aid to families with dependent children and the child support enforcement programs.

On June 9, 1980, President Carter signed into law H.R. 3236 (Public Law 96–265), the Social Security Disability Amendments of 1980. 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 program administration." In addition, the bill contains amendments designed to strengthen and improve the administration of both the aid to families with dependent children (AFDC) and the child support enforcement (CSE) programs.

The major provisions affecting the old-age, survivors, and disability insurance (OASDI—title II or, in this article, DI) and supplemental security income (SSI—title XVI) disability programs are as follows:

1. Revisions of the DI benefit structure to—

   A. Establish a maximum family disability benefit at the lesser of 85 percent of the average indexed monthly earnings (AIME), or 150 percent of the primary insurance amount (PIA), but no less than 100 percent of the PIA. The new DI family maximum is designed to ensure that beneficiaries and their families will not receive benefits significantly higher than the worker's predisability net earnings.

   B. Make the number of years that can be dropped from the computation (averaging) period proportional to the age of the disabled worker (1 year can be disregarded for each 5 years after age 21 up to the year in which the worker becomes disabled, with a maximum of 5 dropout years). The proportional dropout years provision is designed to assure that workers with comparable wage histories receive comparable benefits, regardless of the age at which they become disabled.

2. A number of provisions designed to encourage disabled beneficiaries to attempt to return to work. These work incentives are provided by a phased schedule under which cash and medical support will be withdrawn gradually as earnings rise. The major incentives will—

   A. Deduct extraordinary impairment-related work expenses from a disabled individual's earnings for purposes of determining whether the individual is engaging in substantial gainful activity. (Applies to both DI and SSI.)

   B. Provide a 15-month "reentitlement" period, following the 9-month trial work period, during which a disabled beneficiary can become automatically reentitled to disability benefits if a work attempt is not successful. (Applies to both DI and SSI.)

   C. Extend the trial work period, previously applicable to disabled workers and childhood disability beneficiaries, to disabled widow(er)s. (Applies only to DI.)

   D. Provide Medicare coverage for 36 months after cash benefits cease for a worker who is engaging in substantial gainful activity but has not medically

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recovered. The first 12 months of this 36-month period are part of the automatic reentitlement period that is discussed in B above. (Applies only to DI.)

E. Eliminate the second 24-month Medicare waiting period for an individual who again becomes disabled and entitled to disability benefits within a certain period of time. (Applies only to DI.)

F. Authorize demonstration projects as follows:

(1) A 3-year experiment to provide special cash benefit payments, Medicaid, and social services to SSI disability recipients who have completed their trial work periods and continue to earn in excess of the amount allowed for substantial gainful activity (SGA). The special cash benefits would end when the countable income reached the "breakeven" point (the point at which income reduces payments to zero). Blind or disabled SSI recipients will continue to be eligible for Medicaid and social services even if income above the "breakeven" point causes them to stop receiving cash benefits under certain circumstances. (Applies only to SSI.)

(2) A 3-year pilot project of an optional program of grants to the States for medical assistance and social services to severely handicapped persons who have earnings in excess of SGA; who do not qualify for DI or SSI benefits, Medicaid, or social services otherwise; and who need these services to continue working. (Applies to both DI and SSI.)

(3) Authority for the Secretary of Health and Human Services to conduct experiments and demonstrations to test the effectiveness of various ways of encouraging disabled beneficiaries to return to work. (Applies to both DI and SSI.)

3. A series of provisions designed to improve DI and SSI program administration by strengthening the disability determination and adjudicatory process. The major provisions require the Secretary to—

A. Issue regulations specifying performance standards and administrative requirements and procedures to be followed by the States in performing the disability determination function.

B. Assume the disability determination function from a State agency if either (1) the State agency substantially fails to make disability determinations in a manner consistent with the regulations and other written guidelines, or (2) the State agency notifies the Secretary that it no longer wishes to make disability determinations.

C. Review a specified percentage of State agency determinations before benefits can be paid.

D. Review the status of a disabled individual, unless the disability has been found to have been permanent, at least once every 3 years.

Additional provisions designed to improve program administration would—

E. Implement a program of reviewing, on the Secretary's own motion, decisions rendered by administrative law judges in disability cases and to report to Congress on the progress of the program.

F. Permit the Secretary to revise a State agency decision and make it more favorable to the claimant.

G. Foreclose the introduction of new evidence in OASDI claims after decisions are made at hearings.

H. Permit old-age, survivors, and disability insurance cases to be remanded from the courts on the Secretary's own motion only for "good cause" shown, and on the court's motion only if there is new and material evidence that was not previously submitted and "good cause" exists for not having submitted that evidence.

4. Provisions affecting the AFDC and CSE programs are revisions that would—

A. Strengthen the work incentive (WIN) program.

B. Allow the use of the Internal Revenue Service to collect child support for non-AFDC as well as AFDC families.

C. Change the authority to disclose certain information under AFDC and social services.

D. Permit Federal matching for child support activities performed by court personnel.

E. Increase Federal matching for child support and AFDC management information systems.

F. Provide access to wage information for the child support program.

Background and Legislative History

During the early 1970's, the disability incidence rates—the number of disability awards in relation to the insured population—increased significantly and resulted in substantial increases in the cost of the disability program. In its 1973 report, the Board of Trustees of the Social Security Trust Funds noted the significant increase in the cost of the DI program resulting from higher disability incidence; the Trustees stated that if the trend of higher disability rates continued, the resultant cost increase of the disability program would be of sufficient magnitude to require additional financing.

During the next several years, both the administration and Congress studied the question of why the disability rates were increasing and what changes might

be made in the DI program. Between 1973 and 1978, the administration convened several internal work groups that closely scrutinized the disability claims process—from the initial interview in the district office, through the appeals process, to the final decision rendered by the Secretary. These work groups made numerous recommendations for improving the administration of the disability program. Many of those recommendations were implemented administratively; others required legislative changes.

Simultaneously with the administration's actions, the Congress was also considering the question of disability reform. Numerous bills focusing on problems in the disability programs were introduced. Representative James Burke, Democrat of Massachusetts, who was Chairman of the House Subcommittee on Social Security from 1976 to 1978, introduced bills[1] in both the 94th Congress (1975–76) and the 95th Congress (1977–78), but final congressional action was never taken on these bills.

In 1978, the House Ways and Means Subcommittee on Social Security held hearings at which the Social Security Administration representatives testified about problems in Federal-State relationships and the quality assurance procedures in the DI program. Subsequently, in September 1978, the Subcommittee reported a bill[2] designed to address these and other problems in the disability insurance program. Congress adjourned, however, without taking action on the bill.

While the House Subcommittee on Social Security was concentrating on the DI program, the House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation turned its attention to the SSI program. During the 95th Congress, the Subcommittee heard testimony about problems that the disabled face in attempting to enter the labor market and how the SSI program presented disincentives for those disabled recipients who wanted to seek gainful employment. The House eventually passed two bills[3] designed to remedy this situation and to improve the administration of the SSI program, but the Senate adjourned without taking action on those bills.

[1] H. R. 15630 and H. R. 8076, the so-called Burke disability bills, dealt primarily with financial issues, the definition of disability, the Federal-State relationship, work incentives for disabled individuals, and a limitation on rehabilitation expenditures.

[2] H. R. 14084 included provisions that would have increased equity in the benefit structure by limiting the total DI family benefits payable and providing for a variable number of dropout years, provided work incentives by extending the trial work period, and improved Federal-State program administration by requiring preefectuation review.

[3] H. R. 7200 included provisions relating to the receipt of SSI payments by aliens, the deeming of parents' income to disabled and blind children, and the finding of presumptive disability for those disabled individuals who had previously received SSI disability payments; and H. R. 12972 included provisions to increase the earnings limitations under SSI and to provide an income disregard for work-related expenses and attendant care costs.

Projections of the Board of Trustees in 1977 indicated that the combined cash benefit trust funds would be exhausted early in the 1980's unless remedial action was taken. The administration developed proposals designed to restore fiscal integrity to the social security programs. Congress responded to these fiscal concerns and passed the financing and decoupling amendments of 1977, which were enacted into law.[4] Although some members of Congress wanted to include disability "reform" legislation at the time, it was decided to consider the disability reform issues separately in the future. In its report on the Social Security Amendments of 1977,[5] the House Committee on Ways and Means warned that, with regard to the DI program, "attention must still be focused on why the costs of the program have risen so rapidly to a level far greater than anticipated. The possibility of not only reducing the cost of the programs but also making it more susceptible to administrative control must be thoroughly explored."

The disability bills that had been introduced in the Congress in 1976–78 focused the congressional eye on the disability program issues most in need of attention. These bills also set the stage for concerted congressional effort to resolve those issues when the 96th Congress convened in 1979.

Carter Administration's Recommendations

In 1979, the administration recommended numerous legislative changes to Congress. These proposals were included in the administration's "Disability Insurance Reform Act of 1979," which was introduced in the House of Representatives as H.R. 2854 by J. J. Pickle, Democrat of Texas, Chairman of the House Ways and Means Subcommittee on Social Security, and the Subcommittee's ranking Republican, William Archer, Republican of Texas, on March 13, 1979. The following proposals were included:

1. Benefit Equity

   A. Maximum family benefits in DI cases: The amount of benefits that a disabled worker and family could receive would be limited to 80 percent of the average indexed monthly earnings (AIME) used to determine the worker's benefit or, if greater, 100 percent of the PIA. As under prior law, the worker would receive the full amount of the worker's benefit, but the benefit amount of the auxiliaries would be reduced so that the total family benefit would not considerably exceed the worker's predisability earnings.

[4] P.L. 95–216 (H.R. 9346).

[5] House of Representatives Report No. 95–702, Part I.

B. Proportional dropout years: Because the administration wanted to assure that workers with comparable wage histories receive comparable benefits, regardless of the age at which they become disabled, it recommended that the number of dropout years be proportional to the age of the worker at the time of disablement (as an indication of the length of the worker's career). For example, the proposal allowed workers who became disabled at age 30 to drop 1 year of low (or no) earnings in computing their benefit, while workers who became disabled at age 47 or older were allowed to drop the maximum of 5 low (or no) earnings years in computing their benefit.

2. Work Incentives

A. Work expense deductions: The cost incurred by a disabled DI or SSI beneficiary for impairment-related work expenses, services, devices, and attendant care costs necessary to engage in gainful activity would be deducted from the beneficiary's earnings in determining SGA. (If the care, services, or items were furnished without cost to the disabled individual, the Secretary would specify the amount of the deduction that could be allowed.)

In determining SSI eligibility and the amount of the SSI payment, only those impairment-related work expenses, services, devices, and attendant care costs actually paid for by the beneficiary would be excluded.

B. Automatic reentitlement to DI and SSI benefits: DI and SSI beneficiaries who have not medically recovered could be automatically reentitled during a 15-month reentitlement period following the 9-month trial work period if a work attempt is not successful.

C. Extending entitlement for Medicare and Medicaid: The period of coverage for DI and SSI beneficiaries who have not medically recovered would be extended for 36 months after cash benefits stop because a worker is engaging in substantial gainful activity.

D. Elimination of the second Medicare waiting period: The second Medicare 24-month waiting period for former DI beneficiaries who become disabled again within a certain time period (60 months for disabled workers) would be eliminated.

E. Trial work period for disabled widows and widowers: The 9-month trial work period would be extended to disabled widow(er)s who are entitled under the DI program.

F. Demonstration projects: The Secretary would be authorized to waive any of the requirements under the OASDI, SSI, and Medicare programs in conducting experiments or demonstration projects to test the effectiveness of various alternatives for encouraging disabled beneficiaries to return to work.

3. Improved Program Administration

A. Disability determination and review: The Secretary would be given the authority to terminate, through regulations, an agreement with a State to make disability determinations because of unsatisfactory performance by the State and to administer the State determination process. The Secretary would be authorized to reverse State agency denials.

B. Closed evidentiary record: The introduction of new evidence would not be permitted after the decision is made at the hearing by an administrative law judge.

C. Judicial review: The judicial review of social security claims would be limited to issues of constitutionality and statutory interpretations.

The administration also recommended changes in the SSI program in its "Social Welfare Reform Amendments of 1979," introduced in the House of Representatives as H.R. 4321 jointly by James Corman, Democrat of California, Chairman of the Ways and Means Subcommittee on Public Assistance, and Al Ullman, Democrat of Oregon, Ways and Means Committee Chairman, on June 5, 1979. The President's proposals included—

1. Eligibility of aliens for SSI benefits: This proposal would make a sponsor's agreement of support legally binding for 5 years, authorize legal action to secure reimbursement of public assistance paid to newly arrived aliens, and provide that aliens who receive unreimbursed public assistance would be regarded as public charges and subject to possible deportation.

2. Relationship between social security and SSI benefits: Retroactive OASDI benefit payments would be reduced by the amount of SSI benefits that were paid for the same period that would not have been paid had the OASDI benefits been paid on time.

3. Deeming of parents' income and resources to disabled or blind children: The SSI program definition of the term "child" would be changed to eliminate deeming of parental income and resources to an individual at age 18. The law required parents' income and resources to be deemed to children aged 18–20 who were students living with their parents, but did not require such deeming to nonstudent children aged 18–20. A child aged 18–20 who became a student could thus lose part or all of SSI payments.

4. Treatment of remuneration for work in sheltered workshops: All remuneration received in sheltered

workshops would be considered earned income and would therefore qualify for the SSI earned income disregards.

Action in the House of Representatives

Social Security Disability Insurance Provisions

Subcommittee on Social Security Action on DI Provisions. On February 21, 1979, the Subcommittee on Social Security of the House Committee on Ways and Means began hearings on proposals to improve the disability insurance program. In opening the hearings, Chairman J.J. Pickle noted that a trend toward lower disability incidence rates seemed to be developing. He indicated that the trend may have been due to improvements in economic conditions and to better administrative procedures such as increased quality assurance and increased use of consultative medical examinations. Chairman Pickle pointed out, however, that the disability program is still subject to wide and unforeseen fluctuations and explained that he had introduced legislation (H.R. 2054) to put the disability program on a more equitable and stable footing.

The Subcommittee on Social Security held public hearings in February and March 1979, at which members of the Congress, the administration, the public, and representatives of interested organizations testified regarding the disability program and offered suggestions for improving it. Secretary of Health, Education, and Welfare,[6] Joseph A. Califano, Jr., testified that some of the problems the administration found during its review of the disability program were: (1) The growth of the system which had far exceeded all expectations, (2) disincentives in the program which discouraged beneficiaries from attempting to return to the work force, and (3) a confusing and cumbersome process for determining if an individual is disabled.

To correct these problems, the administration focused its efforts on the benefit structure, work incentives, and program administration. Secretary Califano stated that the administration's proposals, which were contained in H.R. 2854, were designed to improve both the equity and efficiency of the disability program.

Following these hearings, the Subcommittee held its markup sessions. The Subcommittee's recommendations, similar to many provisions in the administration's bill, were incorporated in a "clean" bill, H.R. 3236, which was introduced in the House on March 27, 1979. The Subcommittee's version of H.R. 3236 included the following:

1. Benefit Equity

A. Maximum family benefits in disability cases: The total family benefits for any month would be limited to 80 percent of a worker's AIME or 150 percent of the PIA, whichever is lower, with a minimum guarantee of 100 percent of the PIA. (The administration's bill did not include the 150 percent limitation.)

B. Proportionate dropout years: The number of years of low or no earnings that could be dropped in computing a disabled worker's benefits would vary and be determined by the age of the worker, according to the following schedule:

Worker's age	Dropout years
Under 27	0
27-31	1
32-36	2
37-41	3
42-46	4
47 and over	5

The Subcommittee added a provision for childcare dropout years. This provision would credit 1 dropout year for each year in which the worker provided the principal care of a child under the age of 6. However, the number of variable dropout years combined with the number of childcare dropout years could not exceed 5. (The administration's bill did not provide for any childcare dropout years.) The use of the smaller number of dropout years would continue to be applicable for any subsequent disability or retirement benefits unless the worker left the rolls for 12 consecutive months prior to the subsequent eligibility.

2. Work Incentives

To stimulate disabled beneficiaries to return to work despite their impairments, provisions were included to—

A. Deduct extraordinary impairment-related work expenses, attendant care cost, and the cost of medical devices and equipment paid by the disabled individual, from a disabled person's earnings in determining SGA. (Similar to the administration's proposal in H.R. 2854, except the administration proposed that if the care, services, or items were furnished without cost to the disabled individual, the Secretary would specify the amount of allowable deduction.)

B. Provide a 15-month reentitlement period after the 9-month trial work period. Although under the DI program cash benefits are not payable for more than 3 months of this period if the individual engages in SGA, the individual could be reentitled to benefits if unable to continue working.[7]

[6] The Department of Health, Education, and Welfare has since been reorganized into two departments: Health and Human Services, and Education.

[7] Same as administration's proposal in H.R. 2854.

C. Provide Medicare coverage for an additional 36 months after cash benefits cease for a worker who is engaging in substantial gainful activity but has not medically recovered (the first 12 months of this 36-month period is part of the reentitlement period discussed in B above).[8]

D. Eliminate the second 24-month Medicare waiting period where an individual again becomes disabled and entitled to benefits within a certain period of time.[9]

E. Extend the same trial work period applicable for disabled workers to disabled widow(er)s.[10]

F. Require SSA to implement 3-year demonstration projects under the DI program to encourage work activity. The Secretary could waive compliance with DI and Medicare requirements, as necessary, to carry out these projects. (Similar to an administration proposal in H.R. 2854.)

G. Permit benefits to continue after medical recovery for a beneficiary who is participating in an approved vocational rehabilitation (VR) program if SSA determines that such participation will increase the likelihood that the beneficiary may be permanently removed from the disability rolls. (An administration proposal in H.R. 4321.)

3. Improved Program Administration

To improve the administration of the disability program, the following provisions were included:

A. The Secretary of Health and Human Services was required to establish, through regulations, procedures and performance standards for the States to follow in the disability determination process. The States would be given the option of continuing to administer the program in compliance with these regulations or turning administration over to the Federal Government.[11]

B. Under a Subcommittee proposal, the Secretary would be required to review a specified percentage of State agency determinations of allowances before the payment of benefits. The percentages were: at least 30 percent in fiscal year 1980, 60 percent in fiscal year 1981, and 80 percent in fiscal year 1982 and thereafter.

C. The Subcommittee also proposed to change the method of reimbursing States for providing vocational rehabilitation services to disabled beneficiaries. The beneficiary rehabilitation program would be eliminated. Instead, the States would use general VR funds in providing rehabilitation services to disabled beneficiaries. (The States receive general VR funds on an 80/20 matching basis from the general revenues.) If the disabled beneficiary engages in SGA (or is employed in a sheltered workshop) for a continuous period of 12 months, the State would be reimbursed for its 20-percent matching funds and would also be rewarded with a 20-percent bonus.

D. The Subcommittee proposed to require the Secretary to review the status of disabled beneficiaries on the rolls at least once every 3 years unless a finding is made that the individual's disability is permanent.

E. The Subcommittee proposed to reimburse, out of social security trust funds, non-Federal institutions and physicians for existing medical evidence submitted to support disability claims.

F. The Subcommittee proposed to require the Secretary to provide claimants with a decision notice containing a clear explanation of the decision, a brief summary of the evidence on which the decision was based, and, as appropriate, a brief statement of the law and regulations.

G. The Subcommittee proposed to provide for the payment from social security trust funds of reasonable costs of travel by claimants to obtain required medical examinations and for claimants and their witnesses and representatives to attend reconsideration interviews and hearings.

H. The Subcommittee stipulated that the evidentiary record in a case would be closed after a hearings decision has been made.[12]

On April 2, 1979, the Subcommittee on Social Security referred the bill to the full Ways and Means Committee.

Committee on Ways and Means Action on DI Provisions. On April 9, 1979, the Committee on Ways and Means held its markup session on H.R. 3236. The only changes made in the bill, as it had been approved by the Subcommittee on Social Security, were—

1. Disability determinations: Because the committee was concerned about how State employees would be treated if the Federal Government had to take over the operation of a State disability determination unit, a provision was added requiring the Secretary to report to the House Committee on Ways and Means and the Senate Committee on Finance by January 1, 1980, about how the Federal Government would assume these responsibilities.

2. Preeffectuation review: The mandated percentages of Federal review of State agency allowances were reduced to 15 percent in fiscal year (FY) 1980, 35 percent in FY 1981, and 65 percent in FY 1982 and later.

[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.

3. Decision notices: The Committee clarified the intent of this provision and indicated that it did not expect the notices to be voluminous documents.

The Committee also considered and rejected three amendments to H.R. 3236: (1) A proposal to change the limitation on total family benefits from 150 percent of PIA to 130 percent (defeated by a vote of 16–14); (2) a proposal to make the DI impairment-related work expense provision, with respect to the blind, the same as the current SSI work expense provision for the blind (defeated by a voice vote); and (3) a proposal that persons under age 55 must meet a medical-only definition of disability in order to qualify for DI benefits (defeated by a vote of 13–12). On April 12, 1979, the Committee on Ways and Means reported the bill to the House.

House Rules Committee and Floor Action on DI Provisions. Action on the bill was delayed as several major groups raised questions about the legislation, and controversy arose as to the rules under which the bill would be considered on the House floor. Both the 1979 Advisory Council on Social Security and the National Commission on Social Security expressed concern that such major legislation was being acted upon in the absence of any recommendations from those statutorily appointed groups. They urged that the House take no action on the bill pending further review.

In addition, an ad hoc group of individuals and associations concerned about social security legislation affecting the disabled, "Save our Security" (SOS), was formed with John W. McCormack (former Speaker of the House), Wilbur D. Mills (former Chairman of the House Ways and Means Committee), and James A. Burke (former Chairman of the Ways and Means Subcommittee on Social Security) as Honorary Cochairmen; and Wilbur J. Cohen (former Secretary of Health, Education, and Welfare) as Chairman. This group strongly opposed several of the provisions of the bill—especially those that could result in lower benefit amounts for workers becoming disabled in the future and their families. A major effort of the SOS group was to assure that when H.R. 3236 was considered on the floor of the House of Representatives there would be an opportunity to consider several of the provisions separately rather than to simply vote for or against the bill as a whole.

The House Committee on Rules held hearings on June 6 and 7, 1979, and reported House Resolution 310, which provided for a modified rule and 1 hour of debate on H.R. 3236. The rule provided that no amendments would be in order except those recommended by the Ways and Means Committee, which are not amendable, and an amendment, offered by Representative Simon, which would delay the implementation of the provision on vocational rehabilitation funding by 1 year until fiscal year 1982.

Because of a crowded House floor schedule, consideration of House Resolution 310 and the debate on H.R. 3236 did not begin until September 6, 1979. Much of the discussion and debate centered around the proposed limitation on total family benefits and the variable number of dropout years. The House agreed to the Committee amendments (see discussion above on the Committee markup session) and Representative Simon's amendment to delay the implementation of the VR funding provision until fiscal year 1982. The House of Representatives passed H.R. 3236 by a vote of 235-162 on September 6, 1979, and sent the bill to the Senate.

SSI Disability Provisions

Subcommittee on Public Assistance and Unemployment Compensation Action on SSI Provisions. Almost simultaneously with the actions taken by the Ways and Means Subcommittee on Social Security on the administration's DI proposals, the Ways and Means Subcommittee on Public Assistance and Unemployment Compensation was considering the administration's SSI disability proposals. On April 3, 1979, the Subcommittee began hearings on the proposals (contained in H.R. 2854) that would remove work disincentives in the SSI disability program and improve the administration of the SSI program.

Following the hearing, the Subcommittee held its markup sessions and incorporated some of these provisions in a "clean" bill, H.R. 3464, which was introduced in the House on April 5, 1979. That same day, the Subcommittee referred the bill to the Committee on Ways and Means. The provisions in H.R. 3464 would have the following effects:

1. Work Incentives

   A. Increase the SGA level in the SSI program to the dollar level at which countable earnings equal the applicable SSI payment standards. In determining countable earnings for SGA purposes, the following amounts would be excluded from gross earnings: (a) 20 percent of gross earnings, (b) $65, (c) an amount equal to the cost of any impairment-related work expense necessary for the individual to work regardless of who paid for these expenses, and (d) one-half of the remainder. (This was a Subcommittee proposal.)

   B. Exclude 20 percent of a disabled person's gross earnings and an amount equal to the cost of any impairment-related work expenses paid by the individual in determining eligibility for, and the amount of, the SSI benefits. These disregards would be in addition to the present exclusions and would be applied after the $65 exclusion and prior to the exclusion of one-half of the remainder. (This provision is a modification of an adminis-

tration proposal in H.R. 2854. The Subcommittee added the 20-percent exclusion to the administration's proposal to exclude impairment-related work expenses.)

C. Resume SSI payments automatically if the worker stopped performing SGA within 1 year after disability payments ended. (Although no provision was included to automatically reestablish Medicaid eligibility when SGA stops, individuals who live in States where Medicaid eligibility follows SSI eligibility would have their Medicaid eligibility reestablished.) If the worker stopped performing SGA, SSI disability payments would be resumed on a presumptive disability basis. (The income and resource test would still have to be met.)[13]

D. Permit benefits to continue after medical recovery for recipients in approved VR programs if SSA determines that continuing in such programs will increase the probability of the person leaving the disability rolls permanently.[14] (This was a Subcommittee proposal.)

2. Improved Program Administration

A. Authorize experiments that would be likely to promote the objectives of the SSI program or to facilitate its administration, with the following qualifications: (a) Recipient participation would be voluntary, (b) the total income and resources of an individual would not be substantially reduced as a result of an experiment, and (c) there must be a project to determine the feasibility of treating drug addicts and alcoholics to prevent permanent disability. (This provision is similar to an administration proposal in H.R. 2854. The three qualifications the Subcommittee placed in H.R. 3464, however, were not in either H.R. 2854 or H.R. 3236.)

B. Require that notices to applicants for SSI benefits whose claims are being denied at either the initial or reconsideration levels contain a citation of the pertinent law and regulations, a list of the evidence of record and a summary of the evidence, and the Secretary's decision and the reasons for the decision.[15] (This was a Subcommittee proposal.)

3. Other SSI Improvements

The bill would also terminate the deeming or attribution of parents' income and resources when a disabled child attains age 18, with the qualification that the benefits of present recipients would not be reduced as a result of this provision. (Similar to a proposal in the administration's welfare reform bill, H.R. 4321.)

On April 10, after amending the SGA provision to delete the exclusion of 20 percent of gross earnings in determining countable earnings for SGA purposes, the House Ways and Means Committee reported H.R. 3464 to the House.

House Rules Committee and Floor Action. In early May 1979, the House Rules Committee conducted a hearing on H.R. 3464 and reported House Resolution 259, which provided for a modified closed rule and 2 hours for debate, to the House. On June 6, 1979, the House passed H.R. 3464 by a vote of 374–3 and sent the bill to the Senate.

Action in the Senate

Senate Committee on Finance Action

In early October 1979, the Senate Finance Committee held public hearings on the proposed disability legislation included in H.R. 3236, H.R. 3464, H.R. 2854 (the administration's bill), and other proposals that were submitted. Stanford G. Ross, Commissioner of Social Security, testifying for the administration, cited the growth of the disability program and warned that its cost would rise from $15 billion to $30 billion within 10 years unless major legislative changes were made. He also stressed that the current legislation was designed to correct three critical areas of the disability program: (1) The high replacement rates for disabled workers, (2) the lack of incentives that would encourage beneficiaries to attempt to work and to leave the disability rolls, and (3) the cumbersome administration of the program.

Commissioner Ross spoke against the provisions in H.R. 3464 that would, if enacted, change the earnings level for determining SGA and provide a 20-percent increase in the earned-income exclusion in the SSI program, but he expressed support for the H.R. 3464 provisions permitting deduction of some impairment-related work expenses from earnings in determining SGA (regardless of who paid them) and in determining benefits (only if the beneficiary paid them). In addition, Commissioner Ross expressed support for adopting the H.R. 2854 provision limiting judicial review, broadening the H.R. 3236 demonstration authority to include other than work-incentive experiments, and providing for the extension of Medicaid eligibility for 3 years after SSI disability benefits end in the same way that Medicare eligibility would be extended after social security disability benefits ended.

Proposals in other bills that were considered by the Committee related to: (1) Benefits for disabled recipients who have earnings from gainful employment, (2) Medicaid eligibility for individuals who are disabled but do not meet the requirements for disability benefits because they are performing SGA, (3) the

[13] Same as administration's proposal in H.R. 2854 and similar to a provision in H.R. 3236 that would affect the DI program.

[14] Similar to a provision in H.R. 3236 that would affect the DI program.

[15] **Ibid.**

waiting period to receive DI benefits in the case of individuals with illnesses that would result in death within 12 months after the impairment became disabling, and (4) provisions designed to encourage disabled DI beneficiaries to return to work.

In late October 1979, the Senate Finance Committee conducted markup sessions. The Committee amended and consolidated provisions of the House approved DI legislation, H.R. 3236, and SSI legislation, H.R. 3464. Senator Talmadge had also introduced a number of bills to amend to the AFDC and CSE programs. The provisions in these bills were then introduced and agreed upon as amendments to H.R. 3236.

The bill, as reported by the Senate Finance Committee, differed from the House-passed bills in the following manner:

1. Provisions Increasing Benefit Equity Under DI

   A. Limited the total family benefits payable in a disability case to the lesser of 85 percent of the worker's AIME or 160 percent of the PIA. (The House provision was 80 percent and 150 percent, respectively.)

   B. Allowed at least 1 dropout year to all workers under the age of 32 and deleted the House provision granting childcare dropout years. (Under the House provision, the worker under age 27 may not be eligible for any regular dropout years.)

2. Provisions Strengthening Work Incentives Under Both DI and SSI

   A. Modified the House provision in H.R. 3236 that would permit the deduction of the costs of impairment-related work expenses and certain other costs from earnings for the purpose of determining whether an individual is engaging in SGA to allow the deduction even where the costs were paid by a third party. (Applies to both DI and SSI.)

   B. Added a 3-year demonstration project that would extend special benefits to disabled SSI recipients whose earnings equal or exceed the SGA level until their countable income reached the Federal breakeven point. Recipients of the special benefits would be eligible for Medicaid and social services on the same basis as SSI recipients. States would have the option of supplementing the special benefits. Medicaid and social services could continue to be available to individuals whose earnings preclude payment if they could not keep working without the services these programs provide and their earnings were insufficient to purchase the coverage. (Applies to SSI only.)

   C. Added a provision to treat remuneration for work in sheltered workshops as earned income for purposes of determining SSI payments. (This SSI provision was contained in the administration's welfare reform bill, H.R. 4321.

3. Improved DI and SSI Program Administration

   A. Added a Senate Finance Committee provision that would delete the substantial evidence requirement and instead modify the scope of Federal court review so that the Secretary's determinations with respect to facts in claims under OASDI and SSI would be conclusive, unless found to be arbitrary and capricious.

   B. Modified the House provision in H.R. 3236 that required the Secretary to perform a preeffectuation review on disability allowances to authorize such review in cases of denials as well as allowances. The schedule for review was changed to 15 percent of the national workload in fiscal year 1981, 35 percent in fiscal year 1982, and 65 percent in years thereafter.

   C. Deleted the House provision that would change the funding provisions for providing VR services for DI beneficiaries.

   D. Modified the House provision in H.R. 3236 to authorize SSA to continue to review eligibility of even permanently disabled persons.

   E. Modified the House provisions in H.R. 3236 and H.R. 3464 to require that denial notices be expressed in language understandable to the claimant.

4. Provisions Relating to AFDC and CSE Programs

   A. Added a provision to make several changes in the work incentive program, including: (1) A requirement that WIN registrants participate in employment search activities, (2) elimination of the 60-day counseling period for refusal to cooperate before assistance can be terminated, and (3) authorization to establish in regulations the period of time during which an individual will be ineligible for assistance in the case of a refusal without a good cause to participate in the WIN program.[16] The Senate Finance Committee, in adding this provision to the bill, stated "that AFDC recipients who are able to work should be required to actively seek employment and that this should be made explicit in the law." Recent demonstration projects, concentrating on employment search activities, have shown that increased emphasis on job search activities have beeen effective in placing new AFDC recipients into jobs.

   B. Added a provision to increase the Federal matching rate for AFDC fraud investigations and prosecutions from 50 percent to 75 percent.

[16] Similar to a provision in the administration's welfare reform bill, H.R. 4321.

C. Added a provision to exempt any governmental agency, or component or instrumentality thereof authorized by law to conduct audits or similar activities in connection with the administration of the AFDC program from the general prohibitation against disclosure of personal information about AFDC recipients to legislative bodies. This provision also permitted disclosure to the Senate Committee on Finance and the House Committee on Ways and Means.

D. Added a provision to increase the Federal matching for AFDC costs incurred by States to 90 percent for developing and implementing a computerized AFDC management information system.[17]

E. Added a provision to extend Internal Revenue Service authority to collect child support for non-AFDC child support enforcement cases.

F. Added a provision to allow Federal matching for State expenditures (including compensation) for child support activities performed by court personnel and other supportive and administrative personnel. As noted in the Senate Finance Committee report, the Congress included the provision because there is "a tremendous backlog of cases awaiting court action in some States" that was created, in large part, by the emphasis on child support enforcement caused by the CSE program.

G. Added a provision to increase the Federal matching to 90 percent for child support costs incurred by States in developing and implementing computer management information systems.

H. Added a provision to prohibit advance payments to the State of the Federal share of the child support program administrative expenses for a calendar quarter unless the State has submitted a full and complete report of the amount of child support collected and disbursed for the calendar quarter that ended 6 months earlier. The amount of the advance payment would also be reduced in the Federal share of child support collections made but not reported by the State.[18]

I. Added a provision to grant authority for States and localities to have access—for purposes of the child support program—to earnings information in records maintained by SSA and State employment security agencies. In addition, SSA would be specifically authorized to disclose certain tax return information to State and local child support enforcement agencies.[19]

5. Other Provisions

A. Expanded the authority of the Secretary to conduct demonstration projects by permitting waiver of certain benefit requirements of DI and Medicare to allow demonstration projects to test ways to stimulate disabled beneficiaries and recipients to return to work. (This provision was also contained in H.R. 2854 and H.R. 3236, and a similar provision was in H.R. 3464.)

B. Added a Senate Finance Committee provision to authorize SSA to participate in a demonstration project designed to determine how best to provide services needed by disabled individuals who are terminally ill.

C. Added a provision to require an alien to reside in the United States for 3 years before becoming eligible for SSI. (This provision is a substitute for one contained in the administration's welfare reform bill, H.R. 4321. The administration had proposed making a sponsor's agreement for support legally binding for 5 years, authorizing legal action to secure reimbursement for public assistance paid to newly arrived aliens, and regarding aliens who received unreimbursed public assistance as public charges.)

D. Added a provision requiring that retroactive OASDI benefits would be adjusted by the amount of SSI benefits already paid that would not have been paid if the social security benefits had been paid timely and taken into account as income on the regularly scheduled payment dates.[20]

E. Added a provision that would close the so-called "FICA II" loophole by stating that, after 1980, any amounts of employee social security taxes paid by an employer would be considered to constitute wages and would, therefore, be subject to social security taxation, except in the case of domestic employment.

F. Added a Senate Finance Committee provision requiring social security contributions for State and local employees to be deposited 30 days after the end of each month.

On November 8, 1979, the Senate Finance Committee reported H.R. 3236 to the full Senate.

Senate Floor Action

On December 5, 1979, the Senate began its floor debate on H.R. 3236. Final debate, which occurred in late January 1980, centered primarily on attempts to modify the provision of the bill dealing with the limitation on family benefits. An amendment to substantially liberalize the provision failed by a vote of 50–34.

[17] **Ibid.**
[18] **Ibid.**
[19] **Ibid.**
[20] **Ibid.**

On January 31, 1980, the Senate passed H.R. 3236 by a vote of 87–1, as modified by the following floor amendments:

1. A modification by Senator Strom Thurmond, Republican of South Carolina, to the Senate Finance Committee's "FICA II" provision, which would require that any amounts of employee FICA taxes paid by an employer would be considered to constitute wages for both social security tax and benefit purposes, and would not be applicable in the case of payments made on behalf of employees of State and local governments; employees of small businesses, including farmers; employees of tax-exempt institutions; and domestic employees. (The Finance Committee provision excluded only domestic employees.)

2. An amendment by Senator Charles Percy, Republican of Illinois, that would modify the Immigration and Nationality Act to make a sponsor's agreement of support for an alien legally binding for 3 years, subject to certain exceptions. This amendment would also modify the Finance Committee's 3-year residency requirement for SSI eligibility of aliens.

3. An amendment by Senator Gaylord Nelson, Democrat of Wisconsin, to require the Secretary of Health and Human Services to develop a plan that would provide State employees who are capable of performing duties in the disability process preferential hiring, nothwithstanding any other provision in law, when the Secretary either partially or fully assumes the disability determination function of a State agency. In addition, the Secretary would not be permitted to assume such function until the Secretary of Labor determines that the State has made arrangements to protect, under every applicable Federal, State, and local statute, employees who will not be hired.

4. An amendment by Senator Birch Bayh, Democrat of Indiana, which would eliminate the waiting period for persons with a terminal illness (a medically determinable physical impairment that is expected to result in death of such individual within 12 months after onset and that has been confirmed by two physicians).

5. An amendment by Senator Herman Talmadge, Democrat of Georgia, to limit the Secretary's right to regulate State agencies making disability determinations to actions authorized by law.

6. An amendment by Senator Henry Bellmon, Republican of Oklahoma, that would require the Secretary to review disability decisions issued by administrative law judges and to report to the Congress by January 1, 1982, on the progress of this review.

7. An amendment by Senator Max Baucus, Democrat of Montana, to establish a voluntary program to certify Medicare supplemental health insurance policies (the so-called Medi-Gap policies) that would meet certain minimum standards.

Action in the House-Senate Conference Committee

Following the appointment of the House-Senate conferees, the Conference Committee, chaired by Representative Al Ullman (Chairman of the House Ways and Means Committee) convened on March 27, 1980, and began its deliberations on H.R. 3236. These deliberations extended throughout April and into May.

The conferees quickly reached a compromise on the benefit equity provisions. They agreed to limit the amount of benefits a family just coming on the disability rolls could receive to the lesser of 85 percent of the disabled worker's AIME (as in the Senate bill) or 150 percent of the worker's PIA (as in the House bill) but not less than 100 percent of PIA. The Committee also agreed to follow the House schedule for the number of dropout years that can be used in computing the amount of the disability benefits. In addition, the childcare dropout provision in the House bill was modified so that, for monthly benefits payable for July 1981 and later, a worker could be eligible for additional dropout years if a child under age 3 lived in the disabled worker's household substantially throughout a year and the disabled worker did not have earnings in that year. If any year is dropped because of childcare, however, the total number of years dropped—regular and childcare—cannot exceed 3.

The House-Senate differences regarding work incentive provisions were resolved later when the conferees agreed that for purposes of determining whether the individual's level of earnings demonstrate an ability to engage in SGA for both the DI and SSI programs, the costs of impairment-related work expenses will be deductible only if paid for by the beneficiary; in addition, for SSI, the deduction will be allowed for benefit-computation purposes. However, an initial applicant must meet the income test and qualify for benefits without the deduction.

The conferees also agreed to a Senate provision authorizing the Secretary to specify, in regulations, the type of care, services, and items that may be deducted and to prescribe the reasonable limits as to the amount of earnings that may be excluded. Agreement was also reached to include the Senate language, which provides that remuneration for work in sheltered workshops will be considered, for SSI purposes, earned—rather than unearned—income.

The conferees also agreed to provisions regarding the work incentive demonstration projects. One of these provisions authorized the Secretary to conduct experiments and demonstrations to test the effectiveness of various alternatives in encouraging disabled beneficiaries to work. In addition, the Secretary is directed to undertake a project to ascertain the feasibility of treating alcoholics and drug addicts to prevent the onset of

irreversible medical conditions that may result in permanent disability. The conferees adopted the Senate's provisions for special SSI benefits and continued Medicaid and social services eligibility for people who had received SSI disability benefits but who are engaging in SGA. They also added a provision under which funds would be provided to States for establishing programs of medical assistance and social services for severely handicapped people who have not qualified for cash disability benefits.

The numerous differences that existed in the provisions for improved program administration were resolved by the conferees with relatively little difficulty. Agreement was reached to follow the Senate schedule for reviewing State agency disability determinations (15 percent in fiscal year 1981, 35 percent in fiscal year 1982, and 65 percent in years thereafter), but to limit the review to only allowances and continuances as proposed by the House. In addition, the Senate provision to permit the Secretary to review State agency determinations and make them more favorable was adopted. In its report, the Conference Committee instructed the Secretary to report to the House Ways and Means and Senate Finance Committees by January 1982 concerning the potential effects on processing times and on the cost effectiveness of the requirement of the 65 percent preeffectuation review scheduled for fiscal year 1983 and thereafter.

The conferees also agreed to the House version of the proposal requiring the Secretary to review the status of DI or SSI beneficiaries at least once every 3 years unless a finding is made that the individual's disability is permanent. They agreed that disability denial notices be expressed in language understandable to the claimant and include a discussion of the evidence and reasons why the claim was denied.

The conferees further agreed to the Senate proposal requiring the Secretary to implement a program of reviewing, on his own motion, decisions rendered by administrative law judges (ALJ's) as a result of disability hearings and to report to Congress on the progress of this program. The Conference Committee report pointed out:

> In the past there had also been fairly extensive review of ALJ allowances and denials through own-motion review by the Appeals Council as authorized by the Administrative Procedure Act and the regulations of the Secretary. This own-motion review has almost been eliminated in recent years.

The new provision is, therefore, designed to move toward greater review of ALJ decisions.

The conferees deleted the Senate amendment that would have provided that the Secretary's determinations with respect to facts in OASDI and SSI claims would be conclusive unless found to be arbitrary and capricious. The conferees were not convinced it would have the intended effect.

The Senate amendment that requires the Secretary to provide a hiring preference to State agency employees (other than the agency administrator and his deputy), in the event the Secretary assumes the functions of a State agency, was adopted. In addition, the Secretary would be prohibited from assuming the State functions until the Secretary of Labor had determined that, with respect to any State agency employees not hired by the Secretary, the State had made fair and equitable arrangements to protect the interests of the displaced employees.

In considering the Senate AFDC and CSE amendments, the conferees deleted the provision to increase the Federal matching rate for AFDC fraud investigations and prosecutions. The conferees agreed to the remaining AFDC and CSE provisions. The provision to allow disclosure of AFDC recipient information to legislative bodies was modified to exclude the disclosure of individual recipients' names and addresses to legislative bodies such as the Senate Finance Committee and House Ways and Means Committee. Also, the provision to allow Federal matching for costs incurred by a court in making judicial determinations related to CSE was modified to exclude judges' salaries from this matching.

After considerable discussion over the course of several conference sessions, the conferees finally agreed to delete the Senate provision that would have eliminated the waiting period for persons with a terminal illness and, instead, compromised on a provision that authorizes SSA to use up to $2 million a year for the purpose of participating in a demonstration project relating to the terminally ill. This project is currently being conducted by the Health Care Financing Administration. The conferees adopted the Senate proposal for a Medi-Gap provision, but modified it by specifying the criteria under which a Medicare supplemental policy would be certified.

The conferees agreed to a modified version of the Senate provision regarding aliens that provides that income and resources of sponsors be deemed to aliens for 3 years after entry and holds aliens and sponsors jointly liable for any overpayment during the 3-year period resulting from incorrect information furnished to SSA. They also agreed to a Senate provision for adjusting retroactive social security benefits by the amount of SSI benefits already paid that would not have been paid if the social security benefits had been paid, and therefore taken into account as income, on their regularly scheduled payment dates.

The conferees agreed to the Senate provision to require that deposits from State and local governments be due 30 days after the end of each month. However, they deleted the provision to count any employer payment of employee FICA taxes as wages for social security crediting and taxing purposes because they

thought the issue needed further congressional consideration and study.[21] Also deleted was a provision to establish a new funding concept in the vocational rehabilitation program designed to increase incentives to the States to help beneficiaries return to work. The conferees believed that the new performance-based allocation system for reimbursing the States for VR services put in place by the Secretary for FY 1979 should continue and be explored further in the future. However, SSA and the Rehabilitation Services Administration are instructed to explore more timely and effective methods of measuring performance in rehabilitations and report the results of these efforts to the Congress.

On May 13, 1980, the House-Senate Conference Committee reported the bill: H.R. 3236, as agreed to by the conferees, was passed on May 22, 1980, by the House of Representatives by a vote of 289–2, and on May 29, 1980, by the Senate on a voice vote. On June 9, 1980, H.R. 3236 was signed by President Carter and became Public Law 96–265, the Social Security Disability Amendments of 1980. The specific provisions of the final legislation are described below.

Summary of Major Provisions

Provisions Increasing Equity

Maximum Family Benefit. The new law sets the maximum family benefit in disability cases at 85 percent of the average indexed monthly earnings or 150 percent of the primary insurance amount, whichever is less, but no less than 100 percent of the primary insurance amount. This provision is effective for individuals eligible after 1978 who were never entitled to disability benefits before July 1980.

One concern that led to this change was that high benefit amounts and replacement rates for some disabled worker families had contributed to growth in the DI program by encouraging persons with serious medical conditions to stop working and apply for benefits and by discouraging those receiving benefits from returning to work. Another concern involved the appropriateness of situations where DI benefits exceed predisability take-home pay, regardless of the effect that such situations might have in encouraging applications for benefits or discouraging rehabilitation. Under the previous law, for example, about 6 percent of newly entitled DI beneficiaries and their families would receive benefits that would be higher than the worker's predisability *net* earnings.

Dropout Years. Effective for individuals who were never entitled to disability benefits before July 1980, the number of years that can be dropped from the computation (averaging) period is proportional to the age of the disabled worker: 1 year can be disregarded for each 5 years after age 21 up to the year in which the worker becomes disabled. As under prior law, the minimum required for the averaging period is 2 years and the maximum number of dropout years is 5.

Under the previous law, younger workers could disregard a higher proportion of their working years than older workers. For example, by disregarding 5 years and counting only 2, a 29-year-old disabled worker would receive a benefit based on the best 29 percent of his or her earnings. A worker aged 50 or older was able to drop only 5 of 28 or more years and would receive a benefit based on 82 percent or more of lifetime earnings. Older workers, therefore, generally had to use more of their low years of earnings than younger workers.

To allow for the fact that younger persons may not work while caring for children, the new law permits workers to drop up to 3 years in which they have no earnings and have children under age 3 living with them. If any year is dropped because of childcare, however, the total number of years dropped—regular and childcare—cannot exceed 3. The childcare provision is effective for monthly benefits after June 1981.

Provisions Strengthening Work Incentives

Exclusion of Extraordinary Work Expenses Due To Severe Disability. This provision states that for purposes of determining whether the level of earnings received by a disabled beneficiary demonstrates ability to engage in substantial gainful activity for both the DI and SSI programs, the costs to the beneficiary of attendant care services, medical devices, equipment prostheses, and similar items and services needed to enable the beneficiary to work will be excluded from income. These costs will be excluded whether or not the items and services are also required for normal daily functions. For SSI recipients, the deduction is permitted in computing the monthly benefit amount. In establishing initial SSI eligibility, however, an applicant must meet the income test and qualify initially without application of the deduction. The change is effective for expenses incurred 6 months after enactment and later.

This change reflects the view that a worker's gross earnings are not a fair measure of a worker's ability to engage in substantial gainful activity when a very substantial part of those earnings must be used to pay for extraordinary impairment-related work expenses. Those whose earnings after these work expenses are deducted do not exceed the SGA level will continue to be considered disabled for benefit purposes.

Automatic Reentitlement to Benefits. Extends under both the DI and SSI programs a person's status as a disabled individual for 15 months after the completion

[21] Although dropped from H.R. 3236, a similar provision was later enacted in P.L. 96–499 (H.R. 7765), Omnibus Reconciliation Act of 1980.

of a 9-month trial work period, as long as there is no medical recovery. Although under the DI program cash benefits are not payable for more than 3 months of this period if the individual engages in SGA, the individual can automatically be reinstated to active benefit status if the work attempt subsequently fails and he or she stops substantial gainful activity. Thus, when earnings exceed SGA, cash benefits will be stopped, but the individual is offered the new assurance of automatic reentitlement in the first year after the trial work period ends. This provision is effective 6 months after enactment.

In commenting on the need for such a change, the Senate Finance Committee stated that it was "concerned that the present 9-month trial work period is insufficient as an incentive for disabled people to return to work...." The Committee said further: "The abruptness of the termination of the trial work period forces people who work for some time and then, because of their impairment, must stop work, to refile an application and go through the lengthy determination process again. The Committee believes the possibility of having to go through this process again poses a sizable impediment to disabled beneficiaries contemplating a return to work."

Extension of Medicare Coverage. Medicare coverage under the DI program is extended for an additional 24 months after the end of the automatic reentitlement period. Thus, Medicare benefits can remain available for 3 years after cash benefits end and 2 years after the reentitlement period. This provision is effective for individuals whose disability has not been determined to have ceased before the 6th month after enactment.

It is often argued that the loss of medical coverage is frequently more of a disincentive than is the loss of cash benefits because medical needs are more uncertain and unpredictable than are cash needs and it may be difficult for a disabled person to obtain private medical insurance. It is hoped that by extending Medicare coverage for up to 4 years after the return to work, the individual has had ample opportunity to adjust to working, to feel secure working, and to make the necessary arrangements for medical coverage either individually or through an employer's group plan.

Waiver of Second Medicare Waiting Period. The requirement is eliminated that a person who was previously receiving DI benefits and entitled to Medicare (and who, within a specified period of time, becomes disabled a second time) must undergo another 24-month waiting period before Medicare is available. Also, if a previously disabled individual who was not entitled to Medicare becomes disabled again within a specified time period, the months for which that individual received cash benefits will count for purposes of qualifying for Medicare. (The specified time period is 60 months (5 years) for workers—the length of time generally required to regain insured status for disability benefits; for widow(er)s and adults disabled in childhood, it is 84 months (7 years)—the period during which a disability would have to occur in order for benefits to be payable on the basis of the deceased worker's earnings.)

This provision assures those who go back to work that the fact that they have attempted to work will not cause a delay in becoming eligible for Medicare should their work attempt fail and they return to the DI rolls. The provision is effective 6 months after enactment.

Three-Year Demonstration Projects.

1. Special SSI payments and eligibility for Medicaid and social services. For the next 3 years, people who have completed the trial work periods and continue to earn in excess of the SGA amount are provided special cash benefit payments. These benefits will be calculated in the same manner as are SSI disability benefits. Individuals receiving the special benefits will continue to be eligible for Medicaid and social services on the same basis as regular SSI recipients. In addition, individuals who are blind or disabled SSI recipients will continue to be eligible for Medicaid and social services even if income above the "breakeven" point causes them to stop receiving cash benefits, as long as they—
   - •continue to be blind or to have the disabling condition that caused them to be considered disabled;
   - •would be entitled to cash payments except for their earnings;
   - •would be seriously inhibited in continuing employment if they lost Medicaid and social services eligibility; and
   - •do not have earnings high enough to allow them to provide a reasonable equivalent of the SSI benefits, State supplementary payments, Medicaid, and social services they would have in the absence of earnings.

   These changes generally assure SSI disability beneficiaries that working will not disadvantage them. Their cash benefit will be reduced only gradually to reflect increases in their earnings (or other income) and their medical and other services are continued even after cash benefits have stopped if their continuation is needed to assure that the individual can continue to work. This provision is effective January 1, 1981.
2. Medical assistance and social services for certain handicapped persons. A 3-year pilot program under which States (at their option) could receive Federal grants to help meet the cost of providing medical assistance and social services to severely handicapped persons who are not receiving SSI is also provided. Eligibility is limited to those persons who have earnings in excess of the SGA amount and are not receiving SSI, special benefits, State

supplementary payments, or Medicaid and for whom the State determines that (1) the individual's ability to continue employment would be significantly inhibited without medical and social services; and (2) the person's earnings are not high enough to provide a reasonable equivalent of the cash and other benefits (SSI, State supplementary payments, Medicaid, and social services) that he or she would have in the absence of those earnings. Effective September 1, 1981, this provision authorizes $6 million for September 1981 through September 1982, with total 3-year expenditures not to exceed $18 million.

Trial Work Period for Disabled Widow(er)s. The trial work period, previously applicable only to disabled workers and adults disabled in childhood, is extended to disabled widows and widowers under DI. This change will allow these beneficiaries an opportunity to attempt to work and become self-sufficient and is effective for individuals whose disability has not been determined to have ceased before the 6th month after enactment.

Continuing Benefits in VR Plans. Special DI and SSI benefits (and, therefore, vocational rehabilitation services) will continue after medical recovery for persons in approved VR programs if (1) the medical recovery was not anticipated and (2) the continuance of such benefits will increase the likelihood that the persons will go off the benefit rolls permanently. This change is designed to allow many of those people who recover (unexpectedly) in the middle of a rehabilitation program to complete that program and is effective 6 months after enactment.

Improving DI and SSI Program Administration

Performance Standards for State Disability Determination Services (DDS). The Secretary is authorized to establish, through regulations, performance standards and procedures for the State disability determination process, with emphasis on performance criteria, fiscal control procedures, and other standards designed to assure equity and uniformity in State agency disability determinations. States may continue to provide disability determination services in compliance with the newly prescribed standards or turn the administration over to the Federal Government. In the event of unsatisfactory State performance, the Secretary could take over the administration of the State determination process. This provision is effective with the 12th month following the month of enactment.

The Secretary is required to develop a contingency plan for the assumption of the disability determination process and, in that plan, to give employment preference to State employees capable of performing duties in disability determination processes, excluding only employees filling the positions of DDS administrator and deputy administrator. The report must be submitted to the Congress by July 1, 1980.

Periodic Review of Disability Determinations. A review is required at least once every 3 years of the status of disabled beneficiaries whose disabilities may not be permanent. Where a finding is made that an individual's disability is permanent, review of the beneficiary's condition may be made at such times as the Secretary considers appropriate. This provision reflects a congressional concern that too little has been done to assure that DI and SSI benefits are not being paid to persons who have medically recovered from their disability. The change is effective January 1, 1982.

Federal Review of State Agency Determinations. A Federal review is required of State disability allowance and continuation determinations on a preeffectuation basis, in order to assure greater uniformity and consistency of the decisions made by various adjudicators within a State agency and of decisions made by the various States. A review of 15 percent of such DI determinations is required in fiscal year 1981, increasing to 35 percent in fiscal year 1982, and 65 percent in fiscal year 1983 and thereafter. In compliance with congressional intent, the preeffectuation review requirement will also be applied to SSI disability determinations, although the law does not set forth a specific schedule for SSI reviews. In addition, the Secretary is to report to the Congress by January 1982 on the potential effects of the requirement for the 65-percent review for fiscal year 1983.

This provision also authorizes the Secretary to reverse a State agency decision to deny a DI claim. Thus, it is not possible for SSA to reverse all State agency decisions in both the DI and SSI programs.

Review of Administrative Law Judge Decisions. The Secretary is required to institute a program of own-motion review of disability decisions rendered by ALJ's and submit a report on the progress of this program to the Congress by January 1, 1982. The report will focus on the uniformity and accuracy of ALJ decisions and the standards employed in making those decisions. The new provision is designed to move toward greater review of ALJ decisions.

Closed Evidentiary Record. The introduction of new evidence is prohibited in OASDI and SSI claims after a decision on the claim is made at the hearings level, in order to stabilize the record on a claim prior to Appeals Council or Federal Court review.

This provision is intended to limit the so-called "floating application" process whereby a claimant, usually an applicant for disability benefits, continues to introduce new evidence while the appealed claim is being reviewed. This provision is effective for applicants filed in the month after the month of enactment.

Limitation on Court Remands. This provision permits OASDI cases to be remanded from courts on the

Secretary's motion only for "good cause" shown, and on court's own motion only if there is new and material evidence that was not previously submitted and there is "good cause" for not having submitted evidence. (This provision also would apply for SSI cases since the provision of title II that is amended is referenced in title XVI.) This provision is effective upon enactment.

Payment for Existing Medical Evidence. The new law provides that any non-Federal provider of medical services that supplies medical evidence required and requested for making a determination of disability in the DI program will be reimbursed for the reasonable costs of providing such evidence. This provision parallels existing authority in the SSI program and is intended to aid in obtaining better and more complete medical information needed to adjudicate disability cases. The change is effective 6 months after enactment.

Information to Accompany DI and SSI Disability Decisions. A notice to a claimant regarding the denial of a disability claim must be expressed in understandable language and must include a discussion of the specific evidence and reason for denial of the claim. This provision is intended to strengthen the adjudicatory process by requiring a written formulation of the reasons for the decision, as well as to provide claimants with a better understanding of the reason for denial. The change is effective 13 months after enactment.

Payment for Certain Travel Expenses. Permanent authority is provided under the Social Security Act to make payments for certain travel expenses incident to medical examinations required by SSA in conjunction with a disability determination and for travel expenses incurred by OASDI and SSI applicants, their representatives, and witnesses in traveling to hearings and face-to-face reconsiderations. Similar authority had been provided annually under appropriation acts. Travel expenses for SSI applicants will be paid from general revenues. This provision is effective upon enactment.

Other Changes Affecting SSI Programs

Parental Deeming for SSI. The preceding law required that the income and resources of parents be deemed to children aged 18–20 who were students and who lived with their parents; no such deeming was required in the case of similarly situated children who were not students. Thus, by becoming a student, a child could lose part or all of his or her SSI payment. This differential treatment of children on the basis of student status has been criticized as counterproductive to goals of education and training for the handicapped.

The new provision deletes the deeming requirement so that all deeming of income and resources from parents to children will end when the children reach age 18. The amendment also provides that the benefit amount of current recipients, if it would otherwise be reduced as a result of the new provision, will not be reduced. These changes are effective October 1, 1980.

Retroactive Title II Benefit Adjustment Due To SSI Benefits. Significant numbers of SSI claims also involve concurrent claims for OASDI benefits. If the OASDI check is delayed until after SSI benefit payments have begun, the beneficiary can receive full payment under both programs for the same months because the lump-sum retroactive OASDI payment is income for SSI purposes only for the calendar quarter in which it is received. The new law provides for offsetting retroactive OASDI benefits by the amount of SSI benefits already paid that would not have been paid had the social security benefits been paid on their regularly scheduled payment dates. This change is effective in the 13th month after enactment.

Aliens. Considerable criticism has been voiced over the fact that aliens could become entitled to SSI benefits within 30 days of their arrival in the United States despite pledges of financial support by sponsors who may have substantial income and resources. In addition, because reduced SSI benefits are payable to those living with and receiving support and maintenance from another person, an alien could receive SSI benefits despite the receipt of substantial support from his or her sponsor. In addition, courts have determined that a sponsor's affidavit of support is not legally binding. To address these concerns, the new law—

- provides that income and resources of sponsors be deemed to aliens for 3 years after entry;
- requires aliens to obtain their sponsors' cooperation in documenting income and resources;
- excludes refugees, those granted political asylum, and those who become blind or disabled after entry from the deeming requirement; and
- holds aliens and sponsors jointly liable for any overpayment during the 3-year period resulting from incorrect information furnished SSA, unless good cause exists.

These changes are effective with respect to applications filed on and after October 1, 1980.

Income in Sheltered Workshops. Under prior law, some income received through participation in a sheltered workshop was treated for SSI purposes as unearned income. Therefore, remuneration received was subject to a less liberal income disregard than that applied to earned income. The new law provides that all remuneration received in a sheltered workshop is considered as earned income and is therefore subject to the earned income disregards.

The intent was to encourage the participation of SSI recipients in vocational rehabilitation programs by extending the work-incentive features of the earned income disregard to income received in sheltered workshop training programs. These changes are effective for remuneration received after September 30, 1980.

Summary of Provisions Affecting AFDC and CSE

Work Incentive Program. The amendments authorize the Department of Labor to require those AFDC recipients who are required to register with the WIN program to participate in up to 8 weeks of job search activities a year through WIN. The new law also strengthens the AFDC work requirements by eliminating the 60-day counselling period before assistance can be terminated for recipients who refuse to participate in WIN and by authorizing the Secretaries of Labor and Health and Human Services to establish a fixed sanction period during which an individual who refuses to participate remains ineligible for AFDC. These changes are effective October 1, 1980, except for the provisions relating to sanctions for nonparticipation, which are effective upon enactment.

AFDC and CSE Management Information Systems. A number of recent studies have concluded that computerized management information systems for AFDC and CSE programs foster better management of these programs. The new law provides for increasing to 90 percent the Federal matching costs of developing and implementing such systems, effective July 1, 1981.

Wage Information for CSE Program. To improve the capacity of the State child support enforcement agencies to acquire accurate wage data, the new law authorizes and requires SSA to disclose wage and self-employment information directly to State and local child support enforcement agencies. Previously this information could be obtained only from the Internal Revenue Service. The new law also requires States to disclose wage information from unemployment compensation records to CSE agencies for the same purpose. The provisions are effective July 1, 1980.

Disclosure of AFDC Information. Prior law provided that State AFDC plans include safeguards against disclosure of AFDC recipient information to legislative bodies or their agents. Although regulations of the Department of Health and Human Services allow State audit agencies performing normal audit functions to be exempted from this restriction, several States did not honor the exemption. The new law eliminates the disclosure prohibition for such agencies. The amendment makes similar changes with regard to audits under title XX, social services. These changes are effective upon enactment.

Child Support Duties by Court Personnel. The new law provides Federal matching funds for expenditures by courts (exclusive of judges' salaries) in performing child support enforcement activities; the Federal Government will pay 75 percent of expenditures over and above 1978 levels. The new law is expected to encourage States to concentrate more court personnel on child support enforcement cases, help to alleviate the existing backlogs, and lead to increased collections. The provision is effective for expenditures beginning July 1, 1980.

IRS and Collections of Child Support for Non-AFDC Families. The new law strengthens the child support enforcement powers of the States by extending to the States the authority to request the Internal Revenue Service collection of delinquent child support payments for non-AFDC families. This change is effective July 1, 1980.

Child Support Reporting and Matching Procedures. Prior law required State child support agencies to submit full reports of collections and disbursements and to return the Federal share of collections for AFDC families to the Federal Government. Some States were delinquent in providing reports requested by the Secretary. Other States that reported promptly failed to return the Federal share of collections. The new legislation will promote more efficient processes in State reporting by denying advances of Federal matching for CSE administrative costs to States that do not report effective with the calendar quarter beginning July 1, 1980. It will also simplify the return of the Federal portion of collections by reducing AFDC quarterly advances of funding to States by the amount of the Federal share, as estimated for States failing to report, effective January 1, 1981.

Other Changes Affecting SSA Programs

Secretary's Report on OASDI and SSI. The Secretary is required to make a full report to the Congress on the effects of the OASDI and SSI disability provisions of P.L. 96–265, with emphasis on work incentives, implementation and operational problems, and cost and caseload impact. The report is due by January 1, 1985.

Social Security Contributions for State and Local Employment. The new law requires that deposits of social security contributions for State and local covered employment be made within 30 days after the end of each month effective with contributions for wages paid on or after July 1, 1980. Prior to the enactment of P.L. 96–265, States were required to make deposits only once each quarter. These social security requirements are much more liberal than for private employers and resulted in a significant loss of interest income to the social security trust funds. The Department of Health and Human Services had published regulations that would have required deposits on a more frequent basis than P.L. 96–265, but P.L. 96–265 was passed before the regulations were to take effect and superseded them.

Study of Time Limits for Decisions on Benefit Claims. The Secretary is required to report to the Congress by July 1, 1980, on appropriate time limits within which a decision should be made in initial, reconsideration, hearing, and Appeals Council cases under OASDI.

Demonstration Projects. The Secretary is authorized

to conduct experiments and demonstrations to test the effectiveness of various alternatives on encouraging disabled beneficiaries to return to work. Such projects could include a study of the effect of lengthening the trial work period; altering the 24-month waiting period for Medicare coverage; altering the way in which the disability program is administered; earlier referral of beneficiaries for vocational rehabilitation; and greater use of private contractors, employers, and others to develop, perform, or otherwise stimulate new forms of rehabilitation. The Secretary is also directed to undertake a project to ascertain the feasibility of treating alcoholics and drug addicts to prevent the onset of irreversible medical conditions that may result in permanent disability.

These demonstration projects and experiments are expected to provide information that can be used to improve the operations of the DI, SSI, and Medicare programs as they relate to the disabled and to ensure that these programs are administered in the most efficient and effective way possible. An interim report on the projects must be sent to Congress by January 1, 1983, and a final report is due 5 years after enactment.

Terminally Ill. Funds are authorized to be used by SSA to participate in a project to study the impact on the terminally ill of provisions of the disability programs administered by the Social Security Administration.

Medicare Supplemental Health Insurance (Medi-Gap) Certification. The Secretary is required to establish a voluntary certification program for Medicare supplemental policies. This certification program will apply to policies sold in States (1) that fail to establish and implement standards that meet or exceed those contained in the National Association of Insurance Commissioners (NAIC) model regulations and (2) whose requirements concerning the loss-ratio are not at least those of P.L. 96–265. Final regulations to announce certification procedures were required to be issued by October 1, 1980, with issuance of seals of certification to begin July 1, 1982.

A panel chaired by the Secretary of the Department of Health and Human Services, and consisting of four State insurance commissioners, will be appointed by the President to determine which States have programs that meet the NAIC standards and the loss-ratio requirements. This provision is effective July 1982 in those States that do not meet standards and is designed to alleviate the highly publicized abuses in the sale of some private health insurance policies to supplement Medicare coverage by encouraging States to implement regulatory insurance programs that would be beneficial to the public.