

*Social Security Administration Created as an Independent Agency: Public Law 103-296**

At an historic White House bill-signing ceremony on August 15, 1994, Public Law 103-296—Social Security Independence and Program Improvements Act of 1994—was signed into law. President Bill Clinton symbolically used one of the pens President Franklin Roosevelt had used when he signed the original Social Security Act 59 years ago, on August 14, 1935. The new legislation officially separates the Social Security Administration (SSA) from the Department of Health and Human Services (HHS), effective March 31, 1995, and restores the SSA to its original status as an independent Federal agency. (Since 1939, SSA has operated under the direction of a “parent” agency.) A single administrator will lead the agency with a seven-member bipartisan advisory board. Also contained in the new law is a number of other major changes affecting the Social Security and Supplemental Security Income (SSI) programs.

Historical Background

What is today the Social Security Administration was established in 1935 as the Social Security Board, managed by a three-member bipartisan board, and operated as a free-standing entity within the Executive Branch. The Social Security Board chairman reported directly to the President. The members of the board, including the chairman, were nominated by the President, and appointed with the advice and consent of the Senate.

In the 1939 U.S. Government Reorganization Act, the Federal Security Agency was created and the Social Security Board became one of its components, no longer reporting directly to the President. In 1946, the three-member Board was abolished and an Office of Commissioner of Social Security was created to run what became the Social Security Administration, still a part of the Federal Security Agency. In 1953, the agency was replaced with the creation of the cabinet-level Department of Health, Education, and Welfare (HEW), and SSA consequently became a component of HEW. When in 1979 the educational components of HEW were spun off and reorganized into a new cabinet-level Department of Education, the remaining components (SSA, Public Health Service, Health Care Financing Administration, Office of Human Development Services, and Office of the Secretary) were reconstituted as the Department of Health and Human Services, which continued as SSA’s parent agency until March 31, 1995.

Since the Social Security Board was abolished in 1946, 18 persons have served in the position of Commissioner or Acting

Commissioner of Social Security, with tenure in office ranging from as little as a few months to as long as 11 years. The agency’s internal organizational structure has also undergone many changes. The most recent reorganizations occurred in 1975, 1977, 1979, and 1994. In its nearly 60 years of operations, SSA has been assigned diverse responsibilities under a myriad of programs (see Milestones). Currently, SSA has principal responsibility for Old-Age, Survivors, and Disability Insurance (OASDI), Supplemental Security Income (SSI) and Black Lung (Part B) programs. It receives support from the Treasury Department—which collects Social Security taxes and disburses benefit checks—the Postal Service, General Services Administration, and the Office of Personnel Management.

Independent Agency Issue

The impetus behind an independent SSA emanated primarily from a desire to separate Social Security policymaking from economic and budgetary decisions affecting the rest of the Federal Government. Considering Social Security unique among Federal social programs because of its self-financing nature and “implied compact” with the Nation’s workers to pay “earned” retirement, survivor, and disability benefits, proponents of SSA’s independence wanted to insulate it from everyday political, fiscal, and operational policy decisions of the Government.

Support for independence began to emerge in the early 1970’s. It can be traced to the decision taken under the Johnson Administration to create a Unified Federal Budget in which Social Security program revenues and outlays were shown together with other government operations. The rationale for this change was that Social Security had grown to be such a significant part of Government activities and of the national economy that it was misleading to use a budgetary accounting that left Social Security off budget. However, soon after this change was implemented in fiscal year 1969, Federal deficits began to grow to increasingly disturbing proportions.

Perhaps in response to the deficits, various cutbacks in Social Security were proposed in budgets submitted to Congress by the Nixon, Ford, and Carter Administrations. More than 100 interest groups opposed to such cuts formed a Save Our Security (SOS) coalition early in 1979 in reaction to proposed cuts in the Carter Administration’s fiscal year 1980 budget. Although most of the Administration’s measures were ignored by Congress, serious consideration was being given to proposed changes in the Disability Insurance program. The SOS coalition feared these measures would lead to larger benefit cuts later, and campaigned for legislation to remove SSA from HEW, and separating Social Security from the unified budget.

*Rita L. DiSimone, Program Analysis Staff, Office of Research and Statistics, Social Security Administration.

The Social Security Amendments of 1977 mandated the establishment of a 2-year National Commission on Social Security. The commission's report in March 1981 endorsed a position similar to that taken by SOS, but on quite different grounds. It recommended that SSA be made into an independent agency managed by a three or five-member bipartisan board, with Social Security and Medicare Trust Funds removed from the unified budget. In doing so, it emphasized administrative reasons for an independent agency, contending that program operations had deteriorated significantly—partly because of frequent reorganizations—and a strong independent board was needed to revitalize the agency.

Calls for making SSA independent and separating it from the unified budget increased with the enactment of Social Security cuts proposed by the Reagan Administration in its fiscal year 1981 budget, along with public controversy over other cuts contained in the Administration's May 1981 plan to remedy Social Security's financial problems. After continued discussions regarding Social Security constraints on congressional budget proceedings, the National Commission on Social Security Reform, a bipartisan study group, was appointed by President Reagan and congressional leaders to work out remedies to Social Security's financial problems. In January 1983, a majority of the members recommended proposals to deal with Social Security's financing problems, that Social Security and Medicare be taken out of the budget, and a further study be conducted of the issues involved in making SSA independent. Three months later, the Social Security Amendments of 1983 was signed into law. It included a provision requiring that "in keeping with" the National Commission's recommendation, a study be conducted of the specific proposal to establish SSA as an independent agency headed by a bipartisan board, which would be appointed by the President with the advice and consent of the Senate.

This study was duly conducted by a three-member panel of experts headed by Elmer Staats, former Director of the General Accounting Office, and its report was submitted to Congress on June 12, 1984. The Congressional Panel on Social Security Organization, as directed by law, studied how SSA could be made into an independent agency. It went to great lengths to document the many administrative problems that SSA has faced in recent years, as a result both of internal reorganizations resulting from frequent and repeated changes in leadership and of the complexity of being a component of HHS, and in dealing second hand with the Office of Management and Budget, the General Services Administration, and the Office of Personnel Management. If SSA were to be made independent, the panel concluded, then:

- It should be headed by a "single administrator" who "would report to and be appointed by the President, by and with the advice and consent of the Senate;"
- A permanent bipartisan "Advisory Board" of nine members should be established "to promote independent review and encourage broadly based policy analysis;"
- It should be delegated certain functions now performed by the General Services Administration and the Office of Personnel Management; and

Social Security Commissioners

Arthur J. Altmeyer	1937-53*
William L. Mitchell (Acting)	1953**
John W. Tramburg	1953-54
Charles I. Schottland	1954-58
William L. Mitchell	1959-62
Robert M. Ball	1962-73
Arthur E. Hess (Acting)	1973 (March to Oct.)
James B. Cardwell	1973-77
Don I. Wortman (Acting)	1977-78
Stanford G. Ross	1978-79
William J. Driver	1980-81
Herbert R. Doggette (Acting)	1981
John A. Svahn	1981-83
Martha A. McSteen (Acting)	1983-86
Dorcas R. Hardy	1986-89
Gwendolyn S. King	1989 to Sept. 1992
Louis D. Enoff (Acting)	Oct. 1992 to July 1993
Lawrence H. Thompson (Acting)	1993 (July to Oct.)
Shirley S. Chater	1993 (Oct. to present)***

*From 1937 to 1946, Mr. Altmeyer served as Chairman of the Social Security Board, which was abolished in 1946 when the Social Security Administration was created. He was then appointed Commissioner *for* Social Security.

**When the Department of Health, Education, and Welfare was created in 1953, the Commissioner became the Commissioner *of* Social Security.

***It was announced on November 16, 1994, that President Clinton had nominated Mrs. Chater to be the first Commissioner of Social Security when it becomes an independent agency on March 31, 1995. The new law provided a fixed term for the Commissioner, to expire on January 19, 2001.

- It should have responsibility only for administering the OASDI and SSI programs.

These recommendations were not universally accepted. Those opposed argued variously that:

- Social Security should not be insulated from fiscal policy decisions because of the magnitude of its revenues and expenditures;
- Social Security is, by definition, a Federal social program, not a contractual pension system, and should be continuously evaluated in conjunction with other economic and social functions of the Government;
- SSA as an independent agency would fragment and greatly weaken domestic policymaking within the Executive Branch since the Office of the Secretary of HHS is the only point below the executive offices of the President where an institutionalized process exists to coordinate social programs and

to conduct a comprehensive approach to social policymaking;
or

- HHS should be turned into a Department of Income Security in order to bring all income security and social welfare programs together (Social Security, Medicare, private pensions, health and welfare), and similar income security programs should be coordinated in other Departments, such as Defense, Labor, and Treasury.

Nevertheless, a strong congressional movement for an independent agency began in 1986 when the House passed H.R. 5050, calling for an independent SSA to be governed by a three-member board appointed by the President and confirmed by the Senate. Although the Senate acted on other Social Security provisions contained in this legislation, it did not take up the independent agency measure, which therefore died at the close of the 99th Congress.

Similar bills were introduced in the 100th Congress (1987-88), but no action was taken. During the 101st Congress, the House Ways and Means Committee brought the measure back as part of its fiscal year 1990 budget reconciliation recommendations, and the House passed it again as part of the Omnibus Budget Reconciliation Act of 1989 (H.R. 3299). Although the Senate Finance Committee had approved a similar measure, the Senate-passed reconciliation package did not contain the provision. It was also omitted from the final bill worked out by conferees. The House Ways and Means Subcommittee on Social Security again tried to move an SSA independence measure by including it in a draft bill reported to the full Committee, but this was not acted on by the close of the 101st Congress.

During the 102nd Congress (1991-92), it was the Senate Finance Committee that took the lead by approving S. 33, providing for an independent SSA run by a single administrator, and including it in a package of changes to Social Security. The House passed its own somewhat different version on June 29, 1992 (H.R. 5429), by an overwhelming vote of 350-8, but the full Senate did not take up either S. 33 or H.R. 5429 before Congress adjourned *sine die*. The Bush Administration opposed both measures.

In the 103rd Congress, the Clinton Administration initially opposed making SSA independent, but eventually changed its position. On March 2, 1994, by voice vote the Senate passed its version (S. 1560). The House passed its version, H.R. 4277, on May 17, 1994, by a recorded vote of 413-0. House-Senate conferees met to resolve their differences on H.R. 4277 and reached agreement on July 20, 1994. On August 5 the Senate, by voice vote, approved H.R. 4277. On August 11, on a recorded vote of 431-0, the House passed H.R. 4277, and the President signed the bill into law on August 15, 1994 (P.L. 103-296).

Major Provisions of the New Legislation

Independent Agency Provisions

A major concern expressed by Congress has been the high turnover of SSA's top management over the past two decades

Milestones

- 1935** Old-Age Insurance; unemployment insurance; State grant programs for needy children and mothers (now called Aid to Families with Dependent Children (AFDC), maternal and child health, and crippled children and child welfare services) and for needy aged and blind persons.
- 1939** Old-Age and Survivors Insurance. (Benefits extended to survivors and dependents of insured workers under the Old-Age Insurance program.) The Social Security Board was also given responsibility for the employment services program (transferred with the unemployment insurance program to the Department of Labor in 1946).
- 1948** Federal credit unions (supervisory responsibility).
- 1950** State grants to aid to the permanently and totally disabled.
- 1954** New "disability" features of the OASI program. Evolved into the Disability Insurance program in 1956.
- 1960** Medical assistance State grants program.
- 1961** Cuban Refugee program. (Transferred in 1963 (with welfare functions) to newly established Welfare Administration in the Department of Health, Education, and Welfare (HEW).)
- 1965** Medicare program.
- 1969** Federal Black Lung benefits program (Part B).
- 1972** Supplemental Security Income program.
- 1977** Medicare program transferred to newly created Health Care Financing Administration. SSA again made responsible for AFDC and refugee assistance. Social Security Commissioner also made Director of the Office of Child Support Enforcement, which became a separate agency within HEW.
- 1981** Low-Income Home Energy Assistance program.
- 1986** AFDC, Low-Income Home Energy Assistance program, and refugee resettlement programs transferred to newly created Family Support Administration in the Department of Health and Human Services along with directorship of the Office of Child Support Enforcement.

Currently SSA is responsible for the Old-Age, Survivors, and Disability Insurance, the Supplemental Security Income, and the Black Lung (Part B) programs.

(during the past 17 years, SSA has had 12 Commissioners, including Acting ones). Under the new law, high priority is placed on management efficiency. To ensure independence, stability, and continuity as well as efficiency, the new law establishes four positions—Commissioner, Deputy Commissioner, Inspector General, and Chief Financial Officer. The Commissioner is given authority to appoint whatever additional officers and employees may be considered necessary to carry out SSA's functions, and consultants and experts may be appointed under an exception to the civil service laws.

Structure of Leadership and Management

Commissioner.—The President will appoint a Commissioner, with confirmation by the Senate. On November 16, 1994, the White House announced that the President would nominate the present Social Security Commissioner, Shirley S. Chater, to continue overseeing the Social Security Administration when it becomes independent on March 31, 1995. Future Commissioners will serve a fixed 6-year term, but the initial term of office is to end on January 19, 2001.¹ The Commissioner, as a single administrator, will be paid at the level of a Cabinet officer, be responsible for the exercise of all powers and the discharge of all duties related to the agency,² have authority and control over all personnel and activities, and serve as a member of the Board of Trustees.

Deputy Commissioner.—A Deputy Commissioner will be appointed by the President, with the advice and consent of the Senate, and serve a 6-year term coinciding with that of the Commissioner. He or she will perform and exercise the duties and powers assigned by the Commissioner, and serve as Acting Commissioner during the absence or disability (or vacancy of the office) of the Commissioner, unless the President designates someone else. In addition, the Deputy will serve as the Secretary of the Board of Trustees of the OASDI Trust Funds.

Chief Financial Officer.—A Chief Financial Officer will be appointed by the Commissioner in accordance with Federal law.

Inspector General.—The Inspector General will be appointed by the President, with Senate confirmation. The Commissioner of the independent agency has authority to appoint an interim Inspector General for up to 60 days. If the appointment is not made, the Inspector General of HHS may, if requested by the Commissioner, serve as SSA's Inspector General until one is appointed for the independent agency.

Chief Actuary.—Although the new legislation does not establish any positions in the independent SSA other than the four listed above, the House-Senate Conference Report expressed the view that the Office of Chief Actuary has a unique role within the agency in that it serves both the Administration and the Congress. Accordingly, it is the intent of Congress that the Chief Actuary will:

- Remain available to consult with the Chairmen of the House Ways and Means Committee and the Senate Finance Committee (the tax-writing Committees of Congress with jurisdiction over Social Security);
- Be permitted to function with a high degree of independence

and professionalism in assessing the financial condition of the Social Security trust funds;

- Develop estimates of the financial effects of potential legislative and administrative changes in the Social Security programs.

The House-Senate conferees noted that in recent years fewer actuarial studies and notes have been published, and various informal reports and actuarial memoranda available in the past are no longer circulated. To remedy this matter, the conferees considered it important that the Commissioner consider providing adequate staff and support to the Office of the Chief Actuary when formulating a comprehensive workforce plan.

General Counsel.—As a component of the Department of Health and Human Services, SSA had received legal services from the Office of General Counsel of HHS through a component headed by a Chief Counsel for Social Security. It is expected that the independent agency officers will include a General Counsel for the new agency.

Advisory Board.—A seven-member bipartisan Advisory Board is appointed for staggered 6-year terms. Three members are appointed by the President (no more than two from the same political party) and confirmed by the Senate; and two each are appointed by the House Speaker and Senate president pro tempore (with no more than one member from the same political party).³ A member of the Board will be designated by the President to serve as chairperson for a term of 4 years, coincident with the term of the President or until the designation of a successor. The Board is to meet at least four times a year (four members will constitute a quorum, with not more than three from the same political party). Although the Board is advisory in nature, congressional intent is that specific functions of the Board will be focused more broadly than in the past, and shall include the following:

- Analyzing the Nation's retirement and disability systems and making recommendations with respect to how the OASDI and SSI programs, supported by other public and private systems, can most effectively assure economic security;
- Studying and making recommendations relating to the coordination of programs that provide health security with the OASDI and SSI programs, and with other public and private systems;
- Making recommendations to the President and Congress on policies that will ensure the solvency of the OASDI program, both in the short and long term;
- Making recommendations on the quality of service SSA provides to the public;
- Making recommendations on policies and regulations of the OASDI and SSI programs;
- Including public understanding of the Social Security system;
- Making recommendations on a long-range research and program evaluation plan for SSA;

- Reviewing and assessing any major studies of Social Security that may come to the attention of the Board; and
- Making recommendations on other matters the Board determines to be appropriate.

While the Advisory Board will appoint a staff director and hire required clerical support personnel, any additional staff required will be detailed to the Board by the Commissioner.

Board of Trustees.—The Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds will consist of the SSA Commissioner and, as before, the Secretaries of Treasury, Labor, Health and Human Services, and two public trustees. The Deputy Commissioner of SSA will serve as the Secretary of the Board.

Transfers, budget, and finance.—The Commissioner and the Secretary of HHS will enter into a written interagency transfer arrangement identifying personnel and resources to be transferred to SSA on March 31, 1995. As required by the new law, the Secretary of HHS and the SSA Commissioner sent an interim report by November 1, 1994 to the tax-writing committees of Congress on their progress in developing the required joint plan. A detailed plan of the terms of arrangement was submitted to these Committees and to the Comptroller General of the General Accounting Office by January 1, 1995, as required by law. The General Accounting Office evaluated the plan and issued a report to the committees.

Other administrative provisions.—During the 1-year period beginning March 31, 1995, all full-time or part-time permanent employees are protected against separation or reduction in grade or compensation if caused solely as a result of the transfer. Any employee who was not employed by SSA immediately prior to enactment of the new Act will be exempt from directed reassignment outside his or her commuting area for 1 year after the effective date. The exemption is limited to 6 months in the case of direct reassignments between Baltimore and Washington, D.C. duty stations.

Data exchange.—Existing data exchange programs between HHS and SSA will continue for the administration of various HHS programs until March 31, 1996, whereafter additional data exchanges and computer matching agreements shall be made in compliance with the routine uses provision under the Privacy Act.

Adjudication.—SSA will continue to adjudicate Medicare appeals. Under this arrangement, the Secretary of HHS will maintain the ultimate authority for appeal decisions, but SSA's Administrative Law Judge corps will continue to conduct Medicare hearings until and unless such time as the Commissioner and the Secretary reach a different agreement.

Budget and planning.—The Commissioner will be required to prepare an annual budget for SSA, which shall be presented by the President to Congress without revision, together with the President's annual budget for the Administration. This will provide a greater degree of independence from the Office of Management and Budget. Appropriations requests for SSA staffing and personnel will be based on a comprehensive workforce plan, established and revised from time to time by the Commissioner.

Within 60 days after establishment of the comprehensive workforce plan, the Director of the Office of Personnel Management shall transmit to the House Ways and Means Committee and the Senate Finance Committee a report specifying the total number of Senior Executive Service (SES) positions authorized for SSA in connection with its workforce plan. Appropriations for administrative expenses are authorized to be provided on a biennial basis. These steps will provide stability in planning ahead.

Current Status of SSA

When the Social Security Administration resumes its independent status, it will employ approximately 65,000 persons, operate 1,300 district and branch offices, 10 regional offices, 8 processing centers, 3 data operations centers, 37 teleservice centers, and 132 hearings offices. It will continue to be responsible for the administration of the OASDI and SSI programs, and will continue to perform its current function in assisting in the administration of the Medicare program, the Black Lung program, and the Coal Industry Retirees Health Benefits Act.

SSA's estimated budget for fiscal year 1996 (October 1, 1995 to September 30, 1996), will be more than \$384 billion. Administrative expenses account for approximately 1.5 percent of the budget. As shown in the following tabulation, the number of beneficiaries served by SSA programs is projected to reach 48 million:

Total beneficiaries (in millions)*.....	50.8
Retirement and Survivors Insurance.....	37.8
Disability Insurance.....	6.1
Supplemental Security Income.....	6.5
SSI (State Supplement).....	.3
Black Lung.....	.1

*Total figure is higher than estimated 48 million because it includes some persons who are eligible under more than one program.

Program Improvements Relating to OASDI and SSI

Restrictions on Substance Abusers

There has been a growing concern regarding Disability Insurance (DI) and Supplemental Security Income (SSI) benefit payments being paid on the basis of drug addiction and alcoholism (DA&A). Since 1984, the percentage of DA&A recipients has increased considerably. In 1984, SSI blind and disabled recipients aged 18-64 totaled 1,775,329, of which there were 4,021 DA&A beneficiaries, or 0.2 percent of the total. By 1991, out of a total of 2,604,500 SSI recipients, 33,869 (or 1.3 percent of the total) represented DA&A recipients. In 1993—a span of 2 years—DA&A recipients doubled to 78,730, or 2.6 percent of the total SSI population of 3,071,200. The new legislation places restrictions and barriers against the misuse of these benefits.⁴ DA&A Disability Insurance beneficiaries are not easily identified, but SSA has taken several actions to begin the necessary process to meet the requirements under the new legislation.

Representative payees.—Supplemental Security Income recipients whose drug addiction or alcoholism is a contributing factor material to their disability are required to have their benefits paid to representative payees responsible for managing their finances. Under the new law, beginning 180 days after enactment (or by February 11, 1995), new Disability Insurance beneficiaries whose substance abuse is a contributing factor material to their disability will be notified that they too will be required to receive payments through a representative payee, beginning with the first benefit check. For such DI beneficiaries already on the rolls, this requirement will become effective the month following the month of notification. Preference is to be given to Social Service agencies or to Federal, State, or local government agencies as representative payees for DI and SSI substance abusers, unless SSA determines that a family member would be more appropriate.

Treatment and suspension for noncompliance.—Payments to SSI beneficiaries whose substance abuse is material to their disability are limited to a maximum of 36 months. Payments to DI beneficiaries are also limited to 36 months, but this period begins only with the first month for which treatment is available, and only those months in which treatment is available are counted as months in the 36-month period. The payment limit will not apply to individuals who are disabled independent of their alcoholism or drug addiction at the close of the 36-month period. Also, the payment limitation will automatically expire effective October 1, 2004. During the 36-month period, SSI and DI beneficiaries whose disabilities are based in whole or in part on drug addiction or alcoholism will be required to undergo appropriate substance abuse treatment, if available, at approved facilities. The Secretary of HHS is required to establish a referral and monitoring agency for each State, which will identify appropriate placements for DI and SSI substance abuse recipients, refer them to treatment, monitor compliance, and report failures to comply to the Secretary. Benefits are to be suspended for noncompliance with treatment for both DI and SSI substance abusers, beginning the month after SSA sends notification of noncompliance. Benefits may be reinstated only after demonstrated compliance with treatment requirements for specified periods of a minimum of 2 months, 3 months, and 6 months, respectively, for the first, second, third, and additional instances of noncompliance. Suspension of benefits for 12 consecutive months for noncompliance will result in termination of benefits. Medicare, Medicaid, and dependents' benefits will continue as long as a terminated beneficiary continues to be disabled and otherwise eligible (that is, after the 36-month payment limit).

Commission on the Evaluation of Childhood Disability

Several factors occurred in the early 1990's—the *Sullivan v. Zebley* Supreme Court decision that required SSA to change the way it evaluates children; new criteria for evaluating mental disorders in children; an increase in the number of childhood disability applications; and a congressionally mandated SSI outreach program—which resulted in a significant increase in the number of children with disabilities receiving Supplemental Security Income.

As the number of children with disabilities receiving SSI increased, so did the complaints about abuses in the program. Teachers, school psychologists, and State legislators complained to Congress during several hearings and in letters, as well as to the media, about such perceived abuses as parents coaching children to misbehave or underperform to receive benefits; parents misusing large retroactive checks by purchasing nonessential items; and children with mild impairments being found disabled.

As the number of complaints grew, concerns were expressed about the propriety and equity of the SSI program for children with disabilities. As a result, several proposals were considered by the Congress and HHS that would limit childhood disability benefits. Under the new law, the Commission on the Evaluation of Disability in Children was established to evaluate the childhood disability program as a preliminary to Congress taking other legislative measures.

The Secretary of HHS was directed to appoint a Commission by January 1, 1995, on the Evaluation of Disability in Children. The Commission will consist of recognized experts in medicine, psychology, education and rehabilitation, law, administration of disability programs, social insurance, and other experts determined appropriate by the Secretary. The Commission, to consist of 9 to 15 members, will conduct a study in consultation with the National Academy of Sciences on the effect of the current SSI definition of disability as it applies to children under age 18 and their receipt of services, including the effect of using an alternative definition. The study shall include issues of:

- Whether families needing assistance to meet the high costs of medical care for children with serious physical or mental impairments might appropriately have their needs met through expansion of Federal health assistance programs;
- The feasibility of providing benefits to children through noncash means, including vouchers, debit cards, and electronic benefit transfer systems;
- The extent to which SSA can involve private organizations to increase social services, education and vocational instruction to promote independence, and the ability to engage in substantial gainful activity;
- The feasibility of conserving some portion of any retroactive SSI payments to disabled children (pursuant to the *Zebley* court decision) to promote the long term well-being of such children;
- Methods to increase the extent to which benefits are used to assist disabled children in achieving independence and engaging in substantial gainful activity;
- The effects of the SSI program on disabled children and their families; and
- Other issues the Secretary determines to be appropriate.

The Commission will issue a report and recommendations by November 30, 1995, to the committees of Congress with jurisdiction.

Provisions to Combat Program Fraud

An area that has captured the attention of the Administration and Congress is a substantial increase in program fraud and abuse. In some cases, it appears that translators for immigrant applicants act not merely as interpreters, but as coaches who prepare immigrants to allege mental impairments related to previous, usually war-related, stress and then present their cases in a uniform manner calculated to maximize apparent eligibility. This problem appears to have been most serious among applicants from Southeast Asia who may speak languages for which SSA can rarely provide its own bilingual employees or interpreters. This has made it difficult to directly assess the credibility and consistency of allegations of impairment.

Effective October 1, 1994, the new legislation expanded the authority of SSA to prevent, detect, and terminate fraudulent claims for OASDI and SSI benefits as follows:

- Requiring third-party translators to certify under oath the accuracy of their translations, whether they are acting as the applicant's legal representative, and their relationship to the applicant.
- Authorizing civil penalties to be imposed against third parties, medical professionals, and OASDI beneficiaries and SSI recipients who engage in fraudulent schemes to enroll ineligible individuals in these programs, or who commit other program-related fraudulent acts. In addition, medical professionals may be barred from participation in Medicare and Medicaid.
- Treating SSI fraud as a felony.
- Clarifying SSA's authority to reopen OASDI and SSI cases where there is reason to believe that an application or supporting documents are fraudulent, and to terminate benefits expeditiously in cases where SSA determines that there is insufficient reliable evidence of disability.
- Requiring the Inspector General to notify SSA immediately about OASDI and SSI cases under investigation for fraud, and requiring SSA to reopen immediately such cases where there is reason to believe that an application or supporting documents are fraudulent, unless the U.S. Attorney or equivalent State prosecutor determines that doing so would jeopardize criminal prosecution of the parties involved.
- Requiring SSA to obtain and utilize, to the extent it is useful, pre-admission immigrant and refugee medical information, identification information, and employment history compiled by the Immigration and Naturalization Service or the Centers for Disease Control when developing SSI claims for aliens.
- Requiring SSA to submit an annual report to the House Ways and Means Committee and the Senate Finance Committee on the extent to which it has reviewed OASDI and SSI cases, including the extent to which the cases involve a high likelihood or probability of fraud.

Disability Reviews for SSI Recipients

In each of fiscal years 1996, 1997, and 1998, SSA is required to perform continuing disability reviews (CDR's) for a minimum of 100,000 SSI recipients and one-third of all childhood SSI recipients who are between ages 18 and 19. The latter provision applies to individuals who attain age 18 in or after the 9th month after enactment of the law. SSA is required to report its findings on these two provisions to the House Ways and Means Committee and the Senate Finance Committee no later than October 1, 1998.

Miscellaneous Program Improvements

Trust funds.—To evidence obligations to the trust funds, 60 days after enactment of the new law the Secretary of the Treasury is required to issue to the OASDI Trust Funds physical documents in the form of bonds, notes, or certificates of indebtedness for all trust fund obligations issued and payments made. The physical documents will state the principal amount, date of maturity, interest rate of the obligation, and on its face state:

“. . . the obligation shall be incontestable in the hands of the Trust Fund to which it is issued, . . . the obligation is supported by the full faith and credit of the United States, and . . . the United States is pledged to the payment of the obligation with respect to both principal and interest.”

Interest on such obligations will be paid to the trust funds with paper checks drawn on the general fund of the Treasury. These provisions are designed to enhance public confidence that present and future recipients will receive all benefits to which they are entitled, and to allay public concerns about the solvency of the trust funds.

Coverage of State and local police and firefighters.—All States, rather than only those now specifically authorized to do so, are given the option to extend Social Security coverage to police officers and firefighters who are under a retirement system.

Expansion of State option to exclude election officers and workers from coverage.—Effective January 1, 1995, the amount an election worker must be paid for the earnings to be covered under Social Security or Medicare is increased from \$100 to \$1,000 a year.

Limited exemption for Canadian ministers from certain self-employment tax liability.—Certain ministers who were American citizens and residents of Canada are exempt from liability for unpaid Social Security taxes and related penalties for 1979 through 1984. The provision is effective with respect to individuals who file a certificate with the Internal Revenue Service within 180 days after it issues implementing regulations.

Disclosure of information for epidemiological research.—The Social Security Administration is required, on a reimbursable basis, to disclose whether an individual is alive or deceased if this information is needed for epidemiological or similar research that the Secretary of HHS determines has reasonable promise to contribute to national health interests. Requestors must agree to safeguard and to limit re-release of the information.

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Use of Social Security numbers (SSN's) for jury selection.—State and local governments and Federal district courts will be allowed to use Social Security numbers to eliminate duplicate names and convicted felons from jury selection lists.

Cross-matching of information to combat fraud.—The Department of Agriculture is permitted to disclose retail operators' names, Social Security numbers, and Employer Identification numbers to other Federal agencies to investigate food stamp fraud and violations of other Federal laws.

Authorize use of SSN's for workers' compensation claims.—The Department of Labor is permitted to use Social Security numbers as claim identification numbers for workers' compensation claims.

Coverage of Federal employees transferred temporarily to international organizations.—This provision continues Social Security coverage of Federal civilian employees temporarily assigned to an international organization, whether located inside or outside the United States. Employees are to pay their share of the Social Security tax on their earnings and the lending agency is to pay the employer's share of the tax.

Aliens excluded from coverage under cultural exchanges.—Aliens who enter the United States as part of a cultural exchange program will be excluded from Social Security coverage.

Transfers to Railroad Retirement Account made permanent.—Makes permanent the provision that proceeds from the income taxation of Railroad Retirement Tier II benefits be deposited in the Railroad Retirement Account, rather than the general fund of the Treasury. The change is effective for income taxes on Tier II benefits received after September 30, 1992 (when the authority for depositing the proceeds from these income taxes in the Railroad Retirement Account was last applicable).

Increased penalties for unauthorized disclosure.—Unauthorized disclosure of Social Security information and fraudulent attempts to obtain personal information under the Social Security Act will be considered a felony, with each violation punishable by a fine of up to \$10,000, imprisonment for up to 5 years, or both.

Misuse of symbols, emblems, or names in reference to SSA or HHS.—For violations occurring after March 31, 1995, the new legislation broadens existing deterrents against misleading mailings on Social Security and Medicare programs by:

- Requiring specific written authorization from SSA or HHS for a person to reproduce, reprint, or distribute for a fee any SSA or HHS form, application, or publication;
- Providing that a disclaimer on a mailing does not provide a defense against misleading mailing violations;
- Providing that each piece of mail in an illegal Social Security mailing constitutes a violation;
- Adding names, letters, symbols, and emblems of SSA, HCFA, SSI, and HHS to the items protected by the misleading advertising prohibitions;

- Removing the \$100,000 annual cap on civil penalties that may be imposed for misleading advertising activities;
- Providing that penalties collected are to be deposited in the OASI Trust Fund, the Hospital Insurance (HI) or Supplementary Medical Insurance (SMI) Trust Funds, as applicable; and
- Requiring the Secretary of HHS and the Commissioner of SSA to issue three reports on the operation and enforcement of these provisions to the House Ways and Means Committee and the Senate Finance Committee, which are due by December 1, 1995, 1997, and 1999.

Notes

¹ As in the case of the Board of Trustees, the Commissioner can be removed from office by the President only pursuant to a finding of neglect of duty or malfeasance in office.

² The Commissioner is authorized to prescribe rules and regulations; establish, alter, consolidate, or discontinue organizational units and components of the agency (except for those prescribed by law); and assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees as the Commissioner may find necessary.

³ Each member of the Board shall serve for a term of 6 years, except that:

- (1) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term; and
- (2) the terms of service of the members initially appointed under this section shall begin on October 1, 1994, and expire as follows:
 - (A) The terms of service of the members initially appointed by the President shall expire as designated by the President at the time of nomination, one each at the end of:
 - (i) 2 years;
 - (ii) 4 years; and
 - (iii) 6 years
 - (B) The terms of service of members initially appointed by the President pro tempore of the Senate shall expire as designated by the President pro tempore of the Senate at the time of nomination, one each at the end of:
 - (i) 3 years; and
 - (ii) 6 years
 - (C) The terms of service of members initially appointed by the Speaker of the House of Representatives shall expire as designated by the Speaker of the House of Representatives at the time of nomination, one each at the end of:
 - (i) 4 years; and
 - (ii) 5 years

On March 30, 1995, the President announced his intent to nominate former Senator Harlan Mathews to be chairman of the

Advisory Board for a term to expire on September 20, 2000; William C. Brookes of General Motors for a term to expire on September 30, 1996; and Gerald M. Shea of the AFL-CIO for a term to expire on September 30, 1998. Earlier, the Senate appointed Carolyn L. Weaver for a 3-year term and Lori L. Hansen for a 6-year term. The House appointed Arthur "Pete" Singleton for a 4-year term and Martha E. Keys for a 5-year term.

⁴ The new legislation requires the Secretary of HHS to conduct the following studies, reports, and demonstration projects:

- A study of (1) the feasibility, cost, and equity of requiring representative payees for all DI and SSI beneficiaries who suffer from drug addiction or alcoholism, regardless of whether their addiction is material to their disability; (2) the feasibility, cost, and equity of providing benefits through noncash means, including (but not limited to) vouchers, debit cards, and electronic benefits transfer systems; and (3) the extent of substance abuse among child recipients and their representative payees. A report on the studies is due to the House Ways and Means Committee and the Senate Finance Committee by December 31, 1995.
- A report on the Secretary's activities relating to the monitoring and testing of Social Security and SSI drug addiction and alcoholic beneficiaries. The report is due to the House Ways and Means Committee and the Senate Finance Committee by December 31, 1996.
- Demonstration projects designed to explore innovative referral, monitoring, and treatment approaches with respect to Social Security and SSI drug addicts and alcoholic beneficiaries who are subject to a treatment requirement. A report on the demonstration projects is due by December 31, 1997 to the House Ways and Means Committee and the Senate Committee on Finance.