



# SOCIAL SECURITY

Office of the Commissioner

May 4, 1998

The Honorable Newt Gingrich  
Speaker of the House  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for the consideration of the Congress is a draft bill "To make improvements in the administration of the Supplemental Security Income program, and for other purposes." Upon enactment, the bill would be cited as the "Supplemental Security Income Program Integrity Act of 1998."

The Supplemental Security Income program is a national income maintenance program under our stewardship. Individuals qualify for assistance under the Supplemental Security Income program if they are elderly, blind, or disabled, and have income and resources below certain levels.

It is our responsibility to ensure that eligible individuals receive the correct amount of assistance under the program to which they are entitled. It is equally our responsibility to ensure that individuals who do not meet the eligibility criteria do not receive assistance.

We take our responsibilities very seriously, and believe that, as careful stewards of the Supplemental Security Income program, we must be ever mindful of ways in which we can improve our administration of this vitally important program.

On March 11, I submitted to the Congress a draft bill in support of the President's FY 99 Budget with respect to the Social Security Administration. That draft bill contained two provisions intended to enhance the integrity of the Supplemental Security Income program. One of these would provide authority to adjust the discretionary spending caps in FY 1999 by \$50 million for funds appropriated to conduct additional redeterminations of the nondisability factors relevant to eligibility under the Supplemental Security Income program. The other would allow us to recover program overpayments made to former Supplemental Security Income recipients from their old age, survivors, or disability insurance benefits.

The enclosed draft bill proposes several additional statutory changes that we believe would strengthen our ability to provide Supplemental Security Income benefits in the correct amount only to those individuals for whom assistance under the program was intended.

Sections 2 through 6 of the draft bill are intended to improve the Social Security Administration's ability to ascertain facts that are material to an individual's eligibility or correct amount of assistance. Under current law, we are required to verify from independent or collateral sources information supplied by applicants, and to obtain from outside sources additional information that might bear on an individual's status under the program. The draft bill's provisions would expand the pool of data available to the Social Security Administration, or make the data available on a more timely or more economical basis.

Section 7 of the draft bill would allow us to improve our efforts to collect Supplemental Security Income overpayments by extending to this program all of the debt collection authorities currently available for the collection of overpayments under the Social Security program.

Sections 8 and 9 of the bill are designed to tighten the program's eligibility criteria that now allow individuals to qualify for the program by disposing of resources for less than fair market value, and by transferring assets to a trust. Actions such as these contravene a basic principle underlying the Supplemental Security Income program; namely, that an individual with the means to provide for his or her own needs should use them for this purpose before applying for publicly funded assistance.

Finally, section 10 of the bill would authorize us to impose an administrative sanction of a limited period of cash benefit ineligibility on certain individuals who misstate or withhold facts material to the determination of eligibility for benefits or the amount of those benefits.

The legislation would affect direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. The pay-as-you-go effect of this draft bill would be to reduce the deficit by \$10 million in fiscal year 1999 and a total of \$120 million during fiscal years 1999 to 2003.

An enclosure to this letter discusses the proposals in more detail.

We urge the Congress to give the enclosed draft bill its prompt and favorable consideration.

Page 3--The Honorable Newt Gingrich

We are advised by the Office of Management and Budget that there is no objection to the submission of this draft bill to the Congress from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink that reads "Kenneth S. Apfel". The signature is written in a cursive style with a large initial "K".

Kenneth S. Apfel

Commissioner of Social Security

Enclosures

# Supplemental Security Income Program Integrity Act of 1998

## Section-by-Section Summary

### Short Title

Section 1 would provide that the Act may be cited as the "Supplemental Security Income Program Integrity Act of 1998."

### Computer Matches with Medicaid Institutionalization Data

Section 2 would require the Commissioner of Social Security to conduct periodic matches with Medicare and Medicaid data held by the Secretary of Health and Human Services, and would authorize the Commissioner to substitute information from the matches for the physician's certification otherwise required in order to maintain the full benefit level of an individual whose institutionalization is expected to last fewer than three months.

### Access to Information Held by Financial Institutions

Section 3 would provide that the Commissioner of Social Security may request Supplemental Security Income applicants and recipients to provide authorization for the Commissioner to obtain any and all financial records from any and all financial institutions. These authorizations would be valid during the pendency of an application and during eligibility for benefits unless revoked in writing. The Commissioner need not furnish to the financial institution copies of the authorizations or written certification of compliance with the provisions of the Right to Financial Privacy Act. As under current law, refusal to provide, or revocation of, an authorization may result in the Commissioner determining a person to be ineligible for Supplemental Security Income.

### State Data Exchanges

Subsection (a) of section 4 would deem the Social Security Administration's data privacy standards to meet all State standards for purposes of sharing data.

### Accelerated Provision of State Death Data

Section 5 would require States having contracts with the Commissioner of Social Security for the provision of death data to provide the data within 30 days of its receipt.

### Prisoner Reporting Requirement

This section requires Federal, State, and local institutions incarcerating individuals subject to the SSI prisoner nonpayment

provision to furnish certain inmate information upon the request of the Commissioner. The provision requires matching of prisoner populations at the Federal, State and local level with records of SSI beneficiaries. Matches between SSA and non-Federal entities will be exempt from the administrative requirements of the Computer Matching and Privacy Protection Act (e.g., a formal matching agreement with each entity). The section also removes the provision in the Social Security Act which removed all Privacy Act rights and requirements from information which is the subject of these matches (i.e., information about prisoners).

#### Additional Debt Collection Practices

Section 7 would extend to the Supplemental Security Income program all of the debt collection authorities currently available for the collection of overpayments under the Social Security program.

#### Treatment of Assets Held in Trust

Section 8 would include in the resources of an individual countable for Supplemental Security Income purposes the assets of any trust containing property transferred from the individual or his or her spouse to the extent that the assets could be used for the benefit of either of them. The Commissioner of Social Security would be authorized to waive application of this provision in the event it would work an undue hardship. This provision would complement, but not replace, similar rules under Medicaid.

#### Disposal of Resources for Less Than Fair Market Value

Section 9 would provide a penalty under the Supplemental Security Income program for the transfer of assets at less than fair market value. The penalty would be a loss of benefits for a number of months equal to the number of months obtained by dividing the uncompensated value of disposed-of resources by the Federal benefit rate. The Commissioner of Social Security would be authorized to waive application of this provision in the event it would work an undue hardship. This provision would complement, but not replace, similar rules under Medicaid.

#### Loss of Benefits Penalty for Program Violations

Section 10 would authorize the Commissioner of Social Security to impose a period of ineligibility for OASDI and Supplemental Security Income benefits on any individual upon making a determination that the individual has made a statement or representation of material fact for use in determining eligibility to benefits, that the individual knew or should have known was false or misleading or omitted a material fact or made such a statement with knowing disregard for the truth. The

period of ineligibility would be 6 months for a first occurrence, 12 months for a second occurrence, and 24 months for a third or subsequent occurrence, and would extend to both programs.

A B I L L

make improvements in the administration of the Supplemental Security Income program, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Supplemental Security Income Program Integrity Act of 1998".

SEC. 2. COMPUTER MATCHES WITH MEDICARE AND MEDICAID INSTITUTIONALIZATION DATA.

(a) In General.--Section 1611(e)(1) of the Social Security Act is amended by adding at the end the following new subparagraph:

"(J) For the purpose of carrying out this paragraph, the Commissioner of Social Security shall conduct periodic computer matches with data maintained by the Secretary of Health and Human Services under title XVIII or XIX of this Act. The Secretary shall furnish to the Commissioner, in such form and manner and under such terms as the Commissioner and the Secretary shall mutually agree, such information as the Commissioner may request for this purpose. Information obtained pursuant to such a match may be substituted for the physician's certification otherwise required under subparagraph (G)(i)."

(b) Conforming Amendment.--Section 1611(e)(1)(G) is amended by striking "subparagraph (H)" and inserting "subparagraph (H) or (J)".

SEC. 3. ACCESS TO INFORMATION HELD BY FINANCIAL INSTITUTIONS.

(a) In General.--Section 1631(e)(1)(B) of the Social Security Act is amended--

(1) by striking "(B)" and inserting "(B)(i)"; and

(2) by adding at the end the following new clause:

"(ii) The Commissioner of Social Security may require each applicant for, or recipient of, benefits under this title to provide authorization by such applicant or recipient (or by any other person whose income or resources are material to the determination of the individual's eligibility) for the Commissioner to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act) from any financial institution (within the meaning of section 1101(1) of such Act) any financial record (within the meaning of section 1101(2) of such Act) held by such institution respecting such applicant or recipient (or any other person whose income or resources are material to the determination of the individual's eligibility) whenever the Commissioner determines such record is needed in connection with a determination respecting the individual's eligibility for benefits under this title (whether initial or continuing) or respecting the amount of such benefits. Such authorization shall, notwithstanding paragraph (1) of section 1104(a) of such Act, remain effective until--

"(I) a final adverse decision is rendered on the individual's application for eligibility for benefits under this title,



"(II) the individual's eligibility for benefits under this title ceases, or

"(III) the individual (or such other person) expressly revokes the authorization in a written notification to the Commissioner,

whichever occurs first. Authorizations obtained by the Commissioner pursuant to this clause shall be considered to meet the requirements of the Right to Financial Privacy Act for the purpose of section 1103(a) of such Act and need not be furnished to the financial institution notwithstanding such requirement in section 1104(a) of such Act. The certification requirements of section 1103(b) of such Act shall not apply to requests by the Commissioner pursuant to an authorization obtained under this clause. Any requests by the Commissioner pursuant to an authorization obtained under this clause shall be deemed to meet the requirements of section 1104(a)(3) and the flush language of section 1102 of the Right to Financial Privacy Act. The Commissioner shall inform any person who provides authorization pursuant to this clause of the duration and scope of the authorization under this clause. If an applicant for, or recipient of, benefits under this title (or any other person whose income or resources are material to the determination of the applicant's or recipient's eligibility for such benefits) refuses to provide or revokes any authorization for the Commissioner to obtain from any financial institution any financial record, the Commissioner may, on that basis, determine

that the applicant or recipient is ineligible for benefits under this title."

(b) Effective Date.--The amendments made by this section shall take effect on the date of the enactment of this Act.

#### SEC. 4. STATE DATA EXCHANGES.

Whenever the Commissioner of Social Security requests information from a State for the purpose of ascertaining an individual's eligibility for benefits (or the correct amount of such benefits) under title XVI of the Social Security Act, the standards of the Commissioner promulgated pursuant to section 1106 of the Social Security Act or any other Federal law for the use, safeguarding, and disclosure of information shall be deemed to meet any standards of the State that would otherwise apply to the disclosure of information by the State to the Commissioner.

#### SEC. 5. ACCELERATED PROVISION OF STATE DEATH DATA.

(a) In General.--Section 6103(d)(4)(B)(i) of the Internal Revenue Code of 1986 is amended by inserting "within 30 days following such filing" after "it".

(b) Technical Amendments.--Subparagraphs (A) and (B) of section 6103(d)(4) of such Code are amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

#### SEC. 6. PRISONER REPORTING REQUIREMENT.

(a) Amendments to Title XVI of the Social Security Act.--Section 1611(e)(1) of the Social Security Act (as previously amended by this Act) is further amended--

(1) in subparagraph (I)(ii), by striking "(I)" and all that follows through "(II)"; and

(2) by adding at the end the following new subparagraphs:

"(K) Any agency of the United States Government shall make available to the Commissioner of Social Security, upon request, the name and social security account number of any individual who is confined as described in section 202(x)(1)(A) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this subsection.

"(L) Any agency of any State (or political subdivision thereof) shall make available to the Commissioner of Social Security, upon request, the name and social security account number of any individual who is confined as described in section 202(x)(1)(A) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this subsection."

(b) Amendment to Title 5, United States Code.--Section 552a(a)(8)(B) of title 5, United States Code, is amended--

- (1) by striking "or" at the end of clause (vi);
- (2) by adding "or" at the end of clause (vii); and
- (3) by adding at the end the following new clause:

"(viii) matches performed pursuant to subparagraph (I) or (L) of section 1611(e)(1) of the Social Security Act."

SEC. 7. ADDITIONAL DEBT COLLECTION PRACTICES.

(a) In General.--Section 1631(d)(1) of the Social Security Act is amended by striking "section 207" and inserting "section 207, section 204(f),".

(b) Effective Date.--The amendment made by this section shall apply to debt outstanding on or after the date of the enactment of this Act.

SEC. 8. TREATMENT OF ASSETS HELD IN TRUST.

(a) Treatment as Resource.--Section 1613 of the Social Security Act is amended by adding at the end the following new subsection:

"Trusts

"(e)(1) In determining the resources of an individual, the provisions of paragraph (3) shall apply to a trust established by such individual.

"(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual (or the individual's spouse) were transferred to the trust.

"(B) In the case of an irrevocable trust to which were transferred the assets of an individual (or the individual's spouse) and the assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual (or the individual's spouse).

"(C) This subsection shall apply without regard to--

"(i) the purposes for which the trust is established;

"(ii) whether the trustees have or exercise any discretion under the trust;

"(iii) any restrictions on when or whether distributions may be made from the trust; or

"(iv) any restrictions on the use of distributions from the trust.

"(3) (A) In the case of a revocable trust, the corpus of the trust shall be considered a resource available to the individual.

"(B) In the case of an irrevocable trust, if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual or the individual's spouse, the portion of the corpus from which payment to or for the benefit of the individual or the individual's spouse could be made shall be considered a resource available to the individual.

"(4) The Commissioner may waive the application of this subsection with respect to any individual if the Commissioner determines that such application would work an undue hardship on such individual.

"(5) For purposes of this subsection--

"(A) the term 'trust' includes any legal instrument or device that is similar to a trust;

"(B) the term 'corpus' means all property and other interests held by the trust, including accumulated earnings and any other addition to such trust after its establishment (except that such term does not include any such earnings or

addition in the month in which such earnings or addition is credited or otherwise transferred to the trust);

"(C) the term 'asset' includes any income or resource of the individual or the individual's spouse, including--

"(i) any income otherwise excluded by section 1612(b),

"(ii) any resource otherwise excluded by this section; and

"(iii) any other payment or property that the individual or the individual's spouse is entitled to but does not receive or have access to because of action by--

"(I) such individual or spouse;

"(II) a person or entity (including a court) with legal authority to act in place of, or on behalf of, such individual or spouse; or

"(III) a person or entity (including a court) acting at the direction of, or upon the request of, such individual or spouse; and

"(D) the term 'benefits under this title' includes State supplementary payments which are paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or section 212(b) of Public Law 93-66.

"(6) For provisions respecting the penalty that may apply to an individual who transfers an asset to a trust, see subsection (c)(1) (especially subparagraphs (A) and (D) thereof).".

(b) Treatment as Income.--Section 1612(a)(2) of such Act is amended--

- (1) by striking "and" at the end of subparagraph (E);
- (2) by striking the period at the end of subparagraph (F) and inserting "; and"; and
- (3) by adding at the end the following new subparagraph:

"(G) any earnings of, and additions to, the corpus of a trust established by an individual (within the meaning of paragraph (2)(A) of section 1613(e)) and of which such individual is a beneficiary (other than a trust to which paragraph (4) of such section applies) (provided, in the case of an irrevocable trust, that there exist circumstances under which payment from such earnings or additions could be made to, or for the benefit of, such individual). For purposes of this subparagraph, the terms 'trust' and 'corpus' have the meanings given them in section 1613(e)(5)."

(c) Effective Date.--The amendments made by this section shall take effect on January 1, 1999, and shall apply to trusts established on or after such date.

#### SEC. 9. DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE.

(a) In General.--Section 1613(c) of the Social Security Act is amended--

- (1) in the caption, by striking "Notification of Medicaid Policy Restricting Eligibility of Institutionalized

Individuals for Benefits Based on";

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(3) by striking "(2)" and inserting "(B)";

(4) by striking "(c)(1)" and inserting "(2)(A)";

(5) by inserting before paragraph (2) (as redesignated by paragraph (4) of this subsection) the following:

"(c)(1) Penalty.--

"(A)(i) If an individual or the spouse of such an individual disposes of resources for less than fair market value on or after the look-back date specified in subclause (I) of clause (ii), the individual is ineligible for benefits under this title for months during the period beginning on the date specified in clause (iii) and equal to the number of months specified in clause (iv).

"(ii)(I) The look-back date specified in this subclause is a date that is 36 months before the date specified in subclause (II).

"(II) The date specified in this subclause is the date on which the individual applies for benefits under this title or, if later, the date on which the individual (or the spouse of such individual) disposes of resources for less than fair market value.

"(iii) The date specified in this clause is the first day of the first month that follows the month in which resources were transferred for less than fair market value.



and that does not occur in any other period of ineligibility under this paragraph.

"(iv) The number of months of ineligibility under this clause shall be equal to--

"(I) the total, cumulative uncompensated value of all resources transferred by the individual (or the spouse of such individual) on or after the look-back date specified in subclause (I) of clause (ii), divided by

"(II) the amount of the maximum monthly benefit payable under section 1611(b) for the month in which occurs the date specified in subclause (II) of clause (ii),

and rounded up, in the case of any fraction, to the next whole number.

"(B) An individual shall not be ineligible for benefits under this title by reason of subparagraph (A) if the Commissioner determines that--

"(i) the resources were transferred exclusively for a purpose other than to qualify for benefits under this title; or

"(ii) the denial of eligibility would work an undue hardship on the individual.

"(C) For purposes of this paragraph, in the case of a resource held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar

arrangement, the resource (or the affected portion of such resource) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such resource.

"(D) (i) Notwithstanding subparagraph (A), this subsection shall not apply to a transfer of a resource to a trust if the portion of the trust attributable to such resource is considered a resource available to the individual pursuant to subsection (e) (3) (or would be so considered, but for the application of subsection (e) (4)).

"(ii) In the case of a trust established by an individual or the individual's spouse (within the meaning of paragraph (2) (A) of subsection (e)), if from such portion of the trust, if any, that is considered a resource available to the individual pursuant to paragraph (3) of such subsection (or would be so considered but for the application of paragraph (4) of such subsection) or the residue of such portion upon the termination of the trust--

"(I) there is made a payment other than to or for the benefit of the individual, or

"(II) no payment could under any circumstance be made to the individual,

then the payment described in clause (I) or the foreclosure of payment described in clause (II) shall be considered a

transfer of resources by the individual or the individual's spouse subject to this subsection, as of the date of such payment or foreclosure, respectively.

"(E) In the case of a transfer by the spouse of an individual that results in a period of ineligibility for such individual under subparagraph (A) or (D)(ii), the Commissioner shall apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for benefits under this title.

"(F) For purposes of this paragraph--

"(i) the term 'benefits under this title' includes State supplementary payments made by the Commissioner pursuant to an agreement under section 1616 or section 212(b) of Public Law 93-66); and

"(ii) the term 'trust' has the meaning given such term in subsection (e) (5) (A)."

(b) Conforming Amendments.--Section 1613(c) (2) of the Social Security Act (as redesignated by subsection (a) of this section) is amended--

(1) by striking "(2) (A)" and inserting "(2) Notice; Availability of Information.--(A)";

(2) in subparagraph (A) (i)--

(i) by inserting "paragraph (1) and" after "provisions of";

(ii) by striking "title XIX" the first place such

phrase appears and inserting "this title and title XIX, respectively,";

(iii) by striking "subparagraph (B)" and inserting "clause (ii)"; and

(iv) by striking "paragraph (2)" and inserting "subparagraph (B)";

(3) in subparagraph (A) (ii)--

(i) by striking "by the State agency"; and

(ii) by striking "section 1917(c)" and all that follows and inserting "paragraph (1) or section 1917(c)."; and

(4) in subparagraph (B), by striking "paragraph (1) (B)" and inserting "subparagraph (A) (ii)".

(c) Effective Date.--The amendments made by this section shall be effective with respect to transfers of resources for less than fair market value that on or after the date of enactment of this Act.

#### SEC. 10. LOSS OF BENEFITS FOR PROGRAM VIOLATIONS.

(a) In General.--Title XI of the Social Security Act is amended by inserting after section 1129 the following section:  
 "SEC. 1129A. NONPAYMENT OF BENEFITS UNDER TITLES II AND XVI FOR FALSE OR MISLEADING STATEMENTS OR OMISSIONS.

"(a) In General.--Any person who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of -

"(A) monthly insurance benefits under title II, or

"(B) benefits or payments under title XVI, that the person knows or should know is false or misleading or knows or should know omits a material fact or makes such a statement with knowing disregard for the truth shall be subject to a penalty described in subsection (b) to be imposed by the Commissioner of Social Security.

"(b) Penalty.--The penalty described in this subsection is--

"(1) nonpayment of benefits under title II that would otherwise be payable to such individual, and

"(2) ineligibility for cash benefits under title XVI, for each month during the applicable period that begins and ends as specified in subsection (c).

"(c) Duration of Penalty.--The duration of the penalty described in subsection (b) shall be--

"(A) 6 consecutive months, in the case of a first determination by the Commissioner described in subsection (a) respecting such individual;

"(B) 12 consecutive months, in the case of a second determination by the Commissioner described in subsection (a) respecting such individual; and

"(C) 24 consecutive months, in the case of a third or subsequent determination by the Commissioner described in paragraph (1) respecting such individual.

"(d) Effect on Other Assistance.--An individual subject to a period of nonpayment of title II or ineligibility for title XVI benefits pursuant to this section, nevertheless shall be

considered to be receiving such benefits for the purposes of--

"(1) determination of the eligibility of such an individual for benefits under title XVIII and title XIX; and

"(2) determination of the eligibility or amount of benefits payable under title II or title XVI to another individual.

"(e) Definition.--For purposes of this section, the term 'benefits under title XVI' includes State supplementary payments made by the Commissioner pursuant to an agreement under section 1616(a) or this Act or section 212(b) of Public Law 93-66).".

(b) Conforming Amendment Precluding Delayed Retirement Credit for any Month to Which a Nonpayment of Benefits Penalty Applies.--Section 202(w) (2) (B) of such Act is amended--

(1) by striking "and" at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting ", and"; and

(3) by adding at the end the following new clause:

"(iii) such individual was not subject to any nonpayment of benefits penalty imposed pursuant to section 1129A.".

(c) The amendments made by this section shall be effective upon the date of the enactment of this Act.