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# Notes and Brief Reports

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## Social Security Related Legislation in 1986\*

In 1986, during the second session of the 99th Congress, the President signed several bills relating to the social security program. In addition to the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), the relevant provisions of which have already been presented in detail in the *Bulletin*,<sup>1</sup> the legislative measures summarized below also became law.

### Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509)

Public Law 99-509, enacted on October 21, 1986, contains the following provisions related to the old-age, survivors, and disability insurance (OASDI) program:

**Section 6001—Change in starting date of Federal thrift savings plan.** Delays until April 1, 1987, the date that Federal employees mandatorily participating in the Federal Employees' Retirement System (FERS),<sup>2</sup> the new retirement system for employees covered under social security, may begin to participate in the thrift savings plan, the optional employee thrift plan which is part of the new system. Under prior law, these employees could have participated in the thrift savings plan as early as January 1, 1987, the date FERS coverage begins. The startup date of the thrift savings plan was set back because the plan could not be put into effect by January 1, 1987, due to delays in appointing the plan investment board. Also provides that Federal employees covered under the Civil Service Retirement System may participate in the thrift savings

plan beginning April 1, 1987, instead of July 1, 1987, as under prior law.

**Section 6101-6104—Program Fraud Civil Remedies Act of 1986.** Provides that Federal agencies can take administrative action against individuals who submit false claims or statements in cases involving \$150,000 or less where the Department of Justice has declined to litigate. Establishes a penalty of not more than \$5,000 for each false claim or statement, plus an assessment in lieu of damages of not more than twice the amount that the Government paid on the claim. These cases would have to be submitted to the Department of Justice for their approval before an agency could begin administrative proceedings against an individual. Provides that penalties and assessments collected in cases involving social security would be deposited in the trust funds. Effective on enactment for any claims or statements made, presented, or submitted after that date.

The purpose is to provide a remedy to penalize and deter fraud against the Government in small-dollar cases where it is economically impractical for the Department of Justice to go to court.

**Section 8202—Federal trust fund protection.** Assures that various Federal trust funds will not be adversely affected by recent delays in increasing the Public Debt Limit. The provision has a significant effect on the civil service and other trust funds, but a negligible effect on OASDI funds.

**Section 9001—Elimination of 3-percent trigger for cost-of-living increases.** Permanently eliminates the cost-of-living adjustment (COLA) trigger, the requirement in the law that the Consumer Price Index (CPI) must have increased by at least 3 percent before a COLA can occur. As a result, social security and supplemental security income (SSI) benefits will increase by 1.3 percent in January 1987. In subsequent years, whenever there is an increase in the CPI, a COLA will apply to social security and SSI benefits and there will be increases in other program amounts. In addition, the new law clarifies that in implementing the supplementary medical insurance (SMI) premium "hold-harmless" provision, the saving from rounding social security benefits down to the lower dollar accrues to the OASDI Trust Funds.

**Section 9002—Deposits of social security contributions by State and local government employers.**

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\*This note is adapted from **Legislation of Interest to SSA During the 99th Congress, Second Session** (Legislative Report No. 3) and **Legislation of Interest to SSA During the 99th Congress, Second Session (Continued)** (Legislative Report No. 4), Office of Legislative and Regulatory Policy, Social Security Administration, 1986.

<sup>1</sup>Mary Ross and Carol Hayes, "Consolidated Omnibus Budget Reconciliation Act of 1985," *Social Security Bulletin*, August 1986, pages 22-31.

<sup>2</sup>For more information on the new retirement program, see Wilmer L. Kerns, "Federal Employees' Retirement System Act of 1986," *Social Security Bulletin*, November 1986, pages 5-10.

Removes States' liability for their political subdivisions' social security deposits and requires States and political subdivisions to pay social security contributions under the Federal Insurance Contributions Act (FICA) procedures applicable to private employers. Transfers the administration and collection of these contributions from the Social Security Administration (SSA) to the Internal Revenue Service (IRS). The provision is effective with respect to payments due with respect to wages paid after December 31, 1986.

The effect of requiring States and political subdivisions to follow FICA procedures is to accelerate the deposit of their contributions, thus eliminating the financial disadvantages to the Social Security Trust Funds under the present State deposit schedule. The provision would also bring about the consistent treatment of public and private employers in terms of social security deposit requirements.

The following provisions of Public Law 99-509 relate to the Medicare program:

**Section 9312(h)—Allowing Medicare beneficiaries to disenroll at a local SSA office.** Permits beneficiaries to disenroll from Health Maintenance Organizations and Competitive Medical Plans at any SSA district office. The intent of the provision is to expand beneficiaries' abilities to disenroll in a timely manner. This provision is effective June 1, 1987.

**Section 9313(a)—Permitting provider representation of Medicare beneficiaries.** Allows Medicare providers who have furnished Medicare Part A and Part B services to represent beneficiaries who are appealing payment denials for the services if the providers waive the right to payments for the appealed services and do not impose financial liability on the beneficiaries for the representation. This provision supersedes the Health Care Financing Administration's (HCFA's) April 1984 instructions prohibiting provider representation because of possible conflict of interest. Effective upon enactment.

**Section 9313(b)—Permitting review of technical denials.** Allows beneficiaries to appeal certain Part A and Part B technical denials. This provision supersedes HCFA's prohibitions on appeals of such denials. Effective upon enactment.

**Section 9319—Medicare as second payer; coverage requirements for certain other payers.** Employers are required to offer to employees who are over age 64, or who have spouses over age 64, the same group health insurance protection that they offer to other employees. Medicare protection is secondary to that provided through any employment-related group health insurance plan in which a Medicare beneficiary is enrolled.

In part, these amendments provide similar treatment for certain disabled employees (and member of their families). Specifically, large employment-related group health plans cannot take Medicare protection into account

in providing health care coverage for "active individuals" (to be defined in regulations) who are eligible for or entitled to Medicare protection as disabled social security beneficiaries. Such employees would have to be offered the same protection offered to other employees. As with the aged, Medicare protection is secondary to that provided through any employment-related group health insurance plan. This provision takes effect January 1, 1987, and sunsets on December 31, 1991. The Comptroller General is required to report to Congress by March 1, 1990, on the impact of the provision on disabled individuals and their families.

The amendments provide a special SMI enrollment period and special late enrollment provisions for disabled individuals who delay enrolling for SMI because they are covered under a large employer's employment-based group health insurance plan. This provision is effective for enrollments occurring on or after January 1, 1987.

**Section 9341—Changing Medicare appeal rights.** Allows beneficiaries to appeal denials of a Part B claim to the administrative law judge level if the amount in controversy is \$500 or more, and appeal to the Federal courts if the amount is \$1,000 or more. In determining the amount in controversy, the Secretary must allow two or more claims to be aggregated if they involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. Carrier hearings are retained for amounts in controversy between \$100 and \$500. This provision applies to items and services furnished on or after January 1, 1987.

Public Law 99-509 also contains a number of Medicaid provisions that are related to the SSI program:

**Section 9402—Optional coverage of elderly and disabled poor for all Medicaid benefits.** Creates a new optional categorically needy group made up of individuals aged 65 and older or disabled (as defined for purposes of SSI eligibility) whose incomes (after exclusions specified in SSI law for determining SSI eligibility and benefits and without reduction for costs of medical or remedial care other than impairment-related work expenses) do not exceed levels, established by the States, that may be as high as the nonfarm poverty level, as established by the Office of Management and Budget (OMB), applicable to the size of the family involved. States that elect to create such an optional category must offer to individuals in the category the same package of benefits offered to other categorically needy Medicaid recipients and must also offer these benefits to certain pregnant women and children. The provision is effective for payments to the States for calendar quarters beginning on or after June 30, 1987.

**Section 9404—Medicaid eligibility for qualified severely impaired individuals.** Permanently establishes mandatory Medicaid coverage for individuals who are working despite severe impairments as long as those indi-

viduals, in the month before the month in which the provision applies to them, received SSI disability or blindness benefits, State supplementary payments, or payments under section 1619(a)<sup>3</sup> and were eligible for Medicaid, and it has been determined that the individuals:

- continue to be blind or to have the disabling impairments and, except for their earnings, continue to meet all nondisability-related SSI requirements;
- have income that would not, except for their earnings, equal or exceed the amount that would make them ineligible for regular SSI benefits if otherwise eligible;
- would have their ability to continue or obtain employment seriously inhibited by the lack of Medicaid coverage; and
- have earnings that are not sufficient to allow them to provide for themselves an equivalent of Medicaid benefits.

Provides Medicaid coverage for individuals in section 1619(b) status in States that previously did not specifically cover section 1619(b) individuals. Effective with respect to payments under title XIX for calendar quarters beginning on or after July 1, 1987.

These provisions duplicate in part provisions in Public Law 99-643, the Employment Opportunities for Disabled Americans Act signed on November 10, 1986. They were made a part of this legislation before final passage of H.R. 5595, the bill that became Public Law 99-643. As described below, this later enactment provides similar protection for individuals in either section 1619 (a) or (b) status.

**Section 9435—Technical correction of Medicaid qualifying trust provision in the Consolidated Omnibus Budget Reconciliation Act of 1985.** Amends section 9506 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Public Law 99-272) by providing that amounts that may be paid (whether or not actually paid) from any trust established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded shall not be deemed available to the trust beneficiary. Effective as if included in the enactment of COBRA.

Under the provision in COBRA, amounts that may be paid (whether or not actually paid) from a trust, or similar legal device, established by an individual (or his spouse) under which the individual may be the beneficiary are considered income or resources of such individual for purposes of determining Medicaid eligibility.

<sup>3</sup>For a detailed description of the Section 1619 program, see "Implementation and Analysis of Public Law 98-460—Section 1619 (The Social Security Disability Benefits Reform Act of 1984)," **Social Security Bulletin**, November 1986, pages 11-45. A history of the 1619 program will appear in the **Bulletin** in the near future.

## **Tax Reform Act of 1986 (Public Law 99-514)**

Public Law 99-514, enacted on October 21, 1986, contains the following provisions related to the OASDI program:

**Section 111—Increase in earned income tax credit.** Beginning in 1987, increases the rate of the earned income tax credit from 11 percent to 14 percent of earnings and increases the maximum amount of earnings to which the rate applies from \$5,000 (unindexed) to an amount equal to \$5,714 adjusted for inflation. Also liberalizes the provisions for phasing down the earned income tax credit. The phasedown rate for tax years after 1986 will be reduced to 10 percent. The income levels at which the phasedown begins will be based on \$6,500 in 1987 and \$9,000 thereafter, adjusted for inflation. All inflation adjustments for any tax year will be based on comparison of increases in the average CPI-U (Urban) for the 12-month period ending August 31st of the prior tax year to the average CPI-U for the 12-month period ending August 31, 1984.

**Section 121—Taxation of unemployment compensation.** The provision amends Section 85 of the Internal Revenue Code to repeal the exclusion of all or a portion of unemployment benefits from gross income for certain taxpayers. Under prior law, unemployment insurance benefits were totally excluded from gross income if the sum of a taxpayer's unemployment benefits under a Federal or State program and his adjusted gross income (AGI) did not exceed \$12,000 for an unmarried individual, \$18,000 for married individuals filing a joint return, and zero for married individuals filing separate returns. If unemployment benefits plus AGI exceeded the specified base amounts, then the amount of unemployment benefits subject to taxation was the lesser of: (1) one-half of the excess of the taxpayer's combined income (AGI plus benefits) over the base amount or (2) the amount of the unemployment benefits.

Under the new law, all unemployment insurance benefits must be included in gross income, regardless of the amount of other income the taxpayer may have. The provision is effective for amounts received after December 31, 1986, in taxable years ending after that date.

**Section 122—Employee awards.** Excludes awards employees receive from their employers from wages for social security purposes to the same extent they are excludable from gross income for income tax purposes. (Generally excludes from gross income employee awards of tangible personal property for length of service or safety achievement to the extent that an employee's annual awards do not exceed \$400 (\$1,600 for qualified plan awards).) Items of low value continue to be excludable for income tax and social security purposes as **de minimus** fringe benefits. This provision is effective for such awards

made after December 31, 1986.

The basic intent of the provision is to clarify the extent to which employee awards are excluded for income tax and social security purposes and deductible by the employer as a business expense.

**Section 1108—Simplified Employee Pensions.**

Would provide that small employers (those with 25 or fewer employees) could offer their employees a choice under a Simplified Employee Pension (SEP) of receiving cash or a SEP contribution. If the employee chose the SEP contribution, the contribution would be excluded from income for income tax purposes, but would be included as wages for social security tax purposes. If the employee chose cash, it would count as income for income tax purposes and wages for social security purposes. This provision is effective with respect to years beginning after December 31, 1986.

The social security and income tax treatment of SEP contributions (or cash) under this provision is generally consistent with the treatment of similar arrangements (salary reduction arrangements) where a cash option already existed under prior law, e.g., tax-sheltered annuities and employer pick-up plans.

**Section 1147—Tax treatment of Federal Thrift Savings Fund.** Provides that amounts contributed by an employee to the Federal Thrift Savings Fund, the thrift fund established under the Federal Employees Retirement System (the new retirement system for Federal employees covered under social security), are included as wages for social security purposes but deferred for income tax purposes until distributed to the employee.

Also provides that employer contributions on behalf of an employee to the Thrift Savings Fund are excluded from wages for social security purposes.

**Section 1151(d)(2)—Cafeteria plans.** Clarifies that the amount of a salary reduction under a cafeteria plan (a plan which allows employees to choose among taxable benefits, such as cash, and one or more nontaxable benefits, such as health care) is not wages for social security purposes. This provision applies to taxable years beginning after December 31, 1983.

**Section 1162—2-year extension of exclusions for educational assistance programs and group legal plans.** Extends for 2 years the exclusion from an employee's income for income tax and social security purposes of (1) amounts paid or expenses incurred by an employer under a qualified educational assistance program and (2) amounts contributed by an employer to, services received by an employee from, or amounts paid to an employee under a qualified group legal services plan. The educational assistance exclusion expires for taxable years beginning after December 31, 1987, and the group legal assistance exclusion for taxable years ending after December 31, 1987.

Also increases to \$5,250 (from \$5,000) the amount

of tax-free educational assistance benefits that an employee could receive during a taxable year.

**Section 1163—\$5,000 limit on dependent care assistance exclusion.** Limits to \$5,000 a year (\$2,500 in the case of a married couple filing a separate income tax return) the exclusion from income for income tax and social security purposes to dependent care assistance benefits provided to the worker by his employer. This provision applies to taxable years beginning after December 31, 1986.

The provision establishes a limit on the amount of dependent care assistance excluded for income tax and social security purposes based on a dollar amount, rather than one based on earned income as under prior law.

**Section 1164—Tax treatment of qualified campus lodging.** Would provide that, in general, income of an employee of an educational institution for income tax and social security tax purposes would not include the value of qualified campus lodging furnished to him. However, the value of the lodging would be included in income to the extent that the lesser of 5 percent of the appraised value of the lodging or the average rentals paid by individuals (other than employees or students) for comparable lodging provided by the educational institution exceeded the rent paid by the employee for qualified campus lodging. This provision would be effective with respect to taxable years beginning after December 31, 1985.

The purpose of the provision is to clarify the tax rules regarding the value of campus lodging.

**Section 1501(a), (b), and (e)—Penalty for failure to file information returns or statements.** Increases the maximum penalty for failure to file an information return (including form W-2) or failure to supply identifying numbers (including social security numbers). Also adds a new penalty for omitting information from or providing incorrect information on an information return. This provision applies to returns due after December 31, 1986, without regard to extensions.

The provision provides an incentive for better reporting by employers, which should facilitate SSA processing of wage data.

**Section 1524—Social security numbers for certain claimed dependents.** Requires individuals filing a tax return due after December 31, 1987, to include the taxpayer identification number (TIN)—usually the social security number—of each person aged 5 or older (as of the close of the taxable year) whom the taxpayer claims as a dependent. Tax filers would be subject to a penalty of \$5 for each failure to comply with the TIN requirement without good cause. (The language of the committee report states that IRS may continue its practice of denying any unsubstantiated deduction for a dependent and expresses the intention of the conferees that IRS, rather than SSA, will continue to issue TIN's to nonresident aliens and to taxpayers and their dependents who are ex-

empt from social security taxes by reason of their religious beliefs.)

**Section 1525—Tax exempt interest to be shown on return.** Requires all taxpayers to report on their returns for taxable years beginning after December 31, 1986, the amount of any tax-exempt interest income. IRS had previously required taxpayers to disclose this income only if they received taxable social security benefits.

**Section 1704—Social security coverage for members of the clergy.** Changes the conditions under which members of the clergy may receive an exemption from social security coverage by requiring that clergymembers inform their church of their opposition to public insurance. Also, before approving an application for exemption, the Department of the Treasury must verify that the clergymember is aware of the grounds on which an exemption may be obtained and is seeking an exemption on these grounds. These provisions are effective with respect to applications filed after December 31, 1986.

Permits members of the clergy who had received an exemption from social security coverage to revoke the exemption, providing the revocation is filed before becoming entitled to social security benefits and no later than the due date of the person's Federal income tax return for the first taxable year beginning after the date of enactment. This provision is effective with respect to coverage for a clergymember's first taxable year ending on or after enactment or beginning after enactment (whichever is specified in the application for revocation) and all succeeding taxable years and with respect to benefits for months in or after the calendar year in which the application is effective.

**Section 1706—Treatment of certain technical personnel.** Provides that section 530 of the Revenue Act of 1978 does not apply to services as an engineer, designer, drafter, computer programmer, systems analyst, or other skilled worker engaged in a similar line of work. Under section 530, if a business has a reasonable basis (such as past industry practice) for not treating a worker as an employee, the employer may continue such treatment, under certain circumstances, and is not liable for social security taxes. The exception from section 530 for these workers is effective for remuneration paid and services rendered after December 31, 1986.

The provision is intended to clarify that the common law rules for determining whether a worker is an employee or an independent contractor apply to certain individuals retained by firms providing technical services to clients.

**Section 1882—Social security tax treatment of employees of churches or church-controlled organizations which have elected not to pay employer taxes.** Permits a church or church-controlled organization which has elected not to pay social security employer taxes (and whose employees are, consequently, treated as self-employed) to revoke its election. This provision is effective upon enactment. Under prior law, a church's

or organization's election could be revoked only by the Secretary of the Treasury and only if the church or organization failed to comply with reporting requirements for 2 years. The new provision enables churches and organizations to revoke their elections more easily and quickly while avoiding noncompliance with the law.

Also provides (1) that the optional exemption from social security self-employment taxes for members of certain religious sects (primarily the Amish) does not apply to church employees who are treated as self-employed, and (2) that such church employees cannot combine their earnings or losses from a trade or business with church income for purposes of computing social security coverage and tax liability. The latter provision is effective with respect to remuneration paid or derived in taxable years beginning after December 31, 1985. These provisions are intended to ensure that church employees whose earnings are covered under the self-employed provision because their employers have elected not to pay social security employer taxes are treated as much as possible like employees.

**Section 1895 (b)(18)—Exclusion from mandatory Medicare coverage of State and local election officials and workers.** Provides that the mandatory Medicare coverage of State and local employees employed after March 31, 1986, does not apply to election officials and workers who are paid less than \$100 in a calendar year. Effective for services performed after March 1986.

## **Omnibus Drug Enforcement, Education, and Control Act of 1986 (Public Law 99-570)**

Public Law 99-570, enacted on October 27, 1986, contains a number of provisions relating to the Freedom of Information Act. The following provisions appear under subtitle N of title I (Anti-Drug Enforcement):

**Section 1803—Fees and fee waivers.** In an effort to establish uniform fees for all Federal agencies, effective 90 days after enactment, each Federal agency must establish a schedule of fees applicable for processing Freedom of Information Act (FOIA) requests in accordance with guidelines established by OMB. Such schedules shall provide for

- fees limited to reasonable standard charges for document search, duplication and review when requests are for commercial use;
- no charge for the first 2 hours of search time or the first 100 pages of duplication for all requests made for noncommercial use;
- fees limited to reasonable standard charges for document duplication (over 100 pages) when the request is for other than commercial use and is from an educational or noncommercial scientific institution or a representative of the news media;
- furnishing documents without charge or at a

reduced charge if disclosure is in the public interest;

- no fee if the costs of collection and processing the fee are likely to equal or exceed the amount of the fee; and
- no advance payment of any fee unless the requester has previously failed to pay fees timely or the fee will exceed \$250.

These provisions may not supersede any statutory provisions that set forth specific levels of fees for providing particular types of records.

Public Law 99-570 contains a number of SSI and related Medicaid provisions. The following provisions appear under subtitle C (Entitlements Eligibility) of title XI (Homeless Eligibility Clarification Act):

**Section 11005—Treatment of homeless individuals eligible under SSI and Medicaid programs.** Requires the Secretary of Health and Human Services (HHS) to provide a method of making SSI payments to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address. The requirement is effective on enactment.

Requires State Medicaid plans to provide a method of making cards evidencing eligibility for medical assistance available to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address. The requirement is effective January 1, 1987, without regard to whether regulations have been promulgated.

**Section 11006—Application for SSI and food stamp benefits by SSI prerelease individuals.** Requires the Secretary of HHS to establish a system for individuals to apply for SSI benefits prior to discharge or release from public institutions.

Requires the Secretaries of HHS and Agriculture to establish procedures under which an individual who applies for SSI under the prerelease procedures may also apply for participation in the food stamp program by executing a single application.

The provisions are effective on enactment (in the absence of effective-date language in the legislation).

Public Law 99-570 also contains the following provision under title XII (Commercial Motor Vehicle Safety Act of 1986):

**Section 12006—Classified driver's license.** Under this title, the Secretary of Transportation must, not later than January 1, 1989, issue regulations establishing minimum uniform standards for the issuance of classified drivers' licenses by the States. Minimum information requirements for the license shall include, among other things, the social security number or such other number or information as the Secretary determines to be appropriate to identify the individual to whom the license is issued.

## Continuing Appropriations for Fiscal Year 1987 (Public Law 99-591)

Public Law 99-591,<sup>4</sup> enacted October 30, 1986, contains the following provisions related to the black lung and disability insurance programs:

**Black lung rounding provision.** The continuing resolution for fiscal year 1987 incorporates the language of the conference version of H.R. 5233, the Labor-HHS appropriations bill. H.R. 5233 provided for rounding black lung benefits down to the lower dollar beginning with the first black lung benefit increase occurring in fiscal year 1987—that is, the increase scheduled for January 1987. Since the requirement for this rounding change comes from fiscal year 1987 appropriations language, it applies for the January 1987 pay increase and for benefits newly calculated in the period January through September 1987.

**Disability criteria for Alzheimer's disease.** House and Senate Committee reports expressed concern that the guidelines used in determining disability are not sufficiently defined for Alzheimer's disease and related disorders. Both Committees direct SSA, in cooperation with the National Institutes of Health, to review and update the criteria used to determine disability on the basis of Alzheimer's disease and related disorders. A report on the status of these changes is due to the Committees prior to next year's appropriations hearings.

## Immigration Reform and Control Act of 1986 (Public Law 99-603)

Public Law 99-603, enacted November 6, 1986, contains a number of provisions concerning the reform and control of immigration. The following appear under Part A (Employment) of title I (Control of Illegal Immigration):

**Section 101—Control of unlawful employment of aliens.** Requires employers to examine certain documentation to establish the identity and employment authorization of every individual hired on or after the date of enactment (although full enforcement of employer sanctions will not occur until after May 31, 1988). Employers may accept the social security card as evidence of employment authorization. Employers are not required to accept only tamperproof social security cards for this purpose; however, the President is authorized, during a prescribed review of the employment verification system, to require use of the tamperproof card, provided he has given the Congress 1 year's advance notification and the Congress has approved the change and appropriated funds for this purpose. The costs of any changes in the social security card attributable to immigration reform must be met through general revenues.

<sup>4</sup>Public Law 99-500 (a flawed version of H.J. Res. 738) was signed on October 18, 1986. Public Law 99-591, was signed on October 30, 1986, contains the correct language of H.J. Res. 738 as approved by the Congress.

The Secretary of HHS, acting through SSA and in cooperation with the Attorney General and Secretary of Labor, is required to study the feasibility and costs of establishing a social security number validation system. The law requires that the report, together with recommendations as may be appropriate, be submitted to Congress within 2 years after the date of enactment.

The Attorney General, in consultation with the Secretaries of HHS and Labor, is required to study methods the Department of Justice might use in determining employment eligibility of aliens in the United States. This study is to concentrate on those data bases that are currently available to the Federal Government through which telephone access and computation capability could be used to "verify instantly" the employment eligibility status of job applicants who are aliens. The Attorney General is required to submit a report describing the status of the study 6 months after the date of enactment of the bill and a final report 12 months after enactment.

The President is required to monitor and evaluate the system of employment verification, and, to the extent that the system is found not to be secure, is authorized to implement changes necessary to establish a secure system. A telephone verification system could not be implemented, however, until the President had given the Congress 2 years advance notification and the Congress had approved the change and appropriated funds for this purpose.

Finally, the Comptroller General is required to investigate technological changes, including magnetic strips, holograms, and integrated circuit chips, that could be used to reduce the counterfeiting of social security cards.

The following provisions appear under title II (Legalization):

**Section 201—Legalization of status/eligibility for public assistance.** Provides for granting lawful temporary resident status, beginning no later than May 5, 1987, to aliens who have unlawfully and continuously resided in the United States since before January 1, 1982, and who meet other specified requirements. Further provides for adjusting such temporary resident status to lawful permanent resident status after 18 months if specified requirements are met.

Aliens granted lawful temporary resident status generally would be barred from participation in federally funded assistance programs for 5 years. As an exception, the aged, blind, and disabled would not be barred from the SSI, food stamp, and Medicaid programs.

**Section 203—Updating the registry date.** Updates the registry date from June 30, 1948, to January 1, 1972. The effect of this change is to allow undocumented aliens who entered the country after June 30, 1948, and before January 1, 1972, to be deemed to be lawfully admitted for permanent residence. This status, which meets SSI program requirements, would provide many aliens an alternative to the other legalization provisions in the legislation.

**Section 204—State legalization impact/assistance grants.** Appropriates \$1 billion a year for fiscal years 1988 through 1991 which, after certain Federal offsets, will be available to the States to meet the cost of financial and medical assistance and educational services provided certain newly legalized aliens. The amount available to the States in each year would first be reduced by the amount of Federal expenditures for SSI, food stamps, and Medicaid provided to certain newly legalized aliens because of the exceptions to the public assistance bar under section 201.

The following provisions of Public Law 99-603 appear under Part A (Temporary Agricultural Workers) of title III (Reform of Legal Immigration):

**Section 302—Legalization of certain agricultural workers/eligibility for public assistance.** Provides for granting lawful temporary resident status to foreign agricultural workers who performed seasonal agricultural work in the United States for at least 90 days during the 12-month period ending on May 1, 1986. Further provides for subsequent adjustment of such temporary resident status to lawful permanent resident status.

Aliens granted lawful temporary resident status under this provision would be regarded as aliens lawfully admitted for permanent residence except that they would be barred from the program of aid to families with dependent children (AFDC) for 5 years, and those barred from AFDC would be provided only limited access to the Medicaid program.

**Section 303—Legalization of additional agricultural workers/eligibility for public assistance.** Provides for granting lawful temporary resident status and, subsequently, lawful permanent resident status, to foreign agricultural workers who replace the workers described under section 302 who leave agricultural work.

Aliens granted lawful temporary resident status under this section generally would be barred from participation in federally funded assistance programs for 5 years, except that the aged, blind, and disabled would not be barred from the SSI and Medicaid programs.

## **Employment Opportunities for Disabled Americans Act (Public Law 99-643)**

Public Law 99-643, enacted on November 10, 1986, contains a number of SSI provisions and related Medicaid provisions.

**Section 2—Permanent authorization of program of benefits under section 1619.** Makes permanent the provisions of section 1619,<sup>5</sup> which make special cash benefits and Medicaid coverage available to individuals who work despite severe impairments. This provision is effective on enactment.

<sup>5</sup>*Ibid.*

The provisions of section 1619 were established as a demonstration project and were due to expire July 1, 1987.

**Section 3—Eligibility for certain disabled or blind individuals for benefits during initial 2 months in certain institutions.** Provides that an individual, who in the month prior to admission to a public medical or psychiatric institution was eligible under section 1619, will be eligible for benefits based on the full Federal benefit rate for the first 2 months throughout which he is in such institution, but only if the institution agrees that it will not require the individual to use such benefits to offset the cost of care. Where there is no such agreement, eligibility will be determined under the regular provisions of the SSI program. The provision is effective July 1, 1987.

The effect of this provision is to permit individuals who have been working and who are hospitalized for short periods of time to continue to receive SSI benefits, and to avoid the disruption due to short periods of ineligibility.

**Section 4—Improvements to section 1619 program.** Provides for the following changes in the section 1619 program:

- *Eligibility.* An individual would be eligible for a regular SSI benefit or for section 1619 benefits for any month subsequent to the month of initial eligibility under the regular SSI program based on his earnings and other income. The provisions in the SSI law which provide a trial work period and an extended period of eligibility would be repealed. A continuing disability review would be required within 12 months after the first month of an individual's eligibility under section 1619.
- *Reinstatement.* Reinstatement to benefits under section 1611 or section 1619, as appropriate, would be possible without a medical review for individuals who, within the previous 12 months, had become ineligible for 1619 benefits for a nonmedical reason. However, a continuing disability review would be undertaken immediately in certain cases where earnings have been particularly high.
- *Determination of 1619 (b) eligibility.* The value of publicly funded attendant care would be considered in the determination of whether an individual's earnings could provide a "reasonable equivalent of benefits" and the data used in determining reasonable equivalents would be updated at least annually. In addition, impairment-related work expenses and income for fulfilling plans for achieving self-support would be disregarded in determining such reasonable equivalents.

These provisions, which become effective on July 1, 1987, allow relatively free movement between

the various eligibility categories of SSI. The provisions recognize that severely impaired individuals who make work attempts may not be able to follow a steady progression from status under section 1611 to status under section 1619 (a) and then to section 1619 (b). Often these individuals need to reestablish eligibility for an earlier category of benefits. The provisions also simplify administrative tasks by eliminating for the SSI program the trial work period and the 15-month reentitlement period, which are not useful since the benefits of 1619 (a) and (b) and the ability to move freely among 1611, 1619 (a), and 1619 (b) statuses provide greater protections than these former provisions did.

**Section 5—Notification to applicants and recipients.** Provides that the Secretary shall notify an individual receiving SSI benefits on the basis of disability or blindness of his potential eligibility for benefits under section 1619 at the time of the initial award if the beneficiary is aged 18 or older, and shall notify all disabled and blind SSI beneficiaries at the time that their earnings reach \$200 or more a month and periodically thereafter.

This provision, which will be effective on July 1, 1987, will help ensure that disabled and blind SSI beneficiaries are aware of section 1619 benefits should they decide to attempt to work or increase their work efforts.

**Section 6—Loss of SSI benefits upon entitlement to child's insurance benefits based on disability.** Provides for continuation of Medicaid coverage for individuals who lose their eligibility for SSI because of entitlement to, or an increase in, social security benefits received as "adult disabled children." In effect, creates a new group of individuals who are eligible for Medicaid. Prior to this change, these individuals could become ineligible for Medicaid because of the loss of SSI eligibility. The provision becomes effective July 1, 1987.

**Section 7—Medicaid eligibility for certain recipients of cash benefits under section 1619.** Provides Medicaid coverage for individuals in section 1619 status in those States that previously did not specifically cover section 1619 individuals. (Section 9404 of Public Law 99-509, the Omnibus Budget Reconciliation Act of 1986, provides similar protection, but for section 1619(b) individuals only.) The provision is to be effective July 1, 1987.

This provision allows a blind or disabled individual who resides in a State whose Medicaid plan uses eligibility rules that were in effect in December 1972 rather than SSI eligibility rules (a so-called "section 209(b) State"), and who was eligible for Medicaid in the month before the month in which he becomes eligible under section 1619, to continue to be eligible for Medicaid as long as he remains qualified for a benefit under section 1619.

**Section 8—Payment of benefits due deceased recipients.** Provides that benefits due a deceased recipient



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may be paid to the surviving spouse if the spouse and recipient were living in the same household within the meaning of the lump-sum death payment provision of the Social Security Act at the time of the recipient's death or within 6 months immediately preceding his death, or to the parent of a disabled or blind child recipient if the child was living with the parent within 6 months immediately prior to the child's death. This provision is effective with respect to benefits payable for months after May 1986.

Previously only an eligible spouse could have been paid amounts due a recipient at the time of his death. An eligible spouse is defined as an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and has not been living apart from such other individual for more than 6 months. The amendment does not change the provision in prior law; it merely provides that ineligible spouses and parents also may receive the unpaid benefits of deceased recipients.

**Section 9—Treatment of certain couples in medical**

**institutions.** Permits States not to follow the SSI rule that members of a couple sharing a room in a Medicaid institution be considered as two individuals if following the SSI rule would disadvantage either spouse in determining eligibility for any other program under the Social Security Act. The provision is effective on enactment.

SSI policy treats each member of a couple sharing a room in a Medicaid institution as an individual after 6 continuous months in the institution. While couples eligible for SSI are advantaged by the policy because the SSI benefit rates and resource limits for two individuals are greater than for a couple, some members of couples have lost their Medicaid eligibility as a result of using the SSI rule because their incomes exceeded special Medicaid income limits for individuals in institutions. An existing provision of Medicaid law generally requires the use of cash assistance program income rules even for people not eligible for cash assistance; the amendment makes a specific exception to the general provision.