
Consolidated Omnibus Budget Reconciliation Act of 1985

by Mary Ross and Carol Hayes*

This article briefly describes the legislative history of the old-age, survivors, and disability insurance (OASDI) and supplemental security income (SSI) provisions, as well as related Medicare and Medicaid provisions, of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272). It includes a chronology outlining the interaction of the budget reconciliation process with the development of the OASDI minor and technical changes bill (H.R. 2005) and the development of other social security related legislation resulting in proposals that ultimately combined in the overall Consolidated Omnibus Budget Reconciliation Act of 1985. The article also provides a detailed summary of the provisions of the legislation.

On April 7, 1986, President Reagan signed into law H.R. 3128 (Public Law 99-272), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The new law, which is the result of the congressional budget process, makes hundreds of changes in Federal programs to reduce the deficit in accordance with the budget decisions (S.Con.Res. 32) adopted by both the House and the Senate on August 1, 1985. It also includes a number of provisions affecting the old-age, survivors, and disability insurance (OASDI) and supplemental security income (SSI) programs, most of which have little or no budget impact. This article will deal only with social security related provisions.

The social security related provisions of COBRA come essentially from three sources: (1) OASDI proposals developed by the House Ways and Means Committee and passed by the House in H.R. 2005 on May 14, 1985; (2) OASDI and SSI proposals added in the Senate; and (3) social security related proposals developed as part of the budget reconciliation process and combined into the legislation enacted as COBRA.

The chronology on page 23 gives some indication of how the various bills and separate committee actions on deficit reduction legislation and (after final adoption of the First Concurrent Resolution) budget reconciliation proposals were ultimately combined in the overall COBRA legislation. Although the basic package of social security technical provisions was passed by the House in May 1985, this package was included in the Omnibus Budget bill and was not finally acted upon by Congress until

March 1986, after the first round of outlay reductions under the "Gramm-Rudman-Hollings" process had taken effect.

In general, the various delays in actions leading to enactment of COBRA were not directly related to the social security provisions in the legislation. For example, there was considerable controversy in the fall of 1985 concerning "superfund" provisions (relating to a tax on manufacturers to pay for an expanded toxic-waste cleanup program) and provisions for taxes on tobacco products. In addition, in the fall of 1985, tax reform legislation, civil service retirement legislation, debt ceiling legislation, and the Gramm-Rudman-Hollings balanced budget amendment required considerable congressional attention. There was also controversy concerning Medicare and aid to families with dependent children (AFDC) provisions that are not discussed in this article.

Earlier in the congressional budget process, there was some delay because of the lengthy House-Senate conference to resolve differences in the versions of the First Concurrent Budget Resolution passed by the House and the Senate. Among other differences between the two versions of the resolution, the Senate-passed resolution contemplated substantial budget reductions due to a 1-year freeze in the social security cost-of-living adjustment (COLA), to which the House conferees were unwilling to agree.¹

¹The House-Senate conference agreement on the budget resolution, which was adopted by both Houses on August 1, did not call for any change in the social security or SSI COLA, but did contain a recommendation to the House Ways and Means and Senate Finance Committees to report legislation to limit the amount of social security benefits paid to illegal and nonresident aliens. No subsequent action was taken on this nonbinding recommendation.

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Chronology

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| 3/21/85 | H.R. 1641, "Social Security Minor and Technical Changes Act of 1985," introduced by Representative James R. Jones (D., OK), Chairman, Social Security Subcommittee. | | reduction proposals, but did not include the Ways and Means Committee proposals in H.R. 3128 or the Medicaid and other provisions in H.R. 3101. |
| 4/1/85 | Social Security Subcommittee hearing on H.R. 1641. Acting Commissioner Martha A. McSteen testified. | 10/29/85 | House Rules Committee combined H.R. 3101, the Energy and Commerce Committee reconciliation bill, with H.R. 3128. |
| 4/3/85 | Social Security Subcommittee markup of H.R. 1641. | 10/31/85 | H.R. 3128 passed by House of Representatives (245-174). |
| 4/4/85 | Representative Jones introduced clean bill, H.R. 2005, "Social Security Minor and Technical Changes Act of 1985." | 11/14/85 | Senate completed floor action on S. 1730, substituted language of S. 1730 for language of House-passed H.R. 3128, and passed H.R. 3128 (93-6). |
| 5/1/85 | Ways and Means Committee markup of H.R. 2005. | 12/5/85 | House agreed (voice vote) to go to conference on H.R. 3128 with the Senate amendments thereto. The House agreed to consider H.R. 3500 as passed by the House in the conference on H.R. 3128; the House-passed H.R. 2005 was not considered to be in conference. |
| 5/10/85 | Senate passage of First Concurrent Budget Resolution for fiscal year 1986. (S.Con.Res. 32) (50-49, with the Vice President voting). | | H.J.Res. 372, "Public Debt Increase," providing a permanent increase in the public debt ceiling and containing the Gramm-Rudman-Hollings balanced budget amendment, was passed by both Houses (Senate 61-31, House 271-154) and signed by the President the following day (Public Law 99-177). |
| 5/14/85 | House passage of H.R. 2005 (415-0). | 12/11/85 | Conference Committee on H.R. 3128 issued report. |
| 5/23/85 | House passage of First Concurrent Budget Resolution (S.Con.Res. 32) amended to contain the House version of the resolution, H.Con.Res. 152 (voice vote). | 12/19/85 | After several efforts to reach agreement on the conference report on H.R. 3128, the First Session of the 99th Congress adjourned with the Senate insisting on its amendments and requesting a further conference. |
| 7/29/85 | H.R. 3128, "Deficit Reduction Amendments of 1985," reported out of the Ways and Means Committee. (Bill included social security related Medicare provisions.) | 12/20/85 | The House passed a resolution (314-86) further amending the conference report on H.R. 3128 and sent it to the Senate. |
| 8/1/85 | House (309-119) and Senate (67-32) agreed to Conference Committee recommendations on First Concurrent Budget Resolution. | 3/6/86 | The Senate adopted further changes and sent the bill back to the House (voice). |
| 9/1/85 | H.R. 3101, "Medicare and Medicaid Budget Reconciliation Amendments of 1985," introduced by Representative Henry A. Waxman (D., CA), Chairman of the House Committee on Energy and Commerce. The bill contained an SSI-related Medicaid provision. | 3/14/86 | The House rejected the Senate amendments (331-76) and the Senate voted (voice vote) to insist on its amendments. |
| 9/11/85 | H.R. 3101 reported out of House Energy and Commerce Committee. | 3/18/86 | The House agreed to the Senate amendments (230-154), thus clearing H.R. 3128 for the White House. |
| 9/12/85 | Secretary of Health and Human Services, Margaret M. Heckler, testified before Senate Finance Committee on HHS budget proposals. | 3/20/86 | Final passage of Joint Resolution making technical corrections in H.R. 3128. (These corrections related to pension provisions previously included in H.R. 3500; they did not affect the social security related provisions.) |
| 9/20/85 | Senate Finance Committee completed markup of budget reconciliation legislation (adding OASDI proposals from H.R. 2005); budget reconciliation bill introduced as S. 1730. | 3/26/86 | President signed H.R. 3128, Public Law 99-272. |
| 10/2/85 | Senate Finance Committee and Senate Budget Committee jointly reported S. 1730 to the Senate. | 4/7/86 | |
| 10/24/85 | H.R. 3500, "Omnibus Budget Reconciliation Act of 1985," passed by the House (228-199). Bill contained various budget | | |

Background and Legislative History

H.R. 2005 Provisions

Most of the OASDI provisions ultimately included in Public Law 99-272 were essentially the same as those included in H.R. 2005, the "Social Security Minor and Technical Changes Act of 1985," passed by the House of Representatives in May 1985 and incorporated by the Senate Finance Committee into the Budget Reconciliation bill in September 1985. The following list of H.R. 2005 provisions (all but one of which was included in the predecessor bill, H.R. 1641)² is annotated to reflect the legislative history. The final provisions are described further in "Summary of Major Social Security Related Provisions" of this article.

- **Disability demonstration projects.** Five-year extension of demonstration projects involving the disability insurance program.
- **Disability Advisory Council.** Establishment of a Disability Advisory Council in place of the regular Social Security Advisory Council for 1985.
- **Tax treatment of social security benefits in Samoa.** Taxation of social security benefits received by certain citizens of possessions of the United States. (A clarification was made during Senate Finance Committee consideration to assure that the Social Security Administration (SSA) would be relieved of the obligation for deducting or withholding taxes on benefits for prior years.)
- **Benefits for great-grandchildren.** Payment of benefits to adopted great-grandchildren on the same basis as child's insurance benefits are paid to adopted grandchildren.
- **Publication of benefit tables.** Elimination of requirement for *Federal Register* publication of revisions in the pre-1979 benefit table.
- **Clarification of fail-safe.** Clarification of trust fund measures for purposes of the fail-safe provision.
- **Reentitlement periods for persons disabled in childhood.** Extension of 15-month reentitlement period to childhood disability beneficiaries subsequently entitled.
- **Charging of work deductions against auxiliary benefits in disability cases.** Clarification relating to the benefit to be used in applying work deductions when the spouse or child of a disabled worker has substantial earnings.
- **Perfecting amendments to disability offset provision.** Technical modifications assuring the applicability of provisions to certain workers' compensation payments and providing the same test for exclusion from the offset for Federal pensions as for pensions from State and local employment—whether there was social security coverage of "all or substantially all" of the work on which the pension was based.
- **Effective date of State coverage agreements.** The

effective date of coverage agreements (or modifications) would be based on date of mailing (or delivery) to the Secretary of Health and Human Services (HHS).

- **Medicaid protection for certain widows and widowers.** Restoration of Medicaid protection for certain widows and widowers by disregarding the 1983 increase in benefits for disabled widow(er)s for purposes of Medicaid eligibility. (This provision was included as an OASDI provision in the predecessor bill, H.R. 1641, because the problem it sought to resolve resulted from an OASDI change in 1983. However, because of the possible jurisdictional interest of the Subcommittee on Public Assistance and Unemployment Compensation it was dropped from the bill as marked up by the Social Security Subcommittee but reincluded in the bill when it was reported by the full Ways and Means Committee.)
- **Check delivery date.** Deemed correct delivery date of checks for tax and accounting purposes where actual delivery occurs in prior month. (This provision was not included in H.R. 1641; it was added during Subcommittee consideration of the bill.)

On April 1, 1985, the Subcommittee on Social Security held a public hearing on H.R. 1641 at which Martha A. McSteen, Acting Commissioner of Social Security, testified for the Administration. In general the Administration supported, or did not oppose, the proposed changes. The Administration did, however, recommend that the disability demonstration authority should be made permanent (rather than being extended for only 5 years) and expressed strong reservations concerning the proposal to disregard the 1983 social security benefit increase for disabled widow(er)s on the rolls in December 1983 for purposes of Medicaid eligibility.

Following the April 1 public hearing, the Subcommittee marked up the bill on April 3 and Representative Jones introduced a clean bill, H.R. 2005, on April 4. The full Ways and Means Committee marked up the bill on May 1 and it was passed by the House, 415 to 0, under a suspension of the rules, on May 14. Although the Administration's recommendations had not been agreed to, the Administration raised no formal objection to passage of the bill.

The OASDI proposals were incorporated by the Senate Finance Committee into the Budget Reconciliation bill with no major changes. When these provisions were finally dealt with in conference in H.R. 3128, there were no comparable provisions in the House-passed version of H.R. 3128, and the Senate-passed version was generally accepted without change.

OASDI and SSI Provisions Added in the Senate

Several additional OASDI and SSI provisions were adopted in the Finance Committee in September 1985 and a few were added on the Senate floor. On September 12, the Senate Finance Committee held a public hearing at

²The "Social Security Minor and Technical Changes Act of 1985," H.R. 1641, was introduced by Rep. James R. Jones (D., OK), Chairman of the Social Security Subcommittee of the House Committee on Ways and Means on March 21, 1985.

which Secretary of HHS Margaret M. Heckler testified on the Administration's budget proposals affecting HHS programs within the jurisdiction of the Finance Committee. Her testimony dealt primarily with AFDC and health-related matters and included a general reference to the social security proposals that had passed the House in H.R. 2005.

The following OASDI and SSI amendments were agreed to in the Senate Finance Committee, when that Committee also added the H.R. 2005 provisions to the broad budget reconciliation package, and were included in H.R. 3128 as passed by the Senate:

- **Certain erroneous payments.** An amendment by Senator John Heinz (R., PA) that would treat erroneous payments to deceased social security or SSI beneficiaries (where the payments were directly deposited) as overpayments to the surviving joint account owner in certain cases. This provision was agreed to, without modification, in conference on H.R. 3128.
- **Senior status Federal judges.** An amendment by Senator George J. Mitchell (D., ME) that would make permanent the temporary exclusion of the amounts received by senior status (retired) Federal judges while on active service from wages for social security tax and earnings test purposes. This provision was also adopted by the Conference Committee without modification.
- **Study of "the notch."** An amendment by Senator Charles E. Grassley (R., IA) that would require HHS to study the "notch" situation—a result of the 1977 legislation under which workers born in the period 1917 to 1921 may get lower retirement benefits than workers with comparable earnings who were born earlier. This provision was dropped in conference.
- **SSI passalong and State supplementation.** An amendment by Senator David L. Boren (D., OK) that would revise the SSI "passalong" requirements and allow States to meet the passalong requirements if their current supplementary payment levels are at least as high as they were in 1976. This provision was substantially modified in conference to provide that, in addition to current methods of compliance, a State could meet the requirements for calendar years 1984 and 1985 if in calendar year 1986, the State supplementary payment levels are such that, since December 1976, the State has increased its State supplementary payment levels (other than for residents of Medicaid facilities) by no less than the total percentage increase in the Federal SSI benefit standard between December 1976 and February 1986, including the cost-of-living increase for 1986. The conference agreement also provided that the Social Security Administration shall, if a State requests, administer State supplementary payments provided to residents of Medicaid institutions in cases where the SSI benefit rate is limited to \$25 a month.

Two additional social security provisions were adopted during Senate floor consideration of S. 1730 (later H.R. 3128):

- **Coverage of Connecticut State police.** An amendment by Senator Bob Packwood (R., OR) to permit

the State of Connecticut to extend social security coverage (without a referendum) to State police officers hired on or after May 8, 1984, who are covered under a retirement system. This provision, which was similar to one that had been discussed briefly during the Ways and Means Subcommittee on Social Security hearing in April 1985, was agreed to in conference.

- **Restoration of trust fund securities.** An amendment by Senator Daniel P. Moynihan (D., NY) and 18 cosponsors to restore the securities to the social security trust funds (and all other government-administered trust funds) that had been recently disinvested and pay the interest on these securities. This provision was similar in effect to legislation that was subsequently enacted in H.J.Res. 372, the Debt Ceiling bill (Public Law 99-177) and was, therefore, dropped in conference.

OASDI- and SSI-Related Provisions

Most of the OASDI- or SSI-related provisions that were enacted in COBRA were first included in the Medicare portions of H.R. 3128, the Deficit Reduction bill as passed by the House, and/or S. 1730, the Senate Finance Committee/Budget Committee bill that was substituted for the House text of H.R. 3128 and passed by the Senate.³

- **Extension of hospital insurance coverage to State and local employees.** Both the Ways and Means Committee and the Senate Finance Committee approved provisions (subsequently passed by their respective Houses) to extend the coverage of the Medicare Part A (hospital insurance) program to employees of State and local governments and the governments of American Samoa, Guam, and the District of Columbia. The House provision applied to persons hired on or after January 1, 1986; the Senate version extended coverage to current as well as future employees. The Conference Committee generally followed the House approach; the January 1, 1986, effective date was shifted to April 1, 1986, by a subsequent floor modification to the Conference Committee report. This provision was the only social security related provision with significant budget ramifications: It is expected to result in additional revenues of about \$533 million for fiscal years 1986-88. The original Senate-passed provision was expected to provide about \$4.7 billion over this period while the House provision was estimated at \$537 million.
- **Part B premium**—Both Houses adopted similar provisions for a 1-year extension (through 1988) of the temporary requirement in present law that provides for setting the Medicare Part B (supplementary medical insurance) premium to produce revenue equal to 25 percent of costs. The Senate version, which was adopted, in conference, also included technical corrections.

³Although the Senate Finance Committee acted on S. 1730 before final House passage of H.R. 3128, the Senate Finance Committee was aware of the House bill and, in some cases, adopted similar or identical provisions.

- **Modification of provision making Medicare second payer.** The House and Senate bills also contained similar provisions for allowing working aged individuals of any age who are enrolled in employer-sponsored health insurance plans to defer enrollment in Part B of Medicare without incurring late enrollment premium surcharges and restricted their Medicare protection to items and services that would not be covered under their employer plans. These provisions previously applied only to individuals under age 70.
- **Part A late enrollment fee.** The House bill contained a Ways and Means Committee provision limiting the Medicare Part A late enrollment fee to 10 percent and relating the length of the period during which it would be paid to the lateness of the enrollment. There was no comparable provision in the Senate bill. The House provision was adopted in conference.
- **Medicare appeals.** The House bill also included a Ways and Means Committee provision that would have allowed Part B Medicare claims to be appealed to the Administrative Law Judge level if the amount in controversy were at least \$500, and to the Federal Courts if the amount were \$1,000 or more. The provision would also have permitted Medicare providers to represent beneficiaries in Part A and Part B appeals. The Senate bill contained no such provision. Although this provision was agreed to in conference, it was subsequently dropped from the bill as a result of a modification of the conference report agreed to on the floor.
- **Certification by actuaries.** The Senate bill included a provision, not contained in the House bill, to repeal the prohibition that prevents the Chief Actuaries of the Social Security Administration and the Health Care Financing Administration from referring to economic assumptions while certifying to the reasonableness of the actuarial assumptions and cost estimates used in the OASDI, hospital insurance (HI), and supplementary medical insurance (SMI) Trustees Reports. This provision was adopted in conference.
- **Treatment of trusts.** The House bill contained a provision from the Energy and Commerce Committee requiring State Medicaid programs to count as income or resources amounts that could be distributed (whether or not they actually were) from a "Medicaid qualifying trust" (a trust established by an individual with himself as the beneficiary of any or all payments from the trust and with a trustee permitted to exercise discretion regarding payments to the individual). The provision does not affect SSA's determination of Medicaid eligibility under agreements with States entered into under section 1634 of the Social Security Act as it applies only to determinations of Medicaid eligibility for cash assistance nonrecipients. The conference agreement followed the House provision with a modification authorizing States to refrain from applying this provision to individuals in cases where hardship would result. The conference report also made clear that the provision would not apply to SSI or AFDC eligibility. It also included language stating that in States where (under section 1634 of the Social Security Act) the Secretary is making Medicaid eligibility determinations with regard to SSI recipients, the determinations required under this section will be

integrated into current arrangements in a manner satisfactory to the Secretary. (This language apparently was adopted before it was clear that the provision would not apply to Medicaid determinations for SSI recipients and was intended to mean that in such cases SSA would not have to make determinations regarding the Medicaid qualifying trusts if the Secretary did not agree to its doing so.)

- **Third-party liability for Medicaid costs.** The Senate bill included a Senate Finance Committee provision, not in the House bill, that would require that, as a condition of eligibility for SSI (or AFDC), individuals provide information on third-party liability for medical costs and cooperate in efforts to collect reimbursement for Medicaid expenditures. The provision for making pursuit of third-party liability in Medicaid a condition of SSI eligibility was dropped in conference.
- **Treatment of certain income of Indians.** The Senate bill also contained a provision that would have required amounts of per capita payments to Indians from royalty payments or damage settlements in excess of \$2,000 per household annually to be considered as income and resources for purposes of determining eligibility and benefit amounts for the AFDC, SSI, Medicaid, and other federally assisted programs. There was no similar provision in the House bill and the provision was dropped in conference. The conference report directed the General Accounting Office to do a 1-year study of such payments to Indians.

As noted earlier, the Conference Committee on H.R. 3128 reached agreement and submitted its report on December 19, 1985. The Senate quickly approved the conference report but the House voted to amend it. There were several unsuccessful attempts to dispose of the bill. The last action before the adjournment of the First Session of the 99th Congress on December 20 was that the Senate insisted on its position, and requested a further conference.

The Second Session of the 99th Congress began January 21, 1986, but no further action was taken on H.R. 3128 for some time. Following informal negotiations, the House, on March 6, adopted revisions to the conference report that reflected some accommodation to positions taken by the Senate (and the Administration). The Senate then passed (by voice vote) further amendments to the House amendments. The House initially rejected the Senate proposal, but when the Senate insisted on its position, the House on March 20 voted 230-154 to accept the Senate amendments.

On April 7, the bill was signed by the President and became Public Law 99-272.

Summary of Major Social Security Related Provisions

OASDI Provisions

Demonstration projects involving the disability insurance program. The new law extends through June 9,

1990, the Secretary's authority to waive statutory program requirements in conducting social security disability work incentive demonstration projects under section 505 of Public Law 96-265. It also requires the Secretary to submit annual interim reports to Congress on the progress of these projects on or before June 9 of years 1986 through 1989, with a final report due June 9, 1990.

The provision also makes the waiver authority for SSI demonstration projects permanent and requires that progress reports on SSI projects be incorporated into the Secretary's Annual Report to the Congress.

The extension of the social security provision is designed to ensure that the Secretary is able to carry out planned but not-yet-implemented experiments and demonstration projects to test the advantages of various ways to facilitate and encourage the return to employment of individuals who would otherwise remain dependent on disability benefits.

Disability Advisory Council. The Secretary is required to appoint a Disability Advisory Council by July 6, 1986, in lieu of the regular quadrennial Advisory Council on Social Security, to study and make recommendations on the medical and vocational aspects of disability (which the quadrennial council was required to study pursuant to the 1984 disability amendments, Public Law 98-460). The council is to be composed of a chairman and not more than 12 other members, who must represent organizations of employers and employees in equal numbers, medical and vocational experts from the public or private sector (or both), organizations representing disabled people, and the public.

The council must meet no less often than quarterly and by December 31, 1986, must report its findings to the Secretary on the following studies:

- Alternative approaches to work evaluation, the feasibility of providing work evaluation stipends, screening criteria for work evaluation referrals, and criteria for rehabilitation services referral;
- The effectiveness of vocational rehabilitation programs for social security and SSI beneficiaries; and
- The question of using specialists to complete medical and vocational evaluations at the State agency disability decisionmaking level, including the question of requiring medical specialists to complete the medical portion of each case review and any assessment of residual functional capacity in other than mental impairment cases.

This provision will permit the council to concentrate its attention on several important aspects of the disability insurance program since it will not be required to study the OASI and HI programs.

Taxation of social security benefits received by certain citizens of possessions of the United States. This provision amends the Internal Revenue Code (IRC) to exempt from income taxation all social security benefits paid to citizens of U.S. possessions who are not otherwise citi-

zens of the United States, if those benefits are subject to taxation under a provision of local law equivalent to the IRC provision under which U.S. citizens are taxed on their benefits. Although the language of this provision applies to citizens of all U.S. possessions, in practice, only the taxation of benefits paid to American Samoa citizens is affected.

Under prior law, American Samoans were treated as nonresident aliens for purposes of taxation of benefits, while citizens of Puerto Rico, Guam, and the Virgin Islands were taxed on their benefits in a manner similar to that of citizens. Under the nonresident alien provision, one-half of all social security benefits paid to American Samoans were subject to withholding at a flat 30-percent rate, while no part of the benefits paid to citizens of the other U.S. possessions was subject to withholding and up to half the benefits were taxed only if total income exceeded the income thresholds (\$25,000 for single taxpayers and \$32,000 for married couples filing jointly).

This provision was designed to correct this treatment of American Samoa (which was apparently unintended and was not implemented) by providing the territory with an opportunity to avoid the withholding requirement if local tax law parallel, the U.S. domestic provision. Under the change, citizens of American Samoa can be exempted from the withholding of U.S. income taxes from their social security benefits retroactive to January 1, 1984 (the date that taxation of social security benefits was first imposed under Public Law 98-21), if American Samoa has in effect before July 1, 1987, a tax law equivalent to the provision applicable to U.S. citizens.

The effect of the provision is to allow citizens of all four territories to be taxed on their social security benefits in a manner similar to that of U.S. citizens, with the revenues raised retained in the territories.

Child's insurance benefits for adopted great-grandchildren. The new law provides that great-grandchildren of an insured individual or his or her spouse, adopted after the worker's entitlement to benefits, can be entitled to child's benefits if the child was living with and receiving one-half support from the worker for 1 year immediately before the child's application for benefits. This provision is effective with respect to benefits based on applications filed after April 7, 1986.

Under prior law, benefits were available to a worker's adopted grandchild but not to a great-grandchild.

Elimination of requirement for publication of revisions in pre-1979 benefit table. The requirement that, whenever a general increase in social security benefits is announced, the Secretary publish in the **Federal Register** revisions of the pre-1977 amendments table of benefit is eliminated. (This benefit table applies only to persons eligible for benefits before 1979 and is no longer of general interest.)

The intent of this change is to simplify paperwork requirements; it is expected that the tables would continue to

be revised and updated and made available to those who need them.

Fail-safe clarification. This provision clarifies the measure of reserve ratios for purposes of the "fail-safe" provision of the law, that requires notification to Congress if trust fund assets may become less than 20 percent of a year's expenditures. Under the law as amended, computation of the trust fund reserve ratio (that is, year-end assets as a percent of the following year's outgo) for this purpose will take into account amounts transferred to the trust funds on the first day of the following year.

Thus, computations of trust fund reserve ratios for purposes of the fail-safe provisions will be the same as similar computations for purposes of the "stabilizer" provision, under which automatic cost-of-living adjustments in benefits may in certain circumstances be limited to the lower of the increase in the Consumer Price Index or the increase in average wages in the economy.

Extension of 15-month reentitlement period to childhood disability beneficiaries subsequently entitled. The new law extends the 15-month reentitlement period to childhood disability beneficiaries (CDB's) who become entitled a second, or subsequent, time. During the reentitlement period, all disabled individuals who have completed a 9-month trial work period and still have a disabling impairment may be automatically reinstated to benefit status for any month in which their earnings are below the substantial gainful activity level (now \$300 a month). The 1980 amendments made the reentitlement period available to every type of subsequently entitled disability beneficiary except, apparently by oversight, CDB's.

Charging of work deductions against auxiliary benefits in disability cases. In the case of a working auxiliary beneficiary who receives benefits on the record of a disabled worker, work deductions will be charged against the benefit computed under the maximum family benefit provision for families of disabled workers rather than the benefit computed under the maximum family benefit that applies to nondisability cases. The provision is effective with respect to benefits for months after December 1985.

The amendment corrects an anomaly which, although not generally affecting total monthly family benefits, could result in a working beneficiary receiving benefits sooner (and the nonworking beneficiaries having their benefits decreased sooner) than would be the case if deductions were charged against the disability maximum family benefit amount. This change is especially important in split-household situations to assure that the household with the working beneficiary does not receive an inequitably large share of the total benefits.

Perfecting amendments to disability offset provision. This provision clarifies that all workers' compensation benefits that had been cause for offset of social security disability benefits before the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) continue to cause offset of disability benefits. Unclear

wording in the 1981 act had led to confusion over continued application of the offset on account of certain workers' compensation payments. The amendment is effective as if it had been included in the 1981 act.

The provision also makes Federal, State, and local workers subject to the same test for the exclusion from offset of certain governmental disability benefits based on service covered under the social security program. The Omnibus Budget Reconciliation Act of 1981 had established two different tests—Federal workers only had to have part of their service covered by social security in order to have Federal disability benefits based on such service excluded from the offset; State and local workers had to have substantially all of their service covered by social security in order for State or local disability benefits to be excluded from the offset. The amendment, effective with respect to workers whose disability onset is after April 1986, would conform the exclusion criterion for governmental disability benefits based on Federal service to the "substantially all" test now applicable to benefits based on State or local service.

State coverage agreements. Under this change, the effective date of a State social security coverage agreement (or a modification of an agreement) is the date the agreement (or modification) is mailed or delivered to the Secretary of HHS. Effective for agreements and modifications mailed or delivered to the Secretary on or after enactment.

The provision is intended to eliminate complications and loss of coverage that could occur under prior law because the effective date was based on the date on which the agreement (or modification) was agreed to by the Secretary and the State. This resulted in loss of coverage or administrative complications when an agreement (or modification) was mailed or delivered by a State at the end of one calendar year, but not agreed to by the Secretary until the next.

Effect of early delivery of benefit checks. This change clarifies that, for purposes of taxation of social security benefits and of various provisions of the law that require calculation of year-end trust fund reserve ratios, benefits that are delivered before their scheduled delivery date will be deemed to have been paid on the regular delivery date.

Under the law, when the regular delivery date for social security benefit checks falls on a Saturday, Sunday, or legal holiday, checks must be delivered on the next previous banking day. In some cases, this provision results in payment of benefits in the month prior to their regular delivery date; in the extreme case, benefits that would otherwise be paid in one calendar year are paid in the previous year.

Under prior law, payment of such benefits in a prior calendar year would result in beneficiaries having received 13 months' benefit payments in a calendar year, with possible adverse implications for taxation of benefits. Also, since the law requires computation of year-end trust fund reserve ratios for various purposes, situations in which an addi-

tional month's benefits are paid in a calendar year would have resulted in lower ratios than would have resulted if the benefits had been paid on their regular delivery date. In an extreme situation—in which already low trust fund assets were made even lower by early delivery of benefit checks—the fail-safe or stabilizer provisions might have been triggered due solely to the early delivery of the checks.

Exemption from social security coverage for retired Federal judges on active duty. The new law provides that the compensation received by senior status (retired) Federal judges during periods of active service is not wages for social security tax or earnings test purposes, effective January 1, 1984.

Federal judges qualify for senior status by meeting statutory age and length-of-service requirements. Senior status judges receive their regular salary regardless of whether they choose to continue active service. The purpose of the provision is to ensure that senior status Federal judges are not disadvantaged under social security law if they choose to continue active service (thus, in effect, volunteering their services to the Federal judiciary).

Recovery of overpayments. Under this provision, in certain cases, a benefit payment made to a deceased social security or SSI beneficiary shall be treated as an overpayment (rather than as an "erroneous" payment). This change applies to social security benefit payments for the month of death or later and to SSI benefit payments for any month after the month of death that are made by direct deposit to an account owned jointly by the deceased and another individual who was receiving social security benefits on the same earnings record for the month immediately preceding the month of death or was the other member of an SSI "eligible couple" for the month of death. Effective in the case of deaths of which the Secretary is first notified on or after enactment (April 7, 1986).

Under the general provisions of the law, to which this amendment provides an exception, benefit payments to a deceased individual are considered to be erroneous payments (not overpayments) and are subject to Treasury Department reclamation procedures. Under the general reclamation procedures applicable to direct deposit cases, the financial organization is asked to return the amount erroneously paid. The surviving joint account holder is entitled only to concurrent notice by the financial organization of its debiting of the account to recover an erroneous payment. The purpose of the exception is to ensure that, in cases where benefit payments to a deceased individual are made to a joint account, a qualified joint account holder (as described above) is provided with the due process rights extended to overpaid beneficiaries, for example the right to advance notice of the overpayment, the right to request waiver, the right to appeal, and the opportunity to negotiate a gradual repayment schedule.

Coverage of Connecticut State police. The new law requires the Secretary to modify the social security cover-

age agreement with the State of Connecticut, at the request of the Governor of that State, to cover services performed after enactment by members of the Division of the State Police in the Connecticut Department of Public Safety. Applies only to those members who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System. Effective on enactment.

The provision is intended to permit social security coverage of a group of employees for whom social security coverage has been negotiated as part of a collective bargaining agreement.

General effective date of subtitle. The foregoing OASDI provisions are effective May 1, 1986, unless otherwise specifically provided.

Supplemental Security Income Provisions

Preservation of benefit status for disabled widows and widowers who lost SSI payments because of 1983 changes in actuarial reduction formula. Certain low-income widows and widowers who lost SSI eligibility because of the January 1984 increase in social security benefits for disabled widows and widowers under the 1983 amendments (Public Law 98-21) may be deemed to be receiving SSI payments for the purpose of Medicaid eligibility. Those affected must file applications for Medicaid eligibility with the States within the 15-month period beginning with the month of enactment (that is, before July 1987). The provision further directs the Secretary of HHS to inform the States of the identities of affected individuals, and requires States to solicit their applications for Medicaid coverage and to process their applications. Effective for Medicaid eligibility for months after June 1986.

This provision restores Medicaid coverage to those disabled widows and widowers who (1) lost their SSI eligibility (and, hence, Medicaid) because of the elimination of the reduction factor that applied to persons claiming social security widows' or widowers' benefits at ages 50-59, and (2) would be eligible for SSI and/or State supplementary payments if the increase in disabled widows' and widowers' social security benefits resulting from the 1983 amendments and subsequent social security cost-of-living increases were disregarded.

Amendments relating to State supplementation under SSI.

Passalong—A State will not be found out of compliance with the passalong requirement for the years 1984 and 1985 if, in 1986, the State supplementary payment levels are not less than its December 1976 levels increased by no less than the total percentage increase in the Federal SSI benefit standard between December 1976 and February 1986, including the cost-of-living increase for 1986 and the full \$20/\$30 July 1983 increase. (The Federal benefit standard increased 100.24 percent between December 1976 and February 1986.) The requirement that a State

must have increased its supplementary payment levels by no less than the required percentage does not apply to supplementary payments made to residents of Medicaid facilities in cases in which the Federal SSI payments are limited to \$25 a month. (Oklahoma is the only State that needed this amendment in order to be found in compliance for 1984 and 1985.)

Supplementation in Medicaid facilities—SSA shall, at the request of a State, administer State supplementary payments provided to residents of Medicaid facilities in cases in which the Federal SSI payment standard is limited to \$25. The provision is effective on the date agreed to by a State and the Secretary in a modification of the agreement under which the Secretary administers supplementary payments on behalf of the State.

The purpose of the provision is to overcome the current policy of not administering such supplements, in the interest of States that might provide such supplements but do not wish to administer them themselves while SSA administers their other supplementary payments.

OASDI- and SSI-Related Provisions

Medicare coverage of, and application of hospital insurance tax to, newly hired State and local government employees. The new law provides mandatory coverage, for hospital insurance (Medicare Part A) tax and benefit purposes, of services performed after March 31, 1986, by employees of States and their political subdivisions (and of the Governments of Guam, American Samoa, and the District of Columbia) hired after that date. Not covered are—

- (1) services covered under a Federal-State social security coverage agreement;
- (2) services performed by an employee of a State or political subdivision to relieve him or her from unemployment;
- (3) services performed in a hospital, home, or other institution by a patient or inmate as an employee of a State or political subdivision or of the District of Columbia;
- (4) services performed by an employee of a State or political subdivision, or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; and
- (5) services performed by certain student nurses and other student employees of hospitals of the District of Columbia.

The law also provides optional Medicare-only coverage for employees hired before April 1, 1986 (unless covered under the Federal-State social security coverage agreement), if the State modifies the agreement to provide for such coverage.

Medicare taxes are to be deposited in accordance with

the deposit schedule and procedures followed by States in depositing social security contributions, if the State or local government employer has any positions covered under the coverage agreement. An employer with no positions covered under the social security program is required to deposit its mandatory Medicare taxes in accordance with the employment tax deposit schedule and procedures applicable to private sector employers, which are administered by the Internal Revenue Service.

The provision is intended to relieve the financial drain on the Medicare program that occurs when governmental employees whose employment is not covered under social security become entitled to Medicare benefits through other covered employment or the entitlement of a spouse. (The problem of Medicare entitlement is especially acute because Medicare benefits, unlike social security benefits, are the same for all insured workers regardless of the amount of a worker's covered earnings.) The Congress also anticipated that the provision would serve to reduce the cost of existing health benefits plans for employees and retirees of affected governmental entities. Medicare coverage was made mandatory only for newly hired employees in order to reduce the initial financial burden on affected employers. The special deposit rules are intended to simplify Medicare tax deposits by allowing State and local employers that are subject to the existing State and local contribution deposit process to use the same process for Medicare tax deposits.

Limiting the late enrollment fee in Part A. The Medicare Part A fee for late enrollment is limited to 10 percent of the premium and the period during which the fee is paid is limited to twice the number of years that enrollment was delayed. The provision is effective with premiums paid for months beginning with July 1986. The provision applies to Medicare beneficiaries currently paying a Part A late enrollment fee. Months before, during, or after April 1986 in which such an individual was required to pay a late enrollment fee will be taken into account in determining the month in which the fee will no longer be charged.

Extension of working aged provisions. This provision modifies the group health insurance requirements of the Age Discrimination in Employment Act (ADEA) and makes corresponding changes in the Medicare program to remove the current (age 70) upper age limit. This modification will allow working aged individuals of any age who are enrolled in employment-sponsored health insurance plans to defer enrollment in Part B of Medicare without incurring late enrollment premium surcharges and restrict their Medicare protection to items and services not covered under their employer plans. The provision is effective on May 1, 1986.

Removal of prohibition on comments by Medicare and social security actuaries relating to economic assumptions. The new law removes the prohibition on comments by Medicare and social security actuaries relating to the economic assumptions underlying their Trustees Re-

ports in the annual certification of the reasonableness of actuarial methodologies used in preparing cost estimates.

Under the law, the annual Trustees Report for the OASI and DI funds and the report for the HI fund are to include an opinion, by the Chief Actuary of the Social Security Administration or the Chief Actuary of the Health Care Financing Administration, respectively, certifying that the techniques and methodologies used in preparing the estimates in the reports are generally accepted within the actuarial profession and that the assumptions and cost estimates are reasonable. However, under prior law, this requirement was restricted in that there was a prohibition against any reference to the economic assumptions underlying the Trustees Report in the required opinions. Under the new law, this prohibition is removed.

Part B premium. This provision extends for one additional year (through calendar year 1988) the existing temporary provision that requires that the Medicare Part B premium amount be calculated to produce income equal to 25 percent of program costs for aged beneficiaries.

The provision is not intended to change any policy other than to extend the date to 1988.

Treatment of potential payments from Medicaid qualifying trusts. The new law specifies that for purposes of Medicaid eligibility, payments that may be made from qualifying trusts (as defined in the provision) would be considered available to individuals who established the trust whether or not the payments are actually made. The amount deemed to be available to the beneficiary is the maximum amount of payments that may be permitted under the terms of the trust, assuming full exercise of discretion by the trustee. The provision is effective with respect to medical assistance furnished after May 1986.

A "Medicaid qualifying trust" is defined as a trust or similar legal device established by an individual (or his or her spouse) under which the individual is the recipient of all or part of the payments from the trust and the amount of such distribution is determined by one or more trustees who are permitted to exercise any discretion with respect to the amount to be distributed to the individual. The pro-

vision applies (1) whether or not the trusts are irrevocable or are established for purposes other than to enable the trust recipients to qualify for Medicaid, and (2) whether or not the trustees actually make payments to the full limit of their discretion.

States may refrain from applying the provision if undue hardship were to result. For example, the conference report states that the conferees do not expect the States to deny Medicaid coverage to an individual under this section if he or she would be forced to go without life-sustaining services altogether because the trust funds could not be made available to pay for the services.

The provision affects only eligibility for Medicaid, not eligibility for SSI or AFDC, and applies only to those Medicaid recipients who are not receiving cash assistance payments (not categorically eligible for Medicaid).

Counting certain payments to Indians as income. The conferees directed the General Accounting Office to conduct a study of the extent, size, nature, and frequency of payments to Indians from various funds that are based on their status as members of Indian tribes or organizations. The study, to be completed by April 7, 1987, is to describe how such payments are treated under current law for purposes of eligibility for programs authorized under the Social Security Act and other means-tested programs, gather information on the justifications that have been given for special exceptions in the counting of certain types of income received by members of Indian tribes or organizations, take account of the unique responsibility of the Federal Government to Indians, and consider how such responsibility should fit within the broader Federal responsibilities to provide income and medical assistance to low-income persons in an equitable manner irrespective of membership in a particular group or of historical circumstances.

The conferees agreed upon the study after rejecting a Senate amendment to apply an annual \$2,000-per-family limit on the amount of per capita distributions to Indian tribal members from Indian trust funds that are not counted under Social Security Act assistance programs.