

Note

Social Security Related Legislation in 1990*

On November 5, 1990, President Bush signed into law the Omnibus Budget Reconciliation Act of 1990, H.R. 5835 (Public Law 101-508). The Act contains a number of Social Security and Supplemental Security Income (SSI) provisions, as well as Social Security-related Medicare, Internal Revenue, Veterans, and budget process provisions, which are summarized below.

Title V: Income Security, Human Resources, and Related Programs

Old-Age, Survivors, and Disability Insurance Provisions

Section 5102: Continuation of disability benefits during appeal.—Makes permanent the temporary provision permitting disability beneficiaries to elect to have their disability benefits and Medicare protection continue through the hearing level of appeal in medical cessation cases. As under prior law, the disability benefits are subject to recovery if the final decision of the Secretary is that the individual is not disabled; Medicare benefits, however, are not subject to recovery. The intent of

this provision is to prevent undue hardship to beneficiaries who are found on appeal still to be disabled.

Section 5103: Repeal of special disability standard for widows and widowers.—Repeals the stricter definition of disability that had applied to disabled widow(er)'s benefits (DWB) and instead applies the same definition of disability as that for a disabled worker. Also, includes special provisions for a widow(er) who was receiving SSI disability or blindness benefits before becoming entitled to DWB. These provisions will (1) facilitate Social Security entitlement by using the SSI disability (or blindness) determination as a determination for purposes of DWB, (2) expedite benefits by counting certain prior SSI months for purposes of the DWB and Medicare waiting periods, and (3) provide continuing Medicaid coverage for persons not yet entitled to Medicare who would be eligible for SSI in the absence of DWB.

Because Congress was concerned about the potential cost when it first provided for DWB in 1967, it required widow(er)s to meet a stricter test of disability than workers had to meet. The intent of this provision is to eliminate (1) the inequities resulting from having more restrictive disability rules for widow(er)s and (2) public confusion

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about the different tests of disability. The conference report language also expresses the intent of the Congress that, to the extent possible, the Social Security Administration (SSA) should notify individuals affected by this provision.

Section 5104: Adopted child.—

Modifies the dependency requirements to permit a child adopted by a surviving spouse to be entitled to benefits based on the deceased worker's earnings if the child was either living with or receiving one-half support from the worker at the time of the worker's death. Regular contributions for support from someone other than the worker or spouse or from a child welfare organization are no longer an automatic barrier to entitlement; such contributions would be "considered" in determining one-half support. The intent of this provision is to reduce potential barriers to adoption by removing requirements that might preclude payment of Social Security benefits in bonafide adoption situations.

Section 5105: Representative payee reforms.—Requires more extensive investigation of representative payee applicants, generally limits deferral or suspension of direct payment of benefits pending selection of a payee to 1 month, allows certain nonprofit social service agencies to charge a statutorily limited fee for providing payee services through June 1994, and provides stricter standards in determining the fitness of representative payee applicants to manage benefit payments on behalf of beneficiaries. If it is established that there has been a misuse of funds due to SSA's negligence in failing to investigate or monitor a representative payee, an amount

equal to the misused funds must be paid to the beneficiary or to an alternate payee. The new law also requires a centralized file of beneficiary and payee information. The intent of the provision is to provide additional protection for beneficiaries with representative payees.

Section 5106: Fees for representation of claimants in administrative proceedings; limitation of travel expense reimbursement.—Streamlines the process by which SSA approves fees for representation of claimants who have applied for benefits. In cases where a claimant and an attorney or other representative submit a written agreement to the Secretary, a fee of up to the lesser of 25 percent of past-due benefits or \$4,000 is to be paid to the attorney automatically. This provision applies to title II claims and, except for the benefit withholding and direct payment aspects, to title XVI claims. Calculation of the 25 percent of available past due benefits and payment to the attorney is to be done before any reduction for the SSI windfall offset. The intent of this provision is to speed up the attorney fee payment process for most cases. Fees in cases where the requested attorney fee does not meet criteria for automatic payment would continue to be determined under the preexisting fee petition process.

In addition, this provision restricts the amount of reimbursement for travel expenses of individuals who represent Social Security and SSI claimants at administrative proceedings to the maximum amount that would be payable for travel within the geographic area served by the office having jurisdiction over the proceeding. The intent of this provision is to prevent

program funds from being spent to pay expenses for representatives who travel long distances to represent claimants.

Section 5107: Applicability of administrative res judicata; related notice requirements.—Provides that if a claimant for Social Security or SSI benefits does not timely appeal an adverse initial or reconsideration determination, and such failure was due to good faith reliance on incorrect, incomplete, or misleading information provided by SSA, any new application the claimant files cannot be denied on the basis that the claimant did not timely appeal the prior determination.

This provision also requires that SSA include, in all initial and reconsideration denial notices, clear and specific language explaining how filing a new claim instead of appealing the prior determination may affect an applicant's entitlement to benefits.

The intent of this provision is to ensure that claimants are fully informed about SSA's use of administrative res judicata¹ for denial of a subsequent application. It is also intended to assure that claimants are not adversely affected by any misinformation SSA might supply.

Section 5108: Demonstration projects relating to accountability for telephone service center communications.—Mandates demonstration projects in not less than three telephone service centers to evaluate the furnishing of a written receipt to any caller who inquires about potential or current

¹ Under the doctrine of res judicata, which is followed by administrative agencies, including SSA, a claim is denied if it involves the same facts and same issues as a prior claim which was denied and was not timely appealed.

eligibility or entitlement to benefits. (A receipt is not required for routine telephone calls that are unrelated to entitlement, such as questions about the location or hours of operation of an office). The intent of this provision is to test the feasibility of sending a written confirmation to those individuals who conduct business with SSA by telephone.

The projects must begin by May 4, 1991, and last at least 1 year but not more than 3 years. The Secretary of Health and Human Services (HHS) must report to the Congress on the demonstration projects not later than 90 days after the termination of the projects.

Section 5109: Notice requirements.—Requires that Social Security and SSI notices be written in clear and simple language. Notices produced in the Social Security office that serves the individual must include the office's address and telephone number. Notices produced elsewhere must contain the address of the field office serving the individual and a telephone number through which that office can be reached. The intent of this provision is to assure that people understand the notices they receive from SSA and that the notices contain the information the recipient needs to contact the local Social Security office.

Section 5110: Telephone access to the Social Security Administration.—Requires that telephone access to local Social Security offices be restored to the level generally available as of September 30, 1989. The Social Security Administration must request that local directories publish the telephone numbers and addresses of local offices that must provide direct telephone access. The intent of this provision is to provide telephone access to local offices at the level in effect immediately

before nationwide implementation of the 800 number service in October 1989.

The Secretary of HHS is required to report by January 1, 1993, on the impact of the provision on SSA and on a plan to use new technologies to enhance access to SSA, including local offices. Also requires the General Accounting Office (GAO) to report on the level of telephone access to local offices by March 5 (interim report) and June 3 (final report) 1991.

Section 5111: Amendments relating to Social Security account statements.—Requires that, by October 1, 1999, SSA begin sending annual statements of earnings and potential benefits to all workers covered under Social Security. Prior law had required statements every other year beginning October 1, 1999. Also, with appropriate safeguards, provides for release to SSA of Internal Revenue Service (IRS) address information for mailing the statements.

Section 5112: Trial work period during rolling 5-year period for all disabled beneficiaries.—Provides that a disabled beneficiary will exhaust his or her trial work period only if services are performed in 9 months of any period of 60 consecutive months. Also, provides a trial work period for reentitled disabled workers. The intent of this provision is to give all disability beneficiaries, including reentitled disabled workers, a better opportunity to test their ability to work before they are subject to the loss of disability benefits.

Section 5113: Continuation of benefits on account of participation in a non-State vocational rehabilitation program.—With respect to Social Security and SSI disability, and

blindness, beneficiaries who medically recover while participating in an approved non-State vocational rehabilitation (VR) program, extends the same benefit continuation rights as are extended to those who medically recover while participating in a State VR program. This provision, based on a recommendation of the 1988 Disability Advisory Council, is intended to ensure equitable treatment regardless of where beneficiaries receive VR services.

Section 5114: Prouty benefits.—Precludes the payment of "Prouty benefits" (originally intended for older workers who did not have an opportunity to become insured for regular benefits) to anyone reaching age 72 after 1990. The provision precludes the unintended payment of Prouty benefits due to the interaction of the 1966 Prouty benefit provision with subsequent changes in the law affecting the minimum benefit. This change does not affect anyone receiving Prouty benefits as of 1990 or earlier.

Section 5115: Modification of advance tax transfer.—Credits the trust funds with Social Security tax receipts as they are collected throughout the month, rather than in advance (at the first of the month), as under prior law. However, the advance tax transfer mechanism is retained as a contingency in the event the trust funds drop to such a low level that advance transfers are needed to pay benefits. The purpose of this provision is to eliminate the complex tax transfers when they are not needed to pay benefits.

Section 5116: Elimination of retroactive reduced benefits.—Repeals the provisions for paying retroactive reduced retirement benefits if (1) retroactive benefits would be fully or partially withheld

under the retirement earnings test or (2) unreduced benefits would be payable to auxiliary beneficiaries during the 6-month period. These changes are designed to eliminate some windfall benefits and simplify the Social Security program, thereby reducing payment errors. Persons under age 65 who retire midyear may still begin getting benefits as early as the month of filing.

Section 5117: Old computation methods.—Eliminates and consolidates old computation methods. Benefits of all newly entitled beneficiaries, who would have had their benefits computed under one of the old, little-used computations in prior law, will be computed under a newer method. This provision replaces obsolete computations that apply to small groups of people with simplified computations. It also eliminates the need for a complex, time-consuming software redesign in order to incorporate many of these old computations into the modernized system and eliminates all of the remaining computation methods that would have required manual intervention. Benefit amounts will closely approximate prior law benefits in most cases.

Section 5118: Auxiliary benefits during an extended period of eligibility.—Explicitly suspends benefits to auxiliary beneficiaries when the disabled worker's benefits are suspended because of substantial gainful activity (SGA) during the 36-month extended period of eligibility. The intent of this provision is to clarify the statute; the clarification is consistent with prior SSA policy.

Section 5119: Payment of benefits to a deemed spouse.—Provides benefits to a deemed spouse (a person who entered into

an invalid ceremonial marriage in good faith) regardless of whether a legal spouse is entitled to benefits based on the same worker's earnings. Also, provides benefits to divorced deemed spouses. Under this provision, the benefits to the legal spouse are to be paid outside the maximum family benefit—that is, they will not affect, or be affected by, benefits paid to other persons based on the worker's earnings. This provision is intended to address the financial hardship for the deemed spouse, especially the widow, that occurred under prior law when benefits were terminated because of the entitlement of the legal spouse.

Section 5120: Vocational rehabilitation demonstration projects.—Requires the Secretary to conduct demonstration projects permitting disabled beneficiaries to select a qualified public or private rehabilitation provider to furnish them with services aimed at enabling them to engage in SGA and leave the disability rolls. Provides that such projects are to begin as soon as practicable and to run for 3 years in at least three States. An interim report to the Congress on these demonstration projects is required by April 1, 1992, and a final report is due by April 1, 1994. Also, extends from June 9, 1993, to October 1, 1993, the due date of the final report with respect to all other experiments and demonstration projects conducted under section 505 of the Social Security Disability Amendments of 1980.

The intent of this provision is to assess the advantages and disadvantages of giving disabled beneficiaries the option of selecting their own rehabilitation provider.

Section 5121: Legalized aliens (exemption from prosecution).—Provides that persons who have received permanent or temporary legal residence in the United States under specified statutes are not subject to prosecution under the Social Security Act for furnishing false information regarding earnings or misusing a Social Security card (except production and sale of a Social Security card) prior to January 4, 1991. The purpose of the provision is to eliminate the threat of prosecution and thereby encourage aliens who have been granted legal status to correct errors in their earnings records caused by their improper use of a Social Security number or card.

Section 5122: Special minimum benefit.—Reduces the amount of earnings needed to earn a year of coverage toward the special minimum benefit (designed to assist long-term, low-wage workers) from 25 percent of the old-law contribution and benefit base (\$9,900 in 1991) to 15 percent (\$5,940 in 1991). The intent of this provision is to make it possible once again for a minimum-wage earner to earn years of coverage toward the special minimum. Because the minimum wage had not kept up with wage-indexed increases in the Social Security contribution and benefit base, the level of wages required to earn a year of coverage under the special minimum benefit provision exceeded the minimum wage in the period 1983-90.

Section 5123: Treatment of earnings of corporate directors.—Provides that the earnings of a corporate director are taxed and credited for Social Security purposes in the tax year in which they are received rather than in the tax year in which the director

performs services. (The earnings continue to be subject to the retirement earnings test in the tax year in which the director performs the services to which the earnings are attributable.) The provision assures that the point at which the earnings of corporate directors are taxed and credited for Social Security purposes is consistent with the point at which they are taxed for income tax purposes.

Section 5124: Collection of employee Social Security and railroad retirement taxes on taxable group-term life insurance provided to retirees.—Provides that if an employer provides taxable group-term life insurance to a former employee, the former employee is required to pay the employee portion of the FICA tax through the income tax system. The owed tax will be listed separately on the former employee's form W-2, and the form 1040 filing instructions will direct filers to add this amount to their tax liability. The intent of this provision is to relieve employers of the responsibility of collecting the employee share of the FICA tax when there are no employee funds from which the employer can withhold the tax.

Section 5127: Waiver of 2-year waiting period (for certain divorced spouses).—Eliminates the 2-year waiting period for payment of divorced spouse's benefits in situations in which the worker was entitled to benefits before the divorce. This change was prompted by concerns that a newly divorced spouse could suffer serious financial hardship if the spouse's benefits he or she had been relying on were cut off for up to 2 years after divorce because of the ex-spouse's earnings. Under the new law, these divorced spouses could continue to receive benefits without interruption.

Section 5128: Modification of the pre-effectuation review requirement applicable to Social Security Disability Insurance cases.—Changes the present 65-percent review of all favorable State agency Social Security disability decisions to (1) a 50-percent review of disability allowances and (2) a review of a sufficient number of other favorable disability determinations to ensure a high degree of accuracy. To the extent feasible, these reviews must focus on allowances and continuances that are most likely to be incorrect. Requires a report to pertinent congressional committees not later than April 1, 1992, and annually thereafter, setting forth the number of pre-effectuation reviews conducted during the preceding fiscal year and the Secretary's findings relating to the accuracy of State Disability Determination Service determinations. The intent of this provision is to provide a more effective review by focusing on favorable disability determinations that are likely to be incorrect.

Section 5129: Recovery of Old-Age, Survivors, and Disability Insurance (OASDI) overpayments by means of reduction in tax refunds.—Authorizes the recovery of Social Security overpayments from former beneficiaries by means of offsetting any income tax refunds they are due. Individuals will be given an additional opportunity to request waiver or arrange repayment. This authority remains in effect as long as the existing Governmentwide tax refund offset program remains in effect (currently, until January 10, 1994). The intent of this provision is to provide another avenue for recovery of overpayments from those who are no longer receiving Social Security benefits.

Supplemental Security Income Provisions

Section 5031: Exclusion from income and resources of victims' compensation payments.—Excludes from income any payments received by an individual from a State-administered fund established to aid victims of crime. Also excludes victims' compensation payments from resources for the 9-month period beginning with the month after the month they are received, providing recipients show that the amounts are compensation for expenses incurred or losses suffered as a result of crimes. The amendment also provides that SSI eligibility may not be denied because an individual refuses to accept victims' compensation payments.

Section 5032: Attainment of age 65 not to serve as a basis for termination of eligibility under section 1619(b).—Continues Medicaid-only eligibility beyond age 64 under the section 1619(b) work incentive provision for individuals whose SSI eligibility is based on a determination of disability or blindness. The intent is to continue section 1619(b) Medicaid protection to disabled and blind individuals who are working and not receiving cash benefits and who otherwise would lose eligibility for Medicaid on reaching age 65.

Section 5033: Exclusion from income of impairment-related work expenses.—Expands the impairment-related work expense (IRWE) income exclusion to exclude IRWEs in determining SSI and State supplement initial eligibility (and reeligibility). (IRWEs are already excluded in determining ongoing

eligibility and benefit amounts.) This provision is intended to strengthen the work incentive effects of the IRWE exclusion by eliminating the requirement that an individual first meet the Federal SSI income test without benefit of the IRWE exclusion before the exclusion applies. This requirement had made some working disabled persons ineligible for SSI benefits unless they reduced their earnings temporarily in order to qualify without the IRWE exclusion.

Section 5034: Treatment of royalties and honoraria as earned income.—Treats royalties on published works and honoraria for services as earned, rather than unearned, income. This change extends the more liberal earned income disregards to certain royalties and honoraria.

Section 5035: Certain State relocation assistance excluded from SSI income and resources.—Through April 1994, excludes from income certain payments received as State or local government relocation assistance. (Comparable Federal relocation assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 is already excluded for SSI purposes.) Generally, such assistance is paid to individuals displaced by public or publicly assisted programs of real property acquisition. If not expended, such payments also will be excluded from resources for a 9-month period beginning with the month after they are received.

Section 5036: Evaluation of child's disability by pediatrician or other qualified specialist.—

Requires that the Secretary make reasonable efforts to ensure that a qualified pediatrician or a specialist in an appropriate field of medicine evaluates the eligibility of a child under age 18 for SSI disability benefits. The intent of this provision is to assure accurate child disability determinations by having qualified medical specialists make evaluations.

Section 5037: Reimbursement for vocational rehabilitation services furnished during certain months of nonpayment of SSI benefits.—Authorizes

reimbursement for otherwise reimbursable VR services provided in months for which individuals were not receiving Federal SSI benefits but (1) were in "special status" under section 1619(b), (2) were in suspended benefit status, or (3) were receiving federally administered State supplementary payments. This change implements a recommendation of the 1988 Disability Advisory Council that VR agencies be reimbursed for all VR services that result in successful rehabilitations, including services provided in months when an individual was not eligible for a Federal SSI benefit.

Section 5038: Extension of period of presumptive eligibility for benefits.—Extends from 3 to 6 the number of months for which SSI benefits may be paid on the basis of presumptive disability or blindness. As under the prior 3-month provision, the payments are not overpayments if the applicant is found not to be disabled. The

provision is designed to relieve the financial hardship on persons who qualify for payment based on presumptive disability or blindness but for whom a final decision is not made before the end of the prior law 3-month period.

Section 5039: Continuing disability or blindness reviews not required more than once annually.—Limits SSI continuing

disability reviews (CDRs) for purposes of the work incentive provisions of section 1619 to no more than one in any 12-month period. The provision is intended to reduce the perceived work disincentive effect of frequent CDRs. (The amendment will have no practical effect because it already is SSA policy not to schedule CDRs more frequently than once in 12 months.)

Section 5040: Concurrent SSI and food stamp applications by institutionalized individuals.—

Modifies the requirements relating to SSI and food stamp applications for individuals about to be released from a public institution to allow for the use of separate, but concurrent, applications. Previously, the law had required that a single application for both SSI and food stamps be used for these cases.

Section 5041: Notification of certain individuals eligible to receive retroactive benefits.—

Requires the Secretary, in notifying individuals eligible for retroactive benefits under *Zebley* (a Supreme Court decision that requires SSA to reopen many previously denied childhood disability determinations and which will result in large retroactive SSI payments), to provide a clearly written notice explaining (1) that retroactive payments are excluded from resources under SSI for only 6 months; (2) the potential effects on

future SSI eligibility of retroactive payments; (3) the possibility of establishing a trust account that would not be considered as income or resources under SSI; and (4) that legal assistance in establishing such a trust may be available from various legal referral services. The provision is designed to ensure that individuals receiving payments under **Zebley** are aware of the effects of retroactive payments.

Title IV: Medicare, Medicaid, and Other Health-Related Programs

Medicare

Section 4203: Extension of enforcement of Medicare as secondary payor provisions.—Extends through September 30, 1995, the 1989 Omnibus Budget Reconciliation Act provision that requires SSA and IRS to work together to identify from their records the employers of Medicare beneficiaries (or their spouses) so that the Health Care Financing Administration (HCFA) can determine if the beneficiary has group health insurance coverage that is primary to Medicare.

Section 4207: Delegation of authority to Inspector General.—Clarifies the authority of the Secretary of HHS to delegate to the Office of the Inspector General the responsibility for conducting investigations and imposing penalties under section 1140 of the Social Security Act. Section 1140 prohibits the use of the Social Security Administration name, symbols, emblems, or acronyms in connection with any advertisement, mailing, broadcast, or any other publication, in a manner that conveys the false impression that

the item is approved or authorized by SSA or HCFA and provides for civil money penalties for violators.

Section 4301: Increase Part B premium.—Increases the Supplementary Medical Insurance (Part B) premium to \$29.90 in 1991; \$31.80 in 1992; \$36.60 in 1993; \$41.10 in 1994; and \$46.10 in 1995. The increase in the Part B premium requires a higher percentage of the cost of the program to be paid for by or for enrolled people (see section 4501).

Sections 4359 and 4361: Health insurance advisory service and Medicare and Medigap information.—Requires the Department of HHS to provide information, counseling and assistance for Medicare-eligible individuals concerning eligibility for Medicare and Medicaid benefits, the process of applying for benefits, the nature of covered and noncovered services, Medicare supplemental insurance policies ("Medigap" protection), and other health insurance matters. This assistance is generally to be provided through local Federal offices, such as SSA offices, that provide Medicare information and community outreach programs. The Department of HHS is also required to provide information, through a toll-free telephone number, about the Medicare program and Medicare supplemental insurance policies.

Also requires HHS to conduct demonstration projects in up to five States for the purpose of establishing Statewide toll-free telephone numbers for information on Medicare, Medigap insurance policies, and benefits available under State Medicaid programs.

Medicaid

Section 4501: Phased-in extension of Medicaid payment of Medicare premiums for certain individuals with incomes below 120 percent of the official poverty line.—Advances to 1991 the requirement that State Medicaid programs pay the Medicare premiums, deductibles, and coinsurance for qualified Medicare beneficiaries whose incomes are 100 percent or less of the Federal poverty level. For States that do not cover all SSI recipients (the so-called 209(b) States), advances coverage of qualified Medicare beneficiaries to 1991 for those with incomes up to 95 percent of poverty and to 1992 for those with incomes up to 100 percent of poverty. For all States, the requirements for paying Medicare Part B premiums will apply to persons with incomes of 110 percent or less of poverty in 1993 and 1994 and 120 percent or less of poverty in 1995 and after. For purposes of determining income levels, title II cost-of-living adjustments will not be taken into account until the month after the month the Federal poverty level is published.

Section 4601: Phased-in mandatory coverage of children up to 100 percent of poverty level.—Phases in required Medicaid coverage of children aged 7-18 where family income does not exceed 100 percent of the Federal poverty level for a family of its size. The coverage is phased in as children born after September 30, 1983, attain age 7. Prior law continues to apply to children aged

6 and under: Medicaid coverage is mandatory if family income does not exceed 133 percent of poverty.

Section 4724: Optional State Medicaid disability determinations independent of SSA.—Clarifies that States are allowed to make determinations of disability and blindness for Medicaid eligibility purposes using SSI standards. State determinations are effective until final determinations are made by SSA.

Title VII: Civil Service and Postal Service Programs

Miscellaneous

Section 7201: Computer matching and privacy provisions.—Modifies provisions relating to independent verification of information obtained by computer matching that leads to an adverse action and requirements for notifying individuals before an adverse action becomes effective. Permits an agency administering a Federal benefit program to take an adverse action against a beneficiary on the basis of data obtained from a Federal computer matching program without independent verification, if the appropriate Data Integrity Board has certified that the matched information has been found to be highly reliable. However, because certification as to the "highly reliable" nature of certain matched information may take some time, a special provision waives the requirement for independent verification in the absence of such

certification in the case of SSI, Medicaid, AFDC, and food stamps until the earlier of: 30 days after publication of Office of Management and Budget guidelines for certification by Data Integrity Boards, or the date the Board certification occurs.

Section 7201 also provides that, prior to taking an adverse action, an agency must either give the individual a 30-day advance notice or apply an alternative notice period established by statute or regulation.

This provision will make it easier for agencies administering programs such as SSI, Medicaid, ADFC, and food stamps to use information provided by Federal agencies. It will allow SSA to take adverse actions in the SSI program without independent verification of data found to be highly accurate.

Title VIII: Veterans' Programs

Miscellaneous

Section 8051: Use of IRS and SSA data for income verification.—Authorizes the Secretary of Veterans Affairs to access, with appropriate safeguards, Social Security and IRS data to verify the income of applicants for or recipients of certain veterans compensation or pension benefits. Individuals whose incomes are to be verified must be notified in advance of these verification procedures. The General Accounting Office is to conduct a study of the effectiveness of this provision and submit a report to the Congress no later than January 1, 1992; the provision is due to terminate after September 30, 1992.

Section 8053: Requirement of claimants to report Social Security numbers; use of death information by the Department of Veterans Affairs.—Requires, as a condition of eligibility, that applicants for or recipients of veterans compensation or pension benefits provide their Social Security number (SSN) and the SSN of any dependents. Also requires the Department of Veterans Affairs (DVA) to periodically check HHS death information with respect to DVA beneficiaries.

Title XI: Revenue Provisions

Individual Income Tax Provisions

Sections 1111 and 1115: Modifications of earned income tax credit and treatment for Social Security purposes.—Liberalizes the earned income tax credit (EITC) by increasing the maximum basic credit available to eligible families (families including a dependent child meeting a relationship, residency, and age test) and by adjusting the maximum credit amount upward if the family has two or more children. Also provides new supplemental credits for a child under age 1 and for certain health insurance premium expenses.

Also, excludes from income and resources (for the month of receipt and the following month) under SSI, AFDC, and Medicaid the total amount of any refund of Federal income taxes related to EITCs and any payment made by an employer for advance payment of EITCs.

Section 1112: Requirement of identifying number for certain dependents.—Requires a Taxpayer Identification Number (usually a SSN) for anyone who has attained

age 1 (instead of age 2, as under prior law) as of the close of the taxable year. This applies to returns for taxable years beginning after December 31, 1990.

Other Revenue Provisions

Section 11331: Increase in the Hospital Insurance contribution base.—Increases the amount of earnings subject to the Hospital Insurance (HI) tax to \$125,000 for 1991. For years after 1991, the amount is indexed to increases in the average wages in the economy. The limit on earnings subject to the OASDI tax (\$53,400 for 1991) is not affected by the amendment.

Section 11332: Coverage of certain State and local employees under Social Security.—Mandatorily covers under Social Security employees of State and local governments who are not covered under a retirement system. Persons who are affected by this change and who were not already covered for purposes of the Hospital Insurance portion of Medicare are also covered under that program. Students employed by the educational institution they are attending are excluded. The provision extends Social Security coverage to those State and local employees who have no protection under a retirement system.

Section 11334: Deposits of payroll taxes.—Beginning in 1991, accelerates the schedule under which certain employers whose withheld Social Security and income taxes total \$100,000 or more must deposit those taxes in a Federal Reserve Bank or authorized financial institution.

One-Year Extension of Certain Expiring Tax Provisions

Sections 11403 and 11404: Employer-provided educational assistance and group legal services plans.—Extends the exclusion 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 paid by an employer to, or services or amounts received by an employee under, a qualified group legal services plan.

Section 11901: Increase in public debt limit.—Increases the permanent statutory debt limit from \$3.123 trillion to \$4.145 trillion.

Title XIII: Budget Enforcement ^{2 3}

Amendments to 1985 Gramm-Rudman-Hollings Act and Related Amendments

Section 13101: Sequestration.—Revises the Gramm-Rudman-Hollings (GRH) Act to provide for “mini-sequesters” relating to specified discretionary spending categories for fiscal years (FY) 1991-93, across-the-board discretionary spending sequesters for FY 1994-95, and sequesters to enforce new “pay-as-you-go” rules for FY 1992-95. These sequestration provisions are in addition to the

² Title XIII may also be cited as the Budget Enforcement Act of 1990.

³ For further information see chapter 2 of **The Economic and Budget Outlook: Fiscal Years 1992-1996 A Report to the Senate and House Committees on the Budget**, Congressional Budget Office, January 1991.

overall deficit reduction sequester already provided. Social Security and SSI benefit payments remain exempt from all sequestration provisions. Administrative expenses for Social Security and SSI are not exempt from sequester. (Although the Omnibus Budget Reconciliation Act of 1990 (OBRA) excludes the trust funds from the budget as well as GRH, other provisions of OBRA specifically address Social Security administrative expenses; the Office of Management and Budget (OMB) determined that SSA's administrative expenses, excluding OASDI administrative expenses, are considered as discretionary spending and are not excluded from sequesters.)

Mini-sequesters can occur with respect to each of three categories of discretionary spending: defense, international, and domestic. Pay-as-you-go sequesters can be imposed on all nonexempt accounts to offset net GRH deficit increases caused by direct spending (including the SSI program) that are enacted without appropriate offsets.

Section 13111: Temporary amendments to the Congressional Budget Act of 1974.—Provides new GRH deficit targets (excluding the Social Security trust funds) as follows:

[Amounts in billions]

Fiscal year	Old law	New law
1988	\$144	...
1989	136	...
1990	100	...
1991	64	\$327
1992	28	317
1993	236
1994	102
1995	83

The new deficit targets reflect changes in the economy, the exclusion of Social Security trust fund operations, and the inclusion of deposit insurance (including the savings and loan "bailout"). These targets may be adjusted by the President to reflect future economic and technical factors.

This section also establishes separate limits on discretionary spending by category (defense, international, and domestic spending) for FY 1991 through FY 1993, and overall discretionary spending for FY 1994 and FY 1995. These amounts are also subject to modification as part of the ongoing budget process.

A major emphasis in the next few years is expected to be on discretionary spending limits and pay-as-you-go requirements. Social Security and SSI benefits are not considered discretionary, but administrative expenses for these programs are. Also, SSI benefits are considered direct spending for purposes of the pay-as-you-go requirements; separate pay-as-you-go rules (sections 13301-13303) apply to Social Security. Finally, this section requires that Social Security spending authority and outlays be included in the conference report accompanying the annual Congressional Budget Resolution.

The major effects of these changes, including the OMB interpretation relating to OASDI administrative expenses, for SSA are:

- (1) Social Security trust fund operations are generally excluded from the budget totals; separate fiscal-integrity rules apply to Social Security.
- (2) SSA's administrative expenses (that is, funds in the Limitation on Administrative Expenses account) remain subject to sequester, including the new

mini-sequester provision to enforce the discretionary domestic spending cap, and sequesters to enforce the pay-as-you-go rules for direct spending programs.

- (3) SSI benefit expenditures, while excluded from the discretionary domestic spending caps, are counted for purposes of the pay-as-you-go rules, so that, for example, legislation increasing outlays in these areas will need to include offsetting changes so as to avoid increasing the overall budget deficit.

Permanent Amendments to the Congressional Budget Act

Section 13203: Debt increase as measure of deficit; display of Federal retirement trust fund balance procedure.—Amends the Congressional Budget Act to require that congressional budget resolutions show certain information relating to the national debt—the amount by which the budget resolution would increase the national debt and the balances in Federal retirement trust funds. (These trust funds, like the Social Security trust funds, generally are invested in Federal securities that are included in the national debt.)

Social Security⁴

Section 13301: Off-budget status of OASDI Trust Funds.—Provides generally that the operation of the OASDI Trust Funds

⁴ For further information, see **Social Security: Its Removal From the Budget and New Procedure for Considering Changes to the Program**, a Report for Congress, prepared by David Kóitz, Specialist in Social Legislation, Education and Public Welfare Division, Congressional Research Service, Library of Congress.

will not be counted as receipts, new budget authority, outlays, or deficit or surplus for purposes of the President's budget, the congressional budget, and the Balanced Budget and Emergency Deficit Control Act of 1985 (GRH). The intent of the provision is to end the practice of allowing annual Social Security trust fund surpluses (or deficits) to obscure the annual deficit (surplus) in other Government accounts and to reduce pressure to make changes in Social Security for budgetary purposes.

This section also specifically amends the provision of law relating to the congressional budget resolution to exclude OASDI outlay and revenue totals from surplus or deficit calculations for purposes of the congressional budget. This provision does not, however, exclude Social Security from the budget resolution; other provisions call for inclusion of Social Security in the budget resolution for purposes of spending and revenue allocations to committees and for purposes of enforcement of the Senate "firewall" provisions (see section 13303).

Section 13302: Protection of OASDI Trust Funds in House of Representatives.—Makes it out of order for the House of Representatives to consider legislation that would increase OASDI benefits or decrease OASDI taxes by at least 0.02 percent of taxable payroll over the next 75 years, or by more than \$250 million over the next 5 fiscal years (in combination with any other OASDI legislation enacted in that year or the previous 4 fiscal years). An exception is provided if the legislation under consideration

provides for increases in OASDI taxes that offset the amount by which the legislation would increase benefits in excess of the thresholds over the applicable measuring period. There is also an exception if the legislation that reduces Social Security revenues includes an equivalent increase in Medicare taxes. This point of order may be waived by a majority vote in the House. The intent of this provision is to protect the financial soundness of Social Security, in the absence of the fiscal restraints imposed by the GRH law, by establishing fiscally responsible guidelines for House consideration of Social Security legislation.

Section 13303: Social Security firewall in the Senate.—Amends the Congressional Budget Act to make it out of order in the Senate to consider any concurrent budget resolution that, as reported by the Budget Committee, would decrease the excess of Social Security revenues over outlays during the years covered by the resolution.⁵ Also, makes it out of order in the Senate to consider any legislation that would increase Social Security outlays or decrease revenues from the amounts in the concurrent budget resolution for the current and next 4 fiscal years. A three-fifths majority is required to waive these points of order. The intent of this provision is to protect the financial soundness of Social Security, in the absence of the fiscal restraints imposed by the GRH law, by establishing fiscally responsible guidelines for Senate consideration of Social Security legislation.

⁵ The FY 1992 concurrent budget resolution as passed by the Senate on April 25, 1991, contains a provision that would extend this point of order to floor amendments for purposes of the FY 1992 resolution.

Section 13304: Statement of actuarial balance.—Requires a finding in the annual OASDI Trustees' Report as to whether the trust funds are in close actuarial balance, as defined by the Trustees of the Social Security trust funds. The provision is effective for reports issued in or after 1991. The provision is intended to ensure that the annual trustees reports include a statement as to whether the trust funds are in close actuarial balance—a practice that has generally been followed in the past.

Treatment of Fiscal Year 1991 Sequestration

Section 13401: Restoration of sequestered funds.—Restores any amounts sequestered in FY 1991 under orders issued in accordance with the GRH deficit reduction provisions. The purpose of the provision is to reverse any actions to implement the FY 1991 sequestration orders and restore any budgetary resources withheld as a result of these orders.