

## Note

### Social Security Related Legislation in 1989\*

On December 19, 1989, President Bush signed into law the Omnibus Budget Reconciliation Act of 1989, H.R. 3299 (Public Law 101-239). This act contains a number of Social Security and Supplemental Security Income (SSI) provisions as well as Social Security Administration-related Internal Revenue Code and Medicare provisions, which are summarized below.

#### Title X: Miscellaneous and Technical Social Security Act Amendments

##### Time-Sensitive and Technical Social Security Provisions

**Section 10101: Benefit continuation during appeal.**— Extends for 1 year the provision that temporarily continues, up to an administrative law judge (ALJ) decision, the payment of disability benefits (including Medicare) to Social Security beneficiaries who appeal a medical cessation determination. Under this extension, the provision includes determinations made prior to January 1, 1991; the last month for which payments can continue is June 1991.

The intent of this provision is to provide for continued disability

benefit payment pending appeal to the ALJ level until Congress can evaluate a report to be submitted by the Social Security Administration (SSA) on the effect of the provision on the Social Security and Medicare trust funds and the rates of appeal to ALJ's of unfavorable continuing disability determinations.

**Section 10103: Extension of Disability Insurance program demonstration project authority.**— Extends for 3 years (through June 10, 1993) the Secretary's authority to waive compliance with Social Security and Medicare benefit requirements for the purpose of conducting work incentive demonstration projects designed to encourage disabled beneficiaries to return to work. Provides for an interim report to the Congress by June 9 of each year through 1992 and a final report by June 9, 1993, on these projects. The intent of this provision is to give SSA additional time to complete demonstration projects planned and underway.

**Section 10201: Prohibit termination of coverage.**— Prohibits the termination of coverage of U.S. citizens and residents employed abroad by a foreign affiliate of an American employer. United States citizens and residents employed abroad by a foreign affiliate of an American employer are covered at the option of the American employer through an agreement between the

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American employer and the Secretary of the Treasury. Under prior law, coverage could be terminated by the American employer by giving 2 years' advance notice after the agreement had been in effect for at least 8 years. The provision applies to any agreement in effect on or after June 15, 1989 (if no notice of termination is in effect as of such date). Also provides that an agreement terminates at the end of the calendar quarter in which a foreign entity ceases to qualify as a foreign affiliate.

A similar provision prohibiting States and nonprofit organizations from terminating the Social Security coverage of their employees was included in the Social Security Amendments of 1983.

**Section 10203: Carryover reduction.**—Eliminates the "carryover" reduction in retirement and disability benefits due to receipt of reduced widow(er)'s benefits prior to age 62. (Any reduction in the retirement benefit due to receipt of benefits before normal retirement age would be computed independently based on age at first receipt of retirement benefits.) The provision is effective for people reaching age 62 on or after January 1, 1990. This change is designed to eliminate a complex, error-prone computation and represents a simplification in both administration and public understanding.

**Section 10204: Coverage exception for persons of certain religious faiths.**—Expands current law exemptions from Social Security tax and coverage for members of certain religious sects opposed to participation in the Social Security program (generally the Amish). Provides an exemption for a sect member who is an employee of a partnership in which each partner is also a sect member who has elected to be exempt from Social Security tax

and coverage. Also provides an exclusion for a sect member who is treated as self-employed because the member's employer is a church or church-controlled organization that has elected to be exempt from Social Security employer taxes.

**Section 10208: Deferred compensation.**—Provides for including certain "deferred compensation" (that is, income-tax-deferred contributions to certain retirement plans under Section 401(k) of the Internal Revenue Code) in calculating average wages for various Social Security program purposes. Although deferred compensation was covered for Social Security purposes beginning in 1984, deferred compensation has not been included in the average wage index used to adjust various program amounts. The law specifically provides that:

- The increase in the contribution and benefit base for 1990 will be 2 percent greater than expected—a 1990 base of \$51,300 instead of \$50,400—to take account of the rise in average wages that has occurred because of the 1983 extension of Social Security coverage to such deferred compensation.
- Special transitional provisions will apply for including deferred compensation in average wages for computing the contribution and benefit base for 1991 and 1992.
- After 1992, the year-to-year growth in average wages including deferred compensation will be used to automatically adjust both the base and the various benefit provisions that are kept up to date with average wage levels.

This provision does not affect the adjustment of the various benefit

provisions until 1993 to avoid the substantial long-range cost that otherwise would result.

### **Additional Social Security and SSI Provisions**

**Section 10301: Adopted child.**—Eliminates the special dependency tests for a child's insurance benefits in the case of children who are adopted before age 18 by retired or disabled beneficiaries so that these children are treated the same as natural children. This change removes a financial disincentive to adoption and simplifies program administration.

**Section 10302: Deemed application date based on misinformation.**—Provides for a deemed application date for claimants who failed to file for Social Security benefits as a result of misinformation concerning eligibility provided by SSA after December 1982. The claimant will have to furnish evidence that demonstrates to the Secretary's satisfaction that misinformation was given.

The application date in such cases will be the later of (1) the date the incorrect information was provided or (2) the date the individual met all the requirements for entitlement. The amendment applies with respect to Social Security benefits for months after December 1982.

A similar provision applies to the SSI program but is restricted to cases of misinformation provided on or after December 19, 1989, and for benefits for months after December 1989. The different effective date for the SSI program recognizes that the basic purpose of SSI is to provide assistance for current needs.

The intent of this provision is to provide relief to those who, to their detriment, fail to apply for benefits

timely because of misinformation they received from SSA employees.

**Section 10303: Same-day personal interviews at field offices.**—Requires that in any case where an individual visits a Social Security office in response to a notice from SSA requiring a time-limited action (for example, filing for a reconsideration, or a request for waiver) or because his or her Social Security or SSI check was lost, stolen, or not received, the Secretary shall assure that the individual receives a face-to-face interview with an SSA employee before the close of the business day.

The intent of this provision is to assure that individuals who are required to take an action within a set time frame are accorded every opportunity to complete the action promptly and conveniently.

**Section 10304: Correction of earnings records.**—Permits correction of an earnings record after the 3-year, 3-month, 15-day statute of limitations to credit wages if an employer reported an amount of wages for an employee that is less than the correct amount.

This provision is intended to provide additional protection of workers' rights under Social Security by ensuring that unreported wages may be credited at any time. Under prior law, unreported wages could not generally be credited after the expiration of the time limit unless the employer did not report any wages for the employee for the period involved.

**Section 10305: Good cause, fault, and good faith determination.**—Requires SSA to take into account a person's physical, mental, educational, or linguistic limitations (including lack of facility with the English language) in determining whether he or she is without fault in causing an

overpayment, has acted in good faith in appealing a termination of disability benefits, has good cause for failing to file a timely report of certain information affecting eligibility for benefits, is precluded from certain standards of review applicable to the termination of disability benefits because he fraudulently obtained such benefits, or has good cause for failure to cooperate in a reassessment of disability entitlement or to participate in a program of prescribed treatment. This provision also amends the SSI law to include a general requirement to take these limitations into account in determining whether an individual acted in good faith or was at fault and in determining fraud, deception, or intent. This provision would generally codify current policies and procedures that assure that consideration is given to individuals' limitations in connection with determinations involving fault, good faith, and good cause.

**Section 10306: Notice requirements.**—Requires that notices be available in various forms (such as telephone calls or certified mail) for blind Social Security applicants and beneficiaries (as already provided in the SSI program). Also requires that, not later than July 1, 1990, all current Social Security beneficiaries receiving disability benefits based on blindness be given an opportunity to elect an option for receiving additional or alternative notices from SSA.

The purpose of this provision is to assure that blind applicants and beneficiaries of Social Security disability benefits have the same rights with respect to notices as do those persons who apply for or receive SSI payments based on blindness.

In addition, the Secretary is required to report, by January 1,

1991, on SSA's procedures for issuing notices in languages other than English and on options for expanding this practice.

**Section 10307: Representation of Social Security or SSI claimants.**—Requires the Secretary of Health and Human Services to maintain in SSA's electronic information retrieval system a current record of any person representing a claimant. This electronic record must be accessible to SSA offices through SSA's computer system.

This provision also requires that information regarding the options available to a claimant who desires to obtain attorney representation be included with the notice sent to the claimant of an adverse determination. The representation information must also advise the claimant of the availability of legal services organizations that provide legal representation free of charge to qualifying claimants.

The intent of the first provision is to ensure that when a claimant's representative contacts an SSA field office or teleservice center, SSA staff can access the computer system to readily verify the caller's identity as a designated claimant representative and provide the desired claim information.

The intent of the latter provision is to ensure that claimants who receive denial or other adverse determinations from SSA are informed of the various options (including available free legal services) for obtaining representation by an attorney.

**Section 10308: Earnings and benefit statements.**—Requires the Secretary to issue earnings and benefit statements automatically in three phases: First, by October 1, 1990, to all workers aged 25 or older,

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on request; second, by September 30, 1995, to all workers who attain age 60 by October 1, 1994 (and to those attaining age 60 in fiscal years 1995-99), together with a notice that the statement is updated annually and is available on request; and third, by October 1, 1999, biennially to all workers aged 25 or older, except that no estimate of future retirement benefits is required for workers under age 50. The intent of this provision is to assure that each worker is made aware of the protection provided by Social Security and is periodically afforded an opportunity to review the accuracy of his or her earnings record.

#### **Subtitle D: Human Resource and Income Security Provisions**

**Section 10405: Agent Orange settlement payments excluded from countable income and resources under Federal means-tested programs.**—Excludes payments from a trust fund set up, pursuant to the Agent Orange product liability settlement, by manufacturers of a chemical defoliant used by the U.S. military in Vietnam from income and resources for SSI, Aid to Families with Dependent Children (AFDC), Medicaid, and other specified Federal and federally assisted means-tested programs. Without this exclusion, veterans or their survivors who receive Agent Orange settlement payments would have their SSI or AFDC and possibly other means-tested benefits denied or reduced for the months they receive them and, possibly, for subsequent months, depending on the amount of the settlement payments and the individuals' circumstances. This exclusion is consistent with the provision in Public Law 100-687, which excluded Agent Orange settlement payments from income

and resources for programs administered by the Department of Veterans Affairs.

Settlement payments began to be made in early 1989. The provision is effective January 1, 1989, in order to exclude payments already made as well as future payments.

#### **Amendments Related Exclusively to SSI**

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##### **Title VIII: Human Resource and Income Security Provisions**

**Section 8008: Establishment and conduct of outreach program for children.**—Requires the Secretary to establish and conduct an ongoing program of outreach to children who are potentially eligible for SSI benefits on the basis of disability or blindness. The provision requires the Secretary to work with the types of agencies and organizations, including school systems and public and private service agencies, that focus on the needs of children and have knowledge of potential SSI recipients. This provision reflects congressional interest in assuring that SSA will conduct an active, ongoing SSI outreach program to reach potentially eligible children who are disabled or blind.

**Section 8009: Eligibility for benefits of children of Armed Forces personnel residing overseas.**—Continues SSI eligibility for children of Armed Forces personnel who live with their parents who are on permanent duty assignments outside the United States, Puerto Rico, and the territories and possessions of the United States if the children are U.S. citizens and were eligible for SSI in the month before the month their parents reported for overseas duty.

The provision lessens the dilemma that Armed Forces personnel who have disabled or blind children often are faced with having to decide to forego overseas duty, leave their families in the United States if they go abroad, or take their families and lose their children's SSI benefits. The provision might help Armed Forces personnel to keep their families together while they serve overseas.

**Section 8010: Rule for deeming to children the income and resources of their parents waived for certain disabled children.**—

Provides that disabled children who receive medical treatment at home under Medicaid State home care plans, who previously received SSI personal needs allowances while in medical institutions, and who otherwise would be ineligible for SSI because of their parents' income or resources, can receive the \$30 monthly personal needs allowance that would be payable if they were institutionalized, without regard to their parents' income and resources.

This provision is designed to assure that severely disabled children who are cared for at home rather than in institutions will be eligible for the same SSI benefits they would have if they were institutionalized. Such disabled children often are in middle-income families whose incomes and resources preclude SSI eligibility because of the deeming of parents' income and resources.

**Section 8011: Exclusion from income of domestic commercial transportation tickets received as gifts.**—Provides that the value of a domestic commercial transportation ticket received by an individual (or spouse) that is used by that individual (or spouse) and not converted to cash will be excluded in determining his or her income. For purposes of this

provision, domestic travel is defined as travel among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Under the provision, all commercial travel tickets actually used for travel will be treated the same regardless of whether or not they could have been converted to cash. Under prior law, tickets that could be converted by the recipient were income to the recipient.

**Section 8012: Reduction in time during which income and resources of separated couples must be treated as jointly available.—**

Provides for treating a married couple as separate individuals for purposes of determining eligibility and benefit amounts beginning the month after the month they begin living apart, rather than after 6 full months apart. In the case of an initial application or reinstatement following a period of ineligibility, if a married couple is not living together on the date of application or date of request for reinstatement, each member of the couple will be considered as an individual as of the date of the application or request regardless of how recently the separation occurred.

Under this change, separations among eligible couples are treated the same as separations of couples in which one member is eligible and the other is not. In addition, the more rapid adjustment of the separated individuals' SSI eligibility status should help reduce the potential for financial hardship that can be experienced by one member of the couple when a couple separates and the other member has the majority of the income or control of the resources.

**Section 8013: Exclusion of accrued income with respect to purchase of certain burial spaces.—**Excludes from income and resources for SSI purposes interest earned on the value of agreements representing the purchase of burial spaces provided that the burial spaces are excluded from resources and provided that the interest is left to accrue.

The intent of the provision is that interest left to accumulate together with the excluded value of the burial space should not be counted as income or resources because it is not intended to be used for the purchase of food, clothing, or shelter.

**Section 8014: Exclusion from resources of all income-producing property.—**Bars the Secretary from establishing limits (such as the \$6,000/6-percent regulatory rule) on property used in a trade or business or by an employee (including the tools of a tradesperson and the machinery and livestock of a farmer) that is excludable as property essential to self-support.

The \$6,000/6-percent limits on excludable resources have been viewed by many as too restrictive, especially for farm operators and in cases of business resources owned by parents whose resources are deemed to disabled and/or blind children. The provision is intended to make treatment of property essential to self-support under the SSI program similar to its treatment under the Food Stamp program.

## **Amendments Related to SSA Programs**

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### **Title VI: Medicare, Medicaid, Maternal and Child Health, and Other Health Provisions**

**Section 6012: Medicare buy-in for disabled individuals.—**Provides individuals under age 65 who are no

longer entitled to Social Security disability benefits and Medicare coverage because their earnings exceeded the substantial gainful activity level, but who continue to be disabled, the option to purchase Medicare coverage during specified enrollment periods. The amount of the monthly premium will be the same as the premiums charged for Medicare's Hospital Insurance benefits for uninsured individuals. (See section 6408 for Medicaid buy-in details.)

One of the primary concerns of disabled beneficiaries who are considering a return to work is the possibility that they may lose their Medicare protection. This provision is intended to act as an incentive to encourage such beneficiaries to work by giving them the opportunity to continue their Hospital Insurance and supplemental medical insurance under the Medicare program.

**Section 6301: Supplementary Medical Insurance (SMI) premium.—**Extends through 1990, the temporary provision under which the SMI premium rate is limited to the amount necessary to cover 25 percent (rather than 50 percent) of program costs; as a result, the basic SMI premium for 1990 will be \$28.60 per month.

Without this extension, the basic SMI premium would have been \$29.00 per month based on the prior law cap that limits the percentage increase in the SMI premium to the cost-of-living adjustment (COLA) in Social Security benefits for the prior year (that is, the December 1988 COLA).

**Section 6408: Other Medicaid provisions.—**Subsection (d) of this section requires the State Medicaid programs to pay, on a sliding scale, the Medicare Part A premiums for disabled individuals (1) who are eligible to purchase Medicare

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protection under section 6012 of this Act; (2) whose income, as determined under the SSI program, does not exceed 200 percent of the official poverty line; and (3) whose resources, as determined under the SSI rules, do not exceed twice the SSI resource limits.

The intent of this provision is to help low-income workers who are eligible to purchase Medicare protection under section 6012 to pay the premiums for that coverage.

## **Title VII: Revenue Provisions**

**Section 7101: Employer-provided educational assistance.**—Extends the exclusion for income tax and Social Security purposes of amounts paid or expenses incurred by an employer before October 1, 1990, under a qualified educational assistance program. The exclusion, which had expired for taxable years beginning after December 31, 1988, is restored retroactively to the date of expiration.

**Section 7102: Employer-provided group legal services.**—Extends the exclusion for income tax and Social Security purposes of amounts contributed by an employer to services received by an employee from, or amounts paid to an employee under a qualified group

legal services plan before, October 1, 1990. The exclusion, which had expired for taxable years ending after December 31, 1988, is restored retroactively to the date of expiration.

**Section 7631: Income tax withholding for agricultural labor.**—Requires that employers (and crew leaders) withhold income tax from remuneration paid for agricultural labor if the remuneration is covered as wages under Social Security.

Under prior law, employers were required to withhold Social Security taxes from covered agricultural wages but not income taxes.

**Section 7632: Acceleration of tax deposits for large employers.**—Generally requires employers who have accumulated \$100,000 or more in undeposited income taxes and Social Security taxes to deposit such taxes between the first and third banking days after the taxes accumulate, according to a schedule set out in the law for 1990–94. For 1995 and thereafter, the Secretary of the Treasury must prescribe regulations that establish the date on which deposits of such taxes will be made in order to minimize the unevenness in the revenue effects of the deposit schedule.

The IRS regulations currently require that if an employer has \$3,000 or more in undeposited taxes at the end of a defined period (that is, a period ending on the 3rd, 7th, 11th, 15th, 19th, 22nd, 25th, or last day of the month), the taxes do not have to be deposited until the third banking day after the end of such period. Thus, the provision accelerates the deposit of employment taxes by large employers and generates additional interest income for the Federal Government.

**Section 7713: Uniform requirements for magnetic media reports.**—Precludes the Treasury Department from requiring employers to file tax returns (including Social Security wage reports) on magnetic media unless the employer is required to file at least 250 returns during the calendar year.

Under prior law, the Treasury Department's authority to impose magnetic media filing requirements on employers was not restricted by the number of returns they file.