

# Chapter 1 - Social Security: The Old-Age, Survivors, and Disability Insurance (OASDI) Programs

## *Legislative History*

This section covers major legislative changes made in the 104<sup>th</sup> through 111<sup>th</sup> Congresses. For a description of legislative changes made in the 95<sup>th</sup> through 102<sup>nd</sup> Congresses, please refer to the 1996 *Green Book*. For legislative changes made in the 103<sup>rd</sup> Congress, please refer to the 1998 *Green Book*. Both the 1996 and 1998 editions are available on the Government Printing Office website:  
<http://www.gpoaccess.gov/wmprints/green/browse.html>

## **104<sup>th</sup> CONGRESS**

### **Senior Citizens' Right To Work Act of 1996 (incorporated into Public Law 104-121, the Contract With America Advancement Act of 1996)**

*Authorizing additional Continuing Disability Review (CDR) funds*--The legislation authorized additional administrative funding to enable the Social Security Administration to increase CDRs. Amounts spent for CDRs above the already assumed base funding levels were not subject to the discretionary spending caps through fiscal year 2002. SSA was required to report annually on CDR expenditures and savings to the Social Security, Supplemental Security Income, Medicaid and Medicare programs.

*Raising the threshold for the Social Security retirement earnings test*--The act gradually raised the retirement earnings test for persons between FRA and age 70 to \$30,000 by the year 2002, phased in over 7 years as follows:

Year	Prior law	Law as altered by Public Law 104-121
1996	\$11,520	\$12,500
1997	\$11,880	\$13,500
1998	\$12,240	\$14,500
1999	\$12,720	\$15,500
2000	\$13,200	\$17,000
2001	\$13,800	\$25,000
2002	\$14,400	\$30,000

Senior citizens between FRA (age 65-67, depending on year of birth) and age 70 who earned over the annual exempt amounts would continue to lose \$1 in benefits for every \$3 of earnings over the specified threshold. After 2002, the annual exempt amounts were indexed to the growth in average wages. The substantial gainful activity (SGA) amount applicable to individuals under FRA who are eligible for disability

benefits on the basis of blindness was no longer linked to the retirement earnings test for persons between FRA and age 70. As under prior law, this SGA amount continued to be wage-indexed and, at the time, was projected to increase to \$14,400 by 2002.

*Making stepchildren entitled to child's benefits based on actual dependency on stepparent support*--Benefits were made payable to a stepchild only if it is established that the stepchild is dependent on the stepparent for at least one-half of his or her financial support. In addition, benefits to the stepchild were to be terminated if the stepchild's natural parent and stepparent divorce. The dependency requirement was made effective for stepchildren who become entitled or re-entitled to benefits beginning in July 1996. In cases of a subsequent divorce, benefits to stepchildren were to be terminated 1 month after the divorce becomes final. Stepparents were required to notify SSA of the divorce. In addition, SSA was required to notify annually persons potentially affected by this provision.

*Removing drug addiction and alcoholism as disabling impairments*--An individual no longer is considered disabled for purposes of entitlement to cash Social Security and Supplemental Security Income disability benefits if drug addiction or alcoholism is the contributing factor material to his or her disability. Individuals with drug addiction or alcoholism who have another severe disabling impairment (such as AIDS, cancer, cirrhosis) can qualify for benefits based on that disabling impairment.

If a person who qualifies for benefits based on another disability also is determined to be an alcoholic or drug addict incapable of managing his or her benefits, a representative payee will be appointed to receive and manage the individual's benefits. Recipients who are unable to manage their own benefits as a result of alcoholism or drug addiction will be referred to the appropriate State agency for substance abuse treatment services. In each of fiscal years 1997 and 1998, \$50 million was authorized to fund additional drug (including alcohol) treatment programs and services. Individuals entitled to benefits before March 1996 remained eligible for benefits until January 1, 1997.

*Studying the efficacy of providing benefit and contribution statements to recipients*--The Commissioner of Social Security was required to conduct a 2-year pilot study (beginning in 1996) of the efficacy of providing individual benefit and contribution information to recipients of Old-Age and Survivors Insurance (OASI) benefits.

*Protecting the Social Security and Medicare Trust Funds*--The legislation codified Congress' understanding of present law that the Secretary of the Treasury and other Federal officials are not authorized to use Social Security and Medicare funds for debt management purposes.

## **Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193)**

The legislation prohibited the payment of Social Security benefits to any noncitizen in the United States who is not lawfully present in the United States. Subsequent legislation enacted in the following month, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), added the prohibition of payments to noncitizens not lawfully present in the United States to the Social Security Act in section 202(y), and clarified that the Attorney General of the United States has the responsibility to determine whether a person is not lawfully present.

### **Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134)**

*Providing for mandatory electronic funds transfers*--Required Federal payments, including Social Security and Supplemental Security Income benefits payable beginning after July 1996 to persons with bank accounts, to be made by electronic funds transfer (EFT). Required all recurring Federal payments made after January 1, 1999 to be made by EFT and allowed the Secretary of the Treasury to waive the requirement under certain circumstances.

*Enhancing debt collection*--Provided SSA with permanent debt collection authorities, including administrative offset of other Federal benefit payments, offset of Federal salaries, reporting of delinquent debt to credit bureaus, use of private collection agencies, and assessment of late charges.

### **105<sup>th</sup> CONGRESS**

### **Revenue Reconciliation Act of 1997 (incorporated into Public Law 105-34)**

*Expanding SSA records for tax collection*--The legislation provided that, for a Social Security Number (SSN) application for a person under age 18, SSA must collect the SSNs of each parent, in addition to the currently required evidence of age, identity, and citizenship, and share this information with the Internal Revenue Service for administration of tax benefits based on support or residency of a child.

*Excluding termination payments made to insurance salesmen*--Payments made to a self-employed insurance salesman after his or her agreement to work for the insurance company has terminated were excluded from Social Security coverage if: he or she performed no additional work for the company in that taxable year; he or she entered into a covenant not to compete with the company; and the amount of the payment was based entirely on the policies the salesman sold during the last year of the agreement which remain in force and not on his or her length of service or overall earnings from the company.

## **106<sup>th</sup> CONGRESS**

### **Foster Care Independence Act of 1999 (Public Law 106-169)**

*Enforcing benefit restrictions for prisoners*--The Commissioner was required to share (on a reimbursable basis) information obtained under agreements with institutions reporting prisoners with other Federal or Federally-assisted cash, food, or medical assistance programs to ensure that other Federal, State or local benefits do not inappropriately flow to prisoners.

*Creating new administrative sanctions to deter abuse*--A new penalty was added to previous penalties for nonpayment of OASDI and SSI benefits for individuals found to have lied or misrepresented facts in applying for benefits. The penalty is a period of nonpayment of 6 months for the first violation, 12 months for the second violation, and 24 months for the third violation. A prior provision banning benefits for 10 years for individuals who misrepresent their place of residence to claim benefits in two or more States was repealed.

*Protecting Social Security funds*--Representative payees were made liable for an OASDI or SSI overpayment caused by a payment made to a beneficiary who has died. SSA was required to establish an overpayment control record under the representative payee's SSN. The legislation also barred from the OASDI and SSI programs representatives and health care providers found to have helped commit fraud. The bar from participation would last 5 years, 10 years, and permanently for the first, second and third such finding, respectively.

*Adding resources and legislative tools to combat fraud*--The Commissioner was required to consult with the Inspector General of SSA and the Attorney General regarding additional measures to combat fraud in Social Security's disability programs, as well as methods for improving the processing of reported changes to beneficiaries' income. In addition, SSA was required to itemize funds needed to combat fraud in its annual budget. The legislation also provided for better data exchanges with State and Federal agencies to ensure proper benefit payment.

### **Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170)**

*Creating new avenues to work and self-sufficiency*--The Social Security Administration phased in a new "Ticket to Work" program nationally over a 3-year period, with full implementation in all States in 2004. Since 2002, SSA has provided eligible Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability beneficiaries with a "ticket" they may use to receive employment, vocational rehabilitation (VR) and other support services needed to obtain, regain, or maintain employment and reduce their dependence on cash benefits programs. Services were tailored to individual needs and choices, with providers paid for results when beneficiaries return to the work force or achieve certain milestones. To protect

individuals who attempt to work but must return to benefits, certain rules were eased for requalifying for benefits for those in need due to failing health.

*Expanding availability of health care services for the disabled*--For SSDI beneficiaries who go to work, the legislation extended Medicare coverage for an additional period of 4.5 years beyond current law (for a total of 8.5 years). The legislation also expanded State options to provide Medicaid to workers with disabilities, provide grants to States to support workers with disabilities, create State demonstration programs to provide medical aid to workers with potentially severe disabilities, and hold down insurance costs for certain disabled workers.

*Funding new studies and demonstration projects*--SSDI demonstration project authority was renewed for 5 years; SSA was required to conduct a project to study the incentives created by gradually reducing SSDI benefits \$1 for every \$2 in earnings over a set level. Several GAO and SSA reports were required to be conducted on current work incentives for individuals with disabilities and on ways to improve such incentives.

*Ensuring changes are paid for*--The legislation made a number of technical changes to Social Security to ensure that any new benefits are fully paid for, including: awarding certain prisons reporting inmate lists up to \$400 per inmate found to be collecting Social Security benefits (preventing fraud and benefit overpayments); restricting Social Security benefits for certain sex offenders and prisoners jailed for under 1 year; allowing clergy members a 2-year "open season" to opt into Social Security; assessing a charge to cover administrative costs created by attorneys who have SSA process their fees; and clarifying rules related to the removal of drug addiction and alcoholism as disabling impairments under the SSDI and SSI programs.

### **Senior Citizens Freedom To Work Act (Public Law 106-182)**

Eliminated the retirement earnings test as of the month a recipient reaches full retirement age, effective in 2000. In the year a recipient reaches full retirement age, the 1-for-3 reduction rate and the exempt amounts established by Public Law 104-121 would continue to apply.

## **107<sup>th</sup> CONGRESS**

### **Department of Defense Appropriations Act for FY 2002 (Public Law 107-117)**

Eliminated "deemed" extra wages credited to military service personnel beginning in calendar year 2002.

## **108<sup>th</sup> CONGRESS**

### **Social Security Protection Act of 2004 (Public Law 108-203)**

The legislation included various provisions designed to reduce fraud and abuse in programs administered by the Social Security Administration. Several major provisions that affected the OASDI program are described below.

*Imposing stricter standards on individuals and organizations that serve as representative payees for Social Security and SSI recipients*--The legislation required the Commissioner of Social Security to expand the reissuance of benefits to cases in which an individual representative payee who represents 15 or more recipients, or an organizational representative payee, has misused the benefits received on behalf of the beneficiaries they represent.

In addition, nongovernmental representative payees (i.e., those other than Federal, State, and local government agencies) were made liable for the reimbursement of misused funds. SSA was given authority to impose a civil monetary penalty (up to \$5,000 for each violation) and an assessment (up to twice the amount of misused benefits) on representative payees who misuse benefits. The legislation included a number of additional provisions aimed at strengthening the accountability of representative payees.

*Extending temporarily the fee withholding process to non-attorney representatives of disability claimants*--Social Security disability claimants may choose to have an attorney or other qualified individual represent them in proceedings before SSA, and the claimant representative may charge a fee for his or her services. The fee, which is subject to limits, must be authorized by SSA. If a disability claimant is awarded past-due benefits and his or her representative is an *attorney*, SSA withholds the attorney's fee payment from the benefit award and sends the payment directly to the attorney. To cover administrative costs associated with the fee withholding process for attorney representatives of disability claimants, SSA withholds an assessment of up to 6.3 percent from the attorney's fee.

Before Public Law 108-203, if the claimant representative was not an attorney, SSA would send the full benefit award to the claimant and the claimant representative would be responsible for collecting his or her fee from the individual. The legislation capped the assessment for processing attorney fee payments at the lesser of 6.3 percent of the attorney's fee and \$75 (indexed to inflation); authorized a 5-year demonstration project to extend the fee withholding process to non-attorney representatives in disability claims; and required the General Accounting Office (now called the Government Accountability Office) to study the fee payment process for claimant representatives.

*Prohibiting payment of OASDI benefits to fugitive felons*--Before Public Law 108-203, SSA was prohibited from paying SSI benefits to fugitive felons (i.e., persons fleeing prosecution, custody, or confinement after conviction, and persons violating

probation or parole). In addition, upon written request, SSA was required to provide information about these individuals (current address, Social Security Number, and photograph) to law enforcement officials. The legislation prohibited SSA from paying *Social Security* benefits as well to fugitive felons and required SSA, upon written request, to provide information to law enforcement officials to assist in the apprehension of these individuals. The legislation authorized the Commissioner of Social Security to pay, with good cause, SSI and Social Security benefits previously denied because of an individual's status as a fugitive felon.

*Closing the loophole on the "last day" rule to avoid the Government Pension Offset and other provisions affecting workers with non-covered employment*--If an individual receives a government pension from work that was not covered by Social Security, his or her Social Security spousal or widow(er) benefit is reduced by an amount equal to two-thirds of the non-covered government pension, under a provision known as the Government Pension Offset (GPO). Before Public Law 108-203, a State or local government employee who was not covered by Social Security would be exempt from the GPO if he or she worked in a Social Security-covered government position on his or her last day of employment. That is, under the "last day rule," a non-covered State or local government employee could avoid having his or her Social Security spousal or widow(er) benefit reduced under the GPO by switching to a Social Security-covered government position for one day (or longer). The legislation required State or local government employees to be covered by Social Security for at least the last 60 calendar months of employment to be exempt from the GPO. In addition, the legislation required disclosure to workers of the effects of the GPO and the Windfall Elimination Provision (WEP); added information relating to the GPO and the WEP to the Social Security Statement; and provided for a new one-page Statement From Social Security sent to individuals with only non-covered earnings posted to their record.

*Establishing a work authorization requirement for certain noncitizens*--Before Public Law 108-203, a noncitizen was not required to have authorization to work in the United States at any point to qualify for Social Security benefits. Under the legislation, a noncitizen who is assigned a Social Security Number (SSN) in *2004 or later* is required to have work authorization at the time the SSN is assigned, or at some later time, to gain insured status under the Social Security program. Specifically, if the individual obtains work authorization at some point, *all* of his or her Social Security-covered earnings count toward qualifying for benefits (including any earnings based on unauthorized work). If the individual never obtains authorization to work in the United States, *none* of his or her Social Security-covered earnings count toward qualifying for benefits. A noncitizen who was assigned an SSN *before 2004* is not subject to the work authorization requirement established under the legislation (i.e., all of the individual's Social Security-covered earnings count toward qualifying for benefits, regardless of his or her work authorization status).

*Other provisions*--The legislation (1) required the Commissioner of Social Security to issue a receipt to acknowledge submission of reports of changes in work or earnings status of disabled beneficiaries; (2) authorized Federal courts to order a defendant

convicted of defrauding Social Security, Special Veterans' Benefits or SSI to make restitution to SSA; (3) allowed SSA to more fully recover overpayments paid under one program from the benefits paid under another program; (4) clarified definitions for widow(er) benefits when the length of marriage requirement was affected by a prior spouse who was institutionalized due to mental incapacity; (5) provided clear legal authority to exempt a worker's earnings from U.S. Social Security tax in cases where his or her earnings are subject to the laws of a totalization agreement partner; and, (6) for purposes of determining Social Security and Medicare coverage, extended the authority to establish a divided retirement system to Kentucky and Louisiana.

## **109<sup>th</sup> CONGRESS**

No programmatic changes were enacted in the 109<sup>th</sup> Congress.

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## **111<sup>th</sup> CONGRESS**

### **Hiring Incentives to Restore Employment Act (Public Law 111-147)**

Among other provisions, the Hiring Incentive to Restore Employment Act (HIRE Act) provided a temporary Social Security payroll tax exemption for employers under certain circumstances. In 2010, employers were exempt from the employer's share of the payroll tax (6.2%) if they hired an individual who had not been employed for more than 40 hours during the preceding 60-day period. The employee's share of the payroll tax was not affected. The payroll tax exemption for employers expired on December 31, 2010. The law provided general revenue transfers to the Social Security trust funds in amounts needed to protect the trust funds from a loss of payroll tax revenues due to the temporary exemption.

### **Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111-312)**

Among other provisions, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 provided a temporary reduction in the Social Security payroll tax for workers. In 2011, employees and the self-employed are subject to a temporary 2 percentage point reduction in the payroll tax (from 6.2% to 4.2% for employees; from 12.4% to 10.4% for self-employed workers). The employer's share of the payroll tax is not affected. The law provided general revenue transfers to the Social Security trust funds in amounts needed to protect the trust funds from a loss of payroll tax revenues due to the temporary reduction.