

Social Security Related Legislation in 1988 *

The 100th Congress convened on January 6, 1987, and adjourned **Sine Die** on October 22, 1988. During the two sessions of the 100th Congress, more than 1,500 bills of interest to the Social Security Administration (SSA) were introduced. Of these bills, 23 that have an impact on SSA programs were enacted into law. This article describes the Social Security related legislation that was enacted in 1988, during the second session of the 100th Congress.

The major Social Security related legislation in that session was contained in the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647), which President Reagan signed into law on November 10, 1988. This legislation includes several provisions that were recommended by the Reagan Administration in the fiscal year 1988 budget and that were contained in the Administration's bill, "Social Security Amendments of 1987" (H.R. 2660), introduced on June 11, 1987, by Representative Bill Archer of Texas, then the ranking Republican member of the Social Security Subcommittee of the House Ways and Means Committee.

Most of the Social Security related proposals in the Technical and Miscellaneous Revenue Act of 1988 originated in the Congress. The major Social Security provisions of this law are described in the first part of the article. The 100th Congress also passed a number of major legislative initiatives during its second session, including the Medicare Catastrophic Coverage Act and the Family Support Act (welfare reform). The Social Security related provisions that were included in this legislation and in other 1988 enactments are described in the second part of this article.

*Prepared by the staff of the Office of Legislation and Congressional Affairs (OLCA), Social Security Administration. This article is adapted from two OLCA Legislative Reports in 1988: No. 2, **Technical and Miscellaneous Revenue Act of 1988**, and No.3, **Legislation of Interest to SSA During the 100th Congress**.

In 1988, during the second session of the 100th Congress, the major Social Security related legislation was contained in the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647), which President Reagan signed into law on November 10, 1988. Among the Social Security related provisions are several that were recommended by the Administration in the fiscal year 1988 budget; most originated in the Congress.

The major Social Security provisions of Public Law 100-647 are described in the first part of this article. Additional legislation related to the Social Security program is described in the remainder of the article.

Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647)

Section 8001: Interim Disability Benefits

Benefit payments are provided for applicants for Disability Insurance benefits and for Supplemental Security Income (SSI) payments based on disability or blindness whose cases have been allowed (or continued) by an administrative law judge (ALJ) but who have not received a final decision within 110

days after that decision because the Appeals Council has the case for review. The interim benefits will not be considered overpayments if the favorable ALJ decision is reversed. Time due to a claimant-caused delay that exceeds 20 days will not count toward the time limit. Effective with respect to ALJ determinations made after May 9, 1989 (180 days after enactment).

The intent of this provision is to provide some relief to claimants whose cases have been allowed at the ALJ level but who have not received any benefit payments because of delays at the Appeals Council level.

Section 8002: Retirement Earnings Test in Year of Death

The annual exempt amount that applies at ages 65-69 will apply to an individual who would have attained normal retirement age (NRA) in a year but who dies prior to attaining NRA and the annual exempt amount will not be prorated for the year of death. This provision is effective for individuals whose death occurs after the date of enactment of the legislation (November 10, 1988).

The purpose of these changes, initially recommended by the Administration, is to make the earnings test more equitable by precluding a lower annual exempt

amount for the year of death than a person would have had if he had lived for the entire year.

Section 8003: Phaseout of Reduction in Windfall Benefits

The windfall elimination was modified so that the phased-in reduction, previously applicable to workers with 26-29 years of substantial covered employment, will instead apply to workers with 21-29 years of such employment.

This change is designed to give greater recognition under the windfall provision to persons with a significant attachment to covered employment—more than 20 years—while retaining the requirement that persons must have had a substantial link to covered employment (the 30-years-of-coverage measure) before the windfall reduction does not apply. The provision is effective for benefits for months after December 1988.

Section 8004: Suspension of Benefits of Deported Nazi

Benefits otherwise payable to an individual against whom a final order of deportation on the basis of certain Nazi activities has been issued will be suspended beginning with the first month after the month

in which the Secretary of Health and Human Services (HHS) is notified by the Attorney General that the final order has been issued. The law already provides for suspension of benefits in the case of most other deported beneficiaries. This provision is effective in the case of final orders of deportation issued on or after enactment (November 10, 1988).

This provision corrects an apparent oversight caused by failure to make a conforming change to the Social Security Act when the Immigration and Nationality Act was amended to make certain Nazi activities grounds for deportation.

Section 8005: Term of Office for Public Trustees

Under the terms of this provision, a public member of the Boards of Trustees of the Old-Age and Survivors Insurance (OASI), Disability Insurance (DI), or Medicare trust funds could continue to serve as a trustee, even though his or her term has expired, until the earlier of (1) the release of the next annual trustees report or (2) a successor takes office. Also, the term of a replacement public member appointee is limited to the time remaining in the predecessor's term. Effective for public members serving on and after enactment (November 10, 1988).

This provision is designed to avoid the possibility that—because the public trustees serve 4-year terms—no public trustees might be in office at the time of the issuance of an annual trustees report. Such a development could be viewed as contrary to the purpose of having members of the public serve on the Boards of Trustees of the OASI, DI, and Medicare trust funds.

Section 8006: Benefit Continuation During Appeal

This provision extends for 1 year the temporary authority to continue, up to the time of an ALJ decision, the payment of disability benefits (including Medicare) to Social Security beneficiaries who appeal a medical cessation determination. Under this extension, benefit continuation will apply to determinations made prior to January 1, 1990; the last month for which payments could be continued would be June 1990.

The intent of this provision is to provide for continued disability benefit payment pending appeal to the ALJ level until the Congress can evaluate the report that the Social Security Administration (SSA) is preparing on the effect of the provision on the Social Security trust funds and on the rate of appeal to ALJ's of unfavorable disability determinations.

Section 8007: Amish Exemption

The new law extends the exemption from Social Security taxes and coverage that is available to self-employed members of certain sects opposed on religious grounds to participation in the Social Security program (generally the Amish) to employed members of those sects. This exemption applies only where both the employee and the employer are members of such a sect, file for the exemption, and waive all future Social Security benefits. Effective for remuneration paid after December 31, 1988.

This provision is intended to extend the longstanding exemption for self-employed members of certain sects to employees who share the same religious views about Social Security participation.

Section 8008: Blood Donor Locator Service

The Secretary of HHS is to establish a Blood Donor Locator Service (BDLS) by May 9, 1989 (180 days after enactment), administered by the Commissioner of Social Security. The BDLS will be responsible for furnishing to public health agencies, public agencies that regulate blood donation, and blood banks the most current address that SSA and Internal Revenue Service records show for donors who are identified as being infected with the human immunodeficiency virus (HIV), the cause of acquired immune deficiency syndrome (AIDS). States and territories would be authorized to require blood donors to furnish their Social Security number (SSN).

The purpose of this provision is to provide an additional method of locating persons carrying the virus for AIDS for the purpose of informing the blood donor of the possible need for medical care and treatment. The provision protects blood donors by permitting access to the address information only to State agencies and blood donor facilities meeting requirements for confidentiality and security.

Section 8009: Applicants' Own SSN's

Applicants for Social Security benefits will be required, as a condition for receiving Social Security benefits, either to furnish their Social Security number (SSN's) or to apply for one. The provision is effective for entitlements beginning in or after June 1989.

This provision, recommended by the Administration, gives SSA authority similar to that already

available to other agencies to require, for administrative purposes, that applicants have their own SSN's.

Section 8010: Certificate of Election

This provision allows a person who is (1) receiving both reduced spouse's benefits and either retirement or disability benefits, and (2) aged 62-65 when that person's spouse dies, to receive reduced widow(er)'s benefits by filing a certificate of election of reduced benefits rather than an application (as is currently required). The proposal is effective for monthly benefits based on deaths occurring after November 1988.

This change, also recommended by the Administration, is modeled on the present law provision for spouses aged 62-64 with entitled children in their care. It is designed to facilitate the transfer from spouse's to surviving spouse's benefits when a dually entitled survivor is under age 65 at the time of the worker's death.

Section 8011: Calculation of Windfall Benefit Guarantee

Under the windfall elimination provision (WEP), a special formula is used to compute the Social Security benefits of a worker eligible for both Social Security benefits and a pension based on noncovered employment. This modification of the WEP, proposed by the Administration, is designed to simplify administration by providing that the amount of the pension considered in applying the WEP will be the amount payable in the first month of concurrent entitlement to Social Security benefits and the noncovered pension, rather than the first month of concurrent eligibility, as provided

under prior law. The provision applies to benefits based on applications filed after November 1988.

Section 8012: Consolidate Disability Reports

This change permits consolidation in a single annual report to the Senate Committee on Finance and the House Committee on Ways and Means what were previously two separate reports. The first concerns the results of continuing disability reviews (CDR's) and appeals of CDR's at all levels of review within SSA. The second concerns any use by the Secretary of HHS of his authority, based on workload considerations, to waive the mandated triennial CDR's on a State-by-State basis.

This provision, based on an Administration proposal, is designed to reduce reporting requirements by allowing for the consolidation of what have been separate, and in one case, more frequent reports.

Section 8013: Exclusion of Certain Payments for Group-Term Life Insurance

The new law excludes from wages the employer cost of group-term life insurance for individuals who were separated from employment before January 1, 1989.

The provision is intended to simplify Social Security tax compliance in cases where employers do not have access to employee funds for Social Security tax withholding purposes.

Section 8014: Applicability of Government Pension Offset

Anyone who opted into the Federal Employees' Retirement System (FERS) before January 1, 1988, will be exempt from the

Social Security government pension offset (GPO) provision (the provision in current law under which Social Security spouse's and surviving spouse's benefits are reduced if the Federal employee receives a pension based on his or her own work in noncovered employment) even if that person had retired from service before the FERS coverage became effective.

This is essentially a technical clarification of the exception enacted in the 1987 Omnibus Budget Reconciliation Act (Public Law 100-203) and is effective as if it had been included in that Act at the time it was enacted.¹

Section 8015: Coverage of Certain Federal Employees

Authorizes the Secretary of HHS to determine whether Federal service is covered under Social Security. (The effect is to eliminate the authority of each agency head to independently make final determinations in such cases.) Effective for service beginning in any position on or after the date of enactment (November 10, 1988).

The purpose of the provision is to ensure more uniform administration of the program by centralizing the authority to make coverage determinations.

Clarifies that Federal employees who elect to participate in the Foreign Service Pension System (FSPS) (equivalent to FERS) are covered by the Social Security program. Effective for service performed on or after the effective date of an election to participate in

¹For a description of the Social Security related provisions of this law, see "Social Security Related Legislation, 1987," *Social Security Bulletin*, April 1988, pages 4-11.

the FSPS. This provision is a technical change to ensure that the law clearly supports both current practice and clear congressional intent that persons who participate in the FSPS are covered under Social Security.

Provides that Federal employees hired before 1984 who serve in a position mandatorily covered by Social Security will be covered by Social Security with respect to all future Federal service. Effective for service performed after the performance of mandatorily covered Federal service performed on or after the date of enactment. This provision will simplify the administration of both programs—Social Security and Federal retirement—by continuing the Social Security coverage of employees who serve in mandatorily covered positions.

Section 8019: Reports Regarding Certain Disability-Related Benefits

Requires the Secretary of HHS to submit two separate reports to the House Committee on Ways and Means and the Senate Committee on Finance by May 9, 1989 (6 months after enactment). One report is to provide information on the numbers of applications, allowance and denial rates, and the cost of and future estimates about disability benefits under the Social Security and SSI programs for persons with AIDS-related complex (ARC). The other report is to describe coordination arrangements between the Social Security Administration and State disability agencies with respect to the provision of Federal and State disability-related benefits to individuals with AIDS or ARC and efforts to make such individuals aware of the full range of benefits for which they may be eligible.

Minor Technical Amendments

Public Law 100-647 also contains clerical, technical, and conforming corrections and numerous income tax provisions with minor impact for Social Security.

Housing and Community Development Act of 1987 (Public Law 100-242)

Public Law 100-242, enacted on February 5, 1988, includes several provisions with potential SSA impact. They are summarized below.

Enumeration

As a fraud and abuse deterrent for programs administered by the Department of Housing and Urban Development (HUD), allows the Secretary of HUD to require that applicants and participants (including members of the household of an applicant or participant) disclose their Social Security numbers or employer identification number for purposes of eligibility.

Home Equity Conversion (HEC)

Directs HUD to conduct a demonstration program of insurance of HEC mortgages for elderly homeowners. This provision will have no immediate effect on SSA.

Housing Assistance

Transfers housing assistance for the nonelderly disabled from section 8 of the United States Housing Act of 1937 to section 202 of the Housing Act of 1959. Due to an oversight, unlike assistance provided under the United States Housing Act of 1937, the value of which is excluded from income and resources under SSI, assistance

under the Housing Act of 1959 is not excluded from consideration as income or resources for SSI purposes. This oversight was subsequently corrected by one of the technical amendments included in Public Law 100-647, the Technical and Miscellaneous Revenue Act of 1988.

Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360)

Public Law 100-360,² enacted on July 1, 1988, contains, among other Medicare and Medicaid changes, several provisions of specific interest to SSA.

Monthly Premium

Provides that the newly established Medicare Catastrophic Coverage Program will be financed by a flat \$4 monthly premium. This premium is in addition to the monthly Supplementary Medical Insurance (SMI) premium, that is generally deducted from the monthly Social Security benefit.

Social Security Hold-Harmless Provision

Makes permanent the hold-harmless provision that ensures that an individual's Social Security benefit will not decrease due to the combined effect of an SMI increase and the catastrophic premium.

Protection Against False Advertising

Prohibits the use of the names, symbols, and acronyms of the Social Security Administration (SSA), the Health Care Financing Administration (HCFA), and the

² See "The 1988 Medicare Catastrophic Coverage Act," *Social Security Bulletin*, September 1988, page 2.

programs they administer in any advertising, solicitation, or other communication if the effect of such use would convey a false impression of the agencies' sanction of the enterprise or product. In addition, the law authorizes the Department of Health and Human Services to impose civil money penalties, generally not to exceed \$5,000, for violations of these provisions. Any penalties recovered are to be deposited as miscellaneous receipts of the Treasury.

Medicaid Buy-In and Cost Sharing for Poor Medicare Beneficiaries

Requires State Medicaid programs, on a phased-in basis, to pay the Medicare premiums, deductibles, and coinsurance for elderly and disabled individuals with incomes below the Federal poverty level (\$5,770 per year for an individual in 1988) and resources at or below twice the standard under the SSI program (\$3,800 in 1988). For additional information, see Public Law 100-647, the Technical and Miscellaneous Revenue Act of 1988.

Transfer of Assets

Effective for Medicaid applications filed on or after July 1, 1988, and only with respect to resources transferred on or after July 1, 1988, provides for a period of Medicaid ineligibility if the resources were transferred for less than fair market value during the 30 months preceding application for Medicaid. The Family Support Act of 1988 (Public Law 100-485) further amended this provision to make the ineligibility based on asset transfers applicable to Medicaid coverage of nursing facility services and

equivalent services furnished either in medical institutions or in the home or community, rather than to Medicaid generally.

The prior SSI transfer-of-assets penalty is repealed for transfers made on or after July 1, 1988. The SSA is required to (1) inform SSI applicants and recipients of the new Medicaid provision in writing at the time of initial application and redetermination of eligibility status; (2) obtain information about any transferred resources at the time of application and redetermination; and (3) provide such information to States upon request.

An individual whose Medicaid coverage is denied under these provisions could still be eligible for SSI payments. For purposes of determining SSI payment amounts in institutional situations, the individual is considered to be receiving Medicaid (and therefore subject to a \$30 payment cap).

Protection of Income and Resources of Couple for Maintenance of Community Spouse

Requires State Medicaid programs to allow the community spouse of an institutionalized person who is eligible for Medicaid to receive a sufficient amount of the institutionalized spouse's income to achieve a minimum monthly maintenance needs allowance, set by the State, that is at least equal to one-twelfth of 122 percent of the poverty level for a couple effective September 30, 1989 (133 percent effective July 1, 1991, and 150 percent effective July 1, 1992), plus a shelter allowance; except that the monthly allowance cannot exceed \$1,500 indexed to the Consumer Price Index (CPI).

Requires State Medicaid programs to permit transfer of sufficient resources from the

institutionalized spouse eligible for Medicaid to the community spouse to raise the community spouse's resources to the greatest of (1) \$12,000 (indexed to the CPI), (2) one-half of the couple's combined resources or, if less, \$60,000 (indexed to the CPI), or (3) the amount established by a fair hearing or pursuant to a court order.

These provisions reduce the amount of an institutionalized spouse's income and resources available for paying toward institutional care costs and thereby increase the amount that Medicaid must pay.

Family Support Act of 1988 (Public Law 100-485)

Public Law 100-485, enacted October 13, 1988, includes several Social Security-related provisions.

One provision requires that, when the birth of a child is registered, the parents must provide the States with their Social Security numbers (SSN's), unless the State finds good cause for not requiring the parents' SSN's, effective with the 25th month after enactment.

Another provision requires that, for tax returns due after December 31, 1989, a taxpayer identification number must be provided for dependent children aged 2 (rather than age 5) or older.

Another provision of interest to SSA is one that extends, through January 10, 1994, the authority (which had expired on July 1, 1988) for collecting Federal debts, other than title II debts, by withholding income tax refunds.

Computer Matching and Privacy Protection Act of 1988 (Public Law 100-503)

Public Law 100-503, enacted October 18, 1988, also includes a

number of Social Security-related provisions.

This law requires individualized notice at the time of an application for benefits, and periodically thereafter, that any information given may be subject to verification through matching programs.

Another provision requires independent verification of information produced by matching programs.

Further, the law requires that no adverse action be taken to reduce a Federal benefit payment until the recipient has been notified of the proposed action and given at least 30 days to appeal the action.

The law also limits the life of a matching agreement to 18 months, with an automatic extension for 12 months if there is no change in the way the match is conducted.

Stewart B. McKinney Homeless Assistance Act of 1988 (Public Law 100-628)

Public Law 100-628, enacted November 7, 1988, contains provisions that establish, in the Department of Labor, a new program to be known as the Jobs for Employable Dependent Individuals (JEDI) program. The JEDI provisions include the establishment of an incentive bonus system for States for successful job placement for recipients of means-tested benefits (including SSI).

Judicial Improvements and Access to Justice Act (Public Law 100-702)

Public Law 100-702, enacted on November 19, 1988, in title I, establishes within the Judicial Conference of the United States a Federal Courts Study Committee that will examine problems and issues facing U.S. courts and develop a long-range plan for the future of the Federal courts. The Committee is to be composed of 15 members to be appointed by the Chief Justice of the United States by January 10, 1989. The results of the study report are to be submitted to the President, the Chief Justice of the United States, the Congress, the Judicial Conference of the United States, the Conference of Chief Justices, and the State Justice Institute by April 1, 1990.