

118TH CONGRESS
1ST SESSION

S. 3400

To amend title II of the Social Security Act to permit disabled individuals to elect to receive disability insurance benefits during the disability insurance benefit waiting period, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2023

Ms. STABENOW (for herself and Ms. COLLINS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title II of the Social Security Act to permit disabled individuals to elect to receive disability insurance benefits during the disability insurance benefit waiting period, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “We Can’t Wait Act
5 of 2023”.

6 **SEC. 2. ELECTION TO RECEIVE.**

7 (a) IN GENERAL.—Section 223(a) of the Social Secu-
8 rity Act (42 U.S.C. 423) is amended—

1 (1) in paragraph (1), in the matter following
 2 subparagraph (E), by striking “(i)” and all that fol-
 3 lows through “, (ii) in” and inserting “(i) for each
 4 month beginning with the first month after the indi-
 5 vidual’s waiting period (as defined in subsection
 6 (c)(2)) in which the individual becomes so entitled to
 7 such insurance benefits unless the individual elects
 8 to receive insurance benefits during such waiting pe-
 9 riod in accordance with paragraph (3), (ii) in the
 10 case of an individual electing to receive insurance
 11 benefits during the individual’s waiting period pur-
 12 suant to the preceding clause and in”;

13 (2) in paragraph (2), by striking “and section
 14 215(b)(2)(A)(ii)” and inserting “, section
 15 215(b)(2)(A)(ii), and paragraph (3) of this sub-
 16 section,”; and

17 (3) by adding at the end the following new
 18 paragraph:

19 “(3)(A) An individual may elect to receive dis-
 20 ability insurance benefits during the individual’s
 21 waiting period pursuant to paragraph (1) if such in-
 22 dividual or their appointed representative makes
 23 such election in writing (which may include selecting
 24 an option on a benefit application form) during—

1 “(i) in the case of an individual who has
2 applied for but not yet received a decision on
3 their application for such disability insurance
4 benefits before the date on which this para-
5 graph takes effect—

6 “(I) the 45-day period following such
7 date, or

8 “(II) the 10-day period (if such period
9 ends later than the end of the 45-day pe-
10 riod) following the date on which such in-
11 dividual receives a decision on such appli-
12 cation which is favorable to such indi-
13 vidual,

14 “(ii) in the case of an individual applying
15 for disability insurance benefits on or after the
16 date on which this paragraph takes effect—

17 “(I) the date on which such individual
18 files an application for disability insurance
19 benefit, or during the 10-day period fol-
20 lowing such date,

21 “(II) the date on which such indi-
22 vidual requests reconsideration of the ini-
23 tial determination, or during the 10-day
24 period following such date, or

1 “(III) the date on which such indi-
2 vidual requests a hearing by an adminis-
3 trative law judge, or during the 10-day pe-
4 riod following such date,

5 “(iii) in the case of an individual whose in-
6 terest the Commissioner of Social Security de-
7 termines would be served by making payment of
8 the individual’s benefit to a representative
9 payee (within the meaning of section 205(j)),
10 such individual’s election may be revoked or
11 confirmed by such representative payee during
12 the 10 day period beginning on the date on
13 which such representative payee is selected, and

14 “(iv) in the case of an individual who elects
15 to receive disability insurance benefits during
16 such individual’s waiting period pursuant to
17 paragraph (1), the individual may revoke such
18 election during the periods described in this
19 subparagraph, except that in no event shall
20 such elections or revocations occur in the first
21 month of an established period of eligibility.

22 “(B) In the case of an individual electing to re-
23 ceive a disability insurance benefit during the indi-
24 vidual’s waiting period pursuant to paragraph (1),

1 such individual's disability insurance benefit for any
 2 month during or after such waiting period shall—

3 “(i) be equal to the product of—

4 “(I) the disability insurance benefit
 5 amount determined under paragraph (2)
 6 (as determined before application of this
 7 paragraph), multiplied by

8 “(II) the percentage determined under
 9 subparagraph (C) for the month during
 10 which such individual first becomes enti-
 11 tled to such disability insurance benefit,

12 “(ii) continue unchanged for the entire pe-
 13 riod of eligibility for such disability insurance
 14 benefit, and without the effect of recalculations
 15 described under subparagraph (C), and

16 “(iii) if applicable, be paid as part of a
 17 claim of entitlement to past-due benefits under
 18 this title and included in the total dollar
 19 amount of such past-due benefits.

20 “(C) The percentage determined under this
 21 subparagraph shall be—

22 “(i) for any month in the 36-month period
 23 beginning with the first month that begins after
 24 the date that is 180 days after the date of en-
 25 actment of this paragraph, 96 percent, and

1 “(ii) for any subsequent month, the per-
 2 centage most recently certified by the Commis-
 3 sioner under paragraph (D)(ii).

4 “(D)(i) Not later than the end of the 36-month
 5 period described under subparagraph (C)(i), and not
 6 later than the end of every 5-year period thereafter,
 7 the Chief Actuary of the Social Security Administra-
 8 tion shall calculate a percentage such that the fiscal
 9 impact over a 75-year period upon the Federal Dis-
 10 ability Insurance Trust Fund if all individuals who
 11 applied pursuant to paragraph (1) to receive dis-
 12 ability insurance benefits made an election to receive
 13 benefits during their waiting periods is equal to the
 14 fiscal impact over such period upon such Trust
 15 Fund that would have been made if all individuals
 16 who applied had not made such election.

17 “(ii) Not later than the end of the 36-month
 18 period described under subparagraph (C)(i), and not
 19 later than the end of every 5-year period thereafter,
 20 the Commissioner—

21 “(I) if the percentage calculated by the
 22 Chief Actuary in accordance with clause (i) is
 23 greater than or equal to 91 percent, shall cer-
 24 tify to the Managing Trustee such percentage,
 25 or

1 “(II) if such percentage is less than 91
2 percent, may elect not to certify such percent-
3 age to the Managing Trustee.

4 “(iii) Not later than 2 years after the Commis-
5 sioner elects not to certify any percentage calculated
6 by the Chief Actuary, the Chief Actuary shall pre-
7 pare and deliver a report to Congress, including de-
8 tailed recommendations for administrative or legisla-
9 tive actions to permit individuals eligible for dis-
10 ability insurance benefits to receive disability insur-
11 ance benefits during the disability insurance benefit
12 waiting period such that the fiscal impact over a 75-
13 year period upon the Federal Disability Insurance
14 Trust Fund is actuarially neutral.

15 “(E) No election made or not made by an indi-
16 vidual pursuant to this paragraph shall be construed
17 to have any effect on any benefits payable to any
18 other individual on the basis of such individual’s
19 wages and self-employment income.

20 “(F) The Commissioner shall make available to
21 the general public by posting on a website informa-
22 tion relating to electing to receive disability insur-
23 ance benefits during the waiting period, including a
24 calculator which an individual may use to determine
25 the effect of electing to receive disability insurance

1 benefits during the waiting period on the individual's
2 disability insurance benefit.

3 “(G) Each application for entitlement to dis-
4 ability insurance benefits that may subject the indi-
5 vidual to the waiting period pursuant to paragraph
6 (1) shall allow for new elections or revocations under
7 this paragraph.”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to applications for disability insur-
10 ance benefits that are made or pending on or after the
11 first day of the first month that begins at least 180 days
12 after the date of enactment of this Act.

13 (c) UPDATE TO SOCIAL SECURITY DISABILITY
14 FORMS.—Not later than 180 days after the date of enact-
15 ment of this Act, the Commissioner of Social Security
16 shall update the application forms for applying for dis-
17 ability insurance benefits to include an option for appli-
18 cants to elect to receive disability insurance benefits dur-
19 ing their waiting period.

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