

114TH CONGRESS
2D SESSION

S. 3037

To help individuals receiving disability insurance benefits under title II of the Social Security Act obtain rehabilitative services and return to the workforce, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2016

Mr. COTTON (for himself and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To help individuals receiving disability insurance benefits under title II of the Social Security Act obtain rehabilitative services and return to the workforce, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Social Security Disability Insurance Return to Work Act
6 of 2016”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Revising disability classifications.
- Sec. 3. Requiring periodic continuing disability reviews for certain beneficiaries.
- Sec. 4. Regulations related to disability classifications and CDRs.
- Sec. 5. Time-limiting disability benefits for MIE and MIL individuals.
- Sec. 6. Encouraging work by MIE and MIL individuals.
- Sec. 7. Increased funding for continuing disability reviews.

1 SEC. 2. REVISING DISABILITY CLASSIFICATIONS.

2 Section 221 of the Social Security Act (42 U.S.C.
3 421) is amended by adding at the end the following new
4 subsection:

5 “(n)(1) Not later than 1 year after the date of the
6 enactment of this subsection, the Commissioner of Social
7 Security shall establish a system for classifying any indi-
8 vidual who is determined to be entitled to disability insur-
9 ance benefits under this title or to monthly benefits under
10 section 202 by reason of being under a disability in the
11 following manner:

12 “(A) An individual shall be classified as ‘med-
13 ical improvement expected’ if the impairment or
14 combination of impairments causing the individual
15 to be disabled is expected to medically improve to
16 the point where the individual will no longer be dis-
17 abled in 12 to 24 months.

18 “(B) An individual shall be classified as ‘med-
19 ical improvement likely’ if the impairment or com-
20 bination of impairments causing the individual to be
21 disabled is expected to medically improve to the

1 point where the individual will no longer be disabled
2 in 25 months to 60 months.

3 “(C) An individual shall be classified as ‘med-
4 ical improvement possible’ if the impairment or com-
5 bination of impairments causing the individual to be
6 disabled is not expected to medically improve to the
7 point where the individual will no longer be disabled
8 in 60 months, but future improvement is possible.

9 “(D) An individual shall be classified as ‘med-
10 ical improvement not expected’ if the individual has
11 an impairment or combination of impairments that
12 is chronic or progressive with permanent, irreversible
13 structural or functional loss, and for which there is
14 no known effective therapy, treatment, or surgical
15 intervention that could result in medical improve-
16 ment to the point where the individual is no longer
17 disabled.

18 “(2) In classifying an individual under the system es-
19 tablished under this subsection, the Commissioner of So-
20 cial Security shall not classify an individual as ‘medical
21 improvement not expected’ solely by reason of such indi-
22 vidual’s age where a lesser classification is appropriate.

23 “(3) Notwithstanding section 205(b)(1) or subsection
24 (c)(1) or (d) of this section, there shall be no review of,

1 or right to appeal, a classification made under the system
 2 established under this subsection.”.

3 **SEC. 3. REQUIRING PERIODIC CONTINUING DISABILITY RE-**
 4 **VIEWS FOR CERTAIN BENEFICIARIES.**

5 (a) IN GENERAL.—Section 221(i) of the Social Secu-
 6 rity Act (42 U.S.C. 421(i)) is amended—

7 (1) by amending paragraph (1) to read as fol-
 8 lows:

9 “(1)(A) In the case of any individual who has not
 10 attained age 63, is determined to be under a disability,
 11 and is classified as ‘medical improvement possible’ or
 12 ‘medical improvement not expected’, the applicable State
 13 agency or the Commissioner of Social Security (as may
 14 be appropriate) shall, for purposes of determining such in-
 15 dividual’s continuing disability—

16 “(i) if the individual is classified as ‘medical im-
 17 provement possible’, conduct a review to determine
 18 whether the individual remains under a disability
 19 during the 5th year following the first month after
 20 the individual’s waiting period (as defined in section
 21 223(c)(2)); and

22 “(ii) if the individual is classified as ‘medical
 23 improvement not expected’, conduct a review to de-
 24 termine whether the individual remains under a dis-
 25 ability during the 10th year following the first

1 month after the individual's waiting period (as so
2 defined).

3 “(B) In addition to the continuing disability reviews
4 required under subparagraph (A) and notwithstanding
5 how an individual is classified under the system estab-
6 lished by the Commissioner of Social Security under sub-
7 section (n), if the Commissioner has reason to believe that
8 an individual that has been determined to be under a dis-
9 ability is not under a disability, the Commissioner may
10 review such individual's case at such time and in such
11 manner as the Commissioner determines appropriate ex-
12 cept that the Commissioner shall not initiate a review on
13 the basis of income earned by an individual who is a par-
14 ticipant in the process established under section 223(l).

15 “(C) Reviews of cases which are required or per-
16 mitted under this paragraph shall be in addition to, and
17 shall not be considered as a substitute for, any other re-
18 views which are required or provided for under or in the
19 administration of this title.”;

20 (2) by striking paragraph (2); and

21 (3) by redesignating paragraphs (3) through
22 (5) as paragraphs (2) through (4), respectively.

23 (b) STANDARD OF REVIEW FOR CONTINUING DIS-
24 ABILITY REVIEWS.—

1 (1) IN GENERAL.—Section 223(f) of the Social
2 Security Act (42 U.S.C. 423(f)) is amended—

3 (A) in paragraph (4), by striking the pe-
4 riod at the end and inserting “; or”;

5 (B) by inserting after paragraph (4) the
6 following new paragraph:

7 “(5) in the case of a continuing disability re-
8 view under section 221(i), evidence that would be
9 sufficient to support a finding in an initial deter-
10 mination that the individual is not under a disability
11 and is able to engage in substantial gainful activ-
12 ity.”; and

13 (C) in the flush matter at the end, by in-
14 serting “, except that, in the case of a con-
15 tinuing disability review under section 221(i),
16 the Commissioner shall not consider the fact
17 that an individual is engaged in substantial
18 gainful work as part of the process established
19 under subsection (1) as evidence that the indi-
20 vidual is able to engage in substantial gainful
21 activity” after “secured by the Commissioner of
22 Social Security”.

23 (2) CONFORMING AMENDMENT TO DEFINITION
24 OF DISABILITY.—Section 223(d)(2) of the Social Se-
25 curity Act (42 U.S.C. 423(d)(2)) is amended—

1 (A) in subparagraph (A), by striking “An
 2 individual” and inserting “Subject to subpara-
 3 graph (D), an individual”; and

4 (B) by adding at the end the following new
 5 subparagraph:

6 “(D) In the case of a continuing disability re-
 7 view under section 221(i), an individual may be
 8 found to be under a disability even though the indi-
 9 vidual is engaged in substantial gainful work as part
 10 of the process established under subsection (l).”.

11 **SEC. 4. REGULATIONS RELATED TO DISABILITY CLASSI-**
 12 **FICATIONS AND CDRS.**

13 The Commissioner of Social Security shall promul-
 14 gate or revise, as appropriate, regulations relating to the
 15 determination, classification, and review of the disability
 16 status of individuals who apply for or receive disability in-
 17 surance benefits under title II of the Social Security Act
 18 and related provisions of agency guidance to carry out sec-
 19 tion 2 and the amendments made by section 3.

20 **SEC. 5. TIME-LIMITING DISABILITY BENEFITS FOR MIE AND**
 21 **MIL INDIVIDUALS.**

22 Section 223 of the Social Security Act (42 U.S.C.
 23 423) is amended—

24 (1) in subsection (a)(1), in the flush language
 25 after and below subparagraph (E), by striking “sub-

1 section (e)” and inserting “subsections (e) and (k)”;
 2 and

3 (2) by adding at the end the following new sub-
 4 section:

5 “Time-Limited Disability Benefits

6 “(k)(1) In the case of an individual who files an appli-
 7 cation for disability insurance benefits under this section
 8 or for monthly benefits under section 202 by reason of
 9 being under a disability for any month that begins on or
 10 after the date that is 1 year after the date of the enact-
 11 ment of the Social Security Disability Insurance Return
 12 to Work Act of 2016, is determined to be under a dis-
 13 ability, and is classified by the Commissioner of Social Se-
 14 curity as ‘medical improvement expected’ or ‘medical im-
 15 provement likely’, the termination month applicable to the
 16 individual shall be—

17 “(A) if the individual has been classified as
 18 ‘medical improvement expected’, the 23rd month fol-
 19 lowing the first month after the individual’s waiting
 20 period (as defined in subsection (c)(2)); or

21 “(B) if the individual has been classified as
 22 ‘medical improvement likely’, the 59th month fol-
 23 lowing the first month after the individual’s waiting
 24 period (as so defined).

1 “(2)(A)(i) For purposes of this paragraph, the term
2 ‘timely reapplication’ means an application for disability
3 insurance benefits under this section or for monthly bene-
4 fits under section 202 by reason of being under a disability
5 that is submitted—

6 “(I) by an individual who is a recipient of such
7 benefits; and

8 “(II) during the period that is 14 months be-
9 fore the end of the termination month applicable (or
10 most recently applicable) to the individual under
11 paragraph (1) as of the date of such application and
12 ending with the date that is 12 months before the
13 end of such termination month.

14 “(ii) Notwithstanding clause (i), the Commissioner of
15 Social Security may deem an application for disability in-
16 surance benefits under this section or for monthly benefits
17 under section 202 by reason of being under a disability
18 submitted by an individual who is a recipient of such bene-
19 fits that is submitted after the period described in clause
20 (i)(II) to be a timely reapplication if—

21 “(I) the individual can show good cause for why
22 the application was not submitted during such pe-
23 riod; and

24 “(II) the application is submitted not later than
25 6 months before the end of the termination month

1 applicable (or most recently applicable) to the indi-
2 vidual under paragraph (1) as of the date of such
3 application.

4 “(B)(i) An individual who submits a timely reapplica-
5 tion and who is determined to be under a disability shall
6 be deemed to have satisfied the waiting period applicable
7 under subsection (c)(2).

8 “(ii)(I) If the Commissioner of Social Security fails
9 to make an initial determination with respect to the timely
10 reapplication of an individual who is a recipient of dis-
11 ability insurance benefits under this section or monthly
12 benefits under section 202 by reason of being under a dis-
13 ability before the end of the termination month applicable
14 to the individual as of the date of such reapplication, such
15 individual shall continue to be entitled to such benefits
16 until an initial determination with respect to such timely
17 reapplication is made.

18 “(II) If the Commissioner of Social Security makes
19 an initial adverse determination with respect to the timely
20 reapplication of an individual who is a recipient of dis-
21 ability insurance benefits under this section or monthly
22 benefits under section 202 by reason of being under a dis-
23 ability and such individual files a timely request for a
24 hearing under section 221(d), such individual may elect
25 to have the payment of such benefits (as well as any other

1 benefits payable under this title or title XVIII on the basis
 2 of such individual's entitlement to such benefits) continue
 3 in the same manner and subject to the same conditions
 4 as an election made under subsection (g).

5 “(C) For purposes of reviewing a timely reapplication
 6 submitted by an individual who is a recipient of disability
 7 insurance benefits under this section or monthly benefits
 8 under section 202 by reason of being under a disability—

9 “(i) the fact that the individual was previously
 10 found to be under a disability shall have no evi-
 11 dentiary weight;

12 “(ii) the fact that the individual participated in
 13 the process established under subsection (l) may be
 14 taken into account for purposes of determining
 15 whether such individual is under a disability; and

16 “(iii) subsection (f) shall not apply.”.

17 **SEC. 6. ENCOURAGING WORK BY MIE AND MIL INDIVID-**
 18 **UALS.**

19 (a) IN GENERAL.—Section 223 of the Social Security
 20 Act (42 U.S.C. 423), as amended by section 5, is further
 21 amended—

22 (1) in subsection (a)(2), by striking “section
 23 202(q) and section 215(b)(2)(A)(ii)” and inserting
 24 “subsection (l) and sections 202(q) and
 25 215(b)(2)(A)(ii)”; and

“Treatment of Work Performed by Certain Disabled
Individuals

“(2)(A) For purposes of this subsection, the term ‘eligible individual’ means an individual who has been classified as ‘medical improvement expected’ or ‘medical improvement likely’.

“(B) Participation by an eligible individual in the process established under this subsection shall be suspended if such individual has no reported wages or self-employment income for the 4 preceding calendar quarters (as defined in section 213(a)(1)).

20 “(3)(A) For purposes of subsection (a)(2), the
21 amount of the disability insurance benefit provided to an
22 eligible individual who has elected to return to employment
23 for any month shall be equal to—

24 “(i) in the case of an individual who has aver-
25 age monthly earnings (as determined under subpara-

graph (B)) equal to or less than the level of monthly earnings established by the Commissioner to represent substantial gainful activity, the amount otherwise applicable for such individual under subsection (a)(2); or

“(ii) in the case of individual who has average monthly earnings (as determined under subparagraph (B)) that are in excess of the level of monthly earnings established by the Commissioner to represent substantial gainful activity, the amount of the disability insurance benefit that would otherwise apply for such individual under subsection (a)(2) reduced (but not below zero) by an amount equal to 50 percent of the excess of such individual’s average monthly earnings over the level of monthly earnings established by the Commissioner to represent substantial gainful activity.

“(B)(i) The average monthly earnings for an eligible individual shall be equal to the quotient of—

“(I) the total amount of wages and self-employment income for such individual in any eligible months during the 2 calendar quarters (as defined in section 213(a)(1)) that precede the most recently completed calendar quarter, and

1 “(II) the total number of eligible months during
2 such 2-calendar-quarter period.

3 “(ii) For purposes of clause (i), the term ‘eligible
4 month’ means any month subsequent to the month in
5 which an eligible individual became entitled to a disability
6 insurance benefit.

7 “(4) For purposes of paragraph (3)(B), wages and
8 self-employment income of an individual shall be deter-
9 mined based on relevant information for such individual
10 as provided by the State agency responsible for the admin-
11 istration of State unemployment compensation law.

12 “(5) For purposes of an eligible individual who has
13 elected to return to employment under this subsection, any
14 services performed or earnings derived from services dur-
15 ing the period of such participation shall not be considered
16 for purposes of demonstrating an individual’s ability to en-
17 gage in substantial gainful activity under subsection (d)(4)
18 and shall not be considered substantial gainful activity for
19 purposes of subsection (e).

20 “(6) For purposes of this title, the disability insur-
21 ance benefit received by an individual under this sub-
22 section shall not be applied for purposes of determining
23 any monthly benefits payable to any other individuals enti-
24 tled to benefits for any month based on the wages and
25 self-employment income of such individual.”.

1 (b) CONFORMING AMENDMENT.—Section
 2 221(m)(2)(B) of the Social Security Act (42 U.S.C.
 3 421(m)(2)(B)) is amended by inserting “(unless such indi-
 4 vidual is participating in the process established under
 5 section 223(l))” before the period.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to benefits payable for months be-
 8 ginning after October 1, 2017.

9 **SEC. 7. INCREASED FUNDING FOR CONTINUING DISABILITY**
 10 **REVIEWS.**

11 Notwithstanding any other provision of law, for any
 12 calendar year after 2017—

13 (1) the Commissioner of Social Security shall
 14 determine the amount of any reduction in expendi-
 15 tures from the Federal Disability Insurance Trust
 16 Fund (as defined in section 201(b) of the Social Se-
 17 curity Act (42 U.S.C. 401(b))) during the preceding
 18 calendar year by reason of the provisions of this Act
 19 and the amendments made by this Act; and

20 (2) 10 percent of the amount determined under
 21 paragraph (1) shall be authorized to be made avail-
 22 able from the Federal Disability Insurance Trust
 23 Fund for continuing disability reviews (as defined in

- 1 section 201(g)(1)(A) of the Social Security Act (42
- 2 U.S.C. 401(g)(1)(A))).

○