

116TH CONGRESS
1ST SESSION

H. R. 4854

To amend title II of the Social Security Act to update and improve eligibility criteria for the Social Security Disability Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 2019

Mr. YOHO introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Oversight and Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title II of the Social Security Act to update and improve eligibility criteria for the Social Security Disability Program, 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 “Making DI Work For
5 All Americans Act of 2019”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—ADMINISTRATIVE CHANGES

- Sec. 101. Strengthening the administrative law judge quality review process.
- Sec. 102. Applying judicial code of conduct to administrative law judges.
- Sec. 103. Compensation for claimant representatives.
- Sec. 104. Minimum monthly withholding to recover overpayments.
- Sec. 105. Disqualification on receipt of disability insurance benefits in a month
for which unemployment compensation is received.
- Sec. 106. Elimination of reconsideration review application stages.
- Sec. 107. Report on hiring new administrative law judges and staff.

TITLE II—ELIGIBILITY

- Sec. 201. Updating of medical-vocational guidelines.
- Sec. 202. Review of social media activity.
- Sec. 203. Updating data on work which exists in national economy.

TITLE III—CONTINUING DISABILITY REVIEWS

- Sec. 301. Study on impact of medical review standard.
- Sec. 302. Additional training relating to MIRS exceptions.
- Sec. 303. Increased frequency of continuing disability reviews.
- Sec. 304. Communication relating to termination of benefits.
- Sec. 305. Communication relating to reporting requirements.

TITLE IV—BENEFITS

- Sec. 401. Establishment of annual poverty guideline based disability insurance
benefits.
- Sec. 402. Retroactive payment of benefits.
- Sec. 403. Inclusion of unearned income in determination of substantial gainful
activity.

1 **TITLE I—ADMINISTRATIVE**
2 **CHANGES**

3 **SEC. 101. STRENGTHENING THE ADMINISTRATIVE LAW**
4 **JUDGE QUALITY REVIEW PROCESS.**

5 (a) REVIEW.—Not later than 1 year after the date
6 of enactment of this Act and annually thereafter, the Divi-
7 sion of Quality of the Office of Appellate Operations of
8 the Social Security Administration shall conduct a review
9 of a sample of determinations that individuals are entitled
10 to disability insurance benefits by outlier administrative

1 law judges and identify any determinations that are not
2 supported by the evidence.

3 (b) REPORT.—Not later than December 1 of each
4 year in which a review described in subsection (a) is con-
5 ducted, the Division of Quality Review of the Office of Ap-
6 pellate Operations of the Social Security Administration
7 shall submit a report containing the results of such review,
8 including all determinations that were found to be unsup-
9 ported by the evidence, together with any recommenda-
10 tions for administrative action or proposed legislation that
11 the Division determines appropriate, to—

12 (1) the Inspector General of the Social Security
13 Administration;

14 (2) the Commissioner of the Social Security Ad-
15 ministration;

16 (3) the Committees on Ways and Means and
17 Oversight and Reform of the House of Representa-
18 tives; and

19 (4) the Committees on Finance and Homeland
20 Security and Governmental Affairs of the Senate.

21 (c) DEFINITION OF OUTLIER ADMINISTRATIVE LAW
22 JUDGE.—For purposes of this section, the term “outlier
23 administrative law judge” means an administrative law
24 judge within the Office of Disability Adjudication and Re-

1 view of the Social Security Administration who, in a given
 2 year—

3 (1) determines that the applicant is entitled to
 4 disability insurance benefits more often than 90 per-
 5 cent, or less often than 10 percent, of administrative
 6 law judges making determinations under this title;
 7 or

8 (2) issues more decisions than 90 percent, or
 9 less decisions than 10 percent, of administrative law
 10 judges making determinations under this title.

11 **SEC. 102. APPLYING JUDICIAL CODE OF CONDUCT TO AD-**
 12 **MINISTRATIVE LAW JUDGES.**

13 (a) IN GENERAL.—Section 3105 of title 5, United
 14 States Code, is amended—

15 (1) by striking “Each agency” and inserting
 16 “(a) Each agency”; and

17 (2) by adding at the end the following:

18 “(b) The Code of Conduct for United States Judges
 19 adopted by the Judicial Conference of the United States
 20 shall apply to administrative law judges appointed under
 21 this section.

22 “(c) If, in applying a standard of conduct to an ad-
 23 ministrative law judge appointed under this section, there
 24 is a conflict between the Code of Conduct for United

1 States Judges and any other law or regulation, the stricter
 2 standard of conduct shall apply.

3 “(d) Pursuant to section 7301, the President may
 4 issue such regulations as may be necessary to carry out
 5 subsections (b) and (c).”.

6 (b) LIMITATION ON REGULATORY AUTHORITY.—Sec-
 7 tion 1305 of title 5, United States Code, is amended by
 8 striking “3105” and inserting “3105(a)”.

9 **SEC. 103. COMPENSATION FOR CLAIMANT REPRESENTA-**
 10 **TIVES.**

11 (a) IN GENERAL.—Section 206 of the Social Security
 12 Act (42 U.S.C. 406) is amended to read as follows:

13 “REPRESENTATION OF CLAIMANTS

14 “SEC. 206. (a)(1) The Commissioner of Social Secu-
 15 rity may prescribe rules and regulations governing the rec-
 16 ognition of agents or other persons, other than attorneys
 17 as hereinafter provided, representing claimants before the
 18 Commissioner of Social Security, and may require of such
 19 agents or other persons, before being recognized as rep-
 20 resentatives of claimants that they shall show that they
 21 are of good character and in good repute, possessed of
 22 the necessary qualifications to enable them to render such
 23 claimants valuable service, and otherwise competent to ad-
 24 vise and assist such claimants in the presentation of their
 25 cases. An attorney in good standing who is admitted to
 26 practice before the highest court of the State, Territory,

1 District, or insular possession of his residence or before
2 the Supreme Court of the United States or the inferior
3 Federal courts, shall be entitled to represent claimants be-
4 fore the Commissioner of Social Security.

5 “(2) Notwithstanding paragraph (1), the Commis-
6 sioner, after due notice and opportunity for hearing—

7 “(A) may refuse to recognize as a representa-
8 tive, and may disqualify a representative already rec-
9 ognized, any attorney who has been disbarred or
10 suspended from any court or bar to which he or she
11 was previously admitted to practice or who has been
12 disqualified from participating in or appearing be-
13 fore any Federal program or agency, and

14 “(B) may refuse to recognize, and may dis-
15 qualify, as a non-attorney representative any attor-
16 ney who has been disbarred or suspended from any
17 court or bar to which he or she was previously ad-
18 mitted to practice.

19 “(3) The Commissioner of Social Security may, after
20 due notice and opportunity for hearing, suspend or pro-
21 hibit from further practice before the Commissioner any
22 such person, agent, or attorney who refuses to comply with
23 the Commissioner’s rules and regulations.

24 “(b) In prescribing the rules and regulations de-
25 scribed in subsection (a), the Commissioner of Social Se-

1 curity may not prescribe any rules or regulations regard-
 2 ing the permissible fees which may be charged for services
 3 performed in connection with any claim before the Com-
 4 missioner of Social Security under this title or title XVI.
 5 In no case shall the Commissioner certify any amount for
 6 payment to any representative out of any benefits payable
 7 to a claimant under this title or title XVI.”.

8 (b) CONFORMING AMENDMENTS TO TITLE XVI.—
 9 Section 1631(d)(2) of the Social Security Act (42 U.S.C.
 10 1383(d)(2)) is amended—

11 (1) by amending subparagraph (A) to read as
 12 follows:

13 “(A) The provisions of section 206 shall apply to this
 14 part to the same extent as they apply in the case of title
 15 II.”; and

16 (2) by redesignating subparagraph (D) as sub-
 17 paragraph (B).

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply with respect to applications for
 20 benefits filed on or after January 1, 2020.

21 **SEC. 104. MINIMUM MONTHLY WITHHOLDING TO RECOVER**
 22 **OVERPAYMENTS.**

23 (a) IN GENERAL.—Section 204(a)(1) of the Social
 24 Security Act (42 U.S.C. 404(a)(1)) is amended—

1 (1) by redesignating subparagraph (A) as
2 clause (i) of subparagraph (A);

3 (2) in subparagraph (A)(i) (as so redesignated),
4 by striking “With” and inserting “Subject to clause
5 (ii), with”; and

6 (3) by adding at the end the following:

7 “(ii) If the Commissioner determines that
8 withholding the full amount of a monthly dis-
9 ability insurance benefit payment to which an
10 individual is otherwise entitled under this title
11 to recover an overpayment pursuant to this sec-
12 tion would defeat the purpose of this title, the
13 Commissioner may withhold from such payment
14 an amount that is less than such full amount
15 but not less than 10 percent of such full
16 amount.”.

17 (b) REGULATIONS.—The Commissioner of Social Se-
18 curity shall prescribe such regulations and make any con-
19 forming changes to regulations as the Commissioner de-
20 termines appropriate to carry out the amendments made
21 by this subsection.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this subsection shall apply with respect to overpayments
24 made on or after January 1, 2020.

1 **SEC. 105. DISQUALIFICATION ON RECEIPT OF DISABILITY**
 2 **INSURANCE BENEFITS IN A MONTH FOR**
 3 **WHICH UNEMPLOYMENT COMPENSATION IS**
 4 **RECEIVED.**

5 (a) IN GENERAL.—Section 223(d)(4) of the Social
 6 Security Act (42 U.S.C. 423(d)(4)) is amended by adding
 7 at the end the following:

8 “(D)(i) If for any week ending within a month an
 9 individual is paid unemployment compensation, such indi-
 10 vidual shall be deemed to have engaged in substantial
 11 gainful activity for such month.

12 “(ii) For purposes of clause (i), the term ‘unemploy-
 13 ment compensation’ means—

14 “(I) ‘regular compensation’, ‘extended com-
 15 pensation’, and ‘additional compensation’ (as such
 16 terms are defined by section 205 of the Federal-
 17 State Extended Unemployment Compensation Act
 18 (26 U.S.C. 3304 note)); and

19 “(II) trade readjustment allowance under title
 20 II of the Trade Act of 1974 (19 U.S.C. 2251 et
 21 seq.).”.

22 (b) TRIAL WORK PERIOD.—Section 222(c) of the So-
 23 cial Security Act (42 U.S.C. 422(c)) is amended by adding
 24 at the end the following:

25 “(6)(A) For purposes of this subsection, an individual
 26 shall be deemed to have rendered services in a month if

1 the individual is paid unemployment compensation for any
 2 week ending within such month.

3 “(B) For purposes of subparagraph (A), the term
 4 ‘unemployment compensation’ means—

5 “(i) ‘regular compensation’, ‘extended com-
 6 pensation’, and ‘additional compensation’ (as such
 7 terms are defined by section 205 of the Federal-
 8 State Extended Unemployment Compensation Act
 9 (26 U.S.C. 3304 note)); and

10 “(ii) trade readjustment allowance under title II
 11 of the Trade Act of 1974 (19 U.S.C. 2251 et
 12 seq.).”.

13 (c) DATA MATCHING.—The Commissioner of Social
 14 Security shall implement the amendments made by this
 15 section using appropriate electronic data.

16 (d) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply with respect to individuals who ini-
 18 tially apply for disability insurance benefits on or after
 19 January 1, 2020, and are paid unemployment compensa-
 20 tion for any week ending on or after January 1, 2020.

21 **SEC. 106. ELIMINATION OF RECONSIDERATION REVIEW AP-**
 22 **PLICATION STAGES.**

23 (a) IN GENERAL.—Section 205(b) of the Social Secu-
 24 rity Act (42 U.S.C. 405(b)) is amended—

1 (1) in paragraph (1), by adding at the end the
2 following new sentence: “Opportunity for a hearing
3 under this title in accordance with this subsection
4 with respect to any initial decision or determination
5 under this title shall be available without any re-
6 quirement for intervening reconsideration.”;

7 (2) by striking paragraph (2);

8 (3) by redesignating paragraph (3) as para-
9 graph (2); and

10 (4) in paragraph (2) (as so redesignated), by
11 striking “or an adverse determination on reconsider-
12 ation of such an initial determination”.

13 (b) CONFORMING AMENDMENTS.—Title II of such
14 Act (42 U.S.C. 401 et seq.), as amended by subsection
15 (a), is further amended—

16 (1) in section 201(j), by striking “reconsider-
17 ation interviews and”; and

18 (2) in section 221(i)(3)—

19 (A) by striking “reconsideration of such
20 initial termination or”; and

21 (B) by striking “reconsideration or” before
22 “hearing”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply with respect to any initial deter-
25 mination of entitlement to a benefit under title II of the

1 Social Security Act made on or after the date that is one
2 year after the date of the enactment of this Act.

3 **SEC. 107. REPORT ON HIRING NEW ADMINISTRATIVE LAW**
4 **JUDGES AND STAFF.**

5 Not later than 180 days after the date of the enact-
6 ment of this Act, the Commissioner of Social Security
7 shall submit to Congress a report that includes an esti-
8 mate of the number of new administrative law judges and
9 support staff that the Commissioner determines would be
10 necessary to make a final decision on the entitlement of
11 each individual for a disability insurance benefit under
12 title II of the Social Security Act not later than 6 months
13 after the date on which such individual applies for such
14 benefits.

15 **TITLE II—ELIGIBILITY**

16 **SEC. 201. UPDATING OF MEDICAL-VOCATIONAL GUIDE-**
17 **LINES.**

18 As soon as possible after the date of the enactment
19 of this Act, the Commissioner of Social Security shall pre-
20 scribe rules and regulations that update the medical-voca-
21 tional guidelines, as set forth in appendix 2 to subpart
22 P of part 404 of title 20, Code of Federal Regulations,
23 used in disability determinations, including full consider-
24 ation of removing non-medical factors no longer relevant
25 due to new employment opportunities made possible by ad-

1 vances in treatment, rehabilitation, and technology and
 2 full consideration of the effect of prevalent languages on
 3 education.

4 **SEC. 202. REVIEW OF SOCIAL MEDIA ACTIVITY.**

5 (a) IN GENERAL.—Section 205(b)(1) of the Social
 6 Security Act (42 U.S.C. 405(b)(1)), as amended by sec-
 7 tion 110(a), is further amended by inserting after the sec-
 8 ond sentence the following: “In making any initial deter-
 9 mination of disability under this title, the Commissioner
 10 of Social Security shall consider any relevant evidence
 11 from social media of which the Commissioner is made
 12 aware prior to issuing a decision involving such determina-
 13 tion.”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 subsection (a) shall apply with respect to applications for
 16 disability insurance benefits filed on or after January 1,
 17 2020.

18 **SEC. 203. UPDATING DATA ON WORK WHICH EXISTS IN NA-**
 19 **TIONAL ECONOMY.**

20 Not later than 5 years after the date of the enact-
 21 ment of this Act, and every year thereafter, the Commis-
 22 sioner of Social Security shall—

23 (1) update the data used by the Commissioner
 24 to determine the jobs which exist in the national
 25 economy (within the meaning of section

1 223(d)(2)(A) of the Social Security Act (42 U.S.C.
2 423(d)(2)(A))), to ensure that such data reflects the
3 full range of work which exists in the national econ-
4 omy, including newly-created jobs in emerging indus-
5 tries; and

6 (2) submit to Congress a report describing each
7 such update.

8 **TITLE III—CONTINUING**
9 **DISABILITY REVIEWS**

10 **SEC. 301. STUDY ON IMPACT OF MEDICAL REVIEW STAND-**
11 **ARD.**

12 (a) IN GENERAL.—The Commissioner of Social Secu-
13 rity shall conduct a study with respect to a large number
14 of beneficiaries—

15 (1) to determine whether the Social Security
16 Administration would consider such beneficiaries to
17 be disabled using the Initial Disability Standard
18 rather than the Medical Improvement Review Stand-
19 ard (MIRS) during continuing disability reviews;
20 and

21 (2) to analyze the cause of any difference of re-
22 sult between the two standards.

23 (b) REPORT.—Not later than 180 days after the date
24 of the enactment of this Act, the Commissioner of Social

1 Security shall submit a report to Congress on the study
2 described in subsection (a).

3 **SEC. 302. ADDITIONAL TRAINING RELATING TO MIRS EX-**
4 **CEPTIONS.**

5 The Commissioner of Social Security shall—

6 (1) provide training, as the Commissioner de-
7 termines to be appropriate, to employees of State
8 disability determination services and to Federal per-
9 sonnel involved in making disability determinations
10 on the application of exceptions to the Medical Im-
11 provement Review Standard (MIRS) during con-
12 tinuing disability reviews; and

13 (2) establish a procedure by which such employ-
14 ees and Federal personnel may request assistance
15 from the Social Security Administration in the appli-
16 cation of such exceptions.

17 **SEC. 303. INCREASED FREQUENCY OF CONTINUING DIS-**
18 **ABILITY REVIEWS.**

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

21 (1) in paragraph (1)—

22 (A) by striking “every 3 years” and insert-
23 ing “every year”; and

24 (B) by striking “at such times as the Com-
25 missioner of Social Security determines to be

1 appropriate” and inserting “at least every 5
2 years”; and

3 (2) in paragraph (2), by striking “every 3
4 years” and inserting “once every year”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall apply with respect to applications for
7 disability insurance benefits filed on or after January 1,
8 2020.

9 **SEC. 304. COMMUNICATION RELATING TO TERMINATION**
10 **OF BENEFITS.**

11 (a) IN GENERAL.—The Commissioner of Social Secu-
12 rity shall ensure that each award letter informing an indi-
13 vidual of the individual’s initial entitlement to disability
14 insurance benefits under title II of the Social Security Act
15 includes—

16 (1) a description of all of the conditions under
17 which such benefits may be terminated; and

18 (2) except in any case in which a finding has
19 been made that the individual’s disability is perma-
20 nent, an explanation that disability insurance bene-
21 fits are temporary and that the individual is ex-
22 pected to return to work after medical improvement
23 has occurred.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply with respect to individuals who

1 become entitled to disability insurance benefits on or after
 2 January 1, 2020.

3 **SEC. 305. COMMUNICATION RELATING TO REPORTING RE-**
 4 **QUIREMENTS.**

5 The Commissioner of Social Security shall ensure
 6 that each communication from the Social Security Admin-
 7 istration made to an individual entitled to disability insur-
 8 ance benefits includes a description of the individual's re-
 9 sponsibility to report to the Commissioner of Social Secu-
 10 rity any change of circumstance that may affect the indi-
 11 vidual's entitlement to such benefits.

12 **TITLE IV—BENEFITS**

13 **SEC. 401. ESTABLISHMENT OF ANNUAL POVERTY GUIDE-**
 14 **LINE BASED DISABILITY INSURANCE BENE-**
 15 **FITS.**

16 (a) IN GENERAL.—Section 223(a) of the Social Secu-
 17 rity Act (42 U.S.C. 423(a)(2)) is amended by inserting
 18 after paragraph (2) the following new paragraph:

19 “(3) In the case of an individual who initially
 20 becomes entitled to disability benefits in the calendar
 21 year 2020 or any subsequent calendar year, and ex-
 22 cept as provided in section 202(q) of this title, such
 23 individual's disability insurance benefit for any
 24 month shall be one-twelfth of the most recently pub-
 25 lished annual poverty guideline for an individual (as

1 updated annually in the Fed. Reg. by the Depart-
2 ment of Health and Human Services under the au-
3 thority of section 673(2) of the Omnibus Budget
4 Reconciliation Act of 1981).”.

5 (b) EARLY RETIREMENT BENEFIT REDUCTION.—
6 Section 202(q)(2) of the Social Security Act (42 U.S.C.
7 423(a)(2)) is amended by striking subsection (q)(2) and
8 replacing it with the following:

9 “(2) If an individual is entitled to a disability
10 insurance benefit for a month after a month for
11 which such individual was entitled to an old-age in-
12 surance benefit, such disability insurance benefit for
13 each month shall be—

14 “(A) if such individual initially became en-
15 titled to disability benefits in any calendar year
16 before 2020, reduced by the amount such old-
17 age insurance benefit would be reduced under
18 paragraphs (1) and (4) for such month had
19 such individual attained retirement age (as de-
20 fined in section 416(l) of this title) in the first
21 month for which he most recently became enti-
22 tled to a disability insurance benefit; or

23 “(B) if such individual initially became en-
24 titled to disability benefits in the calendar year
25 2020 or any subsequent calendar year, equal to

1 the higher of the individual’s reduced old-age
 2 insurance benefit under paragraph (1) and the
 3 individual’s disability insurance benefit under
 4 section 423(a)(3).”.

5 (c) CONFORMING AMENDMENT.—Section 223(a)(2)
 6 of the Social Security Act (42 U.S.C. 423(a)(2)) is amend-
 7 ed by striking “Except” and inserting “In the case of an
 8 individual who initially becomes entitled for disability ben-
 9 efits in any calendar year before 2020, and except”.

10 **SEC. 402. RETROACTIVE PAYMENT OF BENEFITS.**

11 (a) IN GENERAL.—Section 223(b) of the Social Secu-
 12 rity Act (42 U.S.C. 423(b)) is amended by striking “12th
 13 month” and inserting “6th month”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 subsection (a) shall apply with respect to applications for
 16 disability insurance benefits filed on or after January 1,
 17 2020.

18 **SEC. 403. INCLUSION OF UNEARNED INCOME IN DETER-**
 19 **MINATION OF SUBSTANTIAL GAINFUL ACTIV-**
 20 **ITY.**

21 (a) IN GENERAL.—Section 223(d)(4) of the Social
 22 Security Act (42 U.S.C. 423(d)(4)), as amended by sec-
 23 tion 3(b), is further amended by adding at the end the
 24 following:

1 “(D)(i) If the amount of unearned income (as defined
2 in section 1612) of an individual for a month is equal to
3 or greater than the monthly income limit for such month,
4 the individual shall be deemed to have engaged in substan-
5 tial gainful activity for such month.

6 “(ii) For purposes of this subparagraph, the monthly
7 income limit is the amount of earnings derived from serv-
8 ices, prescribed by the Commissioner under regulations
9 issued pursuant to subparagraph (A), sufficient to dem-
10 onstrate an individual’s ability to engage in substantial
11 gainful activity for a month.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply with respect to monthly insur-
14 ance benefits paid for months beginning after the date
15 that is 1 year after the date of the enactment of this Act.

○