an airfield pavement research program above safety, security, Flight 21, environment, or energy research programs.

SEC. 5. ENSURING APPROPRIATE STANDARDS FOR AIRFIELD PAVEMENTS.

(a) IN GENERAL.—The Federal Aviation Administration Administrator shall review and determine whether the Federal Aviation Administration's standards used to determine the appropriate thickness for asphalt and concrete airfield pavements are in accordance with the Federal Aviation Administration's standard 20-year-life requirement using the most up-to-date available information on the life of airfield pavements. If the Administrator determines that such standards are not in accordance with that requirement, the Administrator shall make appropriate adjustments to the Federal Aviation Administration's standards for airfield pavements.

(b) REPORT.—Within 1 year after the date of enactment of this Act, the Administrator shall report the results of the review conducted under subsection (a) and the adjustments, if any, made on the basis of that review to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science.

SEC. 6. AIR TRAFFIC MANAGEMENT RESEARCH AND DEVELOPMENT INITIATIVE.

(a) OBJECTIVE.—The Federal Aviation Administration Administrator, in coordination with the National Aeronautics and Space Administration Administrator, shall participate in a national initiative with the objective of defining and developing an air traffic management system designed to meet national long-term aviation security, safety, and capacity needs. The initiative should result in a multiagency blueprint for acquisition and implementation of an air traffic management system that would—

(1) build upon current air traffic management and infrastructure initiatives;

(2) improve the security, safety, quality, and affordability of aviation services;

(3) utilize a system of systems approach;

(4) develop a highly integrated, secure common information network to enable common situational awareness for all appropriate system users; and

(5) ensure seamless global operations for system users.

(b) IMPLEMENTATION.—In implementing subsection (a), the Federal Aviation Administration Administrator, in coordination with the National Aeronautics and Space Administration Administrator, shall work with other appropriate Government agencies and industry to—

(1) develop system performance requirements;

(2) determine an optimal operational concept and system architecture to meet such requirements;

(3) utilize new modeling, simulation, and analysis tools to quantify and validate system performance and benefits;

(4) ensure the readiness of enabling technologies; and

(5) develop a transition plan for successful implementation into the National Airspace System.

SEC. 7. ASSESSMENT OF WAKE TURBULENCE RESEARCH AND DEVELOPMENT PROGRAM.

(a) ASSESSMENT.—The Federal Aviation Administration Administrator shall enter into an arrangement with the National Research Council for an assessment of the Federal Aviation Administration's proposed wake turbulence research and development program. The assessment shall address—

(1) research and development goals and objectives;

(2) research and development objectives that should be part of Federal Aviation Administration's proposed program;

(3) proposed research and development program's ability to achieve the goals and objectives of the Federal Aviation Administration, and of the National Research Council, the schedule, and the level of resources needed; and

(4) the roles other Federal agencies, such as National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, should play in wake turbulence research and development, and coordination of these efforts.

(b) REPORT.—A report containing the results of the assessment shall be provided to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science not later than 1 year after the date of enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Aviation Administration Administrator for fiscal year 2003, $500,000 to carry out this section.

SEC. 8. DEVELOPMENT OF ANALYTICAL TOOLS AND CERTIFICATION METHODS.

The Federal Aviation Administration may conduct research to promote the development of analytical tools to improve existing certification methods and to reduce the overall costs to manufacturers for the certification of new products.

SEC. 9. CABIN AIR QUALITY RESEARCH PROGRAM.

In accordance with the recommendation of the National Academy of Sciences in its report entitled ''The Airliner Cabin Environment and the Health of Passengers and Crew'', the Federal Aviation Administration may establish a research program to answer questions about cabin air quality of aircraft.

SEC. 10. RESEARCH TO IMPROVE CAPACITY AND REDUCE DELAYS.

The Administrator may include, as part of the Federal Aviation Administration research program, a systematic review and assessment of the specific causes of airport delay at the 31 airports identified in the Airport Benchmarking Study, on an airport-by-airport basis.

DIRECTING LAND CONVEYANCE TO CHATHAM COUNTY, GEORGIA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 615, H.R. 2595.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2595) to direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2595) was read the third time and passed.

SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration and the Senate proceed to the consideration of H.R. 4070.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

A bill (H.R. 4070) to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BAUCUS. Mr. President, I rise today to urge my colleagues to support the Senate version of H.R. 4070, the ''Social Security Program Protection Act of 2002.'' H.R. 4070 is bipartisan legislation developed by Ways and Means Social Security Subcommittee Chairman SHAW and ranking member MATSUI. H.R. 4070 passed the House unanimously by a vote of 425 to 0. In keeping with the bipartisan tradition of the Senate Finance Committee and with the bipartisan origins of this legislation, Senator GRASSLEY and I have worked together to further refine this legislation for Senate consideration.

The House-passed version of H.R. 4070 makes a number of important changes to the Social Security and Supplemental Security Income, SSI, programs. These changes will accomplish a number of important goals: they will enhance the financial security of some of the most vulnerable beneficiaries of these programs, increase protections to seniors from deceptive practices by individuals in the private sector, improve program integrity, thereby saving money for the Social Security and Medicare Trust Funds and taxpayers, and reduce disincentives to employment for disabled individuals.

One of the most important results of this legislation will be to enhance the financial security of the almost 7 million Social Security and SSI beneficiaries who are not capable of managing their own financial affairs due to advanced age or disability. The Social Security Administration, SSA, currently appoints individuals or organizations to act as ''representative payees'' for such beneficiaries. Most of these representative payees perform their roles conscientiously. However, some do not. Indeed, there have even been instances of terrible abuse in this program.

It is imperative that Congress take action to guard vulnerable seniors and disabled individuals from such abuse. This legislation increases requirements for SSA to provide restitution to beneficiaries when representative payees defraud the beneficiaries of their benefits. The legislation also tightens the qualifications for representative payees, increases oversight of the program, and imposes stricter penalties on those who violate their responsibilities.

The legislation expands the protection to seniors and disabled individuals by increasing the list of references to Social Security, Medicare and Medicaid which cannot be used by private-sector individuals, companies and organizations to give a false impression of Federal endorsement. The legislation also protects seniors from those who deceptively attempt to charge them for services that the seniors could receive for free from SSA.

H.R. 4070 improves program integrity by expanding the current prohibition against paying benefits to fugitive felons. As part of the 1996 welfare reform law, Congress banned the payment of SSI benefits to these individuals. However, under current law, fugitive felons can still receive Social Security benefits under title II. This legislation prohibits the payment of title II Social Security benefits to fugitive felons.

H.R. 4070 also includes technical amendments to improve the effectiveness of the Ticket to Work and Work Incentives Improvement Act, legislation passed in 1999 to help beneficiaries with disabilities become employed and move toward self-sufficiency.

To these House-passed provisions, Senator GRASSLEY and I have added some new provisions that we feel are very important.

First, we added a program integrity provision which will give the SSA Inspector General additional tools to pursue individuals who commit fraud by concealing work activity while they are receiving disability benefits.

Second, we included a provision to make uniform an exemption to the Government Pension Offset. The Government Pension Offset, GPO, was enacted in order to equalize the treatment of workers in jobs not covered by Social Security and workers in jobs covered by Social Security, with respect to spousal and survivors benefits. The GPO reduces the Social Security spousal or survivors benefit by an amount equal to two-thirds of the government pension. However, as a recent GAO report highlighted, State and local government workers are exempt from the GPO if their job on their last day of employment was covered by Social Security. In contrast, Federal workers who switched from the Civil Service Retirement System, CSRS, a system that is not covered by Social Security, to the Federal Employee Retirement System, FERS, a system that is covered by Social Security, must work for 5 years under FERS in order to be exempt from the GPO. Our Senate version of H.R. 4070 makes the exemption to the Government Pension Offset the same for State and local government workers as for Federal Government workers.

Finally, we added four technical refinements to the Railroad Retirement and Survivors' Improvement Act of 2001. These changes will help to promote the efficient implementation of that important legislation which became law last year.

I believe that each of the provisions of H.R. 4070, as passed by the House, and each of the provisions that Senator GRASSLEY and I have added deserve the support of the Senate. Moreover, in an attempt to expedite congressional passage of this legislation, the changes that Senator GRASSLEY and I want to make to the House-passed bill have already been worked out with both the chairman and the ranking member of the Social Security Subcommittee of the House Ways and Means Committee. Indeed, I have a statement that has been agreed to by the chairman and the ranking member of the Social Security Subcommittee, as well as by the chairman and ranking member of the Senate Finance Committee. This statement provides details about each of the provisions of the legislation, as well as the rationale behind each provision. I am submitting this full statement for the record.

I would also like to point out that the legislation as a whole has net savings of more than $500 million over ten years for taxpayers, according to the non-partisan Congressional Budget Office. As a result, the Social Security and Medicare Trust Fund balances will increase by more than $500 million over that period, excluding increases from increased interest income. Moreover, over the next 75 years, this legislation will decrease—not increase—the long-run actuarial deficit for the Social Security Trust Funds, although by a negligible amount. This information comes from Office of the Independent Chief Actuary for the Social Security Administration. I am submitting the estimate from the office of the Chief Actuary of the Social Security Administration for the RECORD. I will submit the official written estimate from the Congressional Budget Office for the RECORD as soon as I receive it.

This legislation contains the types of improvements we can all agree on, as demonstrated by the overwhelming bipartisan vote in the House, and the bipartisan, bicameral agreement of the chairman and ranking members of the committees of jurisdiction. I wholeheartedly urge my colleagues in the Senate to approve these sensible and important changes.

Mr. President, I ask unanimous consent that a summary of the bill and a memorandum from the Social Security Administration be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

''THE SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2002'' SUMMARY

TITLE I. PROTECTION OF BENEFICIARIES

SUBTITLE A. REPRESENTATIVE PAYEES

SECTION 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES

Present law

The Social Security Act requires the reissuance of benefits misused by any representative payee when the Commissioner finds that the Social Security Administration (SSA) negligently failed to investigate and monitor the payee.

Explanation of provision

The new provision eliminates the requirement that benefits be reissued only upon a finding of SSA negligence in the case of misuse by an organizational payee or an individual payee representing 15 or more beneficiaries. Thus, the Commissioner would reissue benefits under Titles II, VIII and XVI in any case in which a beneficiary's funds are misused by an organizational payee or an individual payee representing 15 or more beneficiaries.

The new provision defines misuse as any case in which a representative payee converts the benefits entrusted to his or her care for purposes other than the ''use and benefit'' of the beneficiary, and authorizes the Commissioner to define ''use and benefit'' in regulation.

In crafting a regulatory definition for ''use and benefit,'' the Commissioner should take special care to distinguish between the situation in which the representative payee violates his or her trust responsibility by converting the benefits to further the payee's own self interest, and the situation in which the payee faithfully serves the beneficiary by using the benefits in a way that principally aids the beneficiary but which also incidentally aids the payee or another individual. For instance, cases in which a representative payee uses the benefits entrusted to his or her care to help pay the rent on an apartment that he or she and the beneficiary share should not be considered misuse.

This provision applies to benefit misuse by a representative payee as determined by the Commissioner on or after January 1, 1995.

Reason for change

There have been a number of highly publicized cases involving organizational representative payees that have misused large sums of monies paid to them on behalf of the Social Security and Supplemental Security Income (SSI) beneficiaries they represented. In most instances, these organizations operated as criminal enterprises, bent not only on stealing funds from beneficiaries, but also on carefully concealing the evidence of their wrongdoing. These illegal activities went undetected until large sums had been stolen. If the Social Security Administration is not shown to be negligent for failing to investigate and monitor the payee, affected beneficiaries may never be repaid or may be repaid only when the representative payee committing misuse makes restitution to SSA.

Requiring the SSA to reissue benefit payments to the victims of misuse by organizational payees or individual payees serving 15 or more beneficiaries protects beneficiaries who are among the most vulnerable because they may have no family members or friends who are willing or able to manage their benefits for them. With respect to individual representative payees, the provision applies only to representative payees serving 15 or more beneficiaries. As with many cases involving organizational representative payees, these are cases which may be the hardest to detect. Moreover, extending the provision to cases involving individual payees serving fewer beneficiaries may lead to fraudulent claims of misuse. These claims, which often turn on information available only from close family members, would be difficult to assess. Similarly, extension of this provision to these cases could potentially encourage misuse or poor money management by these individual representative payees if they believed that the beneficiary could eventually be paid a second time by SSA.

The effective date would protect the interests of beneficiaries affected by these cases

of egregious misuse that have been identified in recent years.

SECTION 102. OVERSIGHT OF REPRESENTATIVE PAYEES

Present law

Present law requires non-governmental fee-for-service organizational representative payees to be licensed or bonded. Periodic on-site reviews of representative payees by SSA is not required.

Explanation of provision

The new provision requires non-governmental fee-for-service organizational representative payees to be both licensed and bonded (provided that licensing is available in the State). In addition, such representative payees must submit yearly proof of bonding and licensing, as well as copies of any available independent audits that were performed on the payee in the past year.

The new provision also requires the Commissioner of Social Security to conduct periodic onsite reviews of: (1) a person who serves as a representative payee to 15 or more beneficiaries, (2) non-governmental fee-for-service representative payees (as defined in Titles II and XVI), and (3) any agency that serves as the representative payee to 50 or more beneficiaries. In addition, the Commissioner is required to submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the reviews conducted in the prior fiscal year.

The bonding, licensing, and audit provisions are effective on the first day of the 13th month following enactment of the legislation. The periodic on-site review provision is effective upon enactment.

Reason for change

Strengthening the bonding and licensing requirements for representative payees would add further safeguards to protect beneficiaries' funds. State licensing provides for some oversight by the State into the fee-for-service organization's business practices, and bonding provides some assurances that a surety company has investigated the organization and approved it for the level of risk associated with the bond for community-based non-profit social service agencies serving as representative payees.

On-site periodic visits should be conducted regularly to reduce misuse of funds. To the degree possible, appropriate auditing and accounting standards should be utilized in conducting such reviews.

SECTION 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN ONE YEAR, OF PERSONS FLEEING PROSECUTION, CUSTODY OR CONFINEMENT, AND OF PERSONS VIOLATING PROBATION OR PAROLE

Present law

Sections 205, 807, and 1631 of the Social Security Act disqualify individuals from being representative payees if they have been convicted of fraud under the Social Security Act.

Explanation of provision

The new provision expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she: (1) has been convicted imprisonment for more than one year; (2) is fleeing to avoid prosecution, or custody or confinement after conviction; or (3) violated a condiction of probation or parole. An exception applies if the Commissioner of Social Security determines that a person who has been convicted of any offense resulting in imprisonment for more than one year would, notwithstanding such conviction, be an appropriate representative payee.

The new provision requires the Commissioner to submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate evaluating existing procedures and reviews conducted for representative payees to determine whether they are sufficient to protect benefits from being misused.

This provision is effective on the first day of the 13th month beginning after the date of enactment, except that the report to Congress is due no later than 270 days after the date of enactment.

Reason for change

Prohibiting persons convicted of offenses resulting in imprisonment for more than one year, of persons fleeing prosecution, custody or confinement, and of persons violating probation or parole from serving as representative payees, not just prohibiting those convicted of fraud under the Social Security Act, decreases the likelihood of mismanagement or abuse of beneficiaries' funds. Also, allowing such person to serve as representative payees places beneficiary payments in potential jeopardy and could raise serious questions about the SSA's stewardship of taxpayer funds. The agency's report to Congress will assist the committees of jurisdiction in both the House and Senate in their oversight of the representative payee program.

The criminal background information provided by those who apply to be representative payees should be the same as the information considered by the Commissioner to implement this provision.

SECTION 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES

Present law

Certain organizational representative payees are authorized to collect a fee for their services. The fee, which is determined by a statutory formula, is deducted from the beneficiary's benefit payments.

Explanation of provision

The new provision requires representative payees to forfeit the fee for those months during which the representative payee misused funds, as determined by the Commissioner of Social Security or a court of competent jurisdiction. This provision applies to any month involving benefit misuse by a representative payee as determined by the Commissioner after December 31, 2002.

Reason for change

Payees who misuse their clients' funds are not properly performing the service for which the fee was paid and therefore such fees should be forfeited. Permitting the payee to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for the individual's needs.

SECTION 105. LIABILITIES OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS

Present law

Although the SSA has been provided with expanded authority to recover overpayments (such as the use of tax refund offsets, referral to contract collection agencies, notification of credit bureaus, and administrative offsets of future federal benefits payments), these tools cannot be used to recoup benefits misused by a representative payee.

Explanation of provision

The new provision treats benefits misused by a non-governmental representative payee (including all individual representative payees) as an overpayment to the representative payee, rather than the beneficiary, thus subjecting the representative payee to current overpayment recovery authorities. Any recovered benefits not already reissued to the beneficiary pursuant to section 101 of this legislation would be reissued to either the beneficiary or their alternate representative payee, up to the total amount misused. This provision applies to benefit misuse by a representative payee in any case where the Commissioner of Social Security makes a determination of misuse after December 31, 2002.

Reason for change

Although the SSA has been provided with expanded authority to recover overpayments, these tools cannot be used to recoup benefits misused by a representative payee. Treating benefits misused by non-governmental organization representative payees and all individual payees as overpayments to the representative payee would provide the SSA with additional means for recovering misused payments.

SECTION 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING

Present law

The Social Security Act requires representative payees to submit accounting reports to the Commissioner of Social Security detailing how a beneficiary's benefit payments were used. A report is required at least annually, but may be requested by the Commissioner at any time if the Commissioner has reason to believe the representative payee is misusing benefits.

Explanation of provision

The new provision authorizes the Commissioner of Social Security to require a representative payee to receive any benefits under Titles II, VIII, and XVI in person at a Social Security field office if the representative payee fails to provide an annual accounting of benefits report. The Commissioner would be required to provide proper notice and the opportunity for a hearing prior to redirecting benefits to the field office. This provision is effective 180 days after the date of enactment.

Reason for change

Accounting reports are an important means of monitoring the activities of representative payees to prevent fraud and abuse. Redirecting benefit payments to the field office would enable the agency to promptly address the failure of the representative payee to file a report.

SUBTITLE B: ENFORCEMENT

SECTION 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES

Present law

The Social Security Act authorizes the Commissioner to impose a civil monetary penalty (of up to $5,000 for each violation) along with an assessment (of up to twice the amount wrongly paid), upon any person who knowingly uses false information or knowingly omits information to wrongly obtain Title II, VIII or XVI benefits.

Explanation of provision

The new provision expands the application of civil monetary penalties to include misuse of Title II, VIII or XVI benefits by representative payees. A civil monetary penalty of up to $5,000 may be imposed for each violation, along with an assessment of up to twice the amount of misused benefits. This provision applies to violations occurring after the date of enactment.

Reason for change

Providing authority for SSA to impose civil monetary penalties along with an assessment of up to twice the amount of misused benefits, in addition to the SSA's

present authority permitting recovery of misused funds, would provide the SSA with an additional means of addressing misuse by representative payees.

TITLE II. PROGRAM PROTECTIONS

SECTION 201. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS

Present law

Changes in work or earnings status can affect a Title II disability beneficiary's right to continued entitlement to disability benefits. Changes in the amount of earned income can also affect an SSI recipient's continued eligibility for SSI benefits or his or her monthly benefit amount.

The Commissioner has promulgated regulations that require Title II disability beneficiaries to report changes in work or earnings status (20 CFR, 404.1588), and regulations that require SSI recipients (or their representative payees) to report any increase or decrease in income (20 CFR, 416.704—416.714).

Explanation of provision

The new provision requires the Commissioner to issue a receipt to a disabled beneficiary (or representative of a beneficiary) who reports a change in his or her work or earnings status. The Commissioner is required to continue issuing such receipts until the Commissioner has implemented a centralized computer file that would record the date on which the disabled beneficiary (or representative) reported the change in work or earnings status.

This provision requires the Commissioner to begin issuing receipts as soon as possible, but no later than one year after the date of enactment. The Committees with jurisdiction over the Social Security Administration, the House Committee on Ways and Means and the Senate Committee on Finance (the Committees), are aware that SSA has developed software known as the Modernized Return to Work System (MRTW). This software will assist SSA employees in recording information about changes in work and earnings status and in making determinations of whether such changes affect continuing entitlement to disability benefits. The software also has the capability of automatically issuing receipts. SSA has informed the Committees that this software is already in use in some of the agency's approximately 1300 local field offices, and that SSA expects to put it into operation in the remainder of the field offices over the next year. The Committees expect that SSA field offices that are already using the MRTW system will immediately begin issuing receipts to disabled beneficiaries who report changes in work or earnings status, and that SSA will require the other field offices to begin issuing receipts as these offices begin using the MRTW system over the next year. For disabled Title XVI beneficiaries, if SSA issues a notice to the beneficiary immediately following the report of earnings that details the effect of the change in income on the monthly benefit amount, this notice would serve as a receipt.

Reason for change

Witnesses have testified before the Social Security Subcommittee and the Human Resources Subcommittee of the House Ways and Means Committee that SSA does not currently have an effective system in place for processing and recording Title II and Title XVI disability beneficiaries' reports of changes in work and earnings status. Issuing receipts to disabled beneficiaries who make such reports would provide them with proof that they had properly fulfilled their obligation to report these changes.

SECTION 202. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE

Present law

The welfare reform law (''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' P.L. 104–193) included provisions making persons ineligible to receive SSI benefits during any month in which they are fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole. However, the same prohibition does not apply to Social Security benefits under Title II.

Explanation of provision

The new provision makes persons ineligible to receive Social Security benefits under Title II during any month in which they are fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole. However, the Commissioner may, for good cause, pay withheld benefits to persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony. Finally, the Commissioner, upon written request by law enforcement officials, shall assist such officials in apprehending fugitives by providing them with the address, Social Security number, and, if available to SSA, a photograph of the fugitive.

This provision is effective on the first day of the first month that begins on or after the date that is 9 months after the date of enactment.

Reason for change

The Inspector General has estimated that persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or in violation of a condition of probation or parole, receive at least $39 million in Title II Social Security benefits annually. The Inspector General has recommended that the law be changed to prohibit these individuals from receiving such benefits.

Under this provision, the Commissioner would be required to develop regulations within one year of the date of enactment with regard to the use of the ''good cause'' exception to withholding Title II benefits from persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony. The good cause exception will provide the Commissioner with the ability to pay benefits under unusual circumstances in which the Commissioner deems the withholding of benefits to be inappropriate. The Committees expect that one of the uses to be made by the Commissioner of this discretionary authority will be to deal with situations that arise when Social Security beneficiaries are found to be in flight from a warrant relating to a crime for which the beneficiary is ultimately not convicted. In such circumstances, it is expected that the absence of a conviction should serve as a basis for paying any benefits withheld from the beneficiary during a period of flight.

The Committees have been made aware of situations in which the violation of a condition of probation or parole could involve mitigating circumstances that may warrant further examination regarding the denial of benefits created by this section. The Committees plan to work with the Commissioner of Social Security to further examine such situations in order to evaluate whether the current good faith exception is sufficient.

SECTION 203. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION

Present law

Section 1140 of the Social Security Act prohibits or restricts various activities involving the use of Social Security and Medicare symbols, emblems, or references which give a false impression that an item is approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services), or the Department of Health and Human Services. It also provides for the imposition of civil monetary penalties with respect to violations of the section.

Explanation of provision

Several individuals and companies offer Social Security services for a fee even though the same services are available directly from SSA free of charge. The new provision requires persons or companies offering such services to include in their solicitations a statement that the services which they provide for a fee are available directly from SSA free of charge. The statements would be required to comply with standards promulgated through regulation by the Commissioner of Social Security with respect to their content, placement, visibility, and legibility. The amendment applies to solicitations made after the 6th month following the issuance of these standards. The new provision requires that the Commissioner promulgate regulations within 1 year after the date of enactment.

Reason for change

Several individuals and companies offer Social Security services for a fee even though the same services are available directly from SSA free of charge. For example, SSA's Inspector General has encountered business entities that have offered assistance to individuals in changing their names (upon marriage) or in obtaining a Social Security number (upon the birth of a child) for a fee. These practices can mislead and deceive senior citizens, newlyweds, new parents, and other individuals seeking services who may not be aware that SSA provides these services for free.

SECTION 204. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES

Present law

An attorney in good standing is entitled to represent claimants before the Commissioner of Social Security. The Commissioner may prescribe rules and regulations governing the recognition of persons other than attorneys representing claimants before the Commissioner. Under present law, attorneys disbarred in one jurisdiction, but licensed to practice in another jurisdiction, must be recognized as a claimant's representative.

Explanation of provision

The new provision authorizes the Commissioner to refuse to recognize as a representative, or disqualify as a representative, an attorney who has been disbarred or suspended from any court or bar, or who has been disqualified from participating in or appearing before any Federal program or agency. Due process (i.e., notice and an opportunity for a hearing) would be required before taking such action. Also, if a representative has been disqualified or suspended as a result of collecting an unauthorized fee, full restitution is required before reinstatement can be considered. This provision is effective upon the date of enactment.

Reason for change

This provision would provide additional protections for beneficiaries who may rely

on representatives during all phases of their benefit application process. As part their ongoing oversight of claimant representatives, the Committees intend to review whether options to establish protections for claimants represented by non-attorneys should be considered.

SECTION 205. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF THE SOCIAL SECURITY ACT

Present law

No provision.

Explanation of provision

The new provision imposes a fine of not more than $5,000, and imprisonment of not more than 3 years, or both, for attempting to intimidate or impede—corruptly or by using force or threats of force—any Social Security Administration (SSA) officer, employee or contractor (including State employees of disability determination services and any individuals designated by the Commissioner) while they are acting in their official capacities under the Social Security Act. If the offense is committed only by threats of force, however, the offender is subject to a fine of not more than $3,000 and/or no more than one year in prison. This provision is effective upon enactment.

Reason for change

This provision extends to SSA employees the same protections provided to employees of the Internal Revenue Service under the Internal Revenue Code of 1954. These protections will allow SSA employees to perform their work with more confidence that they will be safe from harm.

The Internal Revenue Manual defines the term ''corruptly'' as follows: '''Corruptly' characterizes an attempt to influence any official in his or her official capacity under this title by any improper inducement. For example, an offer of a bribe or a passing of a bribe to an Internal Revenue employee for the purpose of influencing him or her in the performance of his or her official duties is corrupt interference with the administration of federal laws.'' (Internal Revenue Manual, [9.5] 11.3.2.2, 4–09–1999).

The Committees expect that judgment will be used in enforcing this section. Social Security and SSI disability claimants and beneficiaries, in particular, are frequently subject to multiple, severe life stressors, which may include severe physical, psychological, or financial difficulties. In addition, disability claimants or beneficiaries who encounter delays in approval of initial benefit applications or in post-entitlement actions may incur additional stress, particularly if they have no other source of income. Under such circumstances, claimants or beneficiaries may at times express frustration in an angry manner, without truly intending to threaten or intimidate SSA employees. In addition, approximately 25% of Social Security disability beneficiaries and 35% of disabled SSI recipients have mental impairments, and such individuals may be less able to control emotional outbursts. These factors should be taken into account in enforcing this provision.

SECTION 206. USE OF SYMBOLS, EMBLEMS OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE

Present law

Section 1140 of the Social Security Act prohibits (subject to civil penalties) the use of Social Security or Medicare symbols, emblems and references on any item in a manner that conveys the false impression that such item is approved, endorsed or authorized by the Social Security Administration, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services) or the Department of Health and Human Services.

Explanation of provision

The new provision expands the prohibition in present law to several other references to Social Security and Medicare. This provision applies to items sent after 180 days after the date of enactment.

Reason for change

Expansion of this list helps to ensure that individuals receiving any type of mail, solicitations or flyers bearing symbols, emblems or names in reference to Social Security or Medicare are not misled into believing that these agencies approved or endorsed the services or products depicted in the solicitations.

SECTION 207. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY

Present law

An individual entitled to disability benefits under Title II is entitled to a ''trial work period'' to test his or her ability to work. The trial work period allows beneficiaries to work with earnings above the substantial gainful activity level for up to 9 months (which need not be consecutive) without any loss of benefits. A month counts as a trial work period month if the individual earns above a level established by regulation (in 2002, this amount is $560 a month). If the individual does not use the full 9 months within a 60 month period, he or she is entitled to another 9 month trial work period.

SSA's Inspector General has pursued prosecution of Title II disability beneficiaries who fraudulently conceal work activity by applying several criminal statutes, including section 208(a) of the Social Security Act and sections 371 and 641 of Title 18 of the United States Code (Crimes and Criminal Procedures).

Explanation of provision

Under the new provision, an individual who is convicted of fraudulently concealing work activity during the trial work period would not be entitled to receive a disability benefit for trial work period months that occur prior to the conviction but within the same period of disability. If the individual had already been paid benefits for these months, he or she would be liable for repayment of these benefits, in addition to any restitution, penalties, fines, or assessments that were otherwise due.

In order to be considered to be fraudulently concealing work activity under this provision, the individual must have: (1) provided false information to SSA about his or her earnings during that period; (2) worked under another identity, including under the social security number of another person or a false social security number; or (3) taken other actions to conceal work activity with the intent to fraudulently receive benefits that he or she was not entitled to.

This provision is effective with respect to work activity performed after the date of enactment.

Reason for change

Under current law, if an individual is convicted of fraudulently concealing work activity, the dollar loss to the government is calculated based on the benefits that the individual would have received had he or she not concealed the work activity. During the trial work period, disability beneficiaries continue to receive their monthly benefit amount no matter how much they earn. Therefore, benefits received during the trial work period are not included in calculating the total dollar loss to the government.

Many United States Attorneys set dollar-loss thresholds that they use in determining which fraud cases to prosecute. As benefits received during the trial work period are not included in the dollar-loss totals, the dollar loss to the government may fall below the thresholds set by the United States Attorneys in cases involving fraudulent concealment of work by Title II disability beneficiaries. In such situations, the case would not be prosecuted even if the evidence of fraud was very clear.

This provision rectifies this situation by establishing that individuals convicted of fraudulently concealing work activity during the trial work period are not entitled to receive a benefit for trial work period months prior to the conviction (but within the same period of disability). As a result, in such cases the total dollar loss to the government that is calculated will be greater and more likely to meet the United States Attorneys' thresholds for prosecution.

TITLE III—ATTORNEY REPRESENTATIVE FEE PAYMENT SYSTEM IMPROVEMENTS

SECTION 301. CAP ON ATTORNEY REPRESENTATIVE ASSESSMENTS

Present law

The Social Security Act allows the fees of claimant representatives who are attorneys to be paid by the SSA directly to the attorney out of the claimant's past-due benefits for Title II claims. The SSA, by law, is permitted to charge an assessment at a rate not to exceed 6.3% of approved attorney fees, for the costs of determining, processing, withholding and distributing attorney representative fees for Title II claims.

Explanation of provision

The new provision imposes a cap of $75 on the 6.3% assessment on approved attorney representative fees for Title II claims, and this cap is indexed for inflation. This provision is effective 180 days after the date of enactment.

Reason for change

Testimony was given at a House oversight hearing in May 2001 on Social Security's processing of attorney representative's fees that the amount of the fee assessment is unfair to these attorneys, who provide an important service to claimants. The attorneys who receive fee payments from the agency have their gross revenue reduced by 6.3%, which is about a 20% reduction in the net revenue for most attorneys. As a result of this revenue loss and the time it takes for the SSA to issue the fee payments to attorneys, a number of attorneys have decided to take fewer or none of these cases. The cap on the amount of the assessment would help ensure that enough attorneys remain available to represent claimants before the Social Security Administration.

The Committees continue to be concerned about the agency's processing time for attorney representative fee payments and expect the SSA to further automate the payment process as soon as possible.

The Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate will request the General Accounting Office to conduct a study of claimant representation in the Social Security and Supplemental Security Income programs. The study will include an evaluation of the potential advantages and disadvantages of extending the fee withholding process to non-attorney representatives.

TITLE IV: MISCELLANEOUS AND TECHNICAL AMENDMENTS

SUBTITLE A: AMENDMENTS RELATING TO THE TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999

SECTION 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS

Present law

Section 234 of the Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. These projects can test: (1) alternative methods of treating work activity of individuals entitled to disability benefits; (2) the alteration of other limitations and conditions that apply to such individuals (such as an increase in the length of the trial work period); and (3) implementation of sliding scale benefit offsets. To conduct the projects, the Commissioner may waive compliance with the benefit requirements of Title II and Section 1148, and the HHS Secretary may waive the benefit requirements of Title XVIII. The Commissioner's authority to conduct demonstration projects terminates on December 17, 2004, five years after its enactment in the ''Ticket to Work and Work Incentives Improvement Act of 1999''(P.L. 106–170, ''Ticket to Work Act'').

Explanation of provision

The new provision clarifies that the Commissioner is authorized to conduct demonstration projects that extend beyond December 17, 2004, if such projects are initiated on or before that date (i.e., initiated within the five-year window after enactment of the Ticket to Work Act). This provision is effective upon enactment.

Reason for change

The current five-year limitation on waiver authority restricts the options that may be tested to improve work incentives and return to work initiatives, as several potential options the Commissioner may test would extend past the current five-year limit. As developing a well-designed demonstration project can require several years, the current five-year authority may in some cases not allow sufficient time to both design the project and to conduct it long enough to obtain reliable data.

SECTION 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

Present law

Section 234 of the Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. In addition, the Ticket to Work Act specifically directs the Commissioner to conduct demonstration projects for the purpose of evaluating a program for Title II disability beneficiaries under which benefits are reduced by $1 for each $2 of the beneficiary's earnings above a level determined by the Commissioner. To permit a thorough evaluation of alternative methods, section 302 of the Ticket to Work Act allows the Commissioner to waive compliance with the benefit provisions of Title II and allows the Secretary of Health and Human Services to waive compliance with the benefit requirements of Title XVIII.

Explanation of provision

The new provision allows the Commissioner to also waive requirements in Section 1148 of the Social Security Act, which governs the Ticket to Work and Self-Sufficiency Program (Ticket to Work Program), as they relate to Title II. This provision is effective upon enactment.

Reason for change

This additional waiver authority is needed to allow the Commissioner to effectively test the $1-for-$2 benefit offset in combination with return to work services under the Ticket to Work Program. Under the $1-for-$2 benefit offset, earnings of many beneficiaries may not be sufficient to completely eliminate benefits. However, under section 1148 of the Social Security Act, benefits must be completely eliminated before employment networks participating in the Ticket to Work Program are eligible to receive outcome payments. Therefore, employment networks are likely to be reluctant to accept tickets from beneficiaries participating in the $1-for-$2 benefit offset demonstration, making it impossible for SSA to effectively test the combination of the benefit offset and these return to work services. Additionally, section 1148 waiver authority was provided for the broad Title II disability demonstration authority under section 234 of the Social Security Act, but not for this mandated project.

SECTION 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

Present law

The Ticket to Work Act provides that the benefits and administrative expenses of conducting the $1-for-$2 demonstration projects will be paid out of the Old-Age, Survivors, and Disability Insurance (OASDI) and Federal Hospital Insurance and Federal Supplementary Medical Insurance (HI/SMI) trust funds, to the extent provided in advance in appropriations acts.

Explanation of provision

The new provision establishes that administrative expenses for the $1-for-$2 demonstration project will be paid out of otherwise available annually-appropriated funds, and that benefits associated with the demonstration project will be paid from the OASDI or HI/SMI trust funds. This provision is effective upon enactment.

Reason for change

For demonstration projects conducted under the broader Title II demonstration project authority under section 234 of the Social Security Act, administrative costs are paid out of otherwise available annually-appropriated funds, and benefits associated with the demonstration projects are paid from the OASDI or HI/SMI trust funds. This provision would make funding sources for the $1 for $2 demonstration project under the Ticket to Work Act consistent with funding sources for other Title II demonstration projects.

SECTION 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS

Present law

Section 1149 of the Social Security Act (the Act), as added by the Ticket to Work Act, directs SSA to establish a community-based work incentives planning and assistance program to provide benefits planning and assistance to disabled beneficiaries. To establish this program, SSA is required to award cooperative agreements (or grants or contracts) to State or private entities. In fulfillment of this requirement, SSA has established the Benefits Planning, Assistance, and Outreach (BPAO) program. BPAO projects now exist in every state.

Section 1150 of the Act authorizes SSA to award grants to State protection and advocacy (P&A) systems so that they can provide protection and advocacy services to disabled beneficiaries. Under this section, services provided by participating P&A systems may include: (1) information and advice about obtaining vocational rehabilitation (VR) and employment services; and (2) advocacy or other services that a disabled beneficiary may need to secure or regain employment. SSA has established the Protection and Advocacy to Beneficiaries of Social Security (PABSS) Program pursuant to this authorization.

To be eligible for services under either the BPAO or PABSS programs, an individual must be a ''disabled beneficiary'' as defined under section 1148(k) of the Act. Section 1148(k) defines a disabled beneficiary as an individual entitled to Title II benefits based on disability or an individual who is eligible for federal Supplemental Security Income (SSI) cash benefits under Title XVI based on disability or blindness.

Explanation of provision

The new provision expands eligibility for the BPAO and PABSS programs under section 1149 and 1150 of the Act to include not just individuals who are ''disabled beneficiaries'' under section 1148(k) of the Act, but also individuals who (1) are no longer eligible for SSI benefits because of an increase in earnings, but remain eligible for Medicaid; (2) receive only a State Supplementary payment (a payment that some States provide as a supplement to the federal SSI benefit); or (3) are in an extended period of Medicare eligibility under Title XVIII after a period of Title II disability has ended. The new provision also expands the types of services a P&A system may provide under section 1150 of the Act. Currently P&A systems may provide ''advocacy or other services that a disabled beneficiary may need to secure or regain employment,'' while the new provision allows them to provide ''advocacy or other services that a disabled beneficiary may need to secure, maintain, or regain employment.''

The amendment to section 1149, which affects the BPAO program, is effective with respect to grants, cooperative agreements or contracts entered into on or after the date of enactment. The amendments to section 1150, which affect the PABSS program, are effective for payments provided after the date of the enactment.

Reason for change

The Committees recognize that Social Security and SSI beneficiaries with disabilities face a variety of barriers and disincentives to becoming employed and staying in their jobs. The intent of this provision, as with the Ticket to Work Act, is to encourage disabled individuals to work.

The definition of ''disabled beneficiary'' under section1148(k) of the Act does not include several groups of beneficiaries, including individuals who are no longer eligible for SSI benefits because of an earnings increase but remain eligible for Medicaid; individuals receiving only a State Supplementary payment; and individuals who are in an extended period of Medicare eligibility. The Committees believe that BPAO and PABSS services should be available to all of these disabled beneficiaries regardless of Title II or SSI payment status. Beneficiaries may have progressed beyond eligibility for federal cash benefits but still be in need of information about the effects of work on their benefits, or in need of advocacy or other services to help them maintain or regain employment. Extending eligibility for the BPAO and PABSS programs to beneficiaries who are receiving State Supplemental payments or are still eligible for Medicare or Medicaid, but who are no longer eligible for federal cash benefits, will help to prevent these beneficiaries from returning to the federal cash benefit rolls and help them to reach their optimum level of employment.

The Committees also intend that PABSS services be available to provide assistance to

beneficiaries who have successfully obtained employment but who continue to encounter job-related difficulties. Therefore, the new provision extends the current PABSS assistance (which is available for securing and regaining employment) to maintaining employment—thus providing a continuity of services for disabled individuals throughout the process of initially securing employment, the course of their being employed and, if needed, their efforts to regain employment. This provision would ensure that disabled individuals would not face a situation in which they would have to wait until they lost their employment in order to once again be eligible to receive PABBS services. Payments for services to maintain employment would be subject to Section 1150(c) of the Social Security Act. The Committees will continue to monitor the implementation of PABSS programs to ensure that assistance is directed to all areas in which beneficiaries face obstacles in securing, maintaining, or regaining work.

SECTION 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

Present law

Under section 52 of the Internal Revenue Code (IRC), employers may claim a Work Opportunity Tax Credit (WOTC) if they hire, among other individuals, individuals with disabilities who have been referred by a State vocational rehabilitation (VR) agency. For an individual to qualify as a vocational rehabilitation referral under section 51(d)(6)(B) of the IRC, the individual must be receiving or have completed vocational rehabilitation services pursuant to: (i) ''an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973;'' or (ii) ''a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.'' (IRC, section 51(d)(6)(B).

The WOTC is equal to 40% of the first $6,000 of wages paid to newly hired employees during their first year of employment when the employee is retained for at least 400 work hours. As such, the maximum credit per employee is $2,400, but the credit may be less depending on the employer's tax bracket. A lesser credit rate of 25% is provided to employers when the employee remains on the job for 120–399 hours. The amount of the credit reduces the company's deduction for the employee's wages.

The Ticket to Work Act established the Ticket to Work and Self-Sufficiency Program (Ticket to Work Program) under section 1148 of the Social Security Act. Under this program, SSA provides a ''ticket'' to eligible Social Security Disability Insurance beneficiaries and Supplemental Security Income beneficiaries with disabilities that allows them to obtain employment and other support services from an approved ''employment network'' of their choice. Employment networks may include State, local, or private entities that can provide directly, or arrange for other organizations or entities to provide, employment services, VR services, or other support services. State VR agencies have the option of participating in the Ticket to Work Program as employment networks. Employment networks must work with each beneficiary they serve to develop an individual work plan (IWP) for that beneficiary that outlines his or her vocational goals, and the services needed to achieve those goals. For VR agencies that participate in the Ticket to Work Program, the individualized written plan for employment (as specified under (i) in paragraph one above) serves in lieu of the IWP.

Under current law, an employer hiring a disabled individual referred by an employment network does not qualify for the WOTC unless the employment network is a State VR agency.

Explanation of provision

The new provision allows employers who hire disabled workers through referrals by employment networks under section 1148 of the Social Security Act to qualify for the WOTC. Specifically, it provides that, for purposes of section 51(d)(6)(B)(i) of the IRC of 1986, an IWP under section 1148 of the Social Security Act shall be treated as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.

This provision is effective as if it were included in section 505 of the Ticket to Work Act.

Reason for change

The Ticket to Work Program was designed to increase choice available to beneficiaries when they select providers of employment services. Employers hiring individuals with disabilities should be able to qualify for the WOTC regardless of whether the employment referral is made by a public or private service provider. This amendment updates eligibility criteria for the WOTC to conform to the expansion of employment services and the increase in number and range of VR providers as a result of the enactment of the Ticket to Work Act.

SUBTITLE B. MISCELLANEOUS AMENDMENTS

SECTION 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT

Present Law

The Social Security Act requires SSA to file a hearing transcript with the District Court for any SSA hearing that follows a court remand of an SSA decision.

Explanation of provision

The new provision clarifies that SSA is not required to file a transcript with the court when SSA, on remand, issues a decision fully favorable to the claimant. This provision is effective upon enactment.

Reason for change

A claimant whose benefits have been denied is provided a transcript of a hearing to be used when the claimant appeals his case in Federal District court. If the Administrative Law Judge issues a fully favorable decision, then transcribing the hearing is unnecessary since the claimant would not appeal this decision.

SECTION 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES

Present law

In most cases, the Social Security Act prohibits the payment of Social Security benefits to non-citizens who are deported from the United States. However, the Act does not prohibit the payment of Social Security benefits to non-citizens who are deported for smuggling other non-citizens into the United States.

Explanation of provision

The new provision requires SSA to suspend benefits of beneficiaries who are removed from the United States for smuggling aliens. This provision applies to individuals for whom the Commissioner receives a removal notice from the Attorney General after the date of enactment.

Reason for change

Individuals who are removed from the United States for smuggling aliens have committed an act that should prohibit them from receiving Social Security benefits.

SECTION 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS

Present law

The Federal Reports Elimination and Sunset Act of 1995 ''sunsetted'' most annual or periodic reports from agencies to Congress that were listed in a 1993 House inventory of congressional reports.

Explanation of provision

The new provision reinstates the requirements for several periodic reports to Congress that were subject to the 1995 ''sunset'' Act, including annual reports on the financial solvency of the Social Security and Medicare programs (the Board of Trustees' reports on the OASDI, HI, and SMI trust funds) and annual reports on certain aspects of the administration of the Title II disability program (the SSA Commissioner's reports on pre-effectuation reviews of disability determinations and continuing disability reviews). The provision is effective upon enactment.

Reason for change

The reports to be reinstated provide Congress with important information needed to evaluate and oversee the Social Security and Medicare programs.

SECTION 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS

Present law

Under the definitions of ''widow'' and ''widower'' in Section 216 of the Social Security Act, a widow or widower must have been married to the deceased spouse for at least nine months before his or her death in order to be eligible for survivor benefits.

Explanation of provision

The new provision creates an exception to the nine-month requirement for cases in which the Commissioner finds that the claimant and the deceased spouse would have been married for longer than nine months but for the fact that the deceased spouse was legally prohibited from divorcing a prior spouse who was in a mental institution. The provision is effective for benefit applications filed after the date of enactment.

Reason for change

This provision allows the Commissioner to issue benefits in certain unusual cases in which the duration of marriage requirement could not be met due to a legal impediment over which the individual had no control and the individual would have met the legal requirements were it not for the legal impediment.

SECTION 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER

Present law

In cases where there is an agreement with a foreign country (i.e., a totalization agreement), a worker's earnings are exempt from United States Social Security payroll taxes when those earnings are subject to the foreign country's retirement system.

Explanation of provision

The new provision clarifies the legal authority to exempt a worker's earnings from United States Social Security tax in cases where the earnings were subject to a foreign country's retirement system in accordance with a U.S. totalization agreement, but the foreign country's law does not require compulsory contributions on those earnings. The provision establishes that such earnings are exempt from United States Social Security tax whether or not the worker elected to make contributions to the foreign country's retirement system.

The provision is effective upon enactment.

Reason for change

In U.S. totalization agreements, a person's work is generally subject to the Social Security laws of the country in which the work is performed. In most cases the worker, whether subject to the laws of the United States or the other country, is compulsorily covered and required to pay contributions in accordance with the laws of that country. In some instances, however, work that would be compulsorily covered in the U.S. is excluded from compulsory coverage in the other country (such as Germany). In such cases, the IRS has questioned the exemption from U.S. Social Security tax for workers who elect not to make contributions to the foreign country's retirement system. This provision would remove any question regarding the exemption and would be consistent with the general philosophy behind the coverage rules of totalization agreements.

SECTION 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY

Present law

Under Section 218 of the Social Security Act, a State may choose whether or not its State and local government employees who are covered by an employer-sponsored pension plan may also participate in the Social Security Old-Age, Survivors, and Disability Insurance program. (In this context, the term ''employer-sponsored pension plan'' refers to a pension, annuity, retirement, or similar fund or system established by a State or a political subdivision of a State such as a town. Under current law, State or local government employees not covered by an employer-sponsored pension plan already are, with a few exceptions, mandatorily covered by Social Security.)

Social Security coverage for employees covered under a State or local government employer-sponsored pension plan is established through an agreement between the State and the federal government. In most States, before the agreement can be made, employees who are members of the employer-sponsored pension plan must agree to Social Security coverage by majority vote in referendum. If the majority vote is in favor of Social Security coverage, then the entire group, including those voting against such coverage, will be covered by Social Security. If the majority vote is against Social Security coverage, then the entire group, including those voting in favor of such coverage and employees hired after the referendum, will not be covered by Social Security.

In certain States, however, if employees who already are covered in an employer-sponsored pension plan are not in agreement about whether to participate in the Social Security system, coverage can be extended only to those who choose it, provided that all newly hired employees of the system are mandatorily covered under Social Security. To establish such a divided retirement system, the state must conduct a referendum among members of the employer-sponsored pension plan. After the referendum, the retirement system is divided into two groups, one composed of members who elected Social Security coverage and those hired after the referendum, and the other composed of the remaining members of the employer-sponsored pension plan. Under Section 218(d)(6)(c) of the Social Security Act, 21 states currently have authority to operate a divided retirement system.

Explanation of provision

The new provision permits the state of Kentucky to join the 21 other states in being able to offer a divided retirement system. This system would permit current state and local government workers in an employer-sponsored pension plan to elect Social Security coverage on an individual basis. Those who do not wish to be covered by Social Security would continue to participate exclusively in the employer-sponsored pension plan.

The governments of the City of Louisville and Jefferson County will be merged in January 2003 and a new retirement system will be formed. Under the new provision, each employee under the new system could choose whether or not to participate in the Social Security system in addition to their employer-sponsored pension plan. As under current law, all employees newly hired to the system after the divided system is in place would be covered automatically under Social Security.

This provision is effective on January 1, 2003.

Reason for change

The governments of the City of Louisville and Jefferson County, Kentucky will merge in January, 2003. Currently, some officers and firefighters in employer-sponsored pension plans provided by these governments are covered by Social Security, while others are not. In order to provide fair and equitable coverage to all officers and firefighters, a divided retirement system, such as that currently authorized in 21 other states, was seen as the best solution. Otherwise, upon creation of the new retirement system, a referendum would be held to determine by majority vote whether or not the group would participate in Social Security. As the number of non-covered employees will exceed the number of Social Security-covered employees under the new retirement system, in the absence of this new provision, those employees covered by Social Security could lose that coverage. The Kentucky General Assembly has adopted a bill that will allow the new divided retirement system to go forward following enactment of this provision.

SECTION 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD

Present law

The Social Security Advisory Board is an independent, bipartisan Board established by the Congress under section 703 of the Social Security Act. The 7-member Board is appointed by the President and the Congress to advise the President, the Congress and the Commissioner of Social Security on matters related to the Social Security and Supplemental Security Income programs. Section 703(f) of the Social Security Act provides that members of the Board serve without compensation, except that, while engaged in Board business away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code for persons in the Government who are employed intermittently.

Explanation of provision

The new provision establishes that compensation for Social Security Advisory Board members will be provided, at the daily rate of basic pay for level IV of the Executive Schedule, for each day (including travel time) during which the member is engaged in performing a function of the Board. This provision is effective on January 1, 2002.

Reason for change

Other government advisory boards—such as the Employee Retirement Income Security Act Advisory Council, the Pension Benefit Guaranty Corporation Advisory Committee and the Thrift Savings Plan Board—provide compensation for their members. This provision allows for similar treatment of Social Security Advisory Board members with respect to compensation.

SECTION 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION

Present law

The Government Pension Offset (GPO) was enacted in order to equalize treatment of workers in jobs not covered by Social Security and workers in jobs covered by Social Security, with respect to spousal and survivors benefits. The GPO reduces the Social Security spousal or survivors benefit by two-thirds of the government pension.

However, under what's known as the ''last day rule,'' State and local government workers are exempt from the GPO if their job on their last day of employment was covered by Social Security. In contrast, Federal workers who switched from the Civil Service Retirement System (CSRS), a system that is not covered by Social Security, to the Federal Employee Retirement System (FERS), a system that is covered by Social Security, must work for 5 years under FERS in order to be exempt from the GPO.

Explanation of provision

The new provision requires that State and local government workers be covered by Social Security during their last 5 years of employment in order to be exempt from the GPO. The provision is effective for applications filed after the month of enactment. However, the provision would not apply to individuals whose last day of employment for the State or local governmental entity was covered by Social Security and occurs on or before June 30, 2003, provided that such period of covered employment began on or before December 31, 2002.

Reason for change

The change will establish uniform application of the GPO exemption for all local, State, and federal government workers.

SUBTITLE C. TECHNICAL AMENDMENTS

SECTION 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD

Present law

Section 1143 of the Social Security Act directs ''the Secretary of Health and Human Services'' to send periodic Social Security Statements to individuals.

Explanation of provision

The new provision makes a technical correction to this section by inserting a reference to the Commissioner of Social Security in place of the reference to the Secretary of Health and Human Services. This provision is effective upon enactment.

Reason for change

The ''Social Security Independence and Program Improvements Act of 1994'' (P.L. 103–296) made the Social Security Administration an independent agency separate from the Department of Health and Human Services. This provision updates Section 1143 to reflect that change.

SECTION 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS

Present law

Section 1456 of the ''Small Business Job Protection Act of 1996'' (P.L. 104–188) established that certain retirement benefits received by ministers and members of religious orders (such as the rental value of a parsonage or parsonage allowance) are not subject to Social Security payroll taxes under the Internal Revenue Code. However, under Section 211 of the Social Security Act, these retirement benefits are treated as net earnings from self-employment for the purpose of acquiring insured status and calculating Social Security benefit amounts.

Explanation of provision

The new provision makes a conforming change to exclude these benefits received by retired clergy from Social Security-covered earnings for the purpose of acquiring insured status and calculating Social Security benefit amounts. This provision is effective for years beginning before, on, or after December 31, 1994. This effective date is the same as the effective date of Section 1456 of P.L. 104–188.

Reason for change

P.L. 104–188 provided that certain retirement benefits received by ministers and members of religious orders are not subject to payroll taxes. However, a conforming change was not made to the Social Security Act to exclude these benefits from being counted as wages for the purpose of acquiring insured status and calculating Social Security benefit amounts. This income is therefore not treated in a uniform manner. This provision would conform the Social Security Act to the Internal Revenue Code with respect to such income.

SECTION 423. TECHNICAL CORRECTION RELATING TO DOMESTIC EMPLOYMENT

Present law

Present law is ambiguous concerning the Social Security coverage and tax treatment of domestic service performed on a farm. Domestic employment on a farm appears to be subject to two separate coverage thresholds (one for agricultural labor and another for domestic employees).

Explanation of provision

The new provision clarifies that domestic service on a farm is treated as domestic employment, rather than agricultural labor, for Social Security coverage and tax purposes. This provision is effective upon enactment.

Reason for change

Prior to 1994, domestic service on a farm was treated as agricultural labor and was subject to the coverage threshold for agricultural labor. According to SSA, in 1994, when Congress amended the law with respect to domestic employment, the intent was that domestic employment on a farm would be subject to the coverage threshold for domestic employees instead of the threshold for agricultural labor. However, the current language is unclear, making it appear as if farm domestics are subject to both thresholds.

SECTION 424. TECHNICAL CORRECTION OF OUTDATED REFERENCES

Present law

Section 202(n) and 211(a)(15) of the Social Security Act and Section 3102(a) of the Internal Revenue Code of 1986 each contain outdated references that relate to the Social Security program.

Explanation of provision

The new provision corrects outdated references in the Social Security Act and the Internal Revenue Code by: (1) in Section 202(n) of the Social Security Act, updating references respecting removal from the United States; (2) in Section 211(a)(15) of the Social Security Act, correcting a citation respecting a tax deduction related to health insurance costs of self-employed individuals; and (3) in Section 3102(a) of the Internal Revenue Code of 1986, eliminating a reference to an obsolete 20-day agricultural work test. This provision is effective upon enactment.

Reason for change

Over the years, provisions in the Social Security Act, the Internal Revenue Code and other related laws have been deleted, re-designated or amended. However, necessary conforming changes have not always been made. Consequently, Social Security law contains some outdated references.

SECTION 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES

Present law

The Social Security Act and the Internal Revenue Code provide that, in the absence of a partnership, all self-employment income from a trade or business operated by a married person in a community property State is deemed to be the husband's unless the wife exercises substantially all of the management and control of the trade or business.

Explanation of provision

Under the new provision, self-employment income from a trade or business that is not a partnership, and that is operated by a married person in a community property State, is taxed and credited to the spouse who is carrying on the trade or business. If the trade or business is jointly operated, the self-employment income is taxed and credited to each spouse based on their distributive share of gross earnings. This provision is effective upon enactment.

Reason for change

Present law was found to be unconstitutional in several court cases in 1980. Since then, income from a trade or business that is not a partnership in a community property State has been treated the same as income from a trade or business that is not a partnership in a non-community property State—it is taxed and credited to the spouse who is found to be carrying on the business.

This change will conform the provisions in the Social Security Act and the Internal Revenue Code to current practice in both community property and non-community property States.

SECTION 426. TECHNICAL CHANGES TO THE RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT ACT OF 2001

Present law

See Public Law 107–90.

Explanation of provisions

Quorum rules

This technical change clarifies that, under Section 105 of the Act, a vacancy on the Board of National Railroad Retirement Investment Trust (NRRIT) does not preclude the Board from making changes in the Investment Guidelines with the unanimous vote of all remaining Trustees.

Transfers

This technical change clarifies that under Section 107 of the Act, the Railroad Retirement Board (RRB) can require the NRRIT to transfer amounts necessary to pay benefits to the Railroad Retirement Account (RRA) and that excess Social Security Equivalent Benefits (SSEB) Account assets can be transferred to the RRA for investment in federal securities until used to pay benefits.

Investment authority

This technical change clarifies that, under Section 105 of the Act, the Board of the NRRIT has the authority to invest the assets with the assistance of its own professional staff or by retaining outside advisors and managers.

Clerical changes

This provision makes a number of grammatical and typographical corrections to the Act.

Reason for change

All four changes are purely technical in nature and are needed to promote the efficient implementation of the Railroad Retirement and Survivors' Improvement Act of 2001.

SOCIAL SECURITY

MEMORANDUM

Date: November 18, 2002
To: Stephen C. Goss, Chief Actuary
From: Chris Chaplain, Actuary, Alice H. Wade, Deputy Chief Actuary
Subject: Estimated Long-Range OASDI Financial Effects of the Social Security Program Protection Act of 2002, as Amended by the Senate Finance Committee—Information.

This memorandum provides long-range estimates of the financial effect on the Social Security (OASDI) program for enactment of the Social Security Program Protection Act of 2002 (H.R. 4070), as passed by the House on June 26, 2002 and amended by the Senate Finance Committee. This legislation contains 35 provisions, including the following:

Provide additional safeguards for Social Security beneficiaries with representative payees, such as requiring periodic onsite reviews, holding payees liable or assessing penalties for misused benefits.

Grant the authority to assess civil monetary penalties for corrupt or forcible interference with the administration of the Social Security Act, and wrongful conversion by representative payees.

Deny title II benefits to fugitive felons, persons fleeing prosecution, and probation or parole violators.

Limit the amount of attorney fee assessments to the lower of 6.3% of the fee or $75. The $75 threshold would be indexed annually by cumulative changes in the Social Security cost-of-living adjustment (COLA), but future threshold amounts would be rounded to the next lower multiple of $10. However, the threshold amount would never go below $75.

Make several amendments to demonstration projects under the Ticket to Work Act.

Extend the right to have a divided retirement system for public employees in the state of Kentucky.

Replace the ''last day'' requirement for exemption from the Government Pension Offset with a ''last 5 years'' requirement—that is, the beneficiary would have to work in a position covered by Social Security and by the government pension plan for the last 5 years of such employment, rather than the last day.

Make miscellaneous technical amendments.

The estimated long-range OASDI financial effect of each provision of the legislation is either no change or a change in the actuarial balance that is negligible (less than 0.0005 percent of taxable payroll). Taken as a whole, the legislation would result in an increase in the OASDI actuarial balance that is estimated to be negligible. In addition, enactment of this legislation would change neither the first year that annual costs are expected to exceed tax income (2017) nor the year that the combined OASI and DI Trust Funds are expected to become exhausted (2041). The provisions in the legislation are generally effective with the date of enactment of the legislation, which we assume to be January 1, 2003. All estimates included in this memorandum are based on the intermediate assumptions of the 2002 Trustees Report.

Mr. REID. I ask unanimous consent that the substitute amendment be agreed to; the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4967) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (H.R. 4070), as amended, was read the third time and passed.

ORDERS FOR TUESDAY, NOVEMBER 19, 2002

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9 a.m., Tuesday, November 19; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate proceed under the previous order; further, that the Senate recess from 12:30 to 2:15 tomorrow for the weekly party conferences, and if the Senate is proceeding under cloture, this time be charged against the cloture 30 hours.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. REID. Under the previous order, there will be a series of rollcall votes in relation to homeland security beginning at approximately 10:30 tomorrow morning.

ORDER FOR ADJOURNMENT

Mr. REID. I ask unanimous consent that if there is no further business to come before the Senate, the Senate stand in adjournment following the statement of the Senator from Alabama.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama is recognized.

NOMINATION OF DENNIS SHEDD

Mr. SESSIONS. Mr. President, in his absence, I want to share some thoughts I have about Judge Dennis Shedd, who has been nominated for the Fourth Circuit Court of Appeals. Judge Shedd is a superb nominee. He served 12 years on the Federal bench as a Federal district trial judge, hearing some 5,000 cases. He was rated by the American Bar Association, which goes around and interviews fellow judges, State court judges, and lawyers on both sides of cases. They get their opinions about how the judge has performed and they issue an independent rating.

We conservatives have sometimes complained about their ratings, saying they tend to be more favorable to more liberal-type judges. But in this case, they rated Judge Shedd the highest possible rating, well-qualified. They have about a 15-member committee that actually votes on all the paperwork that has been put together, and the ABA investigation is quite a deal.

Frankly, I believe it is very valuable to this process. I always have. I was talking recently to Senator-elect Lindsey Graham from South Carolina, who will be replacing Senator THURMOND. We were talking about Dennis Shedd. Lindsey has been a practicing attorney for many years and had been in court a lot. What he said to me was exactly the way I feel about these things. He said: You know, when a person has been on the bench 12 years, everybody knows whether they are any good or not. In a State like South Carolina, there are not that many Federal judges. Lawyers go into their courts all the time. The fact is, after a few years, everybody knows whether they are any good or not. These lawyers support Judge Shedd. The American Bar Association has supported Judge Shedd.

I have looked at some of the complaints that have been made about his record. I find them not only wrong, but in fact he should have been commended for the rulings he has made. I would like to share a few thoughts on that.

One is that he has served the Judicial Conference of the United States during his tenure, 12 years as a Federal judge, serving on the Judicial Branch Committee and the Subcommittee on Judicial Independence. It is a mark of respect for a trial judge in the United States to be chosen to serve on key committees of the Judicial Conference. Most judges are not on these committees.

From 1978 through 1988, he served on the Senate Judiciary Committee staff in this body. He is known by many of the Senators. He served as chief counsel and staff director for the Senate Judiciary Committee for Senator STROM THURMOND. According to the Almanac of Federal Judiciary, the attorneys rate judges and make comments about judges. You go before a judge and want to know something about them. Lawyers have books on them. This is what they say about him. They say he has outstanding legal skills and excellent judicial temperament. A few comments from South Carolinians were included: ''You are not going to find a better judge on the bench or one who works harder.'' ''He is the best Federal judge we have,'' said one attorney. ''He gets an A all around,'' said another. ''It is a great experience trying cases before him,'' said an attorney.

I like that. I tried a lot of cases and some cases you go to trial before a judge and it is miserable. A good judge can make the practice of law a pleasure.

''He is bright in business,'' said another. Everyone knows that is true. Plaintiff lawyers who seem to be stirring this opposition up have commended him for being evenhanded. ''He has always been fair.'' Another plaintiffs lawyer says: ''I have no complaints about him. He is nothing if not fair.''

Judge Shedd will bring experience to the bench, having tried 4,000 to 5,000 cases as a district judge. That will be more trial experience than any of the other Federal judges on the Fourth Circuit Court of Appeals. Trial experience is the crucible for training an appellate judge. Some can do well without it.

As a practicing lawyer trying cases in Federal court full time as a U.S. attorney, and in private practice, as an assistant U.S. attorney, I understand Federal judges. I respect Federal judges. I know they learn from that trial bench. That will help them better when they read a written record to see if a judge made a mistake or not. Trial experience is helpful.

They say this is some sort of a circuit that is too conservative. I don't believe this circuit is at all that way. I note the last five judges appointed to the Fourth Circuit have been Democrats. Some people have forgotten what President Bush did. Judge Gregory, who had been nominated for the circuit and who was not confirmed by this Senate before President Clinton left office was renominated. President Bush, in extending his hand of bipartisanship, reached out and took this African-American jurist and renominated him to the court as an act of bipartisanship. Judge Gregory was a Democrat, a Clinton nominee, and had not been confirmed. President Bush, shortly after he took office, renominated him. Of course, he was confirmed just like that.

The other judges who were nominated at the same time have not moved so well.

But there are 11 cases that Judge Shedd has ruled on that have been reviewed by Judge Gregory. He has affirmed all 11 of them. It is unfair to suggest this is somehow a radical judge who is out of step. One case, Crosby v. South Carolina Department of Health, has been raised, that somehow he made a bad decision on that case. I don't think he did. But regardless of that, people could have a different opinion. That was one of the cases that went to Judge Gregory, President Clinton's nominee. Many members of the Democratic Party were most aggrieved he had not been confirmed by the time President Clinton left office. Judge Gregory agreed with Judge Shedd. He affirmed Judge Shedd's opinion.

That is just typical. Do 5,000 cases and somebody will find something with which to disagree. But, as Lindsey Graham said: Judges have reputations. And to me that means a lot. And this judge, through this career and background, has a good reputation of capability, experience, honesty, and a superb demeanor, making it a pleasure to practice before him.

I just want to say this. I attended the hearings in which Judge Shedd testified, and he was there as long as they wanted him to testify. They submitted all these questions to him, demanding that he explain everything he has ever done. And I heard the complaints, and I read the complaints. I am just going to tell you: They do not hold up.

He was criticized for doing the right thing. He didn't do wrong things. He