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Social Security Program Protection Act of 2002 (H.R. 4070)

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Summary

On June 26, 2002, the House of Representatives passed H.R. 4070 (*Social Security Program Protection Act of 2002*), as amended, by a vote of 425-0. The bipartisan measure would impose stricter standards on individuals and organizations that serve as representative payees for Social Security and Supplemental Security Income (SSI) recipients; make nongovernmental representative payees liable for “misused” funds and subject them to civil monetary penalties; tighten restrictions on attorneys who represent Social Security and SSI disability claimants and limit assessments on attorney fee payments; prohibit fugitive felons from receiving Social Security benefits; and make a number of other changes designed to protect the Social Security programs and recipients from fraud and abuse. The Congressional Budget Office (CBO) estimates that H.R. 4070 would result in net savings of \$541 million over 10 years (fiscal years 2003-2012). This report will be updated as legislative action occurs.

On April 25, 2002, the House Ways and Means Subcommittee on Social Security met to mark up H.R. 4070 (*Social Security Program Protection Act of 2002*) sponsored by Subcommittee Chairman E. Clay Shaw.¹ Representative Shaw offered an amendment in the nature of a substitute making minor changes to the bill as introduced. A second amendment in the nature of a substitute, offered by Representative Matsui, was defeated by a 5-7 vote along party lines.² The Matsui amendment would have expanded H.R. 4070 to include benefit enhancements targeted to divorced spouses and disabled and elderly widow(er)s (provisions reflected in H.R. 4069, as introduced by Representative Shaw on March 20, 2002).³ It also would have increased widow(er)’s benefits from 100% of the

¹ H.R. 4070 is a bipartisan measure co-sponsored by Representative Matsui, the Ranking Democrat on the Social Security Subcommittee, and 17 other Members.

² Many of the same provisions are reflected in H.R. 4671 (*Social Security Widow’s Benefit Guarantee Act of 2002*) introduced by Representative Matsui on May 7, 2002.

³ H.R. 4069 (*Social Security Benefits for Women Enhancement Act of 2002*) is a bipartisan
(continued...)

deceased worker's benefit to 75% of the couple's combined pre-death benefit,⁴ subject to a cap. To pay for the increase, the amendment would have transferred funds from the general fund of the Treasury to the Old-Age and Survivors Insurance (OASI) trust fund in an amount equal to the revenue cost associated with reductions in the highest individual income tax rate bracket for years after 2003 under the *Economic Growth and Tax Relief Reconciliation Act of 2001* (P.L. 107-16). The amounts transferred would have been determined as if the "sunset" provisions of the Act had never been enacted (i.e., as if the tax rate reductions under the Act were to remain in place for years after 2010).⁵

The Shaw amendment in the nature of a substitute was adopted by the Social Security Subcommittee by voice vote. H.R. 4070, as amended, was ordered favorably reported to the Ways and Means Committee by voice vote. On June 25, 2002, the House of Representatives began consideration of H.R. 4070, as amended, under suspension of the rules (the measure did not go before the full Committee). Under suspension of the rules, debate on the measure was limited to 40 minutes, floor amendments were not allowed and a two-thirds majority vote was required for passage. On June 26, 2002, the House passed the bipartisan measure by a vote of 425-0. Major provisions of H.R. 4070, amended, as passed by the House, are described below.⁶

Major Provisions of H.R. 4070

Provisions Affecting Representative Payees. Under current law, the Social Security Administration (SSA) may designate "representative payees" to accept monthly benefits on behalf of Social Security or Supplemental Security Income (SSI) recipients who are considered physically or mentally incapable of managing their own funds, or on behalf of children under age 18. In December 2000, an estimated 10.5% of Social

³ (...continued)

measure co-sponsored by Representative Matsui and 38 other Members. On May 14, 2002, the House considered a manager's amendment to H.R. 4069 under suspension of the rules (the measure did not go before the House Ways and Means Social Security Subcommittee or the full Committee). Under suspension of the rules, debate was limited, floor amendments were not allowed and a two-thirds majority vote was required for passage. The House passed H.R. 4069, as amended, by a vote of 418-0.

⁴ Under current law, a widow(er) receives from 50% to 67% of what the couple had been receiving on a combined basis. A number of proposals would increase the widow(er)'s benefit to 75% of the couple's combined pre-death benefit including H.R. 3497 (*Social Security Guarantee Plus Act*) sponsored by Representative Shaw and two of the three plans recommended by the *President's Commission to Strengthen Social Security*.

⁵ P.L. 107-16, signed into law on June 7, 2001, provides for a gradual reduction in individual income tax rates. To date, the highest income tax rate bracket has dropped from 39.6% to 39.1% for 2001 and to 38.6% for 2002-2003. It is scheduled to drop further to 37.6% for 2004-2005 and to 35% for 2006-2010. After 2010, tax rate reductions under the Act will expire.

⁶ The House-passed version of H.R. 4070, as amended, contains two provisions that were not in the version of the bill approved by the Social Security Subcommittee on April 25, 2002. The first provision would add Kentucky to the list of States that offer coverage under a divided retirement system to public employees, as specified in section 218(d)(6)(C) of the Social Security Act. The second provision would provide compensation for Social Security Advisory Board members.

Security recipients and 33.7% of SSI recipients had representative payees. Examples of individuals and organizations that may serve as a representative payee include a family member or friend who has custody of the recipient; a public agency or non-profit institution that has custody of the recipient; a noncustodial federal institution; a private, for-profit organization licensed under state law that has custody of the recipient; or a member of a community organization. Individual payees are prohibited from charging a fee for their services, but organizational payees (such as Department of Veterans Affairs hospitals, nursing homes and nonprofit agencies) may charge a fee for serving in this capacity.⁷

Under current law, SSA is required to reissue benefits misused by an individual or organizational representative payee if the Commissioner of Social Security (hereafter referred to as the Commissioner) finds that SSA negligently failed to investigate or monitor the payee. H.R. 4070 would eliminate the requirement that reissuance be subject to a finding of negligence on the part of SSA. As a result, SSA would be required to reissue any payments misused by an organizational payee or an individual payee representing 15 or more recipients. Such payments would be reissued directly to the recipient or to an alternative representative payee. The “misuse of benefits” occurs when payments are used by the representative payee for purposes other than the “use and benefit” of the recipient. The bill would authorize the Commissioner to prescribe by regulation the meaning of the term “use and benefit.”

Under current law, representative payees are not liable for misused funds. H.R. 4070 would make individual payees and nongovernmental organizational payees (i.e., those other than federal, state and local government agencies) liable for the reimbursement of misused funds. Such funds would be treated as overpayments to the representative payee (not the recipient) making them subject to current overpayment recovery procedures.

Under current law, qualified organizational payees may be authorized by SSA to receive payment for their services. Those payments are based on a formula specified in the law and are deducted from the recipient’s monthly benefit. H.R. 4070 would require the organization to forfeit fee payments for any month for which the Commissioner or a court of jurisdiction finds that the organization misused all or part of a recipient’s benefit. For such months, fee payments would be treated as a misused part of the recipient’s benefit.

Under current law, the Commissioner may impose a civil monetary penalty and an assessment on persons who knowingly provide false information or knowingly withhold information to obtain Social Security benefits. The civil monetary penalty may be up to \$5,000 for each violation; the assessment may be up to twice the amount of benefits wrongfully paid to the individual. H.R. 4070 would clarify that such penalties may be imposed on persons who fail to notify SSA of changes that affect their eligibility status or benefit amount and would require SSA to provide recipients with written confirmation upon receipt of such notification. In addition, H.R. 4070 would impose the same penalties on representative payees who misuse benefits (a civil monetary penalty of up to

⁷ For more information, refer to: Social Security Administration. Office of the Inspector General. *Organizational Representative Payee Program*. Testimony by Inspector General James G. Huse, Jr. before the Senate Special Committee on Aging, May 2, 2000.

\$5,000 for each violation and an assessment of up to twice the amount of misused benefits).

Under current law, nongovernmental fee-for-service organizational representative payees must be bonded *or* licensed, but they are not required to submit proof of such certification. H.R. 4070 would require such representative payees to be both bonded *and* licensed (if licensing is available in the state) and to submit proof of such certification on an annual basis (along with a copy of any independent audit performed on the organization since the previous certification). H.R. 4070 would require, in addition to existing periodic onsite reviews for state institutions, periodic onsite reviews of individual representative payees who serve 15 or more recipients; nongovernmental fee-for-service organizational representative payees; and any other agency that serves as a representative payee for 50 or more recipients. The bill would require the Commissioner to submit to Congress an annual report on the findings of such reviews including the problems identified and any action taken or planned to correct the problems.

Under current law, individuals are disqualified from acting as a representative payee if they have been convicted of fraudulent conduct involving Social Security programs. H.R. 4070 would extend the restriction to individuals convicted of an offense under federal or state law which results in imprisonment for more than 1 year (unless the Commissioner determines that the individual's designation as a representative payee would be appropriate despite the conviction) and to any individual who is a fugitive felon as defined in the Social Security Act.⁸

Under current law, representative payees are required to complete an annual accounting report form sent to them by SSA describing how a recipient's benefits have been used. (If misuse is suspected, a report may be requested at any time by the Commissioner.) H.R. 4070 would authorize the Commissioner to require a payee to collect a recipient's benefits in person at a local SSA office if he or she fails to submit annual accounting reports.

Provisions Affecting Attorney Claimant Representatives. Social Security and SSI disability claimants may choose to have an attorney or other qualified individual represent them in proceedings before SSA. The representative may charge a fee for his or her services, but the fee must be authorized by SSA under either the fee petition process or the fee agreement process. Under the fee petition process, the representative must file a fee petition with SSA after completing work on a claim (with a copy sent to the claimant). SSA determines the amount of the fee, which is limited to 25% of past-due benefits awarded, based on factors including the complexity of the case and the type of services performed by the representative. Under the more simplified fee agreement process, the representative and the claimant must file a written fee agreement with SSA

⁸ Under Section 1611(e)(4) of the Social Security Act, a fugitive felon is defined as "an individual fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state; or violating a condition of probation or parole imposed under federal or state law."

before a decision is made on the claim. In fee agreement cases, the attorney's fee is limited to 25% of past-due benefits awarded or \$5,300 (whichever is less).⁹

Under current law, if a Social Security claimant is awarded past-due benefits and his or her representative is an attorney, SSA withholds the attorney's fee from the benefit award and pays the attorney directly. If the representative is not an attorney or the claim is for SSI benefits, SSA pays the total amount of the benefit award to the claimant, and the representative must collect his or her fee from that individual. To cover the administrative costs associated with the attorney fee payment process, SSA charges an assessment of up to 6.3% of the attorney's fee (the assessment is deducted from the attorney's fee payment).¹⁰ H.R. 4070 would cap the assessment on attorneys' fees at \$100. In addition, it would extend the attorney fee payment process to SSI claims and require the Commissioner to submit a report to Congress on the feasibility of extending the fee withholding and payment process to *non-attorney* representatives.¹¹

Under current law, attorneys who are licensed to practice must be recognized by SSA as a claimant representative even if they have been disbarred in another jurisdiction. H.R. 4070 would authorize the Commissioner to refuse to recognize as an attorney representative (or disqualify if already recognized) any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice, or who has been disqualified from participating in or appearing before any federal program or agency. Furthermore, H.R. 4070 would authorize the Commissioner to refuse to recognize (or disqualify if already recognized) any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice as a *non-attorney* representative.

Provisions Affecting the Payment of Benefits to Fugitive Felons. Under current law, the Commissioner is authorized to deny SSI benefits to fugitive felons and persons fleeing prosecution. In addition, SSA is required to provide to federal, state and local law enforcement officials, upon written request, the current address, Social Security number and photograph of any SSI recipient who is in fugitive status to assist in the individual's apprehension. H.R. 4070 would further authorize the Commissioner to deny *Social Security* benefits to fugitive felons and persons fleeing prosecution and would require SSA to share information about those individuals with law enforcement officials. In some cases, the Commissioner would be allowed, with good cause, to pay withheld

⁹ The dollar limit for fee agreement cases was increased by regulation from \$4,000 to \$5,300 for fee agreements approved on or after February 1, 2002. In 2000, an estimated 88% of attorney fees were based on fee agreements.

¹⁰ The assessment on attorney fees was enacted under the *Ticket to Work and Work Incentives Improvement Act of 1999* (P.L. 106-170) and set at 6.3% effective January 31, 2000. For each year thereafter, it is set at a rate (not to exceed 6.3%) needed to cover full administrative costs. In 2001 and 2002, the rate has remained unchanged at 6.3%.

¹¹ For more information on the attorney fee payment process, refer to: U.S. General Accounting Office (GAO). *Paying Attorneys Who Represent Disability Applicants*. Testimony by Barbara D. Bovbjerg before the House Ways and Means Subcommittee on Social Security, June 14, 2000; and *Systems Support Could Improve Processing Attorney Fee Payments in the Disability Program*. Testimony by Barbara D. Bovbjerg before the House Ways and Means Subcommittee on Social Security, May 17, 2001.

Social Security benefits (the terms governing the payment of withheld Social Security benefits would be prescribed by regulation).

In addition, H.R. 4070 includes a number of miscellaneous provisions designed to reduce fraud and abuse in the Social Security programs (such as a provision requiring individuals and businesses to notify prospective customers in advance that a product or service being offered for a fee is available directly from SSA free of charge) as well as a number of clarifying and technical amendments to the *Ticket to Work and Work Incentives Improvement Act of 1999* and other aspects of the Social Security program. CBO estimates that H.R. 4070 would result in net savings of \$541 million over 10 years (fiscal years 2003-2012).