International Social Security Agreements

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Summary

International Social Security agreements are bilateral agreements primarily intended to eliminate dual Social Security taxation based on the same work and provide benefit protection for workers who divide their careers between the United States and a foreign country. Most jobs in the United States are covered by Social Security. In addition, the Social Security Act extends Social Security coverage to U.S. citizens and resident aliens who are employed abroad by U.S. companies as well as those who are self-employed in a foreign country. Generally, a U.S. worker abroad and his or her employer would be required to contribute both to the U.S. Social Security system and the Social Security system of the country where the work is performed based on the same work. International agreements eliminate dual Social Security taxation in these circumstances by allowing workers and their employers to contribute to only one Social Security system (either the U.S. or the foreign system depending on the terms of the agreement). In addition, international agreements allow workers who divide their careers between the United States and a foreign country to fill gaps in Social Security coverage by combining work credits under each country's system to qualify for benefits under one or both systems. If a worker qualifies for benefits based on combined (totalized) work credits, the benefit payable under either system is prorated to take into account the actual period during which the worker was covered by that system.

By eliminating dual Social Security taxation, international agreements reduce the cost of doing business abroad. As a result, they can affect the competitiveness and profitability of U.S. companies with foreign operations and promote investment in the United States by foreign companies. In addition, international agreements affect the application of certain provisions of the Social Security Act, including the alien nonpayment provision. The alien nonpayment provision places restrictions on the payment of U.S. Social Security benefits to noncitizens who reside outside the United States, with broad exceptions. These payment restrictions may be waived for beneficiaries who are residents of a country with which the United States has an agreement.

Since 1977, the President has had the authority to negotiate Social Security agreements with foreign countries. Currently, there are 24 Social Security agreements in force. Another agreement (with Mexico) has been signed, but is not in force. In December 2007, about $28 million was paid in monthly benefits to about 146,200 recipients under U.S. Social Security agreements.

Many observers agree that international Social Security agreements can be beneficial for U.S. companies and workers. However, some policymakers have expressed concerns about the agreements. Because the agreements impose a cost to the U.S. Social Security system, some policymakers point to the need for greater assurances that the data relied upon by the United States to administer the agreements are complete and accurate, a condition necessary to protect the Social Security trust funds from improper payments. In addition, they point to concerns about the role of Congress in the approval process for potential agreements, as well as the need for enhanced reporting requirements and periodic evaluation of agreements in force. These and other concerns are reflected in legislative proposals such as S. 42 and H.R. 132 in the 111th Congress.

This report provides an overview of the purpose and operation of international Social Security agreements. In addition, it provides a discussion of the effects of agreements on selected provisions of the Social Security Act and concerns raised by some policymakers about the agreements. This report will be updated to reflect legislative activity or other developments.

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Introduction

International Social Security agreements are bilateral agreements primarily intended to eliminate dual Social Security taxation based on the same work and provide benefit protection for workers who divide their careers between the United States and a foreign country. By eliminating dual Social Security taxation, the agreements reduce the cost of doing business abroad. In turn, they can affect the competitiveness and profitability of U.S. companies with foreign operations as well as promote investment in the United States by foreign companies. Social Security agreements also affect the application of certain provisions of the Social Security Act, such as the alien nonpayment provision which places restrictions on the payment of U.S. Social Security benefits to noncitizens residing outside the United States, with broad exceptions.[1]

Since 1977, the President has had the authority to negotiate Social Security agreements with foreign countries (pursuant to Section 233 of the Social Security Act). Currently, there are 24 Social Security agreements in force (see **Table 2** for a list of U.S. Social Security agreements in force). Another agreement (with Mexico) has been signed, but is not in force.

This report provides an overview of the purpose and operation of international Social Security agreements.[2] It also provides a discussion of the effects of agreements on selected provisions of the Social Security Act and concerns raised by some policymakers about the agreements.[3]

Main Purposes

Eliminating Dual Social Security Taxation

One of the main purposes of international Social Security agreements is to eliminate dual Social Security taxation. Dual Social Security taxation occurs when a worker from one country is employed or self-employed in another country and both countries require that contributions be paid on the same work. In the United States, Social Security-covered workers and their employers each pay 6.2% of earnings up to $106,800 (in 2010) in Social Security payroll taxes.[4] Workers who are self-employed pay 12.4% of net self-employment income up to $106,800, and they may deduct one-half of payroll taxes from federal income taxes.

[1] The terms “alien” and “noncitizen” are used interchangeably in this report. The Immigration and Nationality Act (P.L. 82-414, 1952) defines an alien as “any person not a citizen or national of the United States.”

[2] Much of the information in this report is based on the Social Security Administration’s (SSA) Program Operations Manual System (POMS) available on the web at https://secure.ssa.gov/apps10/poms.nsf/aboutpoms. This is a public version of the POMS used by SSA employees to process claims for Social Security benefits. The information in this report is intended to provide an overview of international Social Security agreements. It is not intended to encompass all of the detailed rules and policies related to such agreements.

[3] In the United States, the agreements are also known as totalization agreements. Terms such as “international Social Security agreement” and “totalization agreement” are used interchangeably in this report.

[4] The limit on wages subject to the Social Security payroll tax is indexed annually to average wage growth (if a Social Security cost-of-living adjustment is payable).

Most jobs in the United States[5] (whether performed by U.S. citizens or noncitizens) are covered by Social Security.[6] The Social Security Administration (SSA) estimates that 94% of workers in paid employment or self-employment in the United States are covered by Social Security.[7] Workers who are *not* covered by Social Security include

(1) state and local government workers participating in alternative retirement systems;

(2) election workers earning less than $1,500 in 2010;

(3) ministers who choose not to be covered and certain religious sects;

(4) federal government workers hired before 1984 (elected office holders, political appointees and judges are mandatorily covered regardless of when their service began);

(5) college students working at their academic institutions;

(6) household workers earning less than $1,700 in 2010, or those under age 18 for whom household work is not their principal occupation;

(7) self-employed workers with annual net earnings below $400;

(8) foreign students and exchange visitors who hold F-1, J-1, M-1, Q1 and Q2 visas if the work is performed in connection with their studies or for the purpose of their visit to the United States (J-1 visa holders who are in the United States for 18 months or longer are required to pay Social Security payroll taxes); and

(9) foreign agricultural workers who hold H-2A visas.

The Social Security Act also extends Social Security coverage to U.S. citizens and residents who are employed abroad by U.S. companies (such as in a branch office located in a foreign country).[8] As a result, a U.S. worker and his or her employer generally would be required to contribute both to the U.S. Social Security system and the Social Security system of the country where the work is performed. In addition, U.S. citizens and residents who are employed by a foreign affiliate of a U.S. company are subject to dual taxation if the company has entered into an agreement with the U.S. Department of the Treasury, Internal Revenue Service, under Section 3121(l) of the Internal Revenue Code to provide U.S. Social Security coverage for employees of a foreign affiliate.

In some cases, a U.S. company that sends an employee to work in a foreign country may agree to pay both the employee's and the employer's shares of the Social Security tax under the foreign system. Payment of the employee's share of the Social Security tax by the employer may be considered taxable compensation to the employee, thereby increasing the employee's income tax liability. The employer may also agree to pay the additional income taxes on behalf of the

[5] For purposes of the Social Security program, the United States is defined as a geographic area that includes the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands and American Samoa.

[6] For purposes of the Social Security program, employment is defined in Section 210 of the Social Security Act and self-employment is defined in Section 211 of the Social Security Act.

[7] Social Security Administration, *2009 Social Security/SSI/Medicare Information*, May 14, 2009, available at http://www.socialsecurity.gov/legislation/2009%20factsheet.pdf.

[8] Section 210 of the Social Security Act.

employee. SSA estimates that, in some countries, an employer's foreign Social Security costs can be as much as 65% to 70% of the employee's salary when foreign Social Security taxes and additional income taxes paid by the employer on behalf of the employee are taken into account.[9]

In addition, the Social Security Act extends Social Security coverage to U.S. citizens and residents who are self-employed in a foreign country. As a result, self-employed workers abroad are also affected by dual Social Security taxation.

International agreements eliminate dual taxation on the same earnings by requiring workers and their employers to contribute to only one Social Security system based on the coverage provisions of the agreements. Each agreement includes coverage rules that determine whether a person's work is covered under the Social Security system of the sending country or that of the foreign country.[10] Under the agreements, there are basic rules of coverage that apply to workers who are sent by an employer to work abroad as well as self-employed workers (see rules regarding the self-employed). In addition, there are special rules and exceptions that apply allowing for variation in the rules of coverage under each agreement.[11]

The basic rule of coverage under international agreements is the *territoriality rule*, which specifies that a worker is covered under the Social Security system of the country where the work is performed, unless the agreement provides for one or more exceptions. Generally, exceptions are provided to "ensure that a worker is covered under the system of the country to which he or she has the more direct connection."[12] A primary exception to the territoriality rule is the *detached worker rule*. Under this rule, a person who is sent by an employer to work in a foreign country on a temporary basis (generally *five years or less*) would continue to be covered under the sending country's system and would be exempt from coverage under the foreign system. Conversely, a person who is sent by an employer to work in a foreign country *for more than five years* would be covered under the foreign system and would be exempt from coverage under the sending country's system. The basic rules of coverage are summarized in **Table 1**.

[9] Social Security Administration, *U.S. International Social Security Agreements*, available at http://www.socialsecurity.gov/international/agreements_overview.html.

[10] The worker is issued a certificate of coverage by SSA or an authorized agency of the foreign country. The purpose of the document is to certify that the worker is subject to Social Security coverage in the issuing country and exempt from coverage in the other country.

[11] The focus of this report is on general coverage rules, rather than specific rules under each agreement. For details on the rules of coverage under each agreement, see the information available from the SSA at http://policy.ssa.gov/poms.nsf/links/0302001000.

[12] For example, see the description of coverage rules under the agreement with Denmark at http://policy.ssa.gov/poms.nsf/links/0302002110.

Table 1. Basic Rules of Coverage Under International Social Security Agreements

Rule	Brief Description
Territoriality Rule	A person is covered under the Social Security system of the country in which the work is performed.
Detached Worker Rule	A person sent by an employer to work in a foreign country on a temporary basis (generally *5 years or less*) will continue to be covered under the sending country's Social Security system and will be exempt from coverage under the foreign system.
	Conversely, a person sent by an employer to work in a foreign country *for more than 5 years* will be covered under the foreign system and will be exempt from coverage under the sending country's system.
Nationality Rule	A person is covered under the Social Security system of his or her country of nationality.
	This coverage rule applies only under the agreement with Italy.
Residence Rule	A person is covered under the Social Security system of the country in which he or she resides.
	This coverage rule generally applies to self-employment.

Source: Information based on the Social Security Administration's Program Operations Manual System (POMS), Section RS 020 (Coverage Under International Agreements), available at http://policy.ssa.gov/poms.nsf/links/0302000000.

Notes: Special exceptions may apply under some agreements and rules of coverage may differ for government employees and other categories of workers.

For example, if a U.S. worker is sent by an employer to work in Canada and the assignment is expected to last five years or less, he or she would remain covered under the U.S. Social Security system. The worker and his or her employer would be required to contribute only to the U.S. system. Alternatively, if a U.S. worker is sent by an employer to work in Canada and the assignment is expected to last for more than five years, he or she would be covered only under the Canadian Social Security system. The worker and his or her employer would be required to contribute only to the Canadian system. Thus, the detached worker rule allows workers and their employers to avoid paying Social Security payroll taxes under two systems based on the same earnings and minimizes disruptions in Social Security coverage for workers who are transferred abroad on temporary assignments.

The agreement with Italy is unique in that the primary exception to the territoriality rule is the *nationality rule*, which specifies that a worker is covered under the Social Security system of his or her country of nationality.[13] For example, if an Italian worker is sent by an employer to work in the United States, he or she would remain covered under the Italian Social Security system, regardless of the period of employment in the United States.[14]

[13] The agreement with Italy, which was the first agreement to be signed, is the only agreement that does not include a detached worker rule.

[14] If the worker is a national of a country other than Italy or the United States, however, the territoriality rule would apply (i.e., the worker would be covered under the system of the country where the work is performed).

Generally, different coverage rules apply to *self-employed* workers. Under most agreements, the general rule of coverage for self-employed workers is the *residence rule*, which specifies that a person is covered under the Social Security system of the country in which he or she resides. For example, under the agreement with Switzerland, a Swiss citizen who resides in the United States and is self-employed is covered under the U.S. system and exempt from coverage under the Swiss system.

Some agreements, such as those with Belgium, France, Germany, Italy and Japan, use other primary rules of coverage for self-employment. For example, under the agreement with Belgium, a self-employed worker is subject to the territoriality rule if he or she conducts business in only one country and the residence rule if he or she conducts business in both countries.[15] Under the agreement with Germany, the basic rule of coverage for both employees and self-employed workers is the territoriality rule, with exceptions provided, such as those under the detached worker rule.[16]

Filling Gaps in Social Security Coverage

The second main purpose of international Social Security agreements is to allow workers who divide their careers between the United States and a foreign country to fill gaps in Social Security coverage by combining work credits under each country's system to qualify for benefits under one or both systems. In the United States, a worker must have at least 6 quarters of coverage under the U.S. system (the person must have worked in the United States in Social Security-covered employment for at least 1½ years) to combine U.S. and foreign work credits.[17] This feature of international agreements allows workers who do not meet the minimum coverage requirements under either country's system potentially to qualify for *partial* benefits under one or both systems. If a worker qualifies for benefits based on combined (totalized) work credits, the benefit payable under either system is prorated to take into account the actual period during which the worker was covered by that system.[18]

For example, under the U.S. system, a worker generally needs 40 quarters (10 years) of Social Security-covered employment to be eligible for retirement benefits.[19] Because the United States and Canada have entered into an agreement, a U.S. worker who has five years of coverage under the U.S. system and five years of coverage under the Canadian system can meet the minimum

[15] SSA POMS, Section RS 02001.270, Exceptions to the General Coverage Rule—U.S. Belgian Agreement, available at http://policy.ssa.gov/poms.nsf/links/0302001270.

[16] SSA POMS, Section RS 02001.110, General Coverage Rule Under the U.S.-German Agreement, available at http://policy.ssa.gov/poms.nsf/links/0302001110; and Section RS 02001.115, Detached Worker Rule Under the U.S.-German Agreement, available at http://policy.ssa.gov/poms.nsf/links/0302001115.

[17] A worker must have at least 6 quarters of coverage and no more than 39 quarters of coverage under the U.S. system to qualify for a totalization benefit. If a worker has 40 or more quarters of coverage under the U.S. system, he or she would qualify for a regular benefit.

[18] A U.S. totalization benefit is prorated to reflect the proportion of the worker's coverage lifetime completed under the U.S. system. A coverage lifetime is defined in the regulations as the worker's benefit computation years (the number of years used to determine the worker's average indexed monthly earnings) under the regular benefit computation process (for example, 35 years in the case of a retirement benefit). For more information, see the section of this report titled *Computation of Benefits*. The Social Security contributions paid under a foreign system do not affect the amount of a U.S. totalization benefit. The amount of any benefit payable under a foreign system would depend on the foreign country's program rules and benefit computation methods.

[19] Fewer quarters of coverage may be required for disability and survivor benefits.

coverage requirement for a U.S. Social Security retirement benefit based on combined coverage credits from the U.S. and Canada. The benefit would be prorated to reflect that the worker contributed to the U.S. system for only five years. In the absence of an agreement between the United States and Canada, the worker in this example would not be able to qualify for a retirement benefit under the U.S. system (nor would a U.S. citizen who had worked in Canada be eligible for benefits under the Canadian system).

Workers may also qualify for Social Security Disability Insurance (SSDI) benefits based on combined work credits. To qualify for SSDI benefits under the U.S. system, a worker must meet the definition of disability,[20] as well as a *recent work test* and a *duration of work test*. Under the recent work test, a worker must have earned a certain number of work credits within a specified period. The requirements vary depending on the age of the worker at the time he or she became disabled. For example, a worker who becomes disabled before the age of 24 must have 1½ years of Social Security-covered employment during the three-year period before the disability began. By comparison, a worker who becomes disabled at the age of 31 or later must have five years of Social Security-covered employment during the 10-year period before the disability began. Under the duration of work test, a worker must have a certain number of *total* work credits, which may have been earned at any time. The requirements vary depending on the age of the worker at the time he or she became disabled. For example, a worker who becomes disabled before the age of 28 must have a total of 1½ years of Social Security-covered employment, while a worker who becomes disabled at the age of 60 must have a total of 9½ years of Social Security-covered employment.[21] In any case, a worker must have at least 6 work credits (1½ years of Social Security-covered employment) to qualify for SSDI benefits, the same minimum number of credits needed under the U.S. system to combine U.S. and foreign work credits under the terms of an international agreement.

The ability to combine coverage credits under the U.S. system and a foreign system provides workers (and their family members) an opportunity to qualify for benefits under one or both systems that would not be payable otherwise because the worker did not work long enough or recently enough to meet the minimum coverage requirements. In this way, a worker's Social Security contributions are not "lost" to the system.[22]

Other Goals

By eliminating dual Social Security taxation, international agreements reduce the cost of doing business abroad. In doing so, they can affect the competitiveness and profitability of U.S. companies with foreign operations and promote investment in the United States by foreign

[20] Section 223(d) of the Social Security Act defines disability as the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment expected to result in death or last at least 12 months.

[21] Other eligibility requirements may apply for receipt of SSDI benefits. For more information, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by Scott Szymendera.

[22] All Social Security agreements allow foreign work credits to count toward the minimum coverage requirement for a U.S. Social Security benefit. Conversely, some agreements allow U.S. work credits to count toward the minimum length-of-work requirement for a foreign benefit. Other agreements, however, do not require U.S. work credits to count toward qualifying for a foreign benefit. Rather, the length-of-coverage requirement for the foreign benefit is reduced. For more information, see SSA POMS, Section GN 01701.100, Overview of Totalization Benefits, available at http://policy.ssa.gov/poms.nsf/links/0201701100.

companies. In addition, international agreements affect the application of certain provisions of the Social Security Act, including the alien nonpayment provision. The alien nonpayment provision places restrictions on the payment of U.S. Social Security benefits to noncitizens who reside outside the United States, with broad exceptions. These payment restrictions may be waived for beneficiaries who are residents of a country with which the United States has a Social Security agreement.[23] Supporters of international Social Security agreements point out that the waiver of residency requirements increases the portability of Social Security benefits for U.S. citizens and foreign nationals.

Negotiation, Congressional Review, and Implementation

Nature and Authority

International Social Security agreements are conducted and approved using the *executive agreement* method rather than the treaty process. Under U.S. law, there are four types of international agreements: (1) treaties, (2) sole executive agreements, (3) agreements pursuant to treaty, and (4) congressional-executive agreements.[24] Congressional-executive agreements are those that are authorized or approved by Congress, or both. International Social Security agreements fall into the fourth category because they are authorized by Congress in the Social Security Act. In addition, Congress has established in the statute a role for itself in reviewing these agreements.

The *Congressional Record* does not provide a discussion of why Congress chose the congressional-executive method over the treaty method for totalization agreements in 1977. However, some discussion of the approval method for totalization agreements occurred during a 1976 hearing before the House Ways and Means Social Security Subcommittee on H.R. 14429, the International Social Security Agreements Act, as described in the next section. A discussion of the characteristics of congressional-executive agreements may shed additional light on the matter. One feature of congressional-executive agreements is that they rely on an *ex ante* authorization by Congress, in which Congress has the opportunity to establish by law certain terms related to such agreements. With respect to Social Security agreements, Section 233 of the Social Security Act authorizes the President to enter into such agreements with foreign countries, establishes the congressional review process for the agreements and specifies reporting requirements. In addition, congressional-executive agreements usually contain an *ex post* approval mechanism that provides an opportunity for both houses of Congress (not just the Senate) to approve or reject an agreement. With respect to Social Security agreements, Section 233(e)(2) of the Social Security Act specifies that an agreement shall become effective after a period of 60 days during which the House of Representatives or the Senate is in session (i.e., a period of 60 session days) after an

[23] For more information, see the "Waiver of the Alien Nonpayment Provision" section of this report.

[24] For a discussion of the different types of executive agreements and a comparison with treaties, see the CRS study prepared for the Senate Committee on Foreign Relations, *Treaties and Other International Agreements: The Role of the United States Senate*, S. Prt. 106-71, January 2001, available at http://www.senate.gov/reference/common/faq/Treaties.htm. In addition, see U.S. Department of State Foreign Affairs Manual Volume 11—Political Affairs, 11 FAM 723, Exercise of the International Agreement Power, available at http://www.state.gov/documents/organization/88317.pdf.

agreement is transmitted to Congress unless the House of Representatives or the Senate adopts a resolution of disapproval.[25]

Legislative History of Section 233 of the Social Security Act

According to congressional testimony by the Commissioner of Social Security in 1976, initial efforts in the United States toward totalization agreements with foreign countries can be found in the Supplementary Agreement to the 1948 Treaty of Friendship, Commerce and Navigation between the United States and Italy. In his statement, Commissioner James B. Cardwell indicated:

> Under the Supplementary Agreement, which became effective in 1961, both countries declared their adherence to a policy of preventing gaps in social security protection by permitting periods of social security coverage in both countries to be counted in determining benefit rights in both countries.[26]

The Supplementary Agreement was signed by the United States and Italy in 1951 and ratified by the U.S. Senate in 1953.[27] While the Supplementary Agreement provided for the negotiation of a totalization agreement between the parties (referred to in the Supplementary Agreement as an "arrangement"), the Senate ratified the Supplementary Agreement on the condition that any such agreement would be made by the United States "only in conformity with provisions of statute."[28]

In May 1973, a totalization agreement between the United States and Italy was signed by both countries. Later that year, an attempt was made to enact legislation providing the statutory authority for totalization agreements as required by the Senate in 1953. In November 1973, the Senate approved H.R. 3153 (93rd Congress), a Social Security bill passed by the House in April 1973, adding a provision authorizing the President to enter into totalization agreements with foreign countries and specifying other terms related to such agreements.[29] The version of the bill approved by the House of Representatives did not include a provision relating to totalization agreements. A conference to resolve differences between the House- and Senate-approved versions of the bill was never held and the legislation was not enacted.[30]

The provision in H.R. 3153 (93rd Congress) relating to totalization agreements added by the Senate in 1973 was similar to current law (Section 233 of the Social Security Act), with some notable differences. For example, it provided for a longer period of congressional review. The Senate provision specified that "such an agreement shall become effective on any date provided in the agreement following 90 calendar days of continuous session of the Congress after the date

[25] For more information, see the "Congressional Review of Agreements" section of this report.

[26] U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *International Social Security Agreements Act*, hearing on H.R. 14429, 94th Cong., 2nd sess., August 4, 1976, p. 2 (hereinafter referred to as 1976 Hearing on International Social Security Agreements Act).

[27] U.S. Congress, House, *International Agreement with Italy on Social Security*, House Document No. 95-297, 95th Cong., 2nd sess., February 28, 1977, p. 24 (hereinafter referred to as House Document No. 95-297).

[28] House Document No. 95-297, p. 27. There were no relevant provisions of statute at the time (i.e., the requirement pre-dates the addition of Section 233 to the Social Security Act).

[29] H.R. 3153 (93rd Congress) made a number of technical and conforming amendments to the Social Security Act that had been omitted in drafting the conference agreement on the Social Security Amendments of 1972 (P.L. 92-603).

[30] For more information on the legislative history of H.R. 3153 (93rd Congress), see CRS Report RL30920, *Major Decisions in the House and Senate on Social Security: 1935-2006*, by (name redacted).

on which the agreement is transmitted ... "[31] In addition, the Senate provision did not specify what action by Congress would be required to stop an agreement from taking effect.

In 1976, the House Ways and Means Committee, Subcommittee on Social Security, held a hearing on the International Social Security Agreements Act (H.R. 14429, 94th Congress), which reflected a proposal supported by the Administration. In contrast to the provision added by the Senate to H.R. 3153 in 1973, H.R. 14429 would have required only that Congress be notified of an international Social Security agreement. Under H.R. 14429, Social Security agreements, like other types of international agreements, would have been reported to Congress *after* (rather than before) entering into force. During the hearing on H.R. 14429, the discussion turned to an alternative "report and wait" provision similar to the one added by the Senate to H.R. 3153 in 1973.[32] The Commissioner of Social Security, James B. Cardwell, indicated that the agency had been advised that the Administration would not object to an arrangement in which Congress would be presented with a proposed Social Security agreement and would have 60 days in which to advise the Administration of their position or otherwise the agreement would become effective. Upon questioning by members of the Social Security Subcommittee, Commissioner Cardwell stated that the agency did not have details on how the process would work. However, the Commissioner indicated that it was his opinion that any objection to an agreement would have to come from Congress, and not from a subcommittee or committee or even one House.[33] Commissioner Cardwell offered to seek clarification on the Administration's position with respect to an appropriate process for congressional review of Social Security agreements.

In a follow-up letter to Honorable James Burke, the Chairman of the Social Security Subcommittee, Commissioner Cardwell expressed the Administration's support for a provision similar to the one added by the Senate to H.R. 3153 in 1973, except with a shorter period of congressional review. The Commissioner stated that the Administration would not object to an arrangement in which a negotiated totalization agreement could not become effective until after 60 days of continuous session of Congress following transmittal to Congress by the President. Under the Administration's provision, if Congress approved of a proposed agreement, no action by Congress would be needed and the agreement would take effect at the end of the specified review period. If Congress disapproved of a proposed agreement, or wanted to alter any of its provisions, Congress would be required to enact a statute to that effect.[34]

In 1977, the statutory authority relating to totalization agreements (Section 233 of the Social Security Act) was established under the Social Security Amendments of 1977 (P.L. 95-216). The provision enacted in 1977 was similar to current law, with some notable differences. For example, under a totalization agreement, an individual may qualify for a benefit from both the United States and the foreign country party to the agreement. The 1977 law specified that, with respect to persons who qualify for benefits under both countries' systems, a totalization agreement could provide that the United States would supplement the total benefit amount (U.S. and foreign benefit combined) payable to a U.S. resident[35] to increase it to the amount he or she would have

[31] The Senate provision further specified that for this purpose: "The continuity of a session is broken ... only by an adjournment of the Congress sine die. The days on which either House of the Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 90-day period."

[32] 1976 Hearing on International Social Security Agreements Act, p. 54.

[33] 1976 Hearing on International Social Security Agreements Act, p. 55.

[34] 1976 Hearing on International Social Security Agreements Act, p. 55.

[35] P.L. 95-216 specified that the supplement would apply to "an individual who legally resides in the United States."

qualified for under the U.S. system based on the minimum Primary Insurance Amount (PIA) available under current law at the time.[36] In addition, the 1977 law provided for a longer period of congressional review than that supported by the Administration. Specifically, it provided that an agreement would go into effect unless the House of Representatives or the Senate adopted a resolution of disapproval within the period following transmittal to Congress "during which each House of the Congress has been in session on each of 90 days."[37]

The House of Representatives and the Senate initially approved different provisions relating to totalization agreements in considering the 1977 legislation. The provision approved by the House of Representatives specified that each agreement would have to be transmitted to Congress and could not go into effect until after *at least one* House of Congress has been in session for 90 days. During that period, an agreement could be rejected by action of *both* Houses of Congress enacting legislation. The provision approved by the Senate specified that (1) each agreement must be transmitted to Congress with a report on the estimated cost and number of individuals affected; (2) an agreement must not be inconsistent with the provisions of Title II of the Social Security Act; and (3) an agreement could not go into effect until after *each* House of Congress has been in session for 90 days, during which period an agreement could be rejected by action of *either* House of Congress. The conference agreement followed the Senate provision.[38]

In 1981, the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) struck the provision in Section 233 of the Social Security Act permitting an agreement to provide that the United States would supplement a U.S. resident's total benefit amount (U.S. and foreign benefit combined) under an agreement if the total benefit amount was less than the minimum benefit he or she would have qualified for under the U.S. system.[39] This was a conforming amendment related to the elimination of the minimum benefit provision under the same law (P.L. 97-35).[40] Accordingly, there is no current law providing for any such supplemental benefit under an agreement.

In 1983, the period for congressional review of Social Security agreements was shortened under the Social Security Amendments of 1983 (P.L. 98-21). The period of congressional review was changed from the period "during which *each* House of the Congress has been in session on each of *90 days*" to the period "during which *at least one* House of the Congress has been in session on each of *60 days*."[41] This is the same period of congressional review provided under current law.[42]

[36] The worker's PIA is the basic monthly benefit amount before any adjustments are made for early or delayed retirement (for more information on the PIA, see **Appendix A** to this report). The minimum PIA is the smallest monthly benefit amount (before applicable reductions) payable to a worker or used to determine benefits payable to the worker's dependents and survivors. In 1977, the minimum PIA was frozen at $122 per month for workers who became disabled or died after 1978 or who reached the age of 62 after 1983.

[37] Section 317 of P.L. 95-216.

[38] U.S. Congress, Conference Committees, *Social Security Amendments of 1977*, conference report to accompany H.R. 9346, S.Rept. 95-612, 95th Cong., 1st sess., December 14, 1977, pp. 70-71.

[39] Title XXII, Section 2201(b)(12) of P.L. 97-35.

[40] P.L. 97-35 eliminated the minimum PIA for persons who become eligible for benefits in January 1982 or later (an exemption for 10 years was provided for certain members of religious orders who have taken a vow of poverty).

[41] Section 326 of P.L. 98-21.

[42] In addition to the changes discussed here, minor technical amendments to Section 233 of the Social Security Act were included in P.L. 98-369 (1984) and P.L. 103-296 (1994).

Selection of Partner Countries

The Government Accountability Office (GAO), in a study conducted in 2005, found that the countries with which the United States has entered into Social Security agreements have been selected without a formal guideline or protocol.[43] SSA officials have stated that the agency has used the same major criteria for selecting partner countries since 1978. According to SSA officials, the major criteria used in selecting agreement countries include (1) whether the other country has a Social Security system of general application that pays periodic benefits on account of death, old age or disability; (2) costs to the trust funds; (3) the number of and cost savings to U.S. employers and workers who would benefit from the elimination of dual taxes; (4) the interest of the other country in negotiating an agreement; (5) the ability of the other country to administer an agreement; and (6) input from other U.S. government agencies such as the Department of State and the Office of the U.S. Trade Representative.[44]

In addition, the 2005 GAO Report indicated that SSA is working on initiatives aimed at determining which countries would be suitable partners for future agreements, taking into account the reliability of a country's data and records. According to SSA officials, the agency has sought input from the Department of State and the Department of Commerce working toward developing a more formalized process for identifying potential agreement countries. GAO also reported that SSA has developed a matrix based on 14 economic and administrative factors that may affect a country's ability to determine an individual's eligibility for benefits under an agreement. The purpose of the matrix is to facilitate comparisons among potential agreement countries and evaluate a country's suitability for a future agreement. The matrix also includes factors that could be used to assess the potential impact of an agreement on the Social Security trust funds.[45]

With respect to SSA's initiatives aimed at determining which countries would be suitable partners for future agreements, SSA noted in October 2009:

> Since 2005, SSA has made significant progress toward formalizing its processes for identifying agreement partner countries and evaluating the reliability of a foreign country's data. These advancements include: (1) developing a standardized questionnaire to elicit information on internal controls and information security policies and procedures in force in a potential partner country to protect the integrity of earnings information and the computer network that stores such information; (2) requiring the completion of the questionnaire and a thorough and successful review by SSA experts in order to enter into formal negotiations on a potential totalization agreement; and (3) expanding the actuarial estimates of potential agreements' impact on the U.S. Social Security Trust Funds from short-range, 5-year estimates of the effect to include both short-range (7 year) and long-range (75 year) estimates.[46]

[43] U.S. Government Accountability Office, *Social Security Administration: A More Formal Approach Could Enhance SSA's Ability to Develop and Manage Totalization Agreements*, GAO-05-250, February 2005 (hereinafter referred to as 2005 GAO Report).

[44] U.S. General Accounting Office, *Proposed Totalization Agreement with Mexico Presents Unique Challenges*, GAO-03-993, September 2003, p. 22.

[45] 2005 GAO Report, pp. 10-12.

[46] Information provided by the Social Security Administration to the Congressional Research Service in October 2009. For more information on the SSA questionnaire, see the section of this report titled *Status of SSA Initiatives in 2009*.

Negotiation and Conclusion of Agreements

Although there are no statutes or regulations regarding the *selection* of potential agreement countries, SSA noted that the agency "has for more than 30 years consistently applied the compatible system, costs/benefits, taxation, practicality and consultative criteria described above in considering possible agreement partner countries."[47] In addition, the negotiation and conclusion of international agreements by SSA are governed by the "Circular 175 Procedure." The Circular 175 Procedure refers to regulations developed by the U.S. Department of State to ensure that treaties and other international agreements are carried out within constitutional and other legal limitations, with due consideration of foreign policy implications, and with appropriate involvement of the State Department.[48] The U.S. Department of State Foreign Affairs Manual states that "[n]egotiations of treaties, or other 'significant' international agreements, or for their extension or revision, are not to be undertaken, nor any exploratory discussions undertaken with representatives of another government or international organization, until authorized in writing by the Secretary or an officer specifically authorized by the Secretary for that purpose."[49]

After authorization is granted by the State Department, SSA officials may negotiate, but not conclude, a Social Security agreement with a foreign country. When negotiations have been completed, SSA's General Counsel reviews the agreement to ensure that it is consistent with U.S. law. In addition, the State Department reviews the agreement to ensure that it conforms to U.S. policy priorities and treaty protocols and that any translation of the agreement is the same in both languages. Following that process, the agreement is signed by an authorized U.S. representative and an authorized representative of the foreign country. After the agreement has been signed, SSA and the foreign Social Security agency meet and address implementation issues, formulating operations procedures to be used in administering the agreement. When that process has been completed, the agreement is forwarded to the U.S. Secretary of State for review. After review at the State Department has been completed, the agreement is sent to the President for review. Finally, the President is required by law to transmit the agreement to Congress for a period of review (60 session days) before the agreement can go into effect.[50] Upon transmittal to Congress, the agreement must be accompanied by a report showing the estimated number of people who will be affected by the agreement and the estimated financial impact of the agreement on programs established by the Social Security Act.[51]

[47] Information provided by the Social Security Administration to the Congressional Research Service in October 2009.

[48] Information on the Circular 175 Procedure is available from the State Department at http://www.state.gov/s/l/treaty/c175/. The applicable procedures are referenced in the Code of Federal Regulations (22 C.F.R. § 181.4) and in the U.S. Department of State Foreign Affairs Manual Volume 11 – Political Affairs, 11 FAM 720 (Negotiation and Conclusion), available at http://www.state.gov/documents/organization/88317.pdf.

[49] U.S. Department of State Foreign Affairs Manual Volume 11—Political Affairs, 11 FAM 724.1, Authorization Required to Undertake Negotiations, available at http://www.state.gov/documents/organization/88317.pdf.

[50] The agreement is subject to ratification in the foreign country as well.

[51] For more information on the process for entering into an international Social Security agreement, see *Statement of Martin Gerry, SSA Deputy Commissioner for Disability and Income Security Programs*, Testimony Before the House Committee on Ways and Means, Subcommittee on Social Security, March 2, 2006, available at http://www.socialsecurity.gov/legislation/testimony_030206.html.

Congressional Review of Agreements

After a Social Security agreement has been entered into with a foreign country, the President is required to transmit the agreement to Congress for a period of review before it can be implemented.[52] There are no rules limiting the amount of time that may elapse between the signing of an agreement and its transmittal to Congress.[53] Although most of the current agreements were transmitted to Congress less than one year after they were signed, there has been some variation. For example, the agreement with Denmark was signed in June 2007 and transmitted to Congress less than a year later in February 2008. The agreement with Canada, which had an additional protocol for Québec, was signed in March 1981 and transmitted to Congress almost three years later in January 1984. The pending agreement with Mexico was signed in June 2004 and has not been transmitted to Congress to date.[54]

Section 233(e)(2) of the Social Security Act specifies that a Social Security agreement automatically goes into effect unless the House of Representatives or the Senate adopts a resolution of disapproval within 60 session days of the agreement's transmittal to Congress.

It should be noted that Section 233(e)(2), which allows for the rejection of a totalization agreement upon adoption of a resolution of disapproval by either House of Congress is functionally identical to the legislative veto provision that was held unconstitutional in *INS v. Chadha*.[55] In that case, the Supreme Court struck down a provision in the Immigration and Nationality Act that gave either House of Congress the authority to overrule deportation decisions made by the Attorney General.[56] The Court declared that a legislative veto constitutes an exercise of legislative power, as its use has "the purpose and effect of altering the legal rights, duties, and relations of persons ... outside the legislative branch."[57] Accordingly, the Court invalidated the disapproval mechanism, holding that Congress may exercise its legislative authority only "in accord with a single, finely wrought and exhaustively considered procedure," namely bicameral passage and presentation to the President.[58] In its decision, the Court explicitly acknowledged that its holding was not limited to the provision at issue, but would instead affect other similar laws, stating: "our inquiry is sharpened rather than blunted by the fact that Congressional veto provisions are appearing with increasing frequency in statutes which delegate authority to

[52] Section 233(e) of the Social Security Act.

[53] Some international agreements enter into force upon signing. The Case-Zablocki Act (P.L. 92-403; 1 U.S.C. 112b, as amended) requires that the text of an international agreement other than a treaty be transmitted to Congress no later than 60 days after the agreement has entered into force. This requirement, however, does not apply to Social Security agreements because they do not enter into force upon signing, but after a mandatory period of review by Congress.

[54] The agreement with Italy (the first agreement which was signed in 1973) and the agreement with Germany (the second agreement which was signed in 1976) were transmitted to Congress almost five years and three years, respectively, after they were signed. These agreements, however, were signed *before* Congress provided the statutory authority for such agreements (Section 233 of the Social Security Act) under the Social Security Amendments of 1977 (P.L. 95-216, which was signed on December 20, 1977). Subsequent to P.L. 95-216, the agreements with Italy and Germany were transmitted to Congress in 1978.

[55] 462 U.S. 919 (1983).

[56] *Id.* Shortly after its decision in *Chadha*, the Court without opinion and with one dissent summarily affirmed lower court opinions that had struck down a two-House legislative veto provision of the Federal Trade Commission Improvements Act, 15 U.S.C. § 57a-1. See *United States Senate* v. *Federal Trade Commission*, 463 U.S. 1216 (1983); *United States House of Representatives* v. *Federal Trade Commission*, 463 U.S. 1216 (1983).

[57] *Chadha*, 462 U.S. at 952.

[58] 462 U.S. at 951.

executive and independent agencies."[59] The Court has emphasized its categorical disapproval of the legislative veto in subsequent cases, noting in *Printz v. United States*, for instance, that "the legislative veto, though enshrined in perhaps hundreds of federal statutes ... was nonetheless held unconstitutional" in *Chadha*.[60] The maxim delineated in *Chadha*, as consistently reaffirmed by the Court, is fully applicable in the current context.[61] Accordingly, given that the disapproval mechanism in Section 233(e)(2) authorizes "congressional invalidation of executive action" outside the strictures of bicameralism and presentment, there is no discernible basis upon which it may be argued successfully that its utilization by Congress would withstand judicial scrutiny.[62]

Congress has never rejected a Social Security agreement. As a result, the apparent constitutional infirmity of Section 233(e)(2) has not been an issue. Congressional utilization of the mechanism in Section 233(e)(2) to reject a Social Security agreement could give rise to a judicial challenge, potentially resulting in an invalidation of the disapproval mechanism and a determination that the agreement is effective. Specifically, in considering the effect of the unconstitutional disapproval mechanism, a reviewing court would consider whether the remainder of Section 233 is valid, or whether the entire statute must be nullified. The Supreme Court has held that "[u]nless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is a fully operative law."[63] In *Westcott v. Califano*, the court noted that "the existence of a broad severability clause in the Social Security Act reflects the Congressional wish that judicial interpretation of the act leave as much of the statute intact as possible."[64] The existence of this severability clause, coupled with the fact that the operative provisions of Section 233 would remain fully functional absent the disapproval mechanism in Subsection (e)(2), gives rise to the likelihood that a reviewing court would invalidate any attempt to utilize the disapproval mechanism, while giving effect to an otherwise properly executed Social Security agreement.[65]

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[59] 462 U.S. at 944-45.

[60] 521 U.S. 898, 918 (1997). *See also*, *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 240 (1995) (stating: "[w]e think legislated invalidation of judicial judgments deserves the same categorical treatment accorded by *Chadha* to Congressional invalidation of executive action.").

[61] See, e.g., *Taylor v. Barnhart*, 399 F.3d 891, 894 (8th Cir. 2005) (indicating applicability of the holding in *Chadha* to Section 233(e)(2)).

[62] The unconstitutionality of legislative veto provisions is noted at 42 U.S.C.A. § 433 (2003), where it is further stated that the provisions of § 233(e) are similar to those struck down in *INS v. Chadha*. For a consideration of bicameralism and presentment requirements generally, see CRS Report RL30249, *The Separation of Powers Doctrine: An Overview of its Rationale and Application*, by (name redacted).

[63] *Buckley v. Valeo*, 424 U.S. 1, 108 (1976) (quoting *Champlin Refining Co. v. Corporation Commission*, 286 U.S. 210, 234 [1932]).

[64] 460 F.Supp 737 (D. Mass 1978). In *Califano*, the court was referring to 42 U.S.C. § 1303, which states: "[i]f any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby."

[65] In light of the Court's holding in *Chadha*, it is apparent that any congressional action taken to restrict or control executive authority to enter into Social Security agreements, or to invalidate any such agreements, must be accomplished through bicameral passage and presentment to the President. Accordingly, congressional options in this regard would appear to be limited to imposing additional requirements on the adoption of Social Security agreements, restricting authority to enter into such agreements unless approved by both Congress and the President on a case by case basis, or passing a law disapproving a particular agreement before or after it is finalized. See *Chadha*, 462 U.S. at 951. Analysis of legal issues regarding Section 233(e)(2) of the Social Security Act prepared by (name redacted), CRS Specialist in American Law.

Before the 1983 Supreme Court Decision of *INS v. Chadha*, other acts had provisions similar to the legislative veto provision found in Section 233(e)(2) of the Social Security Act. In response to the Court's holding in *Chadha*, legislative veto provisions in other Acts were replaced with provisions requiring Congress to adopt a joint resolution of approval or disapproval. For example, the Fishery Conservation and Management Act of 1976, as amended, specified that international fisheries agreements would enter into force after a 60-day waiting period unless Congress adopts a joint resolution of disapproval.[66]

Implementation of Agreements

It is the responsibility of the Social Security Administration to make rules and regulations and to establish procedures necessary to implement and administer international Social Security agreements.[67] Each agreement is accompanied by an *Administrative Arrangement for the Implementation of the Agreement on Social Security* that may be signed when the agreement is signed or at a later time. The administrative arrangement provides general guidelines for the implementation and administration of the agreement, as well as specific rules regarding cooperation between partner countries. For example, it requires the exchange of statistics on the number of beneficiaries and the total amount of benefits paid. It also provides for the exchange of information needed to adjudicate claims filed under the agreement.[68]

Changes and Termination of Agreements

International Social Security agreements and their administrative protocols can be amended. The agreements require that the parties involved communicate to each other any changes in their laws that could affect the application of an agreement. When changes are made to a country's Social Security system that affect the application of an agreement, a supplementary agreement (which updates and amends the original agreement) must be signed. For example, the United States and Sweden signed a supplementary agreement in 2004 to take into account a major reform of Sweden's Social Security system in which the defined benefit public pension system was replaced with a new system that includes mandatory individual accounts, among other features. The supplementary agreement updated and clarified several provisions of the original agreement to reflect other changes in U.S. and Swedish laws since the original agreement was signed in 1985.

Social Security agreements can be terminated by one of the countries party to the agreement. If an agreement is terminated, it typically remains in effect for a 12-month period following the month in which notification is given by one of the parties. Benefits in payment at the time of termination would be retained. Individuals whose claims are in process, or those who would become entitled to benefits before the end of the 12-month period, would retain entitlement to benefits under the agreement. No agreements have been terminated to date.

[66] CRS study prepared for the Senate Committee on Foreign Relations, *Treaties and Other International Agreements: The Role of the United States Senate*, S. Prt. 106-71, January 2001, pp. 235-238, available at http://www.senate.gov/reference/common/faq/Treaties.htm.

[67] Section 233(d) of the Social Security Act.

[68] For more information, see SSA POMS, Section GN 01702.510, Disclosure of Information to Totalization Agreement Countries, available at http://policy.ssa.gov/poms.nsf/links/0201702510.

Current Social Security Agreements

The United States has Social Security agreements in force with 24 countries (see **Table 2**). In addition, the United States has a pending agreement with Mexico that was signed on June 29, 2004. As noted previously, the agreement with Mexico has not been transmitted to Congress. Reportedly, as of January 2010, the agreement remains under review at SSA (SSA has not forwarded the agreement to the State Department).[69]

Although the specific terms of each Social Security agreement may differ given the variation in Social Security systems in each country, the provisions of an agreement must be consistent with the Social Security Act. Section 233(c)(4) of the Social Security Act states "any such agreement may contain other provisions which are not inconsistent with the other provisions of [Title II of the Social Security Act] and which the President deems appropriate to carry out the purposes of this section." A description and the complete text of each agreement are available on the Social Security Administration's website.[70] In December 2007, about $28 million was paid in monthly benefits to about 146,200 recipients under U.S. Social Security agreements (see **Table 3**).[71]

[69] Information provided by the Social Security Administration to the Congressional Research Service in January 2010. General information on the status of Social Security agreements is available on the SSA website at http://www.ssa.gov/international/status.html. For more information on the Social Security agreement between the United States and Mexico, see CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by (name redacted) and (name redacted).

[70] This information is available at http://www.ssa.gov/international/agreement_descriptions.html.

[71] In December 2007, there were about 50 million Social Security recipients. Therefore, those who received benefits under U.S. Social Security agreements represented about 0.3% of the total. SSA, *Social Security Bulletin, Annual Statistical Supplement, 2008*, Table 5.A1, available at http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2008/5a.pdf.

Table 2. U.S. Social Security Agreements in Force

Country	Effective Date
Australia	October 1, 2002
Austria	November 1, 1991
Belgium	July 1, 1984
Canada	August 1, 1984
Chile	December 1, 2001
Czech Republic	January 1, 2009
Denmark	October 1, 2008
Finland	November 1, 1992
France	July 1, 1988
Germany	December 1, 1979
Greece	September 1, 1994
Ireland	September 1, 1993
Italy	November 1, 1978
Japan	October 1, 2005
Korea, South	April 1, 2001
Luxembourg	November 1, 1993
Netherlands	November 1, 1990
Norway	July 1, 1984
Poland	March 1, 2009
Portugal	August 1, 1989
Spain	April 1, 1988
Sweden	January 1, 1987
Switzerland	November 1, 1980
United Kingdom	1985/1988[a]

Source: Social Security Administration, Status of Totalization Agreements, available at http://www.ssa.gov/international/status.html.

Note: The agreements with Austria, Belgium, Germany, Sweden and Switzerland permit an individual to receive benefits as a dependent or survivor of a worker while a *resident* in those countries only if the worker is a U.S. citizen or a citizen of the country of residence.

a. Provisions that eliminate double taxation became effective January 1, 1985; provisions that allow persons to use work in both countries to qualify for benefits became effective January 1, 1988.

Table 3. Number of Beneficiaries and Average Monthly Benefit Under U.S. Social Security Agreements, December 2007

Country	Total	Retired Workers	Disabled Workers	Wives and Husbands	Widow(er)s[a]	Children
			Number of Beneficiaries			
Overall	**146,199**	**96,970**	**2,752**	**32,484**	**12,525**	**1,468**
Australia	1,201	866	90	208	20	17
Austria	1,249	919	53	191	54	32
Belgium	752	517	6	147	68	14
Canada	47,193	29,876	1,274	9,725	5,859	459
Chile	98	77	[b]	17	[b]	[b]
Finland	271	187	16	52	11	5
France	4,498	3,206	24	824	371	73
Germany	19,926	14,785	521	3,228	1,168	224
Greece	3,371	2,311	147	598	260	55
Ireland	1,846	1,296	25	376	120	29
Italy	9,075	5,792	102	1,770	1,293	118
Japan	22,520	13,012	[b]	8,669	773	[b]
Korea, S.	432	307	[b]	119	6	[b]
Luxembourg	58	35	7	10	[b]	[b]
Netherlands	2,676	1,878	6	587	177	28
Norway	3,907	2,546	76	816	432	37
Portugal	2,009	1,308	111	318	238	34
Spain	2,531	1,592	72	516	299	52
Sweden	2,197	1,623	29	422	94	29
Switzerland	4,168	3,006	43	842	229	48
U.K.	16,221	11,831	149	3,049	1,046	146
			Average Monthly Benefit (U.S. dollars)			
Overall	**$193.20**	**$227.54**	**$431.37**	**$84.79**	**$165.36**	**$114.49**
Australia	207.73	214.39	444.33	85.57	242.30	69.35
Austria	208.22	237.64	293.88	70.93	165.14	113.50
Belgium	192.58	226.05	543.50	77.86	174.11	100.57
Canada	169.04	196.56	396.18	71.87	145.03	112.61
Chile	202.10	221.85	[b]	88.94	[b]	[b]
Finland	196.69	207.10	493.69	79.53	170.45	133.00
France	207.32	243.50	489.98	81.61	175.78	104.51
Germany	223.65	253.74	455.77	73.56	175.04	114.62
Greece	174.63	188.08	413.53	74.71	164.33	105.95

Country	Total	Retired Workers	Disabled Workers	Wives and Husbands	Widow(er)s[a]	Children
Ireland	209.35	239.50	647.46	83.60	210.29	110.69
Italy	180.43	214.49	529.47	74.37	151.86	110.70
Japan	193.70	246.41	[b]	110.12	247.16	[b]
Korea, S.	203.54	239.11	[b]	110.60	226.57	[b]
Luxembourg	255.12	270.69	441.86	81.50	[b]	[b]
Netherlands	186.80	218.39	965.83	79.26	189.81	136.43
Norway	186.70	211.61	432.33	81.97	198.78	137.49
Portugal	194.07	203.04	486.24	75.91	174.75	135.74
Spain	174.56	200.47	426.10	73.09	160.79	119.25
Sweden	170.95	190.68	412.72	77.92	184.76	133.83
Switzerland	181.61	209.16	463.21	75.55	174.70	96.96
U.K.	239.19	281.83	510.31	83.40	190.29	110.92

Source: SSA, Social Security Bulletin, Annual Statistical Supplement, 2008, Table 5.M1, available at https://www.socialsecurity.gov/policy/docs/statcomps/supplement/2008/5m.pdf.

Note: Three countries with which the United States has an agreement are not shown in this table (Czech Republic, Denmark and Poland) because these agreements went into effect after 2007.

a. Number includes nondisabled and disabled widow(er)s, mothers and fathers, and parents. A mother's/father's benefit is a monthly benefit payable to a widow/widower or surviving divorced mother/father if (1) the deceased worker on whose account the benefit is paid was either fully or currently insured at the time of death and (2) an entitled child of the worker in her/his care is under age 16 or is disabled. A parent's benefit is a monthly benefit payable to a dependent parent aged 62 or older of a deceased fully insured worker.

b. Number not shown to avoid disclosure of information regarding particular individuals.

Totalization Benefits

Benefit Application Process

Individuals living in the United States may apply for totalization benefits[72] at any one of the approximately 1,300 SSA field offices in the United States.[73] Individuals living outside the United States generally are required to apply for totalization benefits at a Foreign Service Post (FSP) located in a U.S. embassy or consulate, or at the social security agency in their home country.[74]

Initial processing of applications for totalization benefits is handled by SSA field office staff or Foreign Service Nationals in the FSP. Among other tasks, these individuals are responsible for reviewing supporting documents, such as birth and marriage certificates. After initial processing,

[72] Totalization benefits are Social Security benefits based on combined (totalized) U.S. and foreign work credits.

[73] The benefit application process is described in detail in the 2005 GAO Report.

[74] Claims filed at a foreign social security agency generally are referred to a Foreign Service Post, which deals directly with the claimant.

application packages are sent to SSA's Office of International Operations (OIO), which is responsible for final adjudication of claims for U.S. totalization benefits.[75] For claims filed at an SSA field office (rather than a FSP), OIO requests the foreign coverage record from the foreign social security agency.[76] OIO reviews the supporting documents (such as evidence of identity and citizenship), develops additional evidence if needed, and makes a final decision on the claim.[77] If the claim is for U.S. totalization disability benefits, OIO will make the determination of disability, however, Disability Determination Services may be asked to develop the medical evidence in such cases.[78]

Although agreements allow for some variation in the application process for totalization benefits,[79] each of the offices involved in the process (SSA field offices, SSA's Office of International Operations, and FSPs) maintain certain responsibilities. For individuals applying in the United States, SSA field offices are responsible for taking claims for U.S. totalization benefits, as well as claims for regular or totalization benefits from foreign countries. OIO is responsible for liaison activities with foreign countries, which include requesting foreign coverage records and providing U.S. coverage records or other information to foreign countries. In addition, OIO is responsible for final adjudication of a claim for U.S. totalization benefits. For individuals applying outside the United States, the FSPs, like the SSA field offices, are responsible for the development of benefit claims. The specific procedures vary depending on the terms of each agreement and whether the claim is filed initially at the FSP or the foreign social security agency.[80]

Computation of Benefits

Workers who meet the minimum coverage requirement for a U.S. Social Security benefit based on combined U.S. and foreign work credits can receive a totalization benefit (assuming all other eligibility requirements are met). A totalization benefit is prorated to reflect the number of years the worker was covered by the U.S. system.

[75] SSA POMS, Section GN 01702.001, SSA's Role in Processing Claims Under Totalization Agreements—General, available at http://policy.ssa.gov/poms.nsf/links/0201702001.

[76] If a claim is filed at a Foreign Service Post, the foreign coverage record is requested before the application is forwarded to OIO.

[77] 2005 GAO Report, p. 8.

[78] If the claim is concurrent with a claim for Supplemental Security Income, a means-tested benefit administered by the Social Security Administration, Disability Determination Services will make the determination of disability. For more information on the routing of claims for U.S. totalization disability benefits and the development of medical evidence in such cases, see SSA POMS, Section GN 01702.400 - Section GN 01702.420. For more information on SSA's disability programs, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by Scott Szymendera.

[79] Under the agreement with Canada, for example, designated border field offices are responsible for liaison activities and final adjudication of claims for U.S. Social Security benefits, unless the claims are received by OIO directly from claimants or from other field offices.

[80] SSA POMS, Section GN 01702.001, SSA's Role in Processing Claims Under Totalization Agreements—General, available at http://policy.ssa.gov/poms.nsf/links/0201702001. For more detailed information, see SSA POMS, Section GN 01702.000, DO Development and Routing of Totalization Claims, available at http://policy.ssa.gov/poms.nsf/links/0201702000.

For *regular* (non-totalization) benefits, the worker's Primary Insurance Amount (PIA)[81] is computed by applying the Social Security benefit formula to the worker's Average Indexed Monthly Earnings (AIME). The AIME is computed by dividing the worker's 35 highest years of covered earnings, adjusted for the growth in average wages over time, by the computation period (35 years or 420 months). If a worker has fewer than 35 years of covered earnings, years of zero earnings are counted in the computation of the AIME, resulting in a lower initial monthly benefit amount. For workers who reach the age of 62, become disabled, or die in 2010, the benefit formula that is applied to the worker's AIME to compute his or her PIA is:

> 90% of the first $761 of AIME, *plus*
>
> 32% of AIME over $761 through $4,586, *plus*
>
> 15% of AIME over $4,586.[82]

As with regular benefits, the amount of a U.S. totalization benefit depends on the duration of the worker's coverage under the U.S. system and his or her level of earnings. The process for computing a totalization benefit, however, differs from the regular benefit computation process according to the following basic steps:

> (1) a theoretical full-career earnings record is created based on the worker's actual earnings under the U.S. system relative to the average earnings of all covered workers;
>
> (2) a theoretical PIA is computed based on the theoretical earnings record;
>
> (3) the theoretical PIA is multiplied by a pro rata fraction to determine the pro rata PIA;[83] and
>
> (4) the monthly benefit amount is established based on the pro rata PIA (i.e., any adjustments that apply, such as a reduction for early retirement, are made to the pro rata PIA to determine the monthly benefit amount).[84]

Stated simply, a theoretical benefit is computed as though the individual had worked a full career (a coverage lifetime)[85] under the U.S. system at the same level of earnings he or she had during actual periods of covered employment in the United States. The theoretical benefit is prorated to reflect the proportion of the worker's coverage lifetime completed under the U.S. system.

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[81] The worker's PIA is the basic monthly benefit amount before any adjustments for early or delayed retirement.

[82] For a detailed explanation of the Social Security benefit computation, see **Appendix A** to this report.

[83] For example, in the case of a retirement benefit, assume that the worker's theoretical PIA is $1,000 and that he or she has seven years of work (or 28 quarters of coverage) under the U.S. system. The number of benefit computation years is 35 (or 140 calendar quarters), so the pro rata fraction applied to the theoretical PIA is 0.20 (i.e., 28 quarters of coverage divided by 140 calendar quarters). The pro rata PIA is $200 (i.e., $1,000 x 0.20).

[84] For information on the detailed procedures involved in each step, see SSA POMS, Section GN 01701.200, Totalization Computations, available at http://policy.ssa.gov/poms.nsf/links/0201701200. In addition, a detailed description of the totalization benefit computation procedure is available in SSA regulations (20 C.F.R. § 404.1918); totalization benefits are computed in this manner unless otherwise specified in an agreement.

[85] A coverage lifetime is defined in the regulations as the worker's benefit computation years (the number of years used to determine the worker's average indexed monthly earnings) under the regular benefit computation process (for example, 35 years in the case of a retirement benefit). For more information on benefit computation years, see **Appendix A** to this report.

By definition, totalization beneficiaries have fewer than 40 quarters (10 years) of Social Security-covered employment in the United States.[86] Because totalization benefits are prorated to reflect the worker's period of coverage under the U.S. system, totalization benefits on average are lower than regular benefits. For example, in December 2007, the average monthly benefit under U.S. totalization agreements for retired workers was $227.54 (see **Table 3**). Among regular beneficiaries, the average monthly benefit for retired workers was $1,079.[87]

Based on combined (totalized) work credits, a worker may qualify for Social Security benefits under one or both country's systems, depending on the eligibility requirements in each country. Totalization benefits are paid independently by each country (i.e., a U.S. Social Security benefit payable under a totalization agreement is paid separately from a benefit payable under a foreign system).[88] In addition, a U.S. totalization benefit may be converted to a regular benefit if the beneficiary continues to work in Social Security-covered employment in the United States and obtains enough work credits to become fully insured under the U.S. system without taking into account foreign work credits.[89]

Monitoring of Beneficiaries

The Social Security Administration monitors the continuing eligibility of Social Security beneficiaries (totalized and regular beneficiaries) living in the United States and abroad. With respect to beneficiaries living in the United States, SSA relies on data matching with states and federal agencies to identify circumstances that could affect an individual's continuing eligibility for benefits or the proper benefit amount (such as changes in work activity) and unreported deaths. With respect to beneficiaries living outside the United States (U.S. citizens and noncitizens), SSA relies on personal questionnaires (Foreign Enforcement Questionnaires) and periodic validation surveys (i.e., visits to beneficiaries' homes) to verify an individual's continuing eligibility for benefits.

SSA mails Foreign Enforcement Questionnaires (FEQs) to beneficiaries who live outside the United States on an annual or biennial basis, depending on factors such as the beneficiary's country of residence, age, and whether he or she has a representative payee.[90] For example, beneficiaries with a representative payee and those who are aged 97 or older are sent a questionnaire each year. Generally, beneficiaries who receive their own benefits (i.e., those who do not have a representative payee) are sent a questionnaire every other year, unless they live in certain countries to which questionnaires are sent annually.[91] The completed questionnaire must

[86] A worker who has 40 or more quarters of coverage (10 or more years of covered employment) in the United States would qualify for a regular Social Security benefit (assuming all other eligibility requirements are met).

[87] Social Security Administration, *2009 Social Security/SSI/Medicare Information*, May 14, 2009, available at http://www.socialsecurity.gov/legislation/2009%20factsheet.pdf.

[88] SSA POMS, Section GN 01701.100, Overview of Totalization Benefits, available at http://policy.ssa.gov/poms.nsf/links/0201701100.

[89] SSA POMS, Section GN 01703.270, Processing Cases Where Insured Status is Acquired Based on U.S. Coverage Only, available at http://policy.ssa.gov/poms.nsf/links/0201703270.

[90] A representative payee is a person, agency, organization or institution that is selected by SSA to manage the funds of a beneficiary who is determined to be unable to manage his or her own funds.

[91] For more information on FEQs, including the mailing schedule for various countries, see SSA POMS, Section RS 02655.005, Preparation and Mailing Schedule—Foreign Enforcement Program (FEP), available at http://policy.ssa.gov/poms.nsf/links/0302655005.

be returned to SSA within 60 days. The questionnaires are intended to provide SSA with information needed to verify the individual's continuing eligibility for benefits and the proper benefit amount (for example, an individual's benefit payments could be affected by changes in work activity or marital status as well as improvement of a disabling condition). The 2005 GAO Report indicated that SSA relies on foreign beneficiaries to accurately *self-report* the information because the agency does not conduct independent verification of the responses. Among other reasons, GAO indicated that SSA does not have the capability to verify information for foreign beneficiaries using computer database matches (as it does for domestic beneficiaries) and is unable to independently verify the death of foreign beneficiaries. GAO also pointed out, however, that SSA is developing pilot computer match projects with Italy and Germany to establish an independent, third-party mechanism for verifying beneficiaries' continuing eligibility for benefits.[92]

With respect to SSA's computer match projects, SSA noted in October 2009 that since 2005:

> SSA has initiated data matching projects under current totalization agreements to support and expand its stewardship initiatives. SSA has begun automated death data exchanges with a number of totalization partner countries designed to identify deceased beneficiaries and avoid overpayment of benefits. Some of the results of these efforts are as follows:
>
> A one-way death data exchange with Germany resulted in overpayment savings of $1,792,546 (U.S. dollars).
>
> Since February 2009, SSA has implemented recurring death data exchanges with Australia. These data exchanges have resulted in overpayment savings of $128,878.70 (U.S. dollars).
>
> In 2009, SSA is working to expand the death data exchange to five additional totalization partner countries.
>
> SSA will pilot two additional automated death data exchanges before the end of 2009.
>
> SSA intends to conduct automated death data exchanges with all totalization agreement partner countries.[93]

In addition, SSA conducts periodic validation surveys in foreign countries (including countries with which the United States has totalization agreements) where Social Security beneficiaries live. SSA staff (from the Office of Central Operations) and foreign service staff visit beneficiaries' homes to administer the surveys for the purpose of verifying the identity and continuing eligibility of beneficiaries. SSA conducts validation surveys in about three countries each year. The frequency of visits varies by country, depending on factors such as results of past surveys and evidence of data reliability concerns. For example, some countries may be surveyed every five years (such as Portugal) while others may be surveyed every 30 years (such as Sweden). Although validation surveys have helped SSA identify unreported deaths and overpayments, the 2005 GAO Report indicated that, according to SSA officials, the validation surveys conducted since 2000 generally verify only the identity and existence of beneficiaries.

[92] 2005 GAO Report, p. 14.

[93] Information provided by the Social Security Administration to the Congressional Research Service in October 2009.

They do not verify work activity or other information that could affect an individual's benefit payments.[94]

Effects of Agreements on Selected Provisions of the Social Security Act

Waiver of the Alien Nonpayment Provision

Section 202(y) of the Social Security Act requires noncitizens in the United States to be lawfully present to receive benefits.[95] If a noncitizen is entitled to benefits, but does not meet the lawful presence requirement, his or her benefits are suspended. In such cases, a noncitizen may receive benefits (which may include benefits based on work performed in the United States without authorization)[96] while residing outside the United States if he or she meets one of the exceptions to the alien nonpayment provision under Section 202(t) of the Social Security Act (see **Table 4**). Under the alien nonpayment provision, a noncitizen's benefits are suspended if he or she remains outside the United States[97] for more than six consecutive months,[98] unless one of several broad exceptions is met.[99] For example, an alien may receive benefits outside the United States if he or she is a citizen of a country that has a social insurance or pension system that pays benefits to eligible U.S. citizens residing outside that country[100] (see **Appendix B**), or if he or she is a resident of a country with which the United States has a totalization agreement (see **Table 2**). If an alien does not meet one of the exceptions to the alien nonpayment provision, his or her benefits are suspended beginning with the seventh month of absence and are not resumed until he or she returns to the United States lawfully for a full calendar month.

In addition, to receive payments outside the United States, alien *dependents and survivors* must have lived in the United States previously for at least five years (lawfully or unlawfully), and the

[94] 2005 GAO Report, p. 13.

[95] For the definition of "lawfully present" see Appendix C in CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by (name redacted) and (name redacted). The lawful presence requirement was added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208). In addition, see the section of this report titled "Legislative History of Payment Rules for Noncitizens."

[96] The Social Security Protection Act of 2004 (P.L. 108-203) requires an alien whose application for benefits is based on a Social Security Number (SSN) assigned on or after January 1, 2004, to have work authorization at the time an SSN is assigned, or at some later time, to gain insured status under the Social Security program. An alien whose benefit application is based on an SSN assigned before January 1, 2004, may count all covered earnings toward insured status, regardless of work authorization. For more information, see CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by (name redacted) and (name redacted).

[97] "Outside the United States" means outside the territorial boundaries of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

[98] The 6-month period of absence begins with the first full calendar month following the period in which the individual has been outside the United States for more than 30 consecutive days. If the individual returns to the United States for any part of a day during the 30-day period, the 30-day period starts over.

[99] For information on the alien nonpayment provision, see SSA POMS, Section RS 02610.000, Alien Non-Payment Provisions, available at http://policy.ssa.gov/poms.nsf/links/0302610000.

[100] The criteria used to evaluate the social insurance or pension system of a foreign country to determine whether the exception to the alien nonpayment provision applies is available in SSA regulations (20 C.F.R. § 404.463).

family relationship to the worker must have existed during that time (see **Table 5**). The law provides several broad exceptions to the five-year U.S. residency requirement for alien dependents and survivors (see **Table 6**). For example, an alien dependent or survivor is exempt from the U.S. residency requirement if he or she is a citizen of a treaty obligation country (i.e., if nonpayment of benefits would be contrary to a treaty between the United States and the individual's country of citizenship; see **Appendix B**), or if he or she is a citizen or resident of a country with which the United States has a totalization agreement (see **Table 2**).

Tables 4 through 6 summarize the complex rules and exceptions that apply to the payment of benefits to noncitizens living outside the United States (payments to workers and their family members). As shown in the tables, assuming all other eligibility requirements are met, the existence of a totalization agreement between the United States and a foreign country (1) allows workers and their family members who are residents of the foreign country to receive benefits outside the United States indefinitely (i.e., the alien nonpayment provision is waived)[101] and (2) may allow family members (dependents and survivors of the worker) who are citizens or residents of the foreign country to receive benefits outside the United States without having to meet the U.S. residency requirement (i.e., the five-year U.S. residency requirement that applies to alien dependents and survivors outside the United States is waived).[102]

These advantages of a totalization agreement are not limited to workers (and their family members) who qualify for U.S. Social Security benefits based on work performed in the United States under a formal arrangement between the United States and a foreign country under the terms of a totalization agreement. Workers (and their family members) who qualify for U.S. Social Security benefits (which may include benefits based on work performed in the United States without authorization) would be exempt from the payment restrictions that apply to noncitizens residing outside the United States (including the five-year U.S. residency requirement for dependents and survivors). This means that, depending on the specific agreement and on whether SSA has determined that the other country reciprocates under the provisions of Section 202(t) of the Social Security Act, dependents and survivors of noncitizen workers who reside outside the United States and who may never have resided in the United States could collect U.S. Social Security benefits on the worker's record. In addition, citizens of third-party countries (countries other than the United States or a totalization agreement country) are exempt from these payment restrictions (including the five-year U.S. residency requirement for dependents and survivors) if they *reside* in a country with which the United States has a totalization agreement.

In addition to the alien nonpayment provision, other restrictions apply to the payment of benefits to individuals residing outside the United States. U.S. Treasury Department regulations and Social Security restrictions prohibit payments from being sent to individuals residing in Cuba, North Korea, Cambodia, Vietnam, or areas that were in the former Soviet Union (excluding Armenia, Estonia, Latvia, Lithuania and Russia); in countries with Social Security restrictions in place, exceptions to the general nonpayment rule can be made for certain eligible beneficiaries.[103]

[101] Under the agreement with Australia, the United States pays Social Security benefits to an Australian citizen who resides in the United States, Australia, or a third country with which the United States has a totalization agreement. If an Australian citizen resides elsewhere (i.e., in a non-totalization country), he or she is subject to the alien nonpayment provision. The agreement with Denmark contains a similar provision.

[102] Under the agreement with Australia, Australian dependents and survivors who do not reside in the United States, Australia, or a third country with which the United States has a totalization agreement must meet the five-year U.S. residency requirement to receive payments abroad. The agreement with Denmark contains a similar provision.

[103] Social Security Administration, *Your Payments While You Are Outside The United States*, SSA Publication No. 05-
(continued...)

The Social Security Act also prohibits the payment of benefits to most individuals who are removed from the United States (i.e., deported).[104]

Table 4. Exceptions to the Alien Nonpayment Provision for Workers and Dependents/Survivors

An alien's benefits are suspended if he or she is outside the United States for more than six consecutive months, unless one of the following exceptions is met:

- the individual is a citizen of a country that has a social insurance or pension system under which benefits are paid to eligible U.S. citizens who reside outside that country (see **Appendix B** for a list of countries)
- the individual is entitled to benefits on the earnings record of a worker who lived in the United States for at least 10 years or earned at least 40 quarters of coverage under the U.S. Social Security system
- the individual is entitled to benefits on the earnings record of a worker who had railroad employment covered by Social Security
- the individual is outside the United States while in the active military or naval service of the United States
- the individual is entitled to benefits on the earnings record of a worker who died while in the U.S. military service or as a result of a service-connected disease or injury
- the nonpayment of benefits would be contrary to a treaty obligation of the United States in effect as of August 1, 1956 (i.e., the individual is a citizen of a treaty obligation country; see **Appendix B** for a list of countries)
- the individual is a resident of a country with which the United States has a totalization agreement[a] (see **Table 2** for a list of countries)
- the individual was eligible for Social Security benefits as of December 1956

Source: Section 202(t) of the Social Security Act.

a. Under the agreement with Australia, the United States pays Social Security benefits to an Australian citizen who resides in the United States, Australia, or a third country with which the United States has a totalization agreement. If an Australian citizen resides elsewhere, he or she is subject to the alien nonpayment provision. The agreement with Denmark contains a similar provision.

(...continued)

10137, June 2009, available at http://www.ssa.gov/pubs/10137.html#countries; and 20 C.F.R. § 404.460 based on the *Electronic Code of Federal Regulations* with data current as of June 1, 2009, available at http://ecfr.gpoaccess.gov/. When a beneficiary who is a U.S. citizen or national leaves a country to which payments are restricted due to U.S. Treasury Department regulations and goes to a country where payments can be sent, receipt of benefits may resume and accrued benefits are paid. In this circumstance, accrued benefits are not paid to noncitizens. When a beneficiary, U.S. citizen or noncitizen, leaves a country to which payments are restricted due to SSA restrictions, receipt of benefits may resume and accrued benefits are paid as long as a beneficiary is eligible for the payments and goes to a country where payments can be sent.

[104] One exception would be aliens who are removed on status violations (i.e., removed from the United States because they are illegally present).

Table 5. Additional Residency Requirement for Alien Dependents and Survivors Outside the United States

In addition to the requirements shown in **Table 4**, to receive payments outside the United States, an alien dependent or survivor must have lived in the United States for at least five years (lawfully or unlawfully) under one of the following circumstances:

A spouse, divorced spouse, widow(er), surviving divorced spouse, or surviving divorced mother or father:

must have resided in the United States for at least five years and the spousal relationship to the worker must have existed during that time

A child:

must have resided in the United States for at least five years as the child of the worker; or
the worker and the child's other parent (if any) each must have either resided in the United States for at least five years or died while residing in the United States

An adopted child:

must have been adopted in the United States; *and*
lived in the United States with the worker; *and*
received at least half of his or her support from the worker in the year before the worker's entitlement or death

Source: Section 202(t) of the Social Security Act.

Note: The five-year period of residence in the United States does not have to be continuous (20 C.F.R. § 404.460).

Table 6. Exceptions to the Additional Residency Requirement for Alien Dependents and Survivors Outside the United States

An alien dependent or survivor living outside the United States is not subject to the five-year U.S. residency requirement if one of the following exceptions is met:

- the individual was eligible for Social Security benefits before January 1, 1985
- the individual is entitled to benefits on the earnings record of a worker who died while in the U.S. military service or as a result of a service-connected disease or injury
- the nonpayment of benefits would be contrary to a treaty obligation of the United States in effect as of August 1, 1956 (i.e., the individual is a citizen of a treaty obligation country; see **Appendix B** for a list of countries)
- the individual is a citizen or resident of a country with which the United States has a totalization agreement[a] (see **Table 2** for a list of countries)

Source: Section 202(t) of the Social Security Act.

a. Under the agreement with Australia, Australian dependents and survivors who do not reside in the United States, Australia, or a third country with which the United States has a totalization agreement must meet the five-year U.S. residency requirement to receive payments abroad. The agreement with Denmark contains a similar provision.

Legislative History of Payment Rules for Noncitizens

When the Social Security program began paying benefits in 1940, there were no restrictions on benefit payments to noncitizens. In 1956, amid concerns that noncitizens were working in the United States for relatively short periods and returning to their native countries where they and their family members would collect benefits for many years, Congress enacted restrictions on benefits for alien *workers* living abroad (restrictions did not apply to alien dependents and survivors). The Social Security Amendments of 1956 (P.L. 84-880) required noncitizens to reside

in the United States to receive benefits and, under the alien nonpayment provision, suspended benefits if the recipient remained outside the United States for more than six consecutive months, with broad exceptions (see **Table 4**).

In 1983, Congress placed restrictions on benefit payments to alien *dependents and survivors* living abroad. The Social Security Amendments of 1983 (P.L. 98-21) made alien dependents and survivors outside the United States subject to the same payment restrictions as alien workers. P.L. 98-21 further required that, to receive benefits outside the United States, alien dependents and survivors (or their parents, in the case of a child's benefit) must have lived in the United States previously for at least five years (see **Table 5**), with broad exceptions (see **Table 6**).

Several factors led to the enactment of tighter restrictions on benefit payments to alien dependents and survivors living abroad in 1983, including the large number of dependents that were being added to the benefit rolls (in some cases under fraudulent circumstances) after workers had returned to their native country and become entitled to benefits, and difficulties associated with monitoring the continuing eligibility of recipients living abroad.

At the time, GAO estimated that, of the 164,000 dependents living abroad in 1981, 56,000 were added to the benefit rolls after the worker became entitled to benefits. Of that number, an estimated 51,000 (or 91%) were noncitizens.[105] Two years earlier, the Commissioner of Social Security stated that SSA investigators had found evidence that some recipients living abroad were faking marriages and adoptions and failing to report deaths in order to "cheat the system." At the time, the Commissioner stated that such problems were particularly acute in Greece, Italy, Mexico and the Philippines where large numbers of beneficiaries were residing. He stated further that, in some countries, "there is a kind of industry built up of so-called claims-fixers who, for a percentage of the benefit, will work to ensure that somebody gets the maximum benefit they can possibly get out of the system."[106]

In 1996, Congress enacted tighter restrictions on the payment of Social Security benefits to aliens residing in the United States. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)[107] prohibited the payment of Social Security benefits to aliens in the United States who are not lawfully present, unless nonpayment would be contrary to a totalization agreement or Section 202(t) of the Social Security Act (the alien nonpayment provision). This provision became effective for applications filed on or after September 1, 1996. Subsequently, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996[108] added Section 202(y) to the Social Security Act. Section 202(y) of the Social Security Act, which became effective for applications filed on or after December 1, 1996, states:

> Notwithstanding any other provision of law, no monthly benefit under [Title II of the Social Security Act] shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General.

[105] U.S. General Accounting Office, *Issues Concerning Social Security Benefits Paid to Aliens*, GAO/HRD-83-32, March 24, 1983, available at http://archive.gao.gov/d40t12/120895.pdf.

[106] CRS Issue Brief IB82001, *Social Security: Alien Beneficiaries*, by David S. Koitz. This out-of-print document is available from the author of this report upon request.

[107] Section 401(b)(2) of P.L. 104-193.

[108] Division C of P.L. 104-208.

Exemption from the Windfall Elimination Provision

Generally, under a provision of the Social Security Act known as the windfall elimination provision (WEP), individuals who receive a pension from work that was not covered by the U.S. Social Security system (a noncovered pension) are subject to a reduction in Social Security retirement and disability benefits if they have fewer than 30 years of Social Security coverage.[109] Under the Social Security Independence and Program Improvements Act of 1994 (P.L. 103-296), the WEP does not apply to U.S. *totalization* benefits payable beginning January 1995.[110]

In addition, a foreign pension based on a totalization agreement with the United States does not trigger the WEP in the computation of a *regular* (non-totalization) U.S. benefit for benefits payable beginning January 1995 (i.e., a foreign pension may trigger the WEP only if the worker is insured based on U.S. coverage alone and the foreign pension is not based on a totalization agreement with the United States).[111]

Application of a Work Test

Social Security beneficiaries who continue to work are subject to a limitation on earnings until they reach the full retirement age (FRA).[112] There are two types of work tests: the Retirement Earnings Test and the Foreign Work Test. The Retirement Earnings Test (RET) applies to work performed by beneficiaries in the United States and to work performed by beneficiaries outside the United States if the work is covered by the U.S. Social Security program. Under the RET, Social Security benefits are subject to a withholding of $1 for every $2 of earnings above $14,160 for beneficiaries who are below the FRA and will not reach the FRA in 2010. For beneficiaries who will reach the FRA in 2010, Social Security benefits are subject to a withholding of $1 for every $3 of earnings above $37,680.[113] The Foreign Work Test applies to work performed by beneficiaries outside the United States if the work is not covered by the U.S. Social Security program. Under the Foreign Work Test, Social Security benefits are withheld for each month a beneficiary below the FRA works more than 45 hours outside the United States in a job that is not subject to U.S. Social Security taxes (regardless of the amount of earnings).[114]

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[109] Examples of a noncovered pension include a state or local government pension based on noncovered employment or a foreign pension based on noncovered employment. Under the WEP, the worker's Social Security benefit is computed using the WEP PIA formula rather than the regular benefit formula. For more information, see CRS Report 98-35, *Social Security: The Windfall Elimination Provision (WEP)*, by (name redacted).

[110] In some cases, the WEP may apply to U.S. totalization benefits payable for months before January 1995. For more information, see SSA POMS, Sections GN 01701.300 - GN 01701.320.

[111] For more information, see SSA POMS, Section GN 01701.310, Foreign Pensions Based on a Totalization Agreement with the United States—Effect on the Windfall Elimination Provision (WEP), available at http://policy.ssa.gov/poms.nsf/links/0201701310.

[112] The FRA is the age at which unreduced (or full) Social Security retirement benefits are payable. The FRA is increasing gradually from age 65 to age 67 (it will reach the age of 67 for persons born in 1960 or later). For more information, see *The Full Retirement Age is Increasing* at http://www.socialsecurity.gov/pubs/ageincrease.htm.

[113] The RET no longer applies beginning with the month the beneficiary reaches the FRA. The earnings thresholds ($14,160 and $37,680 in 2010) are indexed annually to average wage growth (if a Social Security cost-of-living adjustment is payable). For more information on the RET, see *Exempt Amounts Under the Earnings Test* at https://www.socialsecurity.gov/OACT/COLA/rtea.html.

[114] Social Security Administration, *Your Payments While You Are Outside The United States*, SSA Publication No. 05-10137, June 2009, available at http://www.ssa.gov/pubs/10137.html#countries.

The Social Security Act extends U.S. Social Security coverage to U.S. citizens and residents working abroad. However, totalization agreements modify the rules of coverage allowing work performed by U.S. citizens and residents in a foreign country to be covered under either the U.S. system or the foreign system, depending on the terms of the agreement. Therefore, totalization agreements affect whether a Social Security beneficiary working outside the United States is subject to the Retirement Earnings Test or the Foreign Work Test.[115]

Qualification for Medicare Hospital Insurance

Medicare is a federal health insurance program for persons aged 65 or older, under the age of 65 with certain disabilities, and any age with End Stage Renal Disease (ESRD).[116] Social Security beneficiaries are eligible for Medicare at the age of 65. Social Security disability beneficiaries are eligible for Medicare at any age after they have been receiving disability benefits for 24 months. ESRD beneficiaries are eligible if they have permanent kidney failure requiring dialysis or a kidney transplant.[117] Totalization agreements do not extend Medicare coverage to totalization beneficiaries. Specifically, Section 233(c)(3) of the Social Security Act prohibits totalization beneficiaries from entitlement to Medicare premium-free Hospital Insurance (HI) benefits.[118]

However, a person who is entitled to U.S. totalization benefits may qualify for Medicare premium-free HI, but he or she must meet the requirements independently of an agreement.[119] For example, a totalization beneficiary may be entitled to Medicare premium-free HI if he or she is also entitled to regular benefits on a Social Security Number (SSN) that is different from the SSN on which totalization benefits are paid.[120] In addition, a totalization beneficiary may meet the requirements for a regular benefit[121] that is denied or terminated because the regular benefit would be lower than the totalization benefit.[122] In this case, the beneficiary may maintain his or her status as a totalization beneficiary to receive the higher benefit amount and may be entitled to Medicare premium-free HI. A totalization beneficiary who does not meet the requirements for premium-free Medicare HI may be able to get Medicare HI by paying a monthly premium.[123]

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[115] SSA POMS, Section GN 01702.515, Applicability of Annual Earnings Test/Foreign Work Test, available at http://policy.ssa.gov/poms.nsf/links/0201702515.

[116] U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), CMS Publication No. 10116, revised August 2008 (hereinafter referred to as CMS Publication No. 10116, August 2008).

[117] CMS Publication No. 10116, August 2008.

[118] Medicare HI pays for hospital bills and certain follow-up care. There is no monthly premium for Medicare HI. Medicare benefits are available only in the United States (i.e., Medicare generally does not cover health services outside the United States).

[119] SSA POMS, Section GN 01701.140 (Entitlement to Hospital Insurance (HI) in Totalization Claims), available at http://policy.ssa.gov/poms.nsf/links/0201701140.

[120] For example, a beneficiary may be dually entitled to a totalization benefit based on his or her own work record (a retirement or disability benefit) and a regular benefit based on the work record of a spouse (a spousal benefit).

[121] A totalization beneficiary may continue to work in Social Security-covered employment and obtain enough work credits to become fully insured under the U.S. system without taking into account foreign work credits. In this case, a totalization benefit may be converted to a regular benefit.

[122] While regular benefits generally are higher than totalization benefits, there could be a circumstance in which a regular benefit that is subject to reduction under the windfall elimination provision (WEP) would be lower than a totalization benefit that is exempt from the WEP. See related discussion in the section of this report titled *Exemption from the Windfall Elimination Provision*.

[123] Section 1818 of the Social Security Act; and SSA POMS, Section HI 00801.131, Eligibility for Premium-HI, available at http://policy.ssa.gov/poms.nsf/links/0600801131.

Issues and Concerns

Many observers agree that international Social Security agreements can be beneficial for U.S. companies and workers. However, some policymakers have expressed concerns about several aspects of the agreements. Among these concerns are (1) SSA's policies and procedures for assessing the integrity and reliability of foreign data and evidentiary documents to identify potential risks when entering into an agreement; (2) SSA's ability to verify individuals' initial eligibility for benefits under an agreement and to monitor the continuing eligibility of beneficiaries outside the United States; and (3) the role of Congress with respect to the approval process for potential agreements, as well as the need for enhanced reporting requirements and periodic evaluation of agreements once they are in force.[124]

Assessing Risks Associated with Future Agreements

In 2005, GAO reported concerns regarding the potential exposure of the Social Security trust funds to improper payments resulting from inaccurate or falsified foreign data and documentation (such as birth, death, marriage and divorce records). GAO reported that "Historically, SSA has conducted only limited reviews, focusing primarily on broad policy issues and systems compatibility, rather than examining the integrity and reliability of earnings data and evidentiary documents."[125] However, GAO also reported that SSA was in the process of developing new initiatives to identify risks associated with totalization agreements. GAO further stated:

> SSA officials told us that the agency has developed several new initiatives to identify risks associated with totalization agreements. SSA has developed a standardized questionnaire to help the agency identify and assess the reliability of earnings data in countries under consideration for future totalization agreements. In addition, SSA has undertaken two initiatives aimed at determining which countries may be suitable for future agreements. One initiative involves conducting discussions with other U.S. government agencies such as the Department of Commerce to better assess which countries may be suitable for future agreements. SSA is also developing a matrix to compare relevant factors, including data accessibility across countries where agreements could be negotiated in the future. Finally, in an effort to improve existing procedures, SSA is conducting numerous "vulnerability assessments" to detect potential problems with the accuracy of foreign countries' documents.[126]

[124] Totalization agreements and the payment of Social Security benefits to noncitizens became the focus of policymakers and the public when it was disclosed in 2002 that the United States was negotiating an agreement with Mexico. In many cases, the concerns expressed about an agreement with Mexico are related to the large number of individuals from Mexico estimated to be working in the United States without authorization using false (in some cases stolen) identities and documents, the integrity and reliability of Mexico's data and recordkeeping systems, and the potential for an agreement to create an incentive for more unauthorized workers to enter the United States. For example, see U.S. General Accounting Office, *Social Security: Proposed Totalization Agreement with Mexico Presents Unique Challenges*, GAO-03-993, September 2003; and Center for Immigration Studies, *Social Security 'Totalization' Examining a Lopsided Agreement with Mexico*, by Marti Dinerstein, September 2004. For more information on the agreement with Mexico (which has been signed but has not entered into force), see CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by (name redacted) and (name redacted).

[125] 2005 GAO Report, p. 2.

[126] 2005 GAO Report, p. 3.

Despite these initiatives, GAO cautioned in 2005:

> While these tools appear to be a positive first step for helping SSA identify potential risks associated with future totalization agreements, SSA has only recently begun implementing them and has not developed plans to integrate these initiatives into formal procedures. The lack of a formal protocol, coupled with the expected retirement of key management and staff over the next few years, may result in the loss of important institutional knowledge relating to totalization agreements, which may hinder the agency's ability to effectively assess risks associated with future agreements.[127]

Determining Eligibility for Benefits Under an Agreement

In 2005, GAO reported concerns regarding SSA's ability (1) to determine individuals' initial eligibility for benefits under an agreement, and (2) to monitor beneficiaries outside the United States with respect to continuing eligibility for benefits once an agreement is in force. GAO reported:

> Our review also identified potential vulnerabilities in SSA's policies and procedures for verifying individuals' eligibility for benefits once an agreement is in force. When establishing an individual's initial eligibility for benefits, the agency generally accepts critical documentation from foreign countries, such as birth certificates, without independently verifying the accuracy of such information. We also found that SSA's two primary tools for determining an individual's continuing eligibility – validation surveys and personal questionnaires – may be insufficient to ensure that only those still eligible for benefits continue to receive them.[128]

In response, SSA pointed out that the process for evaluating foreign evidence in totalization claims is the same as that for regular claims. SSA maintains, therefore, that totalization agreements do not introduce a new element of risk to the Social Security program.[129] SSA further pointed out that detailed procedures and guidelines are used in evaluating foreign evidence, as described in the agency's Program Operations Manual System.[130]

Despite the existing procedures and guidelines, GAO cautioned in 2005:

> Once totalization agreements are in force, verification of individuals' initial and continuing eligibility for benefits is essential to ensure that benefits are paid only to entitled recipients. The relatively limited scope of SSA's current verification procedures may not provide adequate assurance that the trust funds are protected from improper payments. Moreover, because the agency lacks the ability to independently verify the information it receives from foreign beneficiaries on its questionnaires, SSA has little assurance that questionnaire responses are accurate. Thus, SSA may not be aware of changes in beneficiaries' eligibility status, resulting in improper payments for an extended period of time. Given the likely growth in the number of foreign beneficiaries in coming years, including totalized beneficiaries, the trust funds will likely face increased exposure if existing processes are not improved. In an environment of limited staff and budgetary resources, SSA could benefit

[127] 2005 GAO Report, p. 3.

[128] 2005 GAO Report, p. 3.

[129] 2005 GAO Report, p. 20.

[130] See SSA POMS, Section GN 00307, Foreign Evidence, available at http://policy.ssa.gov/poms.nsf/links/0200307000.

> from a more systematic approach for independently verifying information that can affect individuals' initial and continuing eligibility for benefits, such as computer matches. While SSA has taken some positive steps in this regard such as its negotiations for conducting a death match with Italy, additional challenges remain. In particular, the agency currently lacks the authority to conduct computer matches with foreign countries – a prerequisite for conducting such matches and other forms of independent verification with foreign countries.[131]

Related Testimony by GAO and SSA in 2006

In 2006, GAO raised similar concerns regarding totalization agreements in testimony before the House Ways and Means Committee, Subcommittee on Social Security.[132] A summary table showing the status of recommendations made in the 2005 GAO Report regarding totalization agreements indicates that, while the recommendations had not been implemented at that time, SSA was making progress toward them. For example, it was reported that SSA had developed a standardized questionnaire to assess the reliability of earnings data in countries that may be considered for future totalization agreements. It was also reported that SSA was exploring a more systematic approach, such as the use of computer matches, to independently verify data from foreign countries. A GAO official testified in 2006:

> While SSA is making progress in improving the program's integrity by strengthening its procedures for verifying documents and coordinating with other agencies and foreign governments, opportunities remain for additional progress. SSA plans further enhancements to the Enumeration at Entry program in order to protect against errors, fraud and abuse. In addition, a more systematic approach to verifying data from other countries with which we have totalization agreements can help ensure proper payments of benefits and prompt notice of the death of beneficiaries. SSA will, however, continue to face challenges in its dealings with noncitizens. Changes in immigration laws and shortcomings in the enforcement of those laws make it difficult for SSA to identify noncitizens who are eligible for [Social Security Numbers] and for benefit payments. Continued attention to these issues by both SSA and the Congress is essential to ensure that noncitizens receive benefits to which they are entitled and the integrity of the Social Security program is protected.[133]

At the hearing, testimony was also given by SSA. In addressing the topic of the integrity of foreign data in totalization agreements, an SSA official testified in 2006:

> Under some totalization agreements, SSA and the other country's agency have agreed to use each other's verification of certain eligibility factors, such as a claimant's date of birth. However, this is done only in cases where years of pre-agreement experience and an examination of the other country's system of records during implementation meetings has indicated that evidence from that particular country is accurate and reliable. This policy eliminates the duplication of effort that would result if the agencies of both countries were required to verify the same information.

[131] 2005 GAO Report, pp. 15-16.

[132] U.S. Government Accountability Office, *Social Security Administration: Procedures for Issuing Numbers and Benefits to the Foreign-Born*, GAO-06-253T, March 2, 2006, available at http://www.gao.gov/new.items/d06253t.pdf (hereinafter referred to as 2006 GAO Testimony).

[133] 2006 GAO Testimony, p. 16.

> However, each agreement includes a provision that makes clear that SSA remains the final judge of the probative value of any evidence it receives from any source. SSA is, therefore, able to verify the accuracy of the other country's certification by obtaining original or certified copies of documents and by contacting the claimant directly.
>
> In addition, SSA conducts validation surveys when we become concerned that document fraud may be becoming a problem in a country. Each year we select three countries from a rotating list to conduct "identity and existence" surveys. We train the foreign-service nationals to be vigilant for fraud when examining documents and instruct them to check primary and secondary sources to verify the accuracy of documents.
>
> SSA has recently developed a standardized set of protocols that integrate and formalize the various initiatives we have already undertaken for verifying foreign countries' data. These protocols will be used when negotiating future totalization agreements.[134]

Status of SSA Initiatives in 2009

In October 2009, the Social Security Administration provided information to the Congressional Research Service on the status of key initiatives referenced in the 2005 and 2006 GAO and SSA documents cited in this report.

With respect to data exchanges with foreign countries, SSA noted:

> As a result of the success of the regularly recurring death data exchange with Australia, first held in February 2009, SSA has begun discussions with five additional totalization partner countries. SSA pays Social Security benefits to nearly 110,000 beneficiaries in these countries, resulting in nearly $58 million in monthly payments (U.S. dollars). The potential for improved stewardship and reduction of improper payments is significant. These automated exchanges are only possible in countries with which the United States has entered into an agreement. Two additional automated death data exchanges will be piloted before the end of 2009. SSA intends to expand the death data exchange project to all totalization agreement partner countries.

GAO reported that SSA had developed a standardized questionnaire to assess the reliability of earnings data in countries that may be considered for future totalization agreements. Since the agreement with Japan entered into force in October 2005, three totalization agreements have entered into force with Denmark (October 2008), the Czech Republic (January 2009) and Poland (March 2009). SSA indicated that officials in each of these countries provided responses to the standardized questionnaire (SSA's *Systems Security and Management Control Environment* questionnaire) that were satisfactory to SSA system security reviewers. In addition, SSA indicated that the agency continues to present updated versions of the standardized questionnaire to officials in potential totalization agreement countries when the agency begins exploratory talks on a possible agreement. Foreign officials are informed that SSA can enter into formal negotiations on a totalization agreement only after SSA data security officials "(1) review questionnaire responses, and (2) confirm that they provide sufficient confidence in the reliability and integrity of the foreign nation's system for recording, maintaining, and reporting earnings data in a secure environment, with adequate privacy safeguards for personally identifiable information." Finally,

[134] *Statement of Martin Gerry, SSA Deputy Commissioner for Disability and Income Security Programs*, Testimony Before the House Committee on Ways and Means, Subcommittee on Social Security, March 2, 2006, available at http://www.socialsecurity.gov/legislation/testimony_030206.html.

SSA noted that the agency is currently doing an internal review of the standardized questionnaire "to ensure that it continues to elicit the responses necessary for SSA data security authorities to identify and assess the reliability of earnings data in countries under consideration for future [t]otalization agreements."

A GAO official testified in 2006 that SSA was planning further enhancements to the Enumeration at Entry (EaE) program to protect against errors, fraud and abuse. SSA indicated that, among measures taken to protect the integrity of the Social Security Number, the agency has expanded the EaE program, effective August 31, 2009, to make it available to all persons entering the country as lawful permanent residents. Previously, the EaE program was available only to persons over the age of 18 entering the country as lawful permanent residents. Currently, a person of any age who applies for an immigrant visa may elect on the visa application to receive an SSN through the EaE program. SSA noted that "EaE improves the integrity of our enumeration process because the information needed to assign the SSN is collected and verified by the [f]ederal agencies responsible for conferring immigrant status. [The Department of] State certifies the identity and age of the person at the time he or she files for the immigrant visa, and [the Department of Homeland Security] admits the person to the United States as a lawful permanent resident, certifying that the person is authorized to work in the United States."[135]

The Role of Congress

Some policymakers have expressed concerns about the role of Congress in the approval process for international Social Security agreements. The Social Security Act specifies that an agreement will become effective unless the House of Representatives or the Senate adopts a resolution of disapproval during a period of 60 session days after the agreement is transmitted to Congress for review.[136] As described in detail above, the congressional review process under current law does not provide an opportunity for Congress to amend the text of an agreement. Moreover, an attempt by Congress to stop an agreement from taking effect using the disapproval mechanism specified in the Social Security Act could give rise to a judicial challenge, potentially resulting in an invalidation of the disapproval mechanism and a determination that the agreement is effective.[137]

With respect to reporting requirements, the Social Security Act specifies only that the agreement shall be transmitted by the President to Congress "together with a report on the estimated number of individuals who will be affected by the agreement and the effect of the agreement on the estimated income and expenditures of the programs established by this Act."[138] In 2005, GAO recommended that "reports of proposed agreements be enhanced to make them more consistent and informative and that SSA establish a regular process to reassess the accuracy of its actuarial

[135] SSA identified a number of measures taken to protect the integrity of the SSN that are not addressed in this report. For example, SSA noted that provisions related SSNs and cards in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), such as independent verification of all birth records presented in support of an application for an original SSN (excluding SSNs assigned through the Enumeration at Birth and Enumeration at Entry programs), have been implemented. In addition, SSA noted that the agency has opened five additional Social Security Card Centers in the United States since the 2006 GAO testimony. SSA pointed out that, because of the specialized expertise of card center employees, "the card centers streamline and improve the integrity and stewardship of the SSN assignment process."

[136] Section 233(e)(2) of the Social Security Act.

[137] For more information, see the section of this report titled "Congressional Review of Agreements."

[138] Section 233(e)(1) of the Social Security Act.

estimates."[139] In addition, Members of Congress have introduced legislation that would, among other changes, establish new reporting requirements and mandate periodic evaluation of Social Security agreements once they are in force.

Legislation in the 111th Congress

In recent years, legislation has been introduced that would alter the congressional review process for international Social Security agreements, among other changes. For example, in the 111th Congress, S. 42 (Social Security Totalization Agreement Reform Act of 2009 or STAR Act)[140] would require both Houses of Congress to approve a totalization agreement before it could go into effect. In addition, the measure would establish new reporting requirements. S. 42 would require the President to submit the "final legal text" of an agreement to Congress, along with a report containing specified information such as "an assessment of the integrity of the retirement data and records (including birth, death, and marriage records) of the other country that is the subject of the agreement" and "an assessment of the ability of such country to track and monitor recipients of benefits under such agreement." In addition, the Commissioner of Social Security would be required to report to Congress and the Comptroller General of the United States (the Government Accountability Office) on the impact of a totalization agreement every two years after it goes into effect. With respect to the initial biennial report by the Commissioner of Social Security, the Comptroller General would be required to conduct an evaluation of the report (including specified information) and submit a report to Congress on the results of the evaluation.

Other legislation would make structural changes to international Social Security agreements. For example, in the 111th Congress, H.R. 132 (Total Overhaul of Totalization Agreements Law of 2009)[141] would provide for the transfer of Social Security contributions between the United States and an agreement country, rather than allowing individuals to establish entitlement to benefits under each country's Social Security system based on combined work credits.

Under the measure, if a citizen or national of an agreement country, or an individual lawfully admitted to an agreement country for permanent residence, becomes entitled to benefits under the agreement country's Social Security system *and* the individual has at least 6 quarters of coverage under the U.S. system, the Secretary of the Treasury would transfer from the Social Security trust funds to the agreement country an amount equal to the contributions paid in connection with the individual's covered employment in the United States.

Conversely, if a citizen or national of the United States, or an individual lawfully admitted to the United States for permanent residence, becomes entitled to benefits under the U.S. Social Security system *and* the individual has the equivalent of 6 quarters of coverage under an agreement country's Social Security system, the agreement country would pay to the United States an amount equal to the contributions paid in connection with the individual's covered employment in the agreement country.

In addition, H.R. 132 would exclude from the computation of a worker's Social Security benefits any earnings obtained while the worker was neither a citizen or national of the United States nor

[139] 2005 GAO Report, p. 9.

[140] S. 42 was introduced by Senator Ensign on January 6, 2009. There has been no action on the measure.

[141] H.R. 132 was introduced by Representative Gallegly on January 6, 2009. There has been no action on the measure.

lawfully admitted for permanent residence in the United States and was not authorized to work in the United States. The exclusion would apply to all such earnings obtained *before, on, or after* the date of enactment of the bill. H.R. 132 would require the Commissioner of Social Security to recompute benefits as needed to carry out this provision, which would affect benefits for months after the date of enactment of the bill.[142]

Conclusion

Supporters of international Social Security agreements point to the advantages associated with such agreements, including elimination of dual Social Security taxes on the same earnings, protection of benefits for workers who divide their careers between the United States and a foreign country and increased portability of benefits through the waiver of residency requirements. Supporters also maintain that Social Security agreements can foster international commerce and enhance diplomatic relations.

With respect to some of the issues and concerns that have been raised about the reliability of foreign data used to administer such agreements, SSA noted in October 2009:

> [Since 2005], SSA has made significant advances in this area. SSA now requires, as a prerequisite for entering into formal negotiations on a totalization agreement, a thorough review of the integrity and reliability of foreign data. SSA has established a formal procedure for obtaining the information necessary to assess the integrity and reliability of foreign data relied upon by the United States to administer social security agreements. SSA has also established procedures for reviewing the information obtained and determining whether the foreign data is reliable and secure. SSA has implemented these procedures, and has reviewed the foreign data in question for all social security agreements negotiated since 2005.[143]

Because the agreements impose a cost to the U.S. Social Security system, some policymakers point to the need for greater assurances that data pertaining to noncitizen workers and beneficiaries (including dependents and survivors) relied upon by the United States to administer the agreements are complete and accurate, a condition necessary to protect the Social Security trust funds from improper payments. In addition, some policymakers point to the need for changes in the congressional review process for totalization agreements, enhanced reporting requirements and ongoing evaluation of agreements after they enter into force as reflected in current legislative proposals.

[142] For examples of legislation related to the pending agreement with Mexico (such as Section 526 of P.L. 110-161, The Consolidated Appropriations Act, 2008, that prohibits appropriated funds from being used to administer benefit payments under an agreement with Mexico that would not otherwise be payable), see CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by (name redacted) and (name redacted).

[143] Information provided by the Social Security Administration to the Congressional Research Service in October 2009.

Appendix A. Computation of the Social Security Primary Insurance Amount

The Primary Insurance Amount (PIA) is the basic Social Security monthly benefit amount payable to an individual upon entitlement to retirement benefits at the normal retirement age (i.e., the PIA does not reflect any adjustments for early or delayed retirement) or disability benefits. In addition, the PIA is the base amount used to determine monthly benefits payable to family members on the worker's record (such as a spouse or surviving spouse).

Under current law, the PIA is determined by applying a benefit formula to the worker's average lifetime covered earnings. In the first step of the benefit computation, the worker's nominal earnings (up to two calendar years prior to the year of eligibility—for example, earnings prior to the age of 60 in the case of a retirement benefit) are indexed to wage growth to reflect the change in average wages over time. (Earnings in subsequent years are counted at nominal value.) For purposes of computing a basic retirement benefit, the 35 highest years of indexed earnings are then averaged and a monthly amount is computed to determine the worker's Average Indexed Monthly Earnings (AIME). If a worker has fewer than 35 years of covered earnings, years of zero earnings are counted in the computation of the AIME.[144] The benefit formula is then applied to the worker's AIME. The benefit formula that applies to individuals who first become eligible for retirement or disability benefits in 2010, or who die in 2010 before becoming eligible for benefits, is

- 90% of the first $761 of AIME, *plus*
- 32% of AIME over $761 through $4,586, *plus*
- 15% of AIME over $4,586

For example, the PIA for a worker who reaches the age of 62 in 2010, based on an AIME of $5,000, would be $1,971.00. The PIA would be computed as follows:

- 90% x $761 = $684.90, *plus*
- 32% x $3,825 = $1,224.00, *plus*
- 15% x $414 = $62.10

PIA = $1,971.00

The worker's PIA is based on the benefit formula that applies in the year the worker first becomes *eligible* for benefits (the age of 62 for retired-worker benefits, the year of disability for disabled-worker benefits, or the year of the worker's death for survivor benefits), rather than the first year

[144] The number of computation years used to determine a worker's AIME varies, depending on the type of benefit and other factors. The number of computation years is determined based on the number of years elapsing after 1950 (or year of attaining age 21, if later) up to the year the worker attains the age of 62, becomes disabled or dies, minus any "dropout" years. Dropout years exclude the years of lowest earnings from the computation. The law generally provides for 40 computation years with 5 dropout years (for a net of 35 computation years) in retirement and survivor benefit computations and in many disability benefit computations in which the worker is disabled at age 47 or later. For workers disabled before the age of 47, the number of dropout years varies from one to four, depending on the worker's age and the number of child care dropout years. The minimum number of computation years is two.

of benefit receipt. Beginning with the first year of eligibility, the PIA is increased by the annual Social Security cost-of-living adjustment (COLA) for any intervening years between eligibility and benefit receipt. For example, if an individual who first becomes eligible for retired-worker benefits at the age of 62 in 2010 elects to receive benefits at the normal retirement age (of 66 in 2014), the PIA effective at the normal retirement age would be the PIA calculated using the benefit formula for 2010 (shown above) adjusted annually according to the COLA (if any) effective in December 2010, December 2011, December 2012, and December 2013.

The dollar amounts that separate the three brackets of AIME in the benefit formula ($761 and $4,586) are referred to as bend points. Under current law, the bend points are indexed to wage growth on an annual basis to provide stable replacement rates over time for workers with similar earnings patterns. (The replacement rate is based on Social Security benefits in the first year of benefit receipt divided by pre-retirement earnings.) For example, the projected long-range constant replacement rate, based on retirement at the age of 67 in 2030 or later, is 55% for a scaled low earner; 41% for a scaled medium earner; and 27% for a maximum earner.[145]

The percentages that apply to each of the three brackets of AIME in the benefit formula (90%, 32% and 15%) are referred to as formula factors (or replacement factors). The formula factors, which are fixed under current law, are structured so that Social Security benefits replace a greater share of pre-retirement earnings for lower-wage workers compared to higher-wage workers.

[145] A scaled low earner is assumed to have career-average earnings at about 45% of the national average wage index (AWI). A scaled medium earner is assumed to have career-average earnings at about 100% of the AWI. (In 2010, the AWI is an estimated $43,451 based on the intermediate assumptions of the 2009 Social Security Trustees Report.) A maximum earner is assumed to have earnings for each year equal to the Social Security taxable wage base. (In 2010, the Social Security taxable wage base is $106,800.) Social Security Administration, *2009 Social Security/SSI/Medicare Information*, May 14, 2009, available at http://www.socialsecurity.gov/legislation/2009%20factsheet.pdf.

Appendix B. Exception Countries

The following lists of countries, which are subject to change periodically, are taken from the *Electronic Code of Federal Regulations* (*e-CFR*) with data current as of June 1, 2009, and the Social Security Administration's Program Operations Manual System (POMS). The *e-CFR* is available at http://ecfr.gpoaccess.gov/. The POMS are available at https://secure.ssa.gov/apps10/poms.nsf/aboutpoms.

Social Insurance or Pension System Countries

Under the alien nonpayment provision, a noncitizen's benefits are suspended if he or she remains outside the United States for more than 6 consecutive months, unless one of several broad exceptions is met. For example, an alien may receive benefits outside the United States if he or she is a citizen of a country that has a social insurance or pension system that pays benefits to eligible U.S. citizens residing outside that country. The following countries meet the social insurance or pension system exception in Section 202(t)(2) of the Social Security Act:

> Albania, Antigua and Barbuda, Argentina, Austria, Bahamas, Barbados, Belgium, Belize, Bolivia, Bosnia-Herzegovina, Brazil, Burkina Faso, Canada, Chile, Colombia, Costa Rica, Cote D'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Grenada, Guatemala, Guyana, Hungary, Iceland, Jamaica, Jordan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Mexico, Federated States of Micronesia, Monaco, Montenegro, Nicaragua, Norway, Palau, Panama, Peru, Philippines, Poland, Portugal, St. Kitts and Nevis, St. Lucia, Samoa, San Marino, Serbia, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, The Netherlands, Trinidad-Tobago, Turkey, United Kingdom, Uruguay, Venezuela (SSA POMS, Section RS 02610.015 (Status of Countries for Applying Exceptions Based on Citizenship), available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0302610015!opendocument)

Treaty Obligation Countries

To receive benefits outside the United States, alien *dependents and survivors* must have lived in the United States previously for at least five years (lawfully or unlawfully), and the family relationship to the worker must have existed during that time. The law provides several broad exceptions to the five-year U.S. residency requirement for alien dependents and survivors. For example, an alien dependent or survivor is exempt from the U.S. residency requirement if he or she is a citizen of a treaty obligation country (i.e., if nonpayment of benefits would be contrary to a treaty between the United States and the individual's country of citizenship). The following countries meet the "treaty obligation" exception in Section 202(t)(3) of the Social Security Act:

> Germany, Greece, Ireland, Israel, Italy, Japan, Netherlands* (20 C.F.R. § 404.463)
>
> *The Treaty of Friendship, Commerce, and Navigation now in force between the United States and the Kingdom of the Netherlands creates treaty obligations precluding the application of the alien nonpayment provision to citizens of that country with respect to monthly survivor benefits only.

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