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Social Security: Substantial Gainful Activity for the Blind

name redacted

Analyst in Income Security

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Summary

In the Social Security disability program, the level of earnings that constitute “substantial gainful activity” (SGA), and therefore disqualifies a person from receiving benefits, is set by regulation at \$1,070 a month for 2014. However, the law provides a different SGA level for the blind at \$1,800 a month for 2014, which is adjusted annually to reflect growth in average wages. This report discusses the reasons for these differing amounts and proposals to change them. The appendix section of the report charts the difference between the two amounts from 1975 to 2014.

Under the Social Security Act, disabled individuals qualify for benefits only if they are determined to be unable to engage in “substantial gainful activity” (SGA).¹ Under Section 223(d) of the Social Security Act, the Commissioner of Social Security is given the authority to promulgate regulations prescribing the criteria for determining when earnings demonstrate an individual’s ability to engage in SGA. Since July 1999, the SGA amount has been adjusted annually to reflect the growth in average wages. In 2014, this amount is \$1,070 a month. However, the same section of the law specifies that a different definition of SGA applies to individuals disabled by blindness. These individuals are considered to be engaging in SGA if their earnings exceed 1,800 a month (this amount is also adjusted annually to reflect growth in average wages).²

History of the SGA Differential

This different treatment for the blind began with enactment of P.L. 95-216 in 1977. During consideration of H.R. 9346, the Social Security Financing Amendments of 1977, the Senate adopted by a voice vote an amendment by Senator Birch Bayh that provided disability benefits for blind individuals regardless of their ability to work or the amount of money they actually earned. The amendment was identical to S. 753, a bill introduced by Senator Hubert Humphrey earlier in the year. Speaking in support of this amendment on the Senate floor, Senator Bayh stated,

Social security disability insurance was designed to partially replace income loss due to a disability. Congress has previously recognized blindness as a distinct and unique condition. Certain economic consequences predictably follow the disability of blindness. It is comparable with the social security insurance concept to protect the blind from these adverse effects. If persons with a high earning capacity can return to work at all after becoming blind, they do so, almost without exception, at a much lower salary, and continue to suffer an adverse impact on their earning power. Moreover, working in a society adapted to vision entails extra costs for supportive services and special devices.³

The House-passed version of H.R. 9346 contained no similar provision. In conference, it was agreed that the House would recede with an amendment that struck the provisions of the Senate amendment but provided that the amount of earnings under the test of SGA that would terminate a blind individual’s benefits would be increased to the monthly exempt amount for persons at or above the full retirement age (FRA) under the Social Security earnings test. The conferees stated that they were aware that this established a different test of SGA for blind persons than is applied administratively for persons with other disabilities. They went on to say that they did not intend that the new SGA level established for the blind should be applied to other types of disabilities. When the provision became effective in 1978, the SGA for non-blind recipients was \$260 a

¹ The Social Security Administration (SSA) uses the term *substantial gainful activity* (SGA) to describe a level of work activity and earnings. According to SSA, *substantial* entails doing “significant physical or mental activities or a combination of both,” while *gainful* work activity involves work performed or intended for profit. SSA uses the monthly SGA amount to help it determine an individual’s eligibility for Social Security Disability Insurance (SSDI). For more information, please see Social Security Administration, *How Do we Define Disability?*, at <http://www.socialsecurity.gov/redbook/eng/definedisability.htm>. This publication is commonly referred to as the *SSA Redbook*.

² For more information on SGA amounts, please see Social Security Administration, *Substantial Gainful Activity*, at <http://www.ssa.gov/oact/cola/sga.html>.

³ Statement of Sen. Bayh, *Congressional Record*, daily edition, vol. 123 (November 4, 1977), p. S18786.

month; for the blind, it was \$334 a month, a difference of about 28% (see **Figure A-1** in the Appendix).

In subsequent years, the different SGA amounts occasionally became subject to debate. In 1988, the Social Security Advisory Council found that the preferential treatment for the blind was inappropriate and recommended that for new applicants the SGA level be lowered to that for all other disabled recipients. The council also recommended that the SGA level for blind persons already on the rolls be frozen at the then-current level (\$700 a month). In 1992, the United States District Court for the District of Wyoming found that the higher SGA amount for the blind was unconstitutional because it violated the guarantee of equal protection under the law. The United States Court of Appeals for the 10th Circuit overturned the district court's ruling, saying that there was a rational basis for Congress to place preferences for blind persons in the law. The Supreme Court refused to review the appeals court's decision.

In 1996, when Congress enacted the Contract with America Advancement Act of 1996 (P.L. 104-121) to substantially increase the earnings test limit for those who have attained retirement age over a period of five years, reaching \$30,000 in 2002, it removed the linkage between the SGA level of the blind and the exempt amount for individuals who have attained the FRA. Instead their SGA level continued as before (i.e., adjusted annually to reflect growth in average wages).

During deliberation of the bill, advocates of the blind sought to have the link maintained. During the mark-up of the bill in the Ways and Means Subcommittee on Social Security, an amendment was offered to do so. However, the amendment was rejected.

On April 7, 2000, President William Clinton signed into law H.R. 5, the Senior Citizens' Freedom to Work Act (P.L. 106-182), which eliminated the Social Security earnings test for recipients who have reached the FRA (effective in 2000). P.L. 106-182 permanently continued the severance between the earnings test and the SGA level of the blind enacted in P.L. 104-121.

Past Evaluation of the SGA Differential

In 1996, the General Accounting Office (GAO, now known as the Government Accountability Office) was asked to examine whether the legislative rationale for an earnings limit for the blind that was higher than for individuals who have other disabilities was warranted. It concluded that the legislative rationale was based on the assumption that adverse employment experiences, including high job-related costs and unemployment, were greater for the blind than for persons who have other disabilities. However, GAO found that such experiences do not appear to be unique to the blind compared to other disabled recipients. GAO repeated this conclusion in a hearing on the topic held by the Social Security Subcommittee of the House Committee on Ways and Means on March 23, 2000.⁴

⁴ U.S. General Accounting Office, *Social Security Administration: Subcommittee Questions Concerning Current and Future Service Delivery Challenges*, AIMD/HEHS-00-165R, May 11, 2000, at <http://gao.gov/products/AIMD/HEHS-00-165R>.

Arguments For and Against the SGA Differential

Proponents of liberalizing the SGA limit for the blind maintain that the reasons given in 1977 to provide a different limit for the blind are just as valid today.⁵ Blindness is still a distinct and special condition, and they believe that the blind still merit being singled out for compensatory help. They point out that Congress has recognized the special nature of blindness by writing into law different disability criteria for the blind in regard to (1) insured status, (2) continued eligibility for benefits beyond the age of 54 regardless of the level of work activity,⁶ and (3) the use of functional capacity as part of the test of meeting the definition of disability. Proponents say that what Congress established then was that the “retirement test” (as the earnings test is sometimes called) for older workers should be applied to the blind, and therefore that they should be treated just like retired older workers whenever Congress makes changes to the retirement test. They say that if any change is made to lessen or eliminate the difference in SGA amounts, it should be to raise the SGA limits of the non-blind.

Opponents of liberalizing the SGA limit for the blind maintain that the blind already receive enough preferential treatment and that to expand it further would be inequitable. Many of them think that even current law is too generous, because they see no logical reason that a particular group of disabled individuals should receive advantages over another. In their view, many other impairments could just as easily be viewed as needing special compensatory relief (e.g., quadriplegia and cancer). They dispute that the blind suffer higher rates of unemployment or work-related expenses.⁷ Opponents point out that the very definition of disability is that a person is unable to perform substantial work, and that the purpose of the SGA limit is to determine if, regardless of a person’s medical condition, he or she demonstrates by work that he or she is not in fact disabled. From their perspective, if the SGA for the blind were further liberalized, especially to the point where it would approach or exceed the average wage of all workers, the concept of disability would become meaningless and weaken the basic concept of the disability program as a whole.

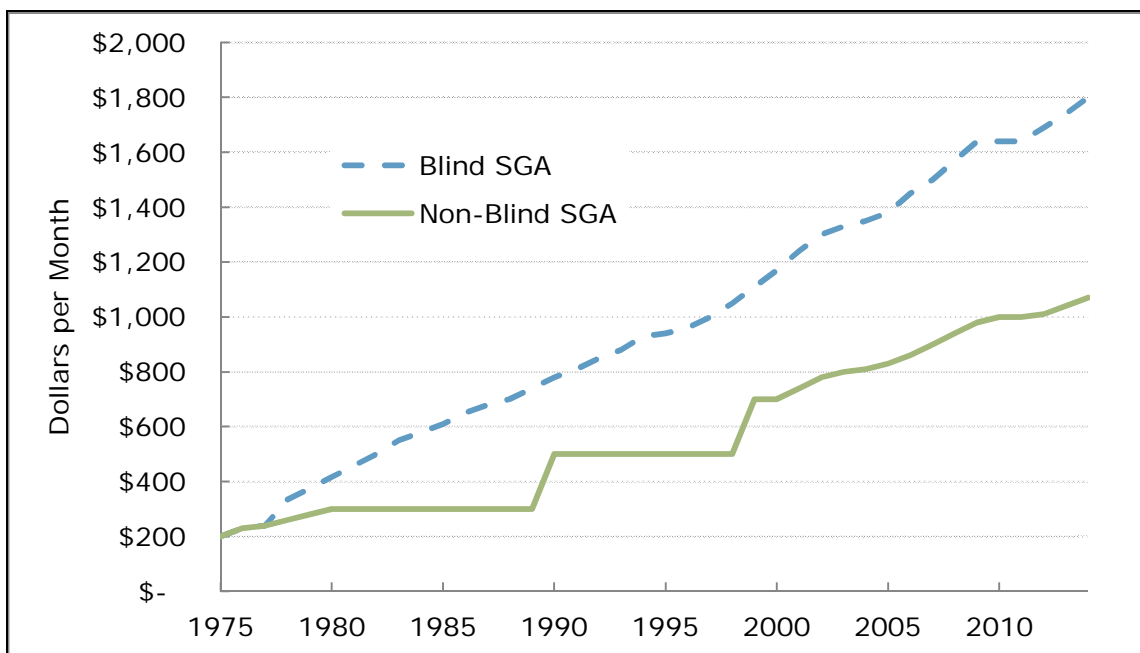
⁵ For more information, see Social Security Advisory Board, *Disability Programs in the 21st Century: Substantial Gainful Activity*, Issue Brief, vol. 1, no. 3, April 2009, <http://ssab.gov/documents/SGA-issue-brief.pdf>.

⁶ Cash benefits are suspended, however.

⁷ See U.S. General Accounting Office, *Social Security Disability Insurance: Raising the Substantial Gainful Activity Level for the Blind*, T-HEHS-00-82, March 23, 2000, <http://www.gao.gov/products/T-HEHS-00-82>.

Appendix.

Figure A-I. SGA Levels for Blind and Non-Blind Individuals, Calendar Years 1975-2014



Source: Social Security Administration, *Substantial Gainful Activity*, at <http://www.ssa.gov/oact/cola/sga.html>.

Author Contact Information

(name redacted)
 Analyst in Income Security
 /redacted/@crs.loc.gov, 7-....

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