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Social Security and Social Security Disability Insurance (SSDI) Provisions in the Proposed Bipartisan Budget Agreement of 2015

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Summary

Title VIII of the proposed Bipartisan Budget Agreement of 2015 (H.R. 1314) makes several changes to the Social Security programs. Among these changes is a temporary reallocation of the Social Security payroll taxes so that a larger share is deposited in the Disability Insurance (DI) trust fund to extend the life of this trust fund beyond its current predicted exhaustion in 2016. Under this provision, the allocation of the 12.40% Social Security payroll tax assigned to the DI trust fund would increase from 1.80% to 2.37% and the allocation to the Old-Age and Survivors Insurance (OASI) trust fund would decrease from 10.60% to 10.03%. These changes would last through 2018.

In addition, these provisions extend the Social Security Administration's (SSA) demonstration authority for the Social Security Disability Insurance (SSDI) programs, make changes to data and earnings reporting, and increase penalties for benefit fraud.

Title VIII of the proposed legislation includes the following subtitles:

- Subtitle A. Ensuring Correct Payments and Reducing Fraud
- Subtitle B. Promoting Opportunity for Disability Beneficiaries
- Subtitle C. Protecting Social Security Benefits
- Subtitle D. Relieving Administrative Burdens and Miscellaneous Provisions

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On October 27, 2015, the House Committee on the Rules published the House Amendment to the Senate Amendment to H.R. 1314, the Bipartisan Budget Agreement of 2015.¹ Title VIII of the amendment makes several changes to the Social Security system, including provisions that would affect the Social Security Disability Insurance (SSDI) program.²

Subtitle A. Ensuring Correct Payments and Reducing Fraud

Section 811. Expansion of Cooperative Disability Investigations Units

Section 811 of the amendment would require the Social Security Administration (SSA) to ensure that Cooperative Disability Investigations (CDI) units are in place to cover all 50 states, the District of Columbia, and the territories by October 1, 2022, subject to available appropriations. CDI units are partnerships between the SSA Office of the Inspector General, SSA field offices, and state and local law enforcement agencies that are designed to detect and resolve issues of disability benefit fraud before benefits are paid.³ There are currently 36 CDI units covering 31 states and Puerto Rico. Section 811 would also require the SSA to report annually to Congress on its progress in attaining nationwide CDI coverage and any areas in which it has been unable to secure the assistance of state and local law enforcement.

Section 812. Exclusion of Certain Medical Sources of Evidence

Section 812 of the amendment would prohibit the SSA from considering any medical evidence provided by the following health care providers when determining disability eligibility for the SSDI or Supplemental Security Income (SSI) programs, except if good cause exists:

- any individual or entity convicted of a felony under Section 208 or 1632 of the Social Security Act (see new felony provisions provided in Section 813 of the amendment);
- any individual or entity who has been excluded from participation in any federal healthcare program, as defined in Section 1128B(f) of the Social Security Act, including Medicare or Medicaid; and
- any person for whom a civil penalty has been assessed for submitting false evidence in connection with the determination of eligibility for any Social Security program or SSI.

Section 812 would also require the SSA Inspector General and the Department of Health and Human Services (HHS) to provide SSA with information on excluded providers. Within one year of enactment, the SSA would be required to issue regulations to carry out this section. This

¹ The bipartisan agreement is available online at <http://docs.house.gov/billsthisweek/20151026/BILLS-114hr-PIH-BUDGETHA.pdf>.

² For additional information on the SSDI program, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by William R. Morton.

³ For additional information on CDI units, see the website of the SSA Office of the Inspector General at <http://oig.ssa.gov/cooperative-disability-investigations-cdi>.

section would also apply to determinations made on or after the earlier of the effective date of these regulations or one year after enactment.

Section 813. New and Stronger Penalties

Section 813 of the amendment would make conspiring to commit Social Security fraud by conspiring to commit the offenses specified in Sections 208(a), 811(a), and 1632(a) of the Social Security Act a felony offense.

This section would also increase the maximum penalty from incarceration from 5 years to 10 years for the following persons who violate Sections 208(a), 811(a), or 1623(a) of the Social Security Act. This section would also increase the maximum civil monetary penalty from \$5,000 to \$7,500 for the following persons who violate Section 1129(a)(1) of the Social Security Act (related to providing false or misleading evidence):

- any person who receives a fee in connection with providing services related to a disability determination, including a claimant representative, translator, or current or former SSA employee; and
- any physician or other medical provider who submits or causes to be submitted medical evidence in connection with a disability determination.

Section 813 would also prohibit the payment of SSDI benefits to any person for whom a civil monetary penalty has been assessed for fraudulently concealing work activity.

Section 814. References to Social Security and Medicare in Electronic Communications

Section 814 of the amendment would provide that in cases of misuse of the symbols, emblems, or names of Social Security or Medicare in electronic communications, each dissemination, viewing, or accessing of such communications is considered a separate offense under Section 1140 of the Social Security Act.

Section 815. Change to Cap Adjustment Authority

Section 815 of the amendment would add costs associated with work-related continuing disability reviews, CDI units, and fraud prosecutions by U.S. Attorneys to the list of activities covered by the discretionary spending cap adjustments for SSA program integrity authorized by Section 251(b)(2)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. § 910(b)(2)(B)].

In addition, this section would make the following changes to the discretionary spending cap adjustments for SSA program integrity:

- for FY2017, from \$1,309,000,000 to \$1,546,000,000;
- for FY2018, from \$1,309,000,000 to \$1,462,000,000;
- for FY2019, from \$1,309,000,000 to \$1,410,000,000;
- for FY2020, no change (remains at \$1,309,000,000); and
- for FY2021, from \$1,309,000,000 to \$1,302,000,000.

Subtitle B. Promoting Opportunity for Disability Beneficiaries

Section 821. Temporary Reauthorization of Disability Insurance Demonstration Project Authority

Section 821 of the amendment would reauthorize the SSA's authority to conduct SSDI demonstration projects, including those that waive compliance with benefit requirements, which had terminated in 2005. The authority to initiate SSDI demonstration projects would expire on December 31, 2021, and the authority to carry out such projects would expire on December 31, 2022.

Section 822. Modification of Demonstration Project Authority

Section 822 of the amendment would specify that SSDI demonstration projects be designed to promote attachment to the labor force.

It would require the following in the report to Congress before any SSDI demonstration project would be permitted to waive compliance with benefit requirements:

- the objectives of the experiment or demonstration project;
- the expected annual and total costs; and
- the dates on which the project is expected to start and finish.

Section 822 would also require that the SSA not require any person to participate in any SSDI demonstration project and require the following:

- voluntary participation is ensured through informed written consent which satisfies the SSA's requirements for consent when human subjects are at risk;
- the right of any person to revoke his or her consent to participate at any time; and
- that such project is expected to yield statistically significant results.

This section would also change the date interim progress reports are due from June 9 to September 30 of each year.

Section 823. Promoting Opportunity Demonstration Project

Section 823 of the amendment would require the SSA to conduct a demonstration project, described below, during a five-year period beginning no later than January 1, 2017. This project would have the following elements:

- a reduction of \$1 in monthly benefits for every \$2 in earnings that exceed a person's impairment-related work expenses for that month;
- no benefits payable in any month in which benefits are reduced to \$0 due to earnings;
- no termination of benefits due to work and no application of the trial work period or extended period of eligibility during any month that benefits are reduced due to earnings but still payable;

- if benefits are terminated because they are reduced to \$0 due to earnings, a person eligible for Medicare remains eligible for Medicare for 93 additional months provided his or her physical or mental impairment continues;
- for the purposes of this demonstration project, a person's impairment-related work expenses shall be deemed to be set at a threshold amount set by the SSA, with the SSA having the authority to test different threshold amounts; or if greater than the threshold amount, be set at the actual amount of the person's itemized work expenses; and
- in no case shall a person's impairment-related work expenses exceed the substantial gainful activity level.

Section 824. Use of Electronic Payroll Data to Improve Program Administration

Section 824 of the amendment would authorize the SSA to enter into data agreements with payroll data providers for the purposes of efficiently administering Social Security and SSI benefits and preventing improper payments. Before entering into an exchange, the SSA would be required to publish notice in the *Federal Register*.

This section would also authorize the SSA to require each person applying for or eligible for any Social Security benefits based on disability, SSDI benefits, or SSI benefits to provide authorization for the SSA to access that person's records from a payroll data provider for the purposes of determining eligibility for benefits. Any person who provides such authorization would not be penalized if the payroll data provider provided SSA with inaccurate information or in the case of SSI if the person changes employers.

Section 824 would also require the SSA to issue regulations within one year of enactment to implement this section and provide for reduced wage reporting for persons who have authorized the SSA to access their records from payroll data providers.

This section would be effective one year after enactment.

Section 825. Treatment of Earnings Derived from Services

Section 825 of the amendment would require that for the purposes of determining if an individual is engaged in substantial gainful activity for the purposes of SSDI eligibility, the SSA consider earnings from services to have been earned:

- for the purposes of initial eligibility, in the month in which such services were performed; and
- in all other cases, in the month such earnings were paid;

unless the SSA can establish based on readily-available evidence the actual month such earnings were earned or the person, after having been denied benefits due to excess earnings, can demonstrate to SSA that such earnings were actually earned in a different month.

This section would be effective upon enactment or as soon as practical thereafter.

Section 826. Electronic Reporting of Earnings

Section 826 of the amendment would require that by September 30, 2017, the SSA establish a system of electronic earnings reporting for any person entitled to Social Security benefits based on disability or SSDI modeled after the SSI electronic earnings reporting system.

Subtitle C. Protecting Social Security Benefits

Section 831. Closure of Unintended Loopholes⁴

Deemed Filing

Section 831 of the amendment would apply the deemed filing rules to all persons, including those at or above full retirement age for Social Security benefits. Under current law, if a person is entitled to or receiving a retired-worker benefit and is also eligible for a spousal benefit, the person is deemed to have filed an application for spousal benefits if he or she is below the full retirement age. Similarly, if a person is entitled to a spousal benefit and is also eligible for a retired-worker benefit, the person is deemed to have filed an application for retired-worker benefits if he or she is below the full retirement age. As a result, the person becomes dually entitled to a retired-worker benefit and a spousal benefit, with the spousal benefit being subject to reduction under the dual entitlement rule. This section would extend the deemed filing rule to persons at or above the full retirement age.

Under current law, the deemed filing process does not apply to persons who are full retirement age or older. Therefore, a person who has attained full retirement age could file for spousal benefits only and delay filing for his or her own retired-worker benefit. In this way, the person could receive spousal benefits while accruing delayed retirement credits, which increase the person's retired-worker benefit by 8% per year from full retirement age to age 70. Under this section if a person is entitled to a retired-worker benefit and is also eligible for a spousal benefit, the person would be deemed to have filed an application for spousal benefits. Similarly, if a person is entitled to a spousal benefit and is also eligible for a retired-worker benefit, the person would be deemed to have filed an application for retired-worker benefits. As under current law, the spousal benefit would be subject to reduction under the dual entitlement rule. This provision would be effective for persons who reach age 62 in 2016 or later.

Voluntary Suspension of Benefits

Section 831 would also provide that in cases in which a person who has attained full retirement age files for retired-worker benefits and requests that those benefit payments be suspended, no benefits would be payable to another person based on his or her work record, and no benefit would be payable to that person based on another person's work record during the period of benefit suspension.

Generally under current law, a person cannot claim a spousal benefit on a worker's record if the worker has not yet filed for benefits. However, if a worker has attained full retirement age, he or she could file for retired-worker benefits and request that the benefit payments be suspended. This process allows a spouse who has attained full retirement age to claim spousal benefits on the

⁴ Significant contributions to this section were made by Dawn Nuschler.

worker's record (the spouse may also choose to delay filing for his or her own retired-worker benefit in order to accrue delayed retirement credits) and allows the worker to accrue delayed retirement credits on his or her own retired-worker benefit. Under this section, if any person who has attained full-retirement age and requests that his or her benefits be suspended, no benefits would be payable to a spouse or other person based on his or her work record and he or she would not be entitled to benefits based on his or her spouse's or other person's work record during the period of suspension. This provision would be effective for requests for benefit suspensions submitted 180 days after enactment.

Section 832. Requirement for Medical Review

Section 832 of the amendment would require that in all disability determinations for the purposes of determining SSDI or SSI eligibility, no determination be made unless the SSA has made every reasonable effort to ensure that in a case with a mental impairment, a qualified psychiatrist or psychologist has completed the medical review of the case and any applicable residual functional capacity assessment; and in a case with a physical impairment, a qualified physician has completed the medical review of the case and any applicable residual functional capacity assessment.

Under a pilot program currently being administered by the SSA, disability examiners in 20 states and territories may make disability determinations without a physician or psychologist having reviewed the case.⁵ This provision would terminate this pilot and require that all disability determinations be made after a medical review.

This section would be effective for determinations made one year after enactment.

Section 833. Reallocation of Payroll Tax Revenue

Section 833 of the amendment would reallocate the share of the Social Security payroll tax designated for the Disability Insurance (DI) trust fund that pays SSDI benefits and administrative costs. Under current law, the combined payroll Social Security payroll tax is 12.40% of covered earnings, with half (6.20%) being paid each by the employer and worker. Under the current allocation, 10.60% is allocated to the Old Age and Survivors Insurance (OASI) trust fund and 1.80% to the DI trust fund.⁶ Under this section, for the period between January 1, 2016, and December 31, 2018, 10.03% of the combined payroll tax would be allocated to the OASI trust fund and 2.37% to the DI trust fund. The total payroll tax rate would not change. The intent of this reallocation is to increase the amount of money in the DI trust fund to delay its exhaustion which is currently estimated predicted to occur in 2016.⁷

⁵ The single decisionmaker model is currently used in Alabama, Alaska, California (Los Angeles and Los Angeles North only), Colorado, Florida, Guam, Kansas, Kentucky, Louisiana, Maine, Michigan, Missouri, Nevada, New Hampshire, New York, North Carolina, Pennsylvania, Vermont, Washington, and West Virginia.

⁶ For additional information on the Social Security trust funds and payroll taxes, see CRS Report RL33028, *Social Security: The Trust Funds*, by Dawn Nuschler.

⁷ For additional information on the DI trust fund and its predicted exhaustion date, see U.S. Congress, House Committee on Ways and Means, *The 2015 Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*, prepared by The Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, 114th, Cong., 1st, sess., July 22, 2015, H. Doc. 114-51 (Washington: GPO, 2015).

Section 834. Access to Financial Information for Waivers and Adjustments of Recovery

Section 834 of the amendment would require that in any case of Social Security or SSI overpayment, in determining if the recovery of such overpayment should be waived because it would defeat the purpose of the title, the SSA requires the person to provide authorization for the SSA to obtain the person's financial records from financial institutions if the SSA determines such records are necessary. If person refuses to grant such authorization, the SSA may, on that basis, refuse to grant the waiver. This section also includes provisions regarding how this process would comply with other federal financial and privacy laws.

This section would be effective for determinations made three months after enactment.

Subtitle D. Relieving Administrative Burdens and Miscellaneous Provisions

Section 841. Interagency Coordination to Improve Program Coordination

Section 841 of the amendment would require the SSA and Office of Personnel Management (OPM) to enter into an agreement to carry out the following procedures:

- OPM notifies the SSA that a person is entitled to a disability annuity under the Federal Employees Retirement System (FERS);⁸
- if the SSA determines that such person is also entitled to past-due SSDI benefits, it notifies OPM of this fact;
- within 30 days of receiving such a notice, OPM provides the SSA with the total amount of any disability annuity overpayments made to that person;
- if the SSA is given this information from OPM in a timely manner, the SSA may withhold past-due SSDI benefits and pay the amount of the disability annuity overpayment to OPM; and
- OPM shall credit any amount received from the SSA toward any disability annuity overpayment.

This process would be subject to the following limitations:

- past-due SSDI benefits would only be withheld after any other benefit reductions provided by the Social Security Act;
- the SSA may not withhold past-due SSDI benefits unless notified by OPM of any disability annuity overpayment within 30 days;
- the SSA may not pay past-due SSDI benefits to a person entitled to a FERS disability annuity until the OPM has had 30 days to notify the SSA of any overpayment; and

⁸ For additional information on disability annuities for federal employees, see CRS Report RS22838, *Disability Retirement for Federal Employees*, by Katelin P. Isaacs.

- any withholding of past-due SSDI benefits under this section shall only be reviewable by the Director of OPM.

OPM is also required to pay quarterly the SSA an amount estimated by the SSA to be equal to its costs of carrying out this section.

This section would be effective for past-due SSDI benefits payable one year after enactment.

Section 842. Elimination of Quinquennial Determinations Relating to Wage Credits for Military Service Prior to 1957

Section 842 of the amendment would remove the requirement that the SSA make determinations of pre-1957 military wage credits every five years as the Social Security trust funds have been fully reimbursed for these credits.

Section 843. Certification of Benefits Payable to a Divorced Spouse of a Railroad Worker to the Railroad Retirement Board

Section 843 of the amendment would add divorced spouses of railroad workers to the list of Social Security beneficiaries whose information is transmitted electronically from the SSA to the Railroad Retirement Board for the purposes of benefit coordination. Under current law, spouses of railroad workers but not divorced spouses have their information transmitted electronically.

Section 844. Technical Amendments to Eliminate Obsolete Provisions

Section 844 of the amendment would eliminate Sections 226(i) and 226A(c) of the Social Security Act that are obsolete.

Section 845. Reporting Requirements to Congress

Section 845 of the amendment would require SSA to make three new to Congress:

Report on Fraud and Improper Payment Prevention Activities

For each FY2016 through FY2021, SSA must report to Congress on the amounts above the discretionary spending caps spent on program integrity activities. This report must include

- total of such amount expended;
- amount expended on CDI units;
- number of cases of fraud investigated by CDI units and amount spent on such cases;
- number of felony cases prosecuted under Section 208 of the Social Security Act and the amount spent by the SSA supporting such prosecutions;
- the number of such felony cases successfully prosecuted and the amount spent by the SSA supporting such prosecutions;
- number conducted and amount spent on:
 - continuing disability reviews by mail;

- redeterminations conducted by mail;
- medical continuing disability reviews of SSDI and SSI cases;
- work-related continuing disability reviews to determine if earnings exceed the substantial gainful activity level.
- number of cases of fraud in which benefits were terminated due to continuing disability reviews and redeterminations and the amount of savings due to each type of review; and
- number of work-related continuing disability reviews in which a beneficiary improperly reported earnings for at least three consecutive months and the resulting savings.

Report on Work-Related Continuing Disability Reviews

The SSA must annually report to Congress on work-related continuing disability reviews to determine if earnings exceed the substantial gainful activity level. This report must include

- number of persons receiving Social Security benefits based on disability for whom reports on earnings from any source were received in the previous year, reported as a total and by source of earnings reports;
- number of persons for whom such reports resulted in a work-related continuing disability review and the basis for such determinations;
- in the case of a person selected for a work-related continuing disability review with earnings reported from any source:
 - average number of days:
 - between receipt of report and initiation of review;
 - between initiation and completion of review; and
 - average amount of any overpayment;
 - number of such reviews completed and number that resulted in suspension or termination of benefits;
 - number of such reviews initiated in the year but not completed in that calendar year; and
 - number of such reviews initiated in a previous year but not completed in the current calendar year;
- total savings to Treasury and the trust funds due to such reviews; and
- for persons with a completed review in the current year:
 - number who participated in the Ticket to Work program;
 - number who used any work incentives in the year; and
 - number who received vocational rehabilitation services in the year.

Report on Overpayment Waivers

By January 1 of each year, the SSA must submit to Congress a report on the number and value of overpayments recovered or scheduled to be recovered during the previous fiscal year for Social Security and SSI respectively, including the terms and conditions of such repayments and the number and value of overpayments waived during the previous fiscal year.

Section 846. Expedited Examination of Administrative Law Judges

Section 846 of the amendment would require OPM to conduct examinations for the hiring of administrative law judges upon request of the SSA with the first examination to be held no later than April 1, 2016, and other examinations to take place no later than December 31, 2022.

This section would require that such examinations take place even if a person who has taken a previous examination has filed an appeal of his or her determination if

- the SSA determines that delaying the examination would pose a significant risk that the SSA would not have enough judges to reduce or prevent a backlog in hearings;
- the appellant is given the opportunity to continue the appeal or take a new examination, in which case the appeal will be vacated; and
- if the appellant continues the appeal and is successful, he or she is given expeditious consideration for hire by OPM and the SSA.

Section 846 would also provide that all costs associated with examinations requested by the SSA be paid by the SSA.

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