CC: Molly

THE WHITE HOUSE

WASHINGTON

May 22, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco CHR
Assistant to the President for Domestic Policy

SUBJECT: SSI and Transfer of Assets

Your note (attached) asked about our response to GAO's report on transfer of assets under SSI. SSA has submitted legislation that would re-establish a transfer of asset restriction under SSI as GAO recommended. The legislation will be sent to Congress this week.

An SSI transfer restriction was repealed by Congress in 1988, in part because it was considered arbitrary since it applied the same two-year restriction regardless of the value of the transferred resource. The current proposed restriction would make individuals transferring more valuable resources ineligible for SSI benefits for longer periods of time than those who transfer less valuable resources.

SSA's estimate is that the 1988 elimination of the SSI transfer-of-resources restriction costs the SSI program $5 million annually.

Reed / Brostrom - per Email

THE PRESIDENT HAS SEEN
5-6-96

SOCIAL SECURITY ADMINISTRATION

- **GAO Report on Supplemental Security Income:** On April 30 GAO released a report on "Supplemental Security Income (SSI): Some Recipients Transfer Valuable Assets to Qualify for Benefits". This report is a spinoff of an earlier GAO survey dealing with fraud, waste and abuse in the SSI program. A recent GAO report found that resource transfers are increasing, recipients are transferring resources worth millions of dollars, and recipients are transferring resources while qualifying for millions of dollars in SSI and other benefits.

  Chater isn't this running right? Ideas

  GAO concluded that eliminating the SSI transfer of resource restriction has resulted in increased program costs. GAO further concluded that an SSI restriction, similar to the current medicaid restriction, could save millions in SSI program expenditures by delaying individuals' date of eligibility for benefits.

  GAO recommends that Congress consider reinstating an SSI transfer-of-resource restriction. The restriction could be calculated in a way that takes into account the value of the resource transferred so that individuals transferring more valuable resources would be ineligible for SSI benefits for longer periods of time than those who transfer less valuable resources.

- **Public Pension Reform Caucus of the U.S. House of Representatives:** The Public Pension Reform Caucus has asked that Commissioner Chater meet with them on May 14 to discuss the upcoming Advisory Council Report. The Caucus, formed approximately 18 months ago, is comprised of 20 Republican Members of Congress and nine conservative Democrats who favor privatizing the Social Security program. Former Commissioner Dorcas R. Hardy also is scheduled to meet with this group the same day. The meeting is informal and not open to the press or the public.

- **Custody Dispute:** Sometime in the next several weeks, *60 Minutes* may air a segment involving a custody dispute over two children receiving Social Security survivor's benefits. The children currently live with their stepmother in London, England, where she has been receiving Social Security checks on their behalf. The children had previously been removed from the natural mother's home in the United States following allegations of neglect.

DEPARTMENT OF INTERIOR

- **FY 96 Land Acquisition Projects:** As required in the Interior section of the Omnibus Appropriations Act for 1996, Secretary Babbitt has submitted to Capital Hill, his list of priorities for 1996 land acquisition projects for the National Park Service, Fish and Wildlife Service, and Bureau of Land Management. The list totals $69 million of which $11 million is for various projects in California. He has included $1 million to purchase properties from willing sellers to protect vistas surrounding Point Reyes National Seashore as recently announced in the Parks for Tomorrow initiative. He has included $2.9 million for acquisitions for the Santa Monica Mountains National Recreation Area. He has also included $1.7 million for a project in the Otay

SSI and Recipient Transfer of Resources

Background

Between 1981 and 1988, the law required SSA, in determining income eligibility for SSI, to count resource transfers as part of an applicants income for two years. In 1988, Congress repealed this provision, in part because they believed it to be arbitrary since it applied the same two-year restriction regardless of the value of the transferred resource.

GAO Report

At the request of Reps. Nancy Johnson and Clay Shaw, GAO conducted a review of the SSI program to determine: 1) how many SSI recipients are reporting transfer of resources and the type and value of the resources being transferred; and 2) what savings might be realized if Congress were to reinstate an SSI transfer-of-resources restriction.

GAO found that: 1) resource transfers are increasing; 2) recipients are transferring resources worth millions of dollars; and 3) recipients are transferring resources while qualifying for millions of dollars in SSI and other benefits.

A rough SSA estimate is that the elimination of the SSI transfer-of-resources restriction costs the SSI program $5 million annually.

Recommendations to Congress

GAO's report recommends that Congress consider reinstating an SSI transfer-of-resource restriction. GAO recommends that the restriction be similar to the Medicaid restriction and take into account the value of the resource transferred (i.e. so that individuals transferring more valuable resources would be ineligible for SSI benefits for longer periods of time than those who transfer less valuable resources).

Administration Position

SSA has drafted a proposal for establishing a transfer restriction and plans to include it in a technical bill to be submitted to Congress shortly. The SSA proposal would provide that people who, in order to become eligible for SSI benefits, dispose of their assets at less than fair market value in the 36-month period prior to filing applications, shall be ineligible for SSI benefits for a period of months equal to the number obtained by dividing the value of the disposed assets by the Federal Benefit Rate for an individual.

[Note: Last fall's welfare reform proposal would have reinstated the restriction. At that point, in an attachment to a letter to Senator Roth, Commissioner Chater stated that SSA preferred that the provision be dropped because "experience has shown that individuals do not divest themselves of resources in order to obtain SSI." Today, they believe differently.]

SOCIAL SECURITY ADMINISTRATION
FISCAL YEAR 1996 LEGISLATIVE PROPOSAL

Disposal of Assets

Establish Penalties Under the Supplemental Security Income (SSI) Program To Be Applied When an Applicant or Recipient Has Disposed of Assets For Less Than Fair Market Value

Current Law: Current law contains no prohibition against an individual's transferring some or all of his assets in order to gain eligibility for SSI. There is, however, a penalty in the Medicaid program for such actions that provides for a period of ineligibility for Medicaid-covered nursing home services, with the period of ineligibility tied to the value of the asset that was transferred. SSA must collect information on transferred assets and provide this information to the State Medicaid agencies. SSA must also periodically provide applicants and recipients with written notices explaining the Medicaid transfer penalty.

Between March 1, 1981 and July 1, 1988, there was a penalty in the SSI program for transferring resources for less than fair market value. The uncompensated value of a resource transferred for less than fair market was included as part of the individual's resources for a 24-month period following the month of transfer. Congress repealed this provision effective July 1, 1988, in part because they believed that the penalty was arbitrary, in that it applied the same 24-month penalty regardless of the value of the transferred resource.

Proposal: Provide that applicants for SSI benefits who, in order to become eligible for SSI benefits, disposed of their assets at less than fair market value in the 36-month period preceding the filing of their applications, or eligible individuals who, in order to preserve their SSI eligibility, at any time after establishing eligibility dispose of their assets at less than fair market value shall be ineligible for SSI benefits for a period of months equal to the number obtained by dividing the uncompensated value of all disposed assets by the Federal Benefit Rate for an individual in force in the month of application or, if later, the month the transfer occurred. 7

Any transaction described above shall be presumed to have been for the purpose of establishing eligibility under the Act unless the individual (or spouse) furnishes convincing evidence to establish that the transfer was exclusively for some other purpose.

Also authorize the Commissioner to suspend application of the provision for months when its imposition would cause undue hardship.

Rationale: The proposal would support a basic SSI principle; that individuals with assets of their own should use those assets to provide for their basic needs before seeking to become entitled to publicly funded assistance. Although instances of individuals divesting themselves of their assets to gain or preserve SSI eligibility may be rare, the proposal would act as a deterrent to anyone who might consider schemes to shelter assets by "giving them away" to relatives or friends while still maintaining access to the funds. The proposal, by directly relating the length of the period of ineligibility to the amount of resources disposed of without compensation, would support the idea that an individual's assets should be used before SSI benefits are made available to the individual.

Establishing such a provision in SSI law would also improve public confidence in the program at a time when the public perception is that SSI benefits are paid to people who do not need them.

However, the law should not be so harsh as to cause undue hardship to individuals who may have disposed of assets without intending to become public charges. There may be cases in which individuals disposed of assets, believing that they had retained a sufficient amount of resources for their own support, but an unforeseen occurrence depleted those resources. Such individuals may have only SSI benefits for their support.

Effect on Beneficiaries: Based on the number of cases referred to State Medicaid agencies under current law, we estimate that fewer than 2,500 SSI beneficiaries will be affected by this provision.

Federalism Impact: The provision might provide small savings to the States if individuals were found to be ineligible for SSI benefits because of a transfer of assets.

Cost: (dollars in millions)

FY 1996	FY 1997	FY 1998	FY 1999	FY 2000

Program	1/	-5	-5	-5	-5
Administrative	2/	2/	2/	2/	2/

Personnel Requirements:

Federal Work-years	2/	2/	2/	2/	2/

Effective Date: Effective upon enactment.

Contact Person: Judy L. Chesser, (410) 965-2386

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1 Savings of less than $2.5 million

2 Annual administrative cost of less than $1 million and 20 work-years.

SOCIAL SECURITY ADMINISTRATION
FISCAL YEAR 1996 LEGISLATIVE PROPOSAL

Counting of Assets Held in Trusts as Resources

<u>Count as a Resource Under the Supplemental Security Income (SSI) Program Any Assets Contained in a Trust</u>

<u>Current Law</u>: Current law contains no provision regarding assets held in trusts and their treatment for resources purposes. The treatment of assets held in trusts under SSI policy is derived from the regulatory definition of resources. Assets held in a trust are only resources to the extent that the SSI recipient could revoke the trust and gain access to the assets or direct the use of the assets for his or her support or maintenance.

<u>Proposal</u>: Provide that the resources of an individual, or the individual's spouse, shall include the assets of any trust, or similar device, established with property belonging to the individual (or spouse) or property to which the individual is entitled but does not receive because of the establishment of the trust by such individual (or spouse) or any individual or entity, including a court or adminstrative body, acting on his behalf. Assets held in such trusts will be resources to the extent that the trust assets could be used for the benefit of the individual. This result will obtain with respect to revocable and irrevocable trusts and without regard to: the purposes for which the trust is established; whether the trustees have or exercise any discretion under the trust; any restrictions on when or whether distributions may be made from the trust; or any restrictions on the use of distributions from the trust.

Assets held in trusts established by third parties, from such third parties' assets, for the benefit of SSI recipients would not be counted as resources. However, deposits made to such trusts by the SSI recipient from his own funds would be counted as resources.
An exception would be made to provide that trusts established by or on behalf of child beneficiaries who are members of the <u>Zebley</u>

class would not be counted as resources to the extent that the trust is comprised of Zebley retroactive payments.[1]

Rationale: The proposal would support a basic SSI principle; that individuals with assets of their own should use those assets to provide for their basic needs before seeking to become entitled to publicly funded assistance.

It would correct an inadvertent flaw in SSI policy by recognizing that, in the case of self-settled trusts, the settlor in establishing the trust is exercising control over his assets in a way that places the burden of his support on the public in order to preserve or extend his estate.

The proposal also would thwart the current, prevalent practice of precluding the use of trust assets for basic needs such as for food, clothing or shelter items or of making those assets available only for certain goods or services that would not be considered income or resources for SSI purposes.

Establishing such a provision in SSI law would also improve public confidence in the program at a time when the public perception is that SSI benefits are paid to people who do not need them and would be similar to a provision in the Medicaid program (section 1917(d)).

Effect on Beneficiaries: The provision would have no effect on any individual who is the beneficiary of a trust established prior to January 1, 1996 nor on the approximately 452,000 Zebley-class cases.

Federalism Impact: No impact.

Cost: (dollars in millions)

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
Program	2/	-5	-5	-5	-5

[1] The Zebley class is made up of a group of 452,000 children whose disability claims have been or may be reopened under the Zebley court order.

[2] Savings of less than $2.5 million

Administrative	3/	3/	3/	3/	3/

<u>Personnel Requirements</u>:

Federal Work-years	3/	3/	3/	3/	3/

<u>Effective Date</u>: For trusts established on or after January 1, 1997.

<u>Contact Person</u>: Judy L. Chesser, (410) 965-2386

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3 Annual administrative savings of less than $1 million and 20 work-years.

URGENT

OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

FILE NO: 2302

5/15/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 25

TO: Legislative Liaison Officer - See Distribution below:

FROM: Janet FORSGREN Janet Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melinda HASKINS 395-3923 Legislative Assistant's Line: 395-3923
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=HASKINS, G=MELINDA, I=D
haskins_m@a1.eop.gov

SUBJECT: **REVISED** Social Security Administration Proposed Draft Bill: Disposal of Assets To Gain Eligibility for SSI

URGENT

DEADLINE: 4 PM Friday, May 17,1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please review the attached draft bill from SSA. Please note that this draft transmittal letter, section-by-section, and bill text replaces language that you have reviewed under separate cover (see LRMs 4390 and 4229). SSA has asked for expedited clearance of this language. For this reason, if we do not hear from you, we will assume that you have no objection to the transmittal of this draft bill.

AGENCIES:

52-HHS - Sondra S. Wallace - 2026907760
61-JUSTICE - Andrew Fois - 2025142141
71-National Council on Disability - Speed Davis - 2022722004
76-National Economic Council - Sonyia Matthews - 2024562174
89-Office of National Drug Control Policy - John Carnevale - 2023956736
118-TREASURY - Richard S. Carro - 2026221146

EOP:

Apfel_K
Min_N
Cassell_M
Blount_J
White_B
Fontenot_K
Green_R
Filippone_D
Smalligan_J
Clendenin_B
Miller_M
Schwartz_K
Haun_D
Oliven_L
Taylor_W
Bernstein_M
Seidman_E
Brostrom_M
Klein_J
Jennings_C
Fortuna_D
OMB-LA
Murr
Forsgren

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 4390
FILE NO: 2302

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter.
Please include the LRM number shown above, and the subject shown below.

TO: Melinda HASKINS 395-3923
Office of Management and Budget
Fax Number: 395-6148
Branch-Wide Line (to reach legislative assistant): 395-3923

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: **REVISED** Social Security Administration Proposed Draft Bill: Disposal of Assets To Gain Eligibility for SSI

The following is the response of our agency to your request for views on the above-captioned subject:

______ Concur

______ No Objection

______ No Comment

______ See proposed edits on pages ________

______ Other: ______________________

______ FAX RETURN of ____ pages, attached to this response sheet

DRAFT

The Honorable Newt Gingrich
Speaker of the House
of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for the consideration of the Congress is a draft bill "To amend the Social Security Act and related laws to extend and amend demonstration project authority, make perfecting amendments related to tax withholding from social security benefits, make a technical clarification in the effective date of the denial of disability benefits to drug addicts and alcoholics, make administrative improvements respecting reports by prisons and certain other institutions, and address the treatment under the supplemental security income program of the disposal of resources for less than fair market value."

The draft bill contains five sections affecting the social security program or the supplemental security income program or both. The first three of the bill's sections are especially time sensitive. The final two sections, while not involving statutory deadlines, also warrant prompt consideration in view of their importance to our efforts to ensure that benefits are paid under these programs only to properly qualified individuals.

Our authority to conduct demonstration projects that test ways to encourage social security disability beneficiaries to return to work will expire on June 9 of this year unless the Congress acts to extend it. Section 1 of the draft bill would provide permanent authority to conduct demonstration projects designed to promote the objectives or facilitate the administration of the social security program, and consolidate it with the authority for demonstration projects under the supplemental security income program.

Amendments to the Internal Revenue Code of 1986 made by the Uruguay Round Agreements Act contemplated that, commencing January 1, 1997, the Social Security Administration would commence tax withholding from benefit payments at the request of beneficiaries. Section 2 of the draft bill contains a perfecting amendment respecting this provision that is essential in order for the agency to offer this service.

Section 3 contains a technical clarification to the effective date of the recently enacted provision denying disability benefits to drug addicts and alcoholics that is important to our ongoing efforts to implement this provision.

Section 4 proposes administrative improvements respecting reports by institutions concerning their inmates that are designed to promote our timely effectuation of the provisions requiring the stoppage of benefits to prisoners and similarly affected individuals.

Section 5 proposes institution of a new penalty against individuals who transfer resources in order to gain or retain eligibility under the supplemental security income program. Individuals with the means to provide for their own needs should not be allowed, at the public's expense, to transfer resources at less than fair market value.

We urge the Congress to give the enclosed draft bill its prompt and favorable consideration. An enclosure to this letter explains the bill's provisions in greater detail.

We are advised by the Office of Management and Budget that there is no objection to the submission of this draft bill to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

Shirley S. Chater
Commissioner
of Social Security

Enclosures

DRAFT

SECTION-BY-SECTION SUMMARY

Demonstration Projects.

Under authority set to expire on June 9, 1996, the Commissioner may initiate experiments and demonstration projects to test ways to encourage social security disability insurance beneficiaries to return to work, and may waive compliance with certain benefit requirements in connection with these projects. Current law also provides the Commissioner with permanent authority to conduct experimental, pilot, or demonstration projects that are likely to promote the objectives, or facilitate the administration, of the supplemental security income program.

Section 1 would consolidate, expand, and make permanent the authority for the conduct of experimental, pilot, or demonstration projects that promote the objectives or facilitate the administration of the social security or the supplemental security income program.

Perfecting Amendments Related to Tax Withholding from Social Security Benefits.

The Uruguay Round Agreements Act contained an amendment to the tax code to authorize tax withholding from social security benefits (as well as certain other payments) made after December 31, 1996, upon the explicit request of the person entitled to the payment. The amendment failed to override the Social Security Act provision that prohibits the assignment of benefits and to authorize funding to cover the Social Security Administration's costs in administering the new provision.

The amendments made by section 2 would remedy these obstacles to timely effectuation of the tax withholding provision. Subsection (a) would provide that the Social Security Act's anti-assignment provision does not apply to the withholding of taxes at the request of the beneficiary. Subsection (b) would authorize an annual appropriation to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of such sums as may be necessary to carry out the tax withholding provision.

Perfecting Amendments With Respect to the Effective Date of the Denial of Disability Benefits to Drug Addicts and Alcoholics.

Public Law 104-121 contained, inter alia, amendments to the social security and supplemental security income disability programs providing that no individual could be considered to be disabled if alcoholism or drug addiction would otherwise be a contributing factor material to the determination of disability. The effective date of the amendments provided that they applied to anyone whose claim was finally adjudicated by the Commissioner on or after March 29, 1996, the date of the enactment of the new law; in the case of anyone whose claim had been finally adjudicated before such date, the amendments would apply commencing with benefits for months beginning on or after January 1, 1997.

Section 3 of the draft bill contains amendments that clarify the meaning of the term "final adjudication" as it is used in the effective date of the new law denying disability benefits to drug addicts and alcoholics. These amendments address the ambiguity that would otherwise exist in the application of the effective date to cases in which, on March 29, 1996, there is pending review (either administrative or judicial) of the Commissioner's denial of a claim or the Commissioner's implementation of a court remand order or readjudication pursuant to relief in a class action. At least one court has already concluded that it can award benefits through January 1, 1997, because the Commissioner's decision denying benefits in the case was issued before March 29.

Administrative Improvements Respecting Reports by Prisons and Certain Other Institutions.

Under current law, social security benefits are not payable to an individual for any month during which the individual is confined in a penal institution pursuant to conviction for an offense punishable by imprisonment for more than one year or is confined by court order in an institution at public expense in connection with a verdict or finding that the individual is guilty but insane, not guilty by reason of insanity, incompetent to stand trial, or a similar verdict or finding based on similar factors with respect to a criminal offense so punishable.

Current law with respect to the supplemental security income (SSI) program provides, subject to multiple exceptions, that SSI benefits are not payable with respect to any month throughout which an otherwise eligible individual is an inmate of a public institution. None of the exceptions apply to prisoners or other individuals confined at public expense in connection with a criminal offense.

Current law requires federal, state, and local agencies to make available, upon the written request of the Commissioner of Social Security, the name and social security account number (SSN) of any individual confined as a result of a conviction (or other finding related to the individual's mental competence) in connection with a crime punishable by imprisonment for more than one year. The law does not specify how frequently institutions must report to the Commissioner, or impose penalties for failure to comply with the Commissioner's request for information. Any information furnished by an institution in automated form is subject to the special requirements of the Privacy Act applicable to computer matching programs, including requirements for various public notices, and a written agreement between the parties that must be approved by the Social Security Administration's Data Integrity Board and re-executed with full approvals every 30 months.

The amendments made by subsection (a) of section 4 are intended to promote the timely effectuation of the prisoner nonpayment provisions by authorizing the Commissioner to enter into agreements with willing state and local institutions under which the Commissioner would pay the institution $400 for each report of a newly admitted inmate who is a social security or SSI beneficiary whose benefits are subject to nonpayment if the report is made within 30 days of the inmate's admission to the institution, or $200 if the report is made between 31 and 90 days following such inmate's admission. The amendments made by subsection (a) would be temporary (through 2001) so that their effectiveness could be analyzed before they became permanent.

The amendments made by subsection (b) provide that the Privacy Act would not apply to the agreements with the institutions or to the information provided under them. The specific purpose of the prisoner nonpayment provisions, as well as the general interests of economy and efficiency in program administration, are served by promoting the use of automation in the exchange of data required by those provisions. Since there are in excess of 3,500 state and local penal institutions, the application of the Privacy Act's procedural requirements to computer matching agreements between the Commissioner and those institutions would impose an excessively costly administrative burden that could hamper administration of the prisoner nonpayment provisions. The other provisions of the Privacy Act prohibiting the taking of any adverse action with respect to a federal benefit as a result of information from a matching program without verifying the information, and establishing procedures for protecting the confidentiality of the information, provide few safeguards beyond those already followed by the Social Security Administration pursuant to the Social Security Act and related laws, and the regulations promulgated under them.

Section 4 additionally would require the Commissioner to provide the Congress by October 1, 1998, with lists of those institutions complying with the reporting requirements of current law and those which are not.

Disposal of Resources for Less than Fair Market Value.

Current law contains no prohibition against the transfer by an individual of some or all of his or her assets in order to gain eligibility for supplemental security income (SSI) benefits. (Between 1981 and 1988 a penalty did apply to such transfers: the uncompensated value of the transferred resource was included in the individual's resources for a 24-month period following the month of transfer. Congress repealed this provision, in part, because of its arbitrariness in applying the same 24-month penalty regardless of the uncompensated value of the transferred resource.)

The amendment made by section 5 would institute a new penalty for such transfers that is tailored to the magnitude of the transaction. Specifically, any individual who, in order to become eligible for SSI benefits or to preserve such eligibility, disposes of assets at less than fair market value shall be ineligible for such benefits for a period of months equal to the number obtained by dividing the uncompensated value of the transferred assets by the federal benefit rate in force in the month of application or, if later, the month of the transfer.

The penalty would not apply in any case in which the Commissioner determines that the individual intended to dispose of the resources at fair market value, the transfer occurred for a purpose other than to qualify for SSI benefits, the transferred assets have been returned to the individual, or the denial of eligibility would work an undue hardship on the individual.

DRAFT

A BILL

To amend the Social Security Act and related laws to extend and amend demonstration project authority, make perfecting amendments related to tax withholding from social security benefits, make a technical clarification in the effective date of the denial of disability benefits to drug addicts and alcoholics, make administrative improvements respecting reports by prisons and certain other institutions, and address the treatment under the supplemental security income program of the disposal of resources for less than fair market value.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEMONSTRATION PROJECTS.

(a) In General.--Section 1110 of the Social Security Act is amended--

(1) in the title, by striking "OR" and inserting "AND";

(2) by striking "(a)(1)" and inserting "(a) Cooperative Research.--(1)"; and

(3) by amending subsection (b) to read as follows:

"(b) Demonstration Projects.--

"(1) In general.--The Commissioner of Social Security is authorized to carry out any experimental, pilot, or demonstration project that, in the Commissioner's judgment, is likely to assist in promoting the objectives or facilitating the administration of title II or title XVI of this Act.

"(2) Waiver and other special authority.--In order to permit a thorough evaluation of any alternative being considered in any project carried out under this subsection--

"(A) the Commissioner is authorized--

"(i) to waive any of the requirements, conditions, or limitations of title II or title XVI (or to waive them only for specified purposes), and

"(ii) to impose additional requirements, conditions, or limitations respecting benefits payable under, or the administration of, such titles; and

"(B) the Secretary of Health and Human Services, upon the request of the Commissioner, is authorized--

"(i) to waive any of the requirements, conditions, or limitations of title XVIII or title XIX (or to waive them only for specified purposes), and

"(ii) to impose additional requirements, conditions, or limitations respecting medical assistance under such titles,

in connection with any project to promote the objectives or facilitate the administration of title II or title XVI.

"(3) Limitation on SSI projects.--With respect to the participation of recipients of supplemental security income benefits payable under title XVI in any project under this subsection--

"(A) the Commissioner is not authorized to carry out any project that would result in a substantial reduction in any individual's total income and resources as a result of the individual's participation in the project;

"(B) the Commissioner may not require any individual to participate in a project, and the Commissioner shall assure that--

"(i) the voluntary participation of each individual in a project is evidenced through informed written consent; and

"(ii) any individual's voluntary agreement to participate in a project may be revoked by the individual at any time; and

"(C) the Commissioner shall, to the extent feasible and appropriate, include recipients who are under age 18 as well as adult recipients.

"(4) Grants and Contracts.--The Commissioner may make grants to, and enter into contracts with, any agency, organization, or other entity, for the purpose of assisting the Commissioner in carrying out any project under this subsection.

"(5) Cost allocation.--

"(A) OASDI and SSI projects.--Any costs for benefits under or administration of any project authorized by this subsection (including planning, reviewing, or evaluating a project) in excess of those that would have been incurred without regard to the project, shall be met by the Commissioner from amounts available for this purpose from the Federal Old-Age Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or appropriations made to carry out title XVI, as appropriate.

"(B) Coordinated projects.--The cost of any such project that is carried out in coordination with one or more related projects, including projects authorized under other titles of this Act, shall be allocated among the Trust Funds involved and the appropriations available for such projects in a manner determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under title II and the supplemental security income program under title XVI, and by the Secretary with respect to other titles of this Act, taking into consideration the programs (or types of benefits) to which the project (or part of a project) is most closely related or which the project (or part of a project) is intended to benefit.

"(C) Reimbursement of State costs.--

"(i) If, in order to carry out a project to promote the objectives or facilitate the administration of title XVI, the Commissioner requests a State to make supplementary payments (or the Commissioner makes them pursuant to an agreement under section 1616 of this Act or section 212(b) of Public Law 93-66) to individuals who are not eligible therefor, the Commissioner -

"(I) from amounts appropriated to carry out title XVI, shall reimburse such State for the amount by which the cost of such payments exceeds the cost that the State would otherwise have incurred in the absence of such request, and

"(II) shall waive any administrative fee that would otherwise be required by section 1616(d) in the case of a supplementary payment made at the Commissioner's request to an ineligible individual.

"(ii) If, in order to carry out a project under this subsection, the Secretary (pursuant to a request of the Commissioner) requests a State to provide medical assistance under its plan approved under title XIX to individuals who are not eligible therefore, or in amounts or under circumstances in which the State does not provide such medical assistance, the Secretary shall reimburse such State for the non-federal share of such assistance from amounts appropriated to carry out title XVI, which shall be provided by the Commissioner to the Secretary for this purpose.".

(b) Conforming Amendment.--Section 201(k) of such Act is amended by striking "experiments and demonstration projects under section 505(a) of the Social Security Disability Amendments of 1980" and inserting "experimental, pilot, or demonstration projects respecting this title that are conducted pursuant to section 1110(b)".

(c) Repeal.--Section 505 of the Social Security Disability Amendments of 1980 is repealed.

SEC. 2. PERFECTING AMENDMENTS RELATED TO TAX WITHHOLDING FROM SOCIAL SECURITY BENEFITS.

(a) Inapplicability of Assignment Prohibition.--Section 207 of the Social Security Act is amended by adding at the end a new subsection as follows:

"(c) This section shall not be construed to prohibit withholding taxes from any benefit under this title provided that such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit.".

(b) Authorization of Appropriations.--Section 201 of such Act is amended by adding at the end a new subsection as follows:

"(n) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for fiscal year 1997 and each fiscal year thereafter such sums as may be necessary to carry out tax withholding from benefits under this title pursuant to section 3402(p)(1) of the Internal Revenue Code of 1986.".

SEC. 3. PERFECTING AMENDMENTS WITH RESPECT TO THE EFFECTIVE DATE OF THE DENIAL OF DISABILITY BENEFITS TO DRUG ADDICTS AND ALCOHOLICS.

(a) In General.--

(1) Amendment relating to social security disability benefits.--Section 105(a)(5)(A) of the Contract with America Advancement Act of 1996 (Public Law 104-121) is amended--

(A) by striking "by the Commissioner of Social Security" and "by the Commissioner"; and

(B) by adding at the end the following new sentence: "For purposes of this subparagraph, no individual's claim with respect to such benefits may be considered to be finally adjudicated before the date of the enactment of this Act if, on or after such date, there is pending a request for either administrative or judicial review with respect to any claim that has been denied in whole, or if there is pending, with respect to any claim, readjudication by the Commissioner pursuant to relief in a class action or implementation by the Commissioner of a court remand order.".

(2) Amendment relating to supplemental security income disability benefits.--Section 105(b)(5)(A) of such Act is amended--

(A) by striking "by the Commissioner of Social

Security" and "by the Commissioner"; and

(B) by adding at the end the following new sentence: "For purposes of this subparagraph, no individual's claim with respect to such benefits may be considered to be finally adjudicated before the date of the enactment of this Act if, on or after such date, there is pending a request for either administrative or judicial review with respect to any claim that has been denied in whole, or if there is pending, with respect to any claim, readjudication by the Commissioner pursuant to relief in a class action or implementation by the Commissioner of a court remand order.".

(b) Effective Date.--The amendments made by this section shall be effective as though they had been included in the enactment of section 105 of the Contract with America Advancement Act of 1996 (Public Law 104-121).

SEC. 4. ADMINISTRATIVE IMPROVEMENTS RESPECTING REPORTS BY PRISONS AND CERTAIN OTHER INSTITUTIONS.

(a) Compliance Incentives.--

(1) OASDI.--Section 202(x)(3) of the Social Security Act is amended--

(A) by inserting "(A)" after "(3)"; and

(B) by adding at the end the following:

"(B)(i) The Commissioner may enter into an agreement with any interested State or local institution described in clause (i) or (ii) of paragraph (1)(A) the primary purpose of which is to confine individuals as described in paragraph (1)(A), under which--

"(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the--

"(aa) name,

"(bb) social security account number,

"(cc) confinement commencement date, and

"(dd) to the extent available to the institution, such other information as the Commissioner may require for the purpose of carrying out this subsection

with respect to each individual currently confined in the institution (including any individual whose confinement began before the effective date of the agreement); and

"(II) the Commissioner shall pay to the institution, with respect to each individual confined therein to whom paragraph (1) applies and to whom a benefit under this title would otherwise be paid for the first month in which the institution provides the Commissioner with the information specified in divisions (aa), (bb), and (cc) of subclause (I) with respect to such individual --

"(aa) $400 (reduced as may be required by clause (ii)), if the institution provides such information within 30 days after the date such individual's confinement in such institution began, or

"(bb) $200 (reduced as may be required by clause (ii)), if the institution provides such information after 30 days, but within 90 days, following such date.

"(ii) The dollar amounts specified in clause (i)(II) shall be reduced by fifty percent if the Commissioner is also required to make a payment to the institution with respect to the same individual pursuant to section 1611(e)(1)(I).

"(iii) There shall be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, such sums as may be necessary to enable the Commissioner to make the payments to institutions required by clause (i)(II). Sums so transferred shall be treated as direct spending for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(2) SSI.--Section 1611(e)(1) of such Act is amended by adding at the end the following:

"(I)(i) The Commissioner may enter into an agreement with any interested State or local institution referred to in subparagraph (A), under which--

"(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the--

"(aa) name,

"(bb) social security account number,

"(cc) confinement or residence commencement date, and

"(dd) to the extent available to the institution, such other information as the Commissioner may require for the purpose of carrying out this paragraph with respect to each of the institution's current inmates (including inmates whose confinement or residence began before the effective date of the agreement); and

"(II) the Commissioner shall pay to the institution, with respect to each inmate thereof who receives a benefit under this title for the first month in which the institution provides the Commissioner with the information specified in divisions (aa), (bb), and (cc) of subclause (I) with respect to such individual and who is precluded from being an eligible individual or eligible spouse pursuant to subparagraph (A) for that month or the following month--

"(aa) $400 (reduced as may be required by clause (ii)), if the institution provides such information within 30 days after the date such individual becomes an inmate of such institution, or

"(bb) $200 (reduced as may be required by clause (ii)), if the institution provides such information after 30 days, but within 90 days, following such date.

"(ii) The dollar amounts specified in clause (i)(II) shall be reduced by fifty percent if the Commissioner is also required to make a payment to the institution with respect to the same individual pursuant to section 202(x)(3)(B).

"(iii) Payments to institutions required by clause (i)(II) shall be made from funds otherwise available for the payment of benefits under this title and shall be treated as direct spending for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(b) Nonapplicability of the Privacy Act.--

(1) OASDI.--Section 202(x)(3) of such Act is amended by adding at the end (after the subparagraph added by subsection (a)(1) of this section) the following new subparagraph:

"(C) If, for the purpose of carrying out this subsection, the Commissioner enters into an agreement or other arrangement with an institution described in paragraph (1) pursuant to which the institution furnishes such information respecting individuals confined therein as the Commissioner may need for such purpose, then section 552a of title 5, United States Code, shall not apply to such agreement or arrangement or to the information furnished pursuant thereto.".

(2) SSI.--Section 1611(e)(1) of such Act is amended by adding at the end (after the subparagraph added by subsection (a)(2) of this section) the following new subparagraph:

"(J) If, for the purpose of carrying out subparagraph (A), the Commissioner enters into an agreement or other arrangement with a public institution pursuant to which the institution furnishes such information respecting inmates thereof as the Commissioner may need for such purpose, then section 552a of title 5, United States Code, shall not apply to such agreement or other arrangement or to the information furnished pursuant thereto.".

(c) Effective Date.--The payments described in sections 202(x)(3)(B)(i)(II) and 1611(e)(1)(I)(i)(II) of the Social Security Act (as added by the amendments made by subsection (a) of this section) shall be payable only with respect to individuals whose period of confinement or residence in an institution commences on or after the first day of the seventh month beginning after the month in which this Act is enacted.

(d) Report to Congress.--By October 1, 1998, the Commissioner of Social Security shall provide the Senate Committee on Finance and the House Committee on Ways and Means with a list of the institutions (described in subparagraph (A) of section 202(x)(1) of the Social Security Act) that are providing to the Commissioner the information described in such section (as amended by subsection (a)(1) of this section) and a list of such institutions that are not providing such information to the Commissioner.

(e) Sunset Provision.--The amendments made by subsection (a) of this section shall be effective only with respect to information received by the Commissioner of Social Security prior to January 1, 2002.

SEC. 5. DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE.

(a) In General.--Section 1613(c) of the Social Security Act is amended--

(1) in the caption, by striking "Notification of Medicaid Policy Restricting Eligibility of Institutionalized Individuals for Benefits Based on";

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(3) by striking "(2)" and inserting "(B)";

(4) by striking "(c)(1)" and inserting "(2)(A)";

(5) by inserting before paragraph (2) (as redesignated by paragraph (4) of this subsection) the following:

"(c)(1) Penalty.--

"(A)(i) If an individual or the spouse of such an individual disposes of resources for less than fair market value on or after the look-back date specified in subclause (I) of clause (ii), the individual is ineligible for benefits under this title for months during the period beginning on the date specified in clause (iii) and equal to the number of months specified in clause (iv).

"(ii)(I) The look-back date specified in this subclause is a date that is 36 months before the date specified in subclause (II).

"(II) The date specified in this subclause is the date on which the individual applies for benefits under this title or, if later, the date on which the individual (or the spouse of such individual) disposes of resources for less than fair market value.

"(iii) The date specified in this clause is the first day of the first month that follows the month in which resources were transferred for less than fair market value and that does not occur in any other period of ineligibility under this paragraph.

"(iv) The number of months of ineligibility under this clause for an individual shall be equal to--

"(I) the total, cumulative uncompensated value of all resources transferred by the individual (or the spouse of such individual) on or after the look-back date specified in subclause (I) of clause (ii), divided by

"(II) the amount of the maximum monthly benefit payable under section 1611(b) to an eligible individual for the month in which occurs the date specified in subclause (II) of clause (ii).

"(B) An individual shall not be ineligible for benefits under this title by reason of subparagraph (A) if the Commissioner determines that--

"(i) the individual intended to dispose of the resources at fair market value;

"(ii) the resources were transferred exclusively for a purpose other than to qualify for benefits under this title;

"(iii) all resources transferred for less than fair market value have been returned to the individual; or

"(iv) the denial of eligibility would work an undue hardship on the individual (as determined on the basis of criteria established by the Commissioner in regulations).

"(C) For purposes of this paragraph, in the case of a resource held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the resource (or the affected portion of such resource) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such resource.

"(D) In the case of a transfer by the spouse of an individual that results in a period of ineligibility for such individual under subparagraph (A), the Commissioner shall apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for benefits under this title.

"(E) For purposes of this paragraph--

"(i) the term 'benefits under this title' includes State supplementary payments made by the Commissioner pursuant to an agreement under section 1616 or section 212(b) of Public Law 93-66); and

"(ii) the term 'trust' has the meaning given such term in subsection (e)(5)(A).".

(b) Conforming Amendments.--Section 1613(c)(2) of the Social Security Act (as redesignated by subsection (a) of this section) is amended--

(1) by striking "(2)(A)" and inserting "(2) Notice.--(A)";

(2) in subparagraph (A)(i)--

(i) by inserting "paragraph (1) and" after "provisions of";

(ii) by striking "title XIX" the first place such phrase appears and inserting "this title and title XIX, respectively,";

(iii) by striking "subparagraph (B)" and inserting "clause (ii)"; and

(iv) by striking "paragraph (2)" and inserting "subparagraph (B)";

(3) in subparagraph (A)(ii)--

(i) by striking "by the State agency"; and

(ii) by striking "section 1917(c)" and all that follows and inserting "paragraph (1) or section 1917(c)."; and

(4) in subparagraph (B), by striking "paragraph (1)(B)" and inserting "subparagraph (A)(ii)".

(c) Effective Date.--The amendments made by this section shall be effective with respect to transfers of resources for less than fair market value that occur 90 or more days after the date of enactment of this Act.

SOCIAL SECURITY

Office of the Commissioner

OCT 2 6

The Honorable William V. Roth, Jr.
United States Senate
104 Senate Hart Office Building
Washington, DC 20510-0801

Dear Senator Roth:

The Administration has significant concerns about several Supplemental Security Income (SSI)issues, including: (a) the impact of both the House and Senate bills on children with disabilities; (b) House and Senate restrictions on benefits to immigrants; (c) the Senate bill's proposal to raise the age of eligibility for the elderly for SSI; and (d) the administrative implications of implementing the provisions in these bills. Following are more detailed discussions of our concerns in these four areas. In addition, we have enclosed a discussion of a number of more technical concerns.

Childhood Disability

Both the House and Senate proposals go too far in making changes to the SSI childhood disability program. The Administration strongly opposes the House provisions that would eliminate most prospective cash benefits in favor of block granted services. This provision essentially punishes innocent children -- more than 900,000 children over the next five years who would have been eligible under current law would not be entitled to cash benefits; as many as 600,000 fewer children with disabilities would receive cash benefits in FY 2000. While authorized services may be available to some of these children, the amount of the block grant allotment for each State would only be about 75 percent of the lost cash benefits -- an amount that then must be spread among both the children receiving only these services and those still receiving cash benefits. More important, we believe that direct cash benefits are superior to block-grant services in several regards. Cash benefits provide greater flexibility to meet the varied and changing needs of children with disabilities; cash benefits support and preserve the capacity of families to care for children with disabilities in their homes, including substituting for lost wages of a parent who is unable to work full-time because he or she must care for a child with a disability; and cash benefits provide a means for the parents of children with disabilities to determine the needs of their children, rather than placing that judgement with a State government agency.

We believe that the stated intent of the House proposal -- to provide necessary services and treatment -- would likely not be met for two reasons. First, it is impossible to foresee every possible service that a disabled child might require. Yet the block grant could only be used for a specified set of services. Second, States would be allowed to (a) select, from a centrally developed list of "authorized services," those services which they would offer and (b) determine which "qualified children" could receive them. There would be no guarantee that a child with a disability would be able to receive services he or she needs -- or any services at all. It would be impossible to ensure that children with disabilities, perhaps our most vulnerable population, would be treated fairly and equally nationwide in a program where block grants are administered differently by each State.

In addition, we oppose the House provision which would codify one narrow section of SSA regulations into law as the new definition of disability. This provision would make it impossible to adapt SSA's rules to improved medical practices and changing circumstances. The Administration much prefers the Senate provision that establishes in law a new general definition of childhood disability.

While the Administration prefers the Senate's definition of childhood disability, we strongly believe Congress should reduce hardship to children with disabilities now on SSI by exempting them from these new, stricter eligibility rules and applying them only to new applicants. If applied to current recipients, according to our most recent estimates, the new definition would cause approximately 160,000 children to lose their eligibility. We believe it would cause serious problems for the families who may have come to rely on this assistance to help those children who, while not so severely disabled as to qualify under the new rules, nevertheless have impairments disabling enough to have made them considered in need of Federal assistance.

While we do not oppose the efforts to require continuing disability reviews, we are concerned that these additional workloads will over-stress SSA's limited resources. We favor the Senate version of this provision, which makes clear that the current medical improvement standard applies to these reviews; we would prefer to have the provision requiring that a parent or guardian present evidence of "medically necessary" treatment dropped, since this concept is not well defined and would be difficult to enforce.

Benefits to Immigrants

The benefits to immigrants provisions have far reaching effects. We will focus our comments only on the impact on Social Security programs. Both the House and Senate bills go too far in cutting SSI benefits for legal immigrants, and shifting costs to States with high numbers of immigrants. Deeming has been shown as an effective way of holding sponsors responsible and we support strengthening that responsibility as reflected by the extended deeming provision in the Administration's welfare reform bill last year. The Administration strongly opposes the Senate provision that would discriminate against U.S. citizens by denying benefits to legal immigrants even after they become naturalized citizens. The Senate bill also limits those who can receive certain Federal benefits, including Social Security benefits. This provision would violate bilateral totalization agreements with 17 foreign countries and increase costs for American companies and workers.

The legislation would be much more acceptable to the Administration if the following features were present. Immigrants who become disabled after entering the country and the aged over 75 should be eligible for SSI. Refugees, asylees, Cuban and Haitian entrants, and others who came to the U.S. to avoid persecution should be given adequate time to naturalize before being subject to benefit restrictions. In addition, any sponsor-to-immigrant deeming formula should take into account the needs of the sponsor's family. The attachment to this letter discusses these issues and other concerns in more detail.

Increased Age Requirements

Section 251of the Senate bill would increase the age requirement for "aged benefits" to correspond with the Social Security program's "retirement age." Beginning in 2003, the age will increase 2 months per year until it reaches age 66 in 2008. A similar transition between ages 66 and 67 will occur between 2021 and 2026. There is no comparable section in the House bill.

The Administration opposes this provision because it could put at risk those poor, elderly individuals who lack skills or experience to enable them to be self-supporting at an advanced age. It is important to understand that the SSI program and the Social Security program are not automatically comparable. Social Security has a provision for optional early retirement at age 62 and the majority of Social Security recipients take advantage of this option. The early retirement age is not scheduled to change. SSI, however, has no provision for an early retirement age.

Administrative Implications

Given the magnitude of the changes to the SSI program envisioned in these bills, we are concerned that the administrative implications of implementing these changes will be significant. Congress needs to be aware of the potential effect of adding these unbudgeted new requirements on SSA's existing workload, including the deferral of other work. This concern is further addressed in our enclosure.

In closing, we would be pleased to work with you on developing statutory language for any of the changes we suggest.

Sincerely,

Shirley Chater

Shirley S. Chater
Commissioner
of Social Security

Enclosure

ENCLOSURE

Noncitizen Eligibility for SSI Benefits

Both section 403 of the House bill and section 202 of the Senate bill generally would prohibit non-citizens from being eligible for SSI with certain exceptions.

Under section 403 of the House bill, non-citizens in the following categories could be eligible: refugees during the 5-year period after their admittance to the United States; lawfully admitted permanent residents over age 75 who have resided in the United States for at least 5 years; active duty Armed Forces personnel, honorably discharged veterans, and their spouses and dependent children; and, lawful permanent residents who cannot take the naturalization examination because of physical or developmental disability or mental impairments. Non-citizens on the SSI rolls at the time of enactment who would not be in one of these excepted categories would be removed from the rolls 1 year after the date of enactment.

Under section 202 of the Senate bill, these non-citizens could be eligible: refugees, asylees, and individuals who have their deportations withheld (eligibility for such individuals would be limited to 5-year period after their arrival in the United States); non-citizens who have worked and have sufficient quarters of coverage to be fully insured for Social Security benefits; and, non-citizens who have been battered or subjected to extreme cruelty. Non-citizens on the SSI rolls at the time of enactment who would not be in one of these excepted categories would be removed from the rolls January 1, 1997.

Both bills end eligibility for non-citizens already on the SSI rolls beyond January 1997 and would result in significant numbers of current recipients--aged, blind, and disabled individuals--losing SSI eligibility. This feature is troubling; benefit restrictions should be applied only to persons who first apply for benefits after the effective date of the legislation.

The Administration supports the House provision which exempts legal immigrants who because of physical or developmental disability or mental impairment are unable to fulfill the Immigration and Naturalization Act's naturalization requirements. The Administration would prefer that the bill be amended to provide that persons who become disabled after entering the country should be exempt from the bill's benefit restrictions. Disability cannot be foreseen and, therefore, should trigger an exemption to allow such benefits.

Regarding refugees, asylees, Cuban and Haitian entrants, and others subject to persecution, the Administration would prefer the House bill if several modifications were made. Asylees, Cuban and Haitian entrants, and individuals who have had their deportations withheld should be added to the list in section 403 of exempted non-citizens who could be eligible for 5 years after their entry. And, the length of exemption should be made longer than 5 years so that sufficient time can be provided for affected individuals to complete the naturalization process.

In addition, we have a number of technical concerns with these sections and would be willing to work with the Conference Committee in addressing our concerns. In the Senate bill, we would support an amendment with respect to treatment of refugees, asylees, Cuban and Haitian entrants, and non-citizens whose deportations are withheld who adjust to lawful permanent residence status after entry. We believe that the status under which the non-citizen was admitted in the United States should continue to be the status used to determine eligibility for benefits during the 5-year period. Otherwise there would be a disincentive for any affected non-citizen to seek adjustment in his or her status.

Deeming of Sponsors' Income and Resources

Both bills also contain provisions with regard to the deeming of sponsors' income and resources in determining SSI eligibility and benefit amount. Section 421 of the House bill would provide that in the case of new legally enforceable affidavits of support, deeming would apply until the non-citizen became a U.S. citizen. Under section 502 of the Senate bill, the deeming period would be for 5 years or, as specified in the new legally enforceable affidavits, until the alien earns 40 quarters of coverage in the United States regardless of whether he or she becomes a U.S. citizen, whichever is longer.

Deeming has been shown as an effective way of holding sponsors responsible and we support strengthening that responsibility as reflected by the extended deeming provision in the Administration's welfare reform bill last year. However, we have strong reservations about both bills because they would repeal the current-law exemption from deeming for sponsored non-citizens who become blind or disabled after entry and change the current-law deeming formula so that the needs of the sponsors' families are not taken into account. Furthermore, we are strongly opposed to continuing deeming of the sponsor's income and assets beyond citizenship. This section may be subject to a constitutional challenge as applied to naturalized aliens, who may be ineligible solely because of their former status as aliens, for benefits to which other citizens are entitled. However, we defer to the Department of Justice on this question.

The Senate bill's provisions regarding the exception to ineligibility for

SSI for non-citizens who are fully insured for Social Security benefits and its relationship to the provision requiring the deeming of sponsors' assets until the non-citizen has worked for 40 qualifying quarters in the United States present policy, technical, and administrative problems. A qualifying quarter is defined as one in which the individual has at least the minimum for a Social Security quarter of coverage, has not received needs-based public assistance, and has income tax liability for the year in which the quarter was earned. Under this requirement, a non-citizen could become fully insured for Social Security benefits but not earn enough in some years to have had any tax liability. The number of quarters of coverage needed to be fully insured is based on how many years elapse after the year the individual becomes aged 21 and before the year in which he or she becomes disabled or reaches age 62. The maximum number of quarters is 40.

Under a number of circumstances, an individual could become qualified for Social Security benefits but be indefinitely subject to the deeming of sponsor's income. A mother with two children could work full time for ten years at $6.25 an hour (1994 dollars), be eligible for Social Security benefits but still be subject to deeming of sponsor's income because she would have received needs based public assistance, the Earned Income Tax Credit. Alternatively, a young individual who became disabled shortly after his or her 21st birthday could become fully insured with as few as 6 quarters. Thus, if such an individual were a non-citizen, he or she could become eligible for SSI benefits. However, if he or she entered the United States on the basis of a legally enforceable affidavit of support, the sponsor's assets would be deemed to him or her for 40 qualifying quarters even though he or she was fully insured. Inasmuch as the individual might not meet the tax liability requirement in the years in which the quarters of coverage were earned, or be able to satisfy the requirement for 10 years of tax liability due to his or her disability, in some cases, deeming of the sponsor's assets would never end. While we do not support deeming past citizenship, the Senate deeming provision would be improved with an amendment to provide that deeming would also end when the immigrant is "fully insured, for Social Security benefits."

In addition to the problems described above, the Senate deeming provision exception related to earnings with income tax liability would require agencies to request that the Internal Revenue Service retrieve at least ten years of tax records for each individual affected. Because tax files are stored for each individual tax year, this would create considerable administrative burdens for the IRS that would not exist for the alternative we recommend above. We defer to the Department of Treasury on the IRS administrative concerns.

In addition, we are concerned with the effective dates in the Senate bill as they relate to deeming and benefit eligibility. Virtually all sponsored aliens on the rolls at the time of enactment would lose eligibility under the Senate bill as of January 1, 1997. However, the new deeming rules would have to be applied to them for the period between enactment and January 1997. This would be a significant administrative workload requiring the identification of all sponsored non-citizens currently exempted from sponsor-to-alien deeming--for example, parolees and disabled immigrants--for whom we have no information about their sponsors' incomes and resources.

Affidavits of Support

We support making affidavits of support legally enforceable contracts, and we believe that the affidavit should be binding for the same period as deeming, assuming deeming does not continue past citizenship. However, we do not believe that SSA should promulgate reimbursement rules, as required in section 503(d)(3) of the Senate bill, for other government agencies that administer means-tested benefits. We prefer the approach in the House bill which requires the Attorney General to promulgate reimbursement rules for all government agencies. Both the House and the Senate bills would permanently bar SSI eligibility for most lawful permanent residents, which would make deeming largely irrelevant for the SSI program. If these blanket exclusions are enacted despite Administration objections, it is likely that there would be very few cases in which SSA would be seeking reimbursement, thereby reducing substantially the need for SSA to administer reimbursement rules. It is likely that other programs will be more affected by this requirement than SSA.

Prohibition on Payment of Federal Benefits to Certain Persons

Section 507 of the Senate bill provides that certain Federal benefits, including Social Security benefits, would be payable only to persons lawfully present within the United States, whom the provision defines as U.S. citizens, permanent resident aliens, and certain categories of aliens and U.S. nationals. Thus, this section would appear to prohibit the payment of Social Security benefits to aliens who are outside the United States or who have been temporarily admitted to the United States.

These payment restrictions would violate the terms of the bilateral Social Security totalization agreements with 17 foreign countries, including Canada and virtually all of Western Europe. Furthermore, the U.S. has treaties with at least 9 countries which require the U.S. to pay Social Security benefits to foreign treaty nationals inside the United States on the same basis as U.S. citizens. Seven of these treaties require the U. S. to accord this national treatment to foreign treaty nationals whether they are inside or outside the U.S. In addition, under current law, Social Security benefits are payable to aliens outside the U.S. who are citizens of one of the 65 countries whose social insurance system affords reciprocal treatment to U.S. citizens.

Legislation abrogating existing agreements and treaties or otherwise adversely affecting the Social Security benefits of foreign nationals could lead to retaliatory restrictions on the payment of social insurance benefits by other countries to U.S. citizens. Furthermore, it would be unfair to deny Social Security benefits to aliens whose eligibility for benefits is based on earnings from authorized work which were covered under Social Security and subject to Social Security taxes. Finally, if the legislation results in the termination of bilateral Social Security agreements, many U.S. workers and employers will lose the right to foreign Social Security tax exemptions accorded to them pursuant to the agreements. Thus, we strongly oppose section 507 and urge that it be dropped by the Conference Committee.

Battered Individual Exemption

Section 701 of the Senate bill would exempt individuals who have been battered or subjected to extreme cruelty from certain provisions of SSI law. Although we understand that the exemption is intended to apply to the prohibition on eligibility for most non-citizens and as an exception to sponsor-to-alien deeming, the bill language also exempts such battered individuals from any of the provisions in section 1614(a) of the Social Security Act, which includes the restriction on benefits to residents of the United States, the age 65 requirement for SSI aged benefits, the statutory definition of disability and blindness, and the so-called medical improvement standard for continuing disability determinations. Thus, the language exempts battered individuals from any of these general eligibility provisions and seems to go far beyond the scope of the other SSI amendments of the bill. We would support the exemption if it were modified to apply only to non-citizens who are otherwise eligible but who would not meet one of the other non-citizen exceptions.

Repeal of Pass-Along Requirement for State Supplementary Programs

Section 605 of the House bill and section 214 of the Senate bill would repeal the current requirement for States to maintain their State supplementary payments at certain levels from year to year. This so-called "pass-along" requirement was added to the law in 1976 in reaction to some States' reducing their supplementary payments when SSI cost-of-living increases occurred. The intent of the original pass-along provisions was to assure that individuals would get an annual increase in their SSI/State supplementary payment amount without requiring States to increase their payments.

The Administration has serious reservations about the provision repealing the "pass-along" requirement. Such a provision would leave the States free to reduce significantly or even eliminate their supplementary payment programs. Up to 2.9 million aged, blind, and disabled individuals could be affected. Of these, nearly 400,000 individuals nationwide receive State supplementary payments, but not Federal SSI benefits. Loss of State supplementary payments in such cases could also mean loss of Medicaid.

Drug Addicts and Alcoholics

Both the House and Senate bills would eliminate all SSI benefits to individuals whose drug addiction/alcoholism (DA/A) is a contributing factor material to their disability as required in both section 601 of the House bill and section 201 of the Senate bill. Provisions in section 201 of the Senate bill require that SSI disability recipients remaining on the rolls and identified as having a DA/A condition be referred to substance abuse treatment and receive their benefits through a representative payee. We have major concerns about the administrative costs associated with these last two proposals. We are willing to work with the conferees to explore alternative provisions that would have more modest administrative costs.

Also, the provision concerning treatment for current recipients is unclear in its application. We prefer that the provision be effective at the date of the individual's first continuing disability review occurring after the date of enactment, parallel to the representative payee provision.

Applicability of Medicaid Rules Regarding Counting of Certain Assets and Trusts

what happened - only for kids? adults

Section 602(c)(4) of the House bill would require that the SSI program treat trusts and disposal of assets in the same way as they are treated in the Medicaid program There is no comparable provision in the Senate bill.

- intent of trusts diff than assets

We support the basic thrust of the provision. However, we do not believe that the intent of the provision will be achieved simply by making reference to a section in Medicaid law. If the treatment of trusts is applied in the same manner as under Medicaid law, it would result in the exclusion of many types of trusts which are currently exceptions in the Medicaid program under the rationale that they relate to situations where long-term health care is an issue. The same rationale would not be appropriate with regard to the SSI program which is designed to meet ordinary day-to-day basic needs. In addition, following strict Medicaid rules could limit the number of States in which the provision would apply since States are not required to apply the provision to non-institutionalized individuals. Further, the provision in the bill is restricted to children under age 18, and only in cases in which the child had control over the trust. It would be appropriate in the SSI program to apply the same treatment to all individuals regardless of age or whether

$5M out
of multi-
billion
program

they are institutionalized, as long as they are able to benefit from the trust.

Medicaid law provides that each State will make determinations as to whether the disposal of assets provision applies in each case based on the individual situations. If it is intended that the provision in section 602(c)(4) for using Medicaid rules in the SSI program be strictly adhered to, it would mean that States would be making eligibility determinations based on separate State criteria rather than uniform SSI national criteria. We would be willing to provide the conference committee with draft language to perfect the provision so that it will fully achieve its intended goal.

With respect to the disposal of resource provision, we would prefer that the provision be dropped since experience has shown that individuals do not divest themselves of resources in order to obtain SSI. If dropping the provision is not possible, we would prefer language specifically tailored to the SSI program. We are prepared to provide the committee perfecting language for such an approach.

contrary to GAO findings?

Reduction of Cash Benefits Payable to Certain Institutionalized Children

According to its title, Section 602(f) of the House bill would provide that the $30 payment standard for persons in certain medical treatment facilities would apply to recipients under age 18 regardless of whether Medicaid or another source pays for their treatment. (Currently, the $30 payment applies to individuals in Medicaid facilities; institutionalized individuals whose care is being paid for by a source other than Medicaid--for example, Medicare--may be eligible for the full SSI benefit of up to $458 a month.) There is no comparable provision in the Senate bill.

In principle, we support the provision but there are technical problems that need to be resolved. The title of the provision indicates that it would apply only to children, but the language of the provision would apply to both children and adults. We suggest that the language of the provision be revised to indicate clearly that the $30 payment limit will now apply to children regardless of the source of payment for their care. (The payment limit will continue to apply only to those adults whose care is covered by Medicaid.) Additionally, because of changes in Medicaid coverage categories over time, the list of facilities in section 1611(e)(1)(B) of current law is no longer applicable. In order to prevent inequitable situations, we strongly suggest as part of the amendment that the specified list of institutions in section 1611(e)(1)(B) be replaced with the term "medical facility" so that the provision would have a broader scope. This additional portion of the provision will apply to both children and adults.

We would be willing to provide the conference committee with draft language to perfect this provision.

Exchanging Information with Law Enforcement

Both bills require SSA to provide law enforcement personnel, upon their request, the addresses of SSI recipients involved in, or who have information concerning, parole or probation violations, other criminal activities, or criminal investigations. This provision presents problems for a number of agencies, including the Departments of Health and Human Services and Housing and Urban Development, and we defer to these agencies and the Department of Justice on the merits of this provision. Should the provision be adopted, we support technical amendments to modify this provision to specify that the request for such information include certain identifying information which SSA would need: (1) in order to comply with the request; (2) be made by an authorized official of the agency; (3) contain sufficient identifying information to insure that the amount of information that we disclose is as limited as possible; and (4) be based on an order from a court of competent jurisdiction.

Dedicated Savings Account

Section 213(b) of the Senate bill would provide that any lump-sum SSI benefit for a disabled child at the request of the child's representative payee be paid into a special dedicated savings account. Monies in this account could be used only for certain specified purposes. There is no comparable provision in the House bill.

We do not oppose the provision. However, we have a number of technical concerns that we would like to raise with staff for its consideration.

Studies

The Administration does not oppose the requirement in section 223 of the Senate bill that the Commissioner arrange for an independent study of the disability process. However, we prefer a modification to avoid overlap with the study to be conducted by the National Commission on the Future of Disability. The study of disability to be arranged by the Commissioner should be restricted to studying research and development by SSA of the methodology for making disability determinations under the current definition of disability as described in the disability redesign project. This should include the identification of a medically determinable impairment(s); the current Listing of Impairments or the proposed Index of Disability Impairments; any functional measure of ability to work; and the development of baseline work activities. It should not include a study of the current definition of disability.

We do not oppose in section 231 of the Senate bill the creation of the National Commission on the Future of Disability, but we recommend that a separate general appropriation of $2 million be set up to fund the commission since it will cover disability issues related to all Federal programs, not just those administered by SSA.

Accounting by Representative Payees

The House bill makes no change to the representative payee accounting provision. Section 213(a) of the Senate bill would require SSA to advise representative payees of their responsibilities and would require payees to document expenditures and keep contemporaneous records of expenditures. This section also would delete the current requirement for annual reports by representative payees and would require SSA to implement statistically valid procedures for reviewing a sample of the contemporaneous records which payees would be required to keep.

We oppose the Senate bill. The Senate provision regarding advising payees of their responsibilities and requiring record keeping is unnecessary because these requirements are met by SSA's current policies and procedures. With regard to payee accounting, although the bill attempts to substitute a review of a sample of payees' records, annual accounting by all payees is currently mandated by the Jordan court decision as a means of ensuring due process protections under the Fifth Amendment of the Constitution and would still apply. Thus, the requirement for a sample review would increase the administrative burden on SSA by requiring a different type of review of a sample of unspecified size in addition to the universal annual accounting, which currently costs more than $60 million annually to administer.

Administrative Costs

While this legislation is estimated by CBO to save from $18 billion to $21 billion in SSI program costs over five years, SSA's FY 1996 appropriations request does not include the funding to cover the new administrative work related to implementation of the legislation which generates these savings. CBO has estimated the administrative work related to SSA's implementation of the Senate Finance Committee version of the bill would cost about $300 million in FY 1996.

Without additional administrative funding, SSA would make every effort to economize without diminishing service to the public. However, given the magnitude of these proposals, we believe that trade-offs would inevitably have to be made. To offset the costs of unbudgeted welfare reform work, we would have to defer other work, including disability claims processing, resulting in higher levels of pending claims, longer processing times, and deterioration of service to the public. We could envision seeking relief from already existing legislative mandates in order to address this new workload. We would note that we believe it would be counterproductive to defer or eliminate any discretionary payment safeguard activities such as overpayment collections, SSI redeterminations, and continuing disability reviews, all of which are intended to protect the public's investment.

Memo - FYI or Action
Background
GAO findings
Recomm to Congress
Admin position/history ~~coming out~~

Smalligan Richard 5-7398

= Dick Eisinger 482-7100

GAO SSI

SSI Btwn 81 + 88, law said if you have assets that you transfer ~~SSA~~ we'll count for 2 yrs (24 mos)

- Congress repealed in '88 ⇒ Reagan Admin bec arbitrary/inequitable

- Medicaid: count for 36 mos ~~if have \$1M + give away~~ ⇒ amount of transferred asset declines by 1/36 each month - so can get to below 10K; subtract 1/36 each month

- GAO study at request of Hany Schum + Clay

GAO
# of pple transf'g resources ↑'s
\$5M ~~[illegible]~~ program cost
- says that 88 change ↑'s - recommend using Medicaid model ⇒ rec to Congress

= Welfare reform prov would have added this prov. back - Admin opposed (Comm. sent ltr to Congress
- opposing to address sthing like
- inclination was to use Medicaid model

A: 100,000 ⇒ transfer 90,000
B: 12,000 ⇒ 2,000
} how to set so that A is inelig for longer period of time

~~333~~
36|12,000

10,000
36|360,000

Richard
5-0851

UDIT NO: 195030

ISSUED ON: 4/30/96

SENSITIVE

RECEIVED: 5/02/96

DCFAM ANALYST: OWoods

TITLE: GAO Final Report, "Supplemental Security Income: Some Recipients Transfer Valuable Resources to Qualify for Benefits"

SUMMARY: **At the request of Representative Nancy L. Johnson, and Representative Clay Shaw**, Committee on Ways and Means, House of Representatives, GAO conducted the review to determine: **(1) how many supplemental security income (SSI) recipients are reporting transfers of resources and the type and value of the resources being transferred; and (2) what savings might be realized if Congress were to reinstate an SSI transfer-of-resources restriction.**

GAO found that: (1) resource transfers are increasing; (2) recipients are transferring resources worth millions of dollars; (3) recipients are transferring resources while qualifying for millions of dollars in SSI and other benefits.

GAO concluded that eliminating the SSI transfer of resource restriction has resulted in increased program costs, which is especially troublesome considering current budgetary constraints. GAO further concluded that an SSI restriction, similar to the current Medicaid restriction, could save millions in SSI programs expenditures by delaying individuals' date of eligibility for benefits.

The report suggests that Congress consider reinstating an SSI transfer-of-resource restriction. The restriction could be calculated in a way that takes into account the value of the resource transferred so that individuals transferring more valuable resources would be ineligible for SSI benefits for longer periods of time than those who transfer less valuable resources.

There are no recommendations for SSA in the report.