

SOCIAL SECURITY ADMINISTRATION INDEPENDENCE ACT
OF 1992

JUNE 26 (legislative day, JUNE 16), 1992.—Ordered to be printed

Mr. BENTSEN, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 33]

The Committee on Finance, having considered the recommendation of the Chairman to amend the Social Security Act and related provisions of law to establish the Social Security Administration as an independent agency, reports favorably thereon with an amendment and recommends that the bill do pass.

I. PURPOSE AND SCOPE

The Committee bill would alter the organizational status of the Social Security Administration, removing it from its current status as a component of the Department of Health and Human Services and establishing it as an independent agency within the executive branch. The agency would be responsible for administering the Social Security Old Age, Survivors, and Disability Insurance programs and the Supplemental Security Income program. The bill provides for the governance and the necessary functions and authorities of the agency.

II. EXPLANATION OF PROVISIONS

Present Law.—Responsibility for administration of the Old Age, Survivors, and Disability Insurance (OASDI) programs and the Supplemental Security Income (SSI) program is vested in the Secretary of Health and Human Services. The programs are administered by the Social Security Administration, a component of the Department of Health and Human Services. SSA is headed by a

Commissioner appointed by the President and directly responsible to the Secretary.

Reasons for Change.—The January 1983 Report of the National Commission on Social Security Reform stated that a majority of the members believed, as a broad general principle, that “it would be logical to have the Social Security Administration be a separate independent agency.” The Commission recommended that a study be conducted of the feasibility of converting SSA to an independent agency within the executive branch.

Following the National Commission Report, in the Social Security Amendments of 1983 the Congress commissioned a study of how to make SSA independent. The study was conducted by a three-member panel headed by Elmer Staats, former Comptroller General of the General Accounting Office. The panel concluded that an independent Social Security Administration should be headed by a single administrator who would report to and be appointed by the President with the advice and consent of the Senate, and that a permanent, bipartisan Social Security Advisory Board should be established to permit independent review and encourage broadly based policy analysis. The panel recommended that the independent agency be responsible for administering only the Social Security Old Age, Survivors, and Disability Insurance programs and the Supplemental Security Income program.

In 1989, the General Accounting office was asked to help the Congress in its determination of the appropriate management structure for an independent Social Security agency. At issue was whether the agency should be governed by a board or a single administrator. In its September, 1989 report, the GAO unequivocally concluded that “a single administrator would be the best management structure for SSA.” In arriving at this conclusion, the GAO reviewed the management experience of different agencies and studies undertaken by other organizations.

The reasons the GAO report gives for arriving at this conclusion can be stated quite succinctly:

Though a single administrator would not be a panacea, the evidence we found suggests that such an administrator would be more effective in managing SSA than a board. * * * Our work—and the work of others that we have reviewed—suggests * * * that, in practice, the board form of organization has not proven effective in providing stable leadership, in insulating decisions from political pressures, and in assuring that diverse viewpoints are considered in the decision-making process. * * * We recognize that a board could give the Congress and the executive branch a valuable source of informed opinion about major social security policy issues. We believe that this can be achieved without sacrificing management effectiveness if the board is created as a Social Security policy advisory board. * * * The board, however, should have no role in the management of SSA.

Excellence in management is a function of the leadership qualities of those selected for key agency positions. The single administrator form of organization, however,

offers the advantage of allowing for a clear delineation of authority and responsibility—an operational characteristic found in most successful public enterprises. The absence of this characteristic is a key deficiency of the board structure. The single administrator form of management also creates a more favorable organizational environment to develop goals and objectives and to address and resolve major problems and issues promptly.

As a result of these studies, testimony on the subject of an independent agency before the Committee, and the views and experience of Committee members, the Committee strongly believes that creating an independent Social Security agency, on the model recommended by the Staats Panel and the GAO, would improve administration of the Social Security program and increase public confidence in the Social Security system. Independence based on this model would help to assure strong, effective leadership for the Social Security program. It would provide strong incentives for development of the program and operational policies of the agency in a bipartisan manner, and would better enable SSA to be guided by its traditional objective of providing the highest quality service to the public. Independence as recommended by the Committee would increase the ability to obtain and retain the most experienced and capable leadership for the agency, enhance the agency's stature within the executive branch, and provide greater opportunity for SSA to request and obtain the administrative resources needed to effectively serve the public.

Summary of Principal Provisions.—The Committee bill establishes the Social Security Administration as an independent agency by amending the Social Security Act and related statutes in the following manner:

Section 101.—Establishment of Social Security Administration as a separate, independent agency

Section 101 would establish the Social Security Administration as an independent agency in the executive branch of the Government, with responsibility for the administration of the Old Age, Survivors, and Disability Insurance programs, and for the SSI program.

Under current law, the Social Security Administration is a subordinate component of the Department of Health and Human Services, and is responsible for administering OASDI programs, SSI, and part B of the Black Lung program.

During the past 15 years there has developed the widespread perception that the quality of the service provided by the Social Security Administration has declined, and that its commitment to high-quality public service has diminished. During these years SSA has undergone great change, which in part accounts for the difficulties the agency has experienced in achieving its mission. Since 1972, SSA has been led by eleven Commissioners, four of whom served temporarily in an acting capacity. During this time SSA has undergone several major reorganizations and has seen its work force reduced from a peak of 84,000 employees in 1985 to its current staffing level of less than 64,000 full time, permanent personnel.

In earlier times, SSA was frequently cited as a model for providing the public with accurate, prompt and courteous service. Because so many people depend on Social Security for their life's sustenance, it is vital that SSA again achieve the level of excellence that was once its standard. To achieve this goal, the Committee bill establishes SSA as an independent agency.

Section 102.—Commissioner of Social Security and other officers

Section 102 establishes the office of Commissioner of Social Security, appointed by the President with the advice and consent of the Senate. The Commissioner would be appointed for a 4-year term coinciding with the term of the President (or until the appointment of a successor), and would be compensated at the rate for level I of the Executive Schedule (equivalent to Cabinet officer pay).

The Commissioner would be selected on the basis of proven competence as a manager, and would be responsible for the exercise of all powers and the discharge of all duties of SSA, have authority and control over all personnel and activities of the Agency, and serve as a member of the 5-member Board of Trustees (the Secretary of Labor would no longer be a member of the Board of Trustees).

The duties of the Commissioner would include prescribing rules and regulations; establishing, altering, consolidating, or discontinuing organizational units and components of the agency (except those prescribed by law); and assigning duties and delegating, or authorizing successive re-delegations of, authority to act and to render decisions, to such officers and employees as the Commissioner may find necessary. The Commissioner and the Secretary of Health and Human Services would be directed to consult with one another on an on-going basis to assure: (1) the coordination of the Social Security, SSI, Medicare and Medicaid programs and (2) that adequate information concerning Medicare and Medicaid benefits will be available to the public.

Under the Committee bill, the Commissioner would be responsible for the day-to-day administration of the Agency and would also be the chief policy maker of the Agency. This form of governance would provide SSA with a favorable organizational environment in which to develop goals and objectives and to address and resolve major problems and issues promptly. Equally important, however, is the selection and retention of an experienced and capable administrator.

Over the past twenty years, SSA has been plagued by a lack of stability and continuity in its executive leadership. During this time, seven individuals have held the position of Commissioner of Social Security on a permanent basis, and four more have been acting. By establishing a fixed term of office for the Commissioner, by requiring that the Commissioner be selected on the basis of demonstrated management ability, and by providing that the Commissioner will be compensated at a level equivalent to a cabinet officer, the Committee bill enhances the likelihood that SSA will attract and retain first-rate leadership. The Committee expects that increased continuity of leadership will in turn lead to the development of far sighted policies and administrative practices and the

establishment of coherent long-term administrative plans and initiatives.

A Deputy Commissioner would be appointed by the President, with the advice and consent of the Senate, for a 4-year term coinciding with the term of the Commissioner or until appointment of a qualified successor. The Deputy Commissioner would perform such duties and exercise such powers as are assigned by the Commissioner, and serve as acting Commissioner during the absence or disability of the Commissioner (or vacancy of office) unless the President designates some other official to serve as acting Commissioner. The Deputy Commissioner would be compensated at the rate provided for in level II of the Executive Schedule.

Section 102 also establishes the following positions within an independent SSA:

(1) *Solicitor*.—A solicitor would be appointed and serve at the pleasure of the Commissioner as SSA's principal legal officer. The Solicitor would be responsible for managing the Agency's litigation workload. Compensation would be set at level IV of the Executive Schedule.

The purpose of establishing the office of Solicitor is to provide a focal point, within the Agency, for managing SSA's litigation workload. Because decisions whether to litigate individual Social Security cases are made currently in the Department of Justice, SSA has not been able to effectively manage and direct this workload. Under the Committee bill, the Social Security Solicitor would provide a central decision making point in managing this important workload. It is also expected that the Solicitor would provide advice to the Commissioner and to the Advisory Board concerning the legal aspects of policy options and issues.

(2) *Inspector General*.—An Office of Inspector General would be created within SSA, to be headed by an Inspector General appointed in accordance with the Inspector General Act of 1978. The Inspector General would be compensated at the rate provided in level IV of the Executive Schedule.

(3) *Beneficiary ombudsman*.—An Office of Beneficiary Ombudsman, headed by a beneficiary ombudsman, appointed by the Commissioner, would be created within SSA. The term of office would be 5 years. The ombudsman may be reappointed, or may serve up to one additional year (at the request of the Commissioner) pending a successor being appointed and taking office.

The beneficiary ombudsman would: Represent the interests and concerns of OASDI and SSI beneficiaries (and potential beneficiaries), within SSA's policy making process; review SSA's policies and procedures for possible adverse effects on beneficiaries (and potential beneficiaries); recommend changes in SSA policies that have caused problems for beneficiaries; help resolve problems for individual beneficiaries in unusual or difficult circumstances; and represent the views of beneficiaries within SSA's policy making process in the design of forms and the issuance of instructions. The annual report of the Commissioner would include a description of the activities of the beneficiary ombudsman.

Under the Committee bill, it is expected that the beneficiary ombudsman's primary function as representative of the interests of beneficiaries would be in the formulation of agency policies and

procedures. Although the beneficiary ombudsman could become involved if a person with a pending claim filed a complaint with the ombudsman, the Committee expects that the activities of the beneficiary ombudsman would not supplant or duplicate the processes established to adjudicate claims for benefits or other actions brought before the agency.

(4) *Chief Administrative Law Judge.*—An office of Chief Administrative Law Judge, headed by a Chief ALJ appointed by the Commissioner for a 5-year term, would be created within SSA to administer the affairs of SSA's ALJs in a manner so as to ensure that hearings and other business are conducted in accordance with applicable law and regulations. All functions relating to hearings before an ALJ would be under the operational control of the Chief ALJ. The Chief ALJ would report directly to the Commissioner.

The term of the Chief ALJ may be extended until he or she is reappointed or a qualified successor is appointed. The Chief ALJ may be removed from office before the completion of the term only if the Commissioner makes a finding of "neglect of duty" or "malfeasance" and the Commissioner transmits such a finding to the Speaker of the House and the President pro tempore of the Senate. Compensation would be set at the rate provided for level V of the Executive Schedule.

To be eligible for the position of Chief ALJ an individual would have to have served at least 3 years as an ALJ. An independent panel would be created by the Commissioner to recommend a list of at least 3 candidates for the position. The Commissioner would be required to invite the Chairman of the Administrative Conference of the United States, the President of the American Bar Association, and the President of the Federal Bar Association, or individuals representing the interests of these organizations, to be members of the panel. For the initial appointment, the list of candidates would have to be submitted within 60 days of appointment of the panel. If the Commissioner rejects all candidates from the list and appoints some other individual, he or she would have to send a written explanation of the decision to do so to the Chairman of the Ways and Means Committee and the Chairman of the Committee on Finance.

(5) *Chief of Computer Systems Operations.*—A Chief of Computer Systems Operations would be appointed and serve at the pleasure of the Commissioner.

(6) *Director of Research.*—A Director of Research would be appointed by the Commissioner to plan and oversee the conduct of the major research and evaluation activities of the agency.

(7) *Chief Actuary.*—The position of Chief Actuary, compensated at level 6 of the SES, would be established for the purpose of advising on the financial status of the OASDI trust funds. The Chief Actuary would be appointed by and serve at the pleasure of the Commissioner. The Chief Actuary would be required to consult on an ongoing basis concerning the financial status of the OASDI Trust Funds with (1) the Commissioner; (2) the Chairman of the Senate Finance Committee; and (3) the Chairman of the House Ways and Means Committee.

In legislatively establishing the position of Chief Actuary within the newly independent Social Security Administration, the Com-

mittee wishes to emphasize the very important role of the Office of the Actuary in assessing the financial condition of the Social Security trust funds and in developing estimates of the financial effects of potential legislative and administrative changes in the Social Security program. The Office of the Actuary has a unique role within the agency in that it serves both the Administration and the Congress. While the Committee expects that the Chief Actuary will report to the Commissioner, his office often must work with the committees of jurisdiction in the development of legislation. The Committee has been satisfied with the working relationship between the Congress and the Chief Actuary in the past. Nonetheless, it is important to emphasize that the Committee relies on its ability to seek estimates on a confidential basis from the Chief Actuary, especially when developing new legislation. Thus, the independence of the Office of the Actuary with respect to providing assistance to the Congress is vital in maintaining a trusting and useful relationship.

The Committee believes that it important for the Office of the Actuary to receive adequate staffing and support from the agency. In this regard, the Committee is concerned that fewer actuarial studies and notes have been published in recent years and that various informal reports and actuarial memoranda that were available in the past are no longer circulated. The Committee considers independent analyses by the Office of the Actuary to be consistent with the general role and responsibilities of the actuarial profession, and in the past has found these analyses to be very helpful in understanding the factors underlying estimates and trends in the Social Security program. The purpose of the Committee in legislatively establishing a position of Chief Actuary in the independent agency is to make certain that the important role the Office of the Actuary performs is recognized, and to assure that the office is permitted to function with a high degree of independence and professionalism.

(8) *Interim Authority of the Commissioner.*—The nominations and appointments provided for under the provisions of the Act may be made at any time on or after enactment. The Commissioner of Social Security would have authority to prescribe regulations providing for the orderly transfer of proceedings before the Secretary of HHS to the Commissioner of Social Security.

Section 103.—Social Security Advisory Board

Section 103 establishes a bipartisan, 7-member part-time Advisory Board appointed for 6-year terms as follows: 3 appointed by the President (no more than 3 from the same political party); 2 each (no more than 1 from the same political party) by the Speaker of the House, (in consultation with the Chairman and Ranking Minority Member of the Committee on Ways and Means), and the President pro tempore of the Senate (in consultation with the Chairman and Ranking Minority Member of the Committee on Finance). Presidential appointees would be subject to Senate confirmation. Members of the Board would serve staggered terms.

The President would appoint a Chairman (from the membership of the Board) to a 4-year term that would coincide with the term of the President. The Board would meet at least 6 times each year to consider a specific agenda, as determined by the Chairman in con-

sultation with the Board, and generally would be responsible for giving advice to the Commissioner of Social Security on policies related to the OASDI and SSI programs. Compensation of the members would be set at a rate equal to 25 percent of level III of the Executive Schedule (except for meeting days when compensation would be equivalent to that of the daily rate of level III of the Executive Schedule). Other benefits (except for health insurance) would not accrue. The Board would have authority to appoint an SES staff director and hire its own staff. The Board would be exempted from the provisions of the Federal Advisory Committee Act.

Specific functions of the Board would include: making recommendations as to the most effective methods of providing economic security through social security and SSI; making recommendations relating to the coordination of such program with other programs providing economic and health security; making an independent assessment of the annual report of the Board of Trustees and advising the President and the Congress on the implications of the assessment; recommending to the President names to consider in selecting his nominee for the positions of Social Security Commissioner and Deputy Commissioner; reviewing and assessing the quality of service that the Agency provides to the public; assessing the state of the Agency's computer technology; reviewing and assessing the Agency's progress in developing needed management improvements; increasing public understanding of the Social Security system; reviewing the development and implementation of a long-range research and program evaluation plan for the Agency; reviewing and assessing any major studies of Social Security; and conducting such other reviews and assessments as may be appropriate.

The primary purpose of the advisory board would be to evaluate policy options under consideration by an independent SSA, to conduct research on social security related issues, and to give advice to the Commissioner. In general, it is expected that the scope of the advisory board would be broadly focused to encompass the full range of programs and program policies administered by SSA. This would be in contrast to the focus of recent Advisory Councils, which have tended to focus on specific aspects of the program, as with the Disability Advisory Council and the 1991 Council, which focused on health care issues.

The Committee expects that the advisory board would, in large measure, rely on SEA to provide such staff as is required to carry out its mission, and that such staff as the advisory board would hire would not replicate areas of expertise that already exist in SSA. Moreover, the number of staff employed by the board should be consonant with the part-time nature of the advisory board.

As an example, it is expected that, in carrying out its independent review of the annual trustees report on the OASDI trust funds, the advisory board would employ such consultants and experts as it considered necessary to complete the evaluation. However, it is not intended that the board would create a permanent actuarial staff that would compete with the staff of the Chief Actuary in preparing actuarial estimates of the functioning of the trust funds or the impact of legislative proposals on the trust funds. It is expected

that the Chief Actuary and his staff would continue to serve as the source of such estimates.

To carry out its duties, the advisory board must have access to the records of the Social Security Administration. Therefore, it is expected that SSA will furnish information requested by the advisory board, that, in the board's judgment, is required for the performance of its duties.

The Committee believes that it is important to emphasize that the board is advisory in nature, and that its members will meet on a part-time basis rather than serve as a standing body. It is expected that the Commissioner will consider the advice of the board when formulating agency policy. By providing the Commissioner with an independent, bi-partisan advisory board, the Committee expects that policy errors, such as those that were made in administering the disability program in the early 1980's, will be avoided in the future.

Section 104.—Personnel; budgetary matters; facilities and procurement; seal of office.

The Commissioner would appoint additional officers and employees to carry out the functions of SSA (with compensation fixed in accordance with title 5 of the U.S. Code, except as otherwise provided), and procure the services of experts and consultants.

The Director of the Office of Personnel Management (OPM) would be required to provide SSA with an allotment of positions in the Senior Executive Service that would be substantially greater than the number authorized to SSA immediately before enactment of this Act, to the extent that a larger number is specified in a comprehensive work plan developed by the Commissioner. The total number of such positions could not be reduced at any time below the number SSA held immediately before the enactment of this Act. Presently, the number of SES positions in SSA is low in proportion to the scope of the agency's responsibilities and the size of the agency's staff. The Committee expects that SSA's allotment will increase significantly as an independent agency, commensurate with the agency's increased responsibilities.

This section directs the Commissioner (jointly with the Director of OPM and the Administrator of General Services, as appropriate) to: carry out demonstration projects under which the Commissioner would be able to appoint computer specialists and other professional and technical specialists without regard to the civil service classification system; perform functions relating to recruitment and examination programs for entry level employees and classification and pay ranges for identified job categories; establish higher compensation levels for geographic areas where there is difficulty in recruiting and retaining qualified employees; and exercise authority relating to the acquisition, operation, and maintenance of facilities and exercise authority relating to leasing, purchasing, or maintaining automated data processing equipment. The demonstration projects would last for up to 6 years.

The Comptroller General, the Director of OPM, and the Commissioner would each be required to evaluate the readiness of the Commissioner to assume permanent and full authority over personnel functions and issue interim reports to the House Ways and

Means and the Senate Finance Committees by December 31, 1997, and to issue final reports by December 31, 1999. Similar evaluations and reports would be required from each of the Comptroller General, the Commissioner, and the Administrator of GSA on the readiness of the Commissioner to assume permanent and full authority over the property and equipment acquisition and management function.

This section limits to the equivalent of not more than five full-time positions the number of positions which may be excepted from the competitive service because of the confidential or policy-determining character of such positions.

In limiting to no more than five the number of positions in SSA which may be excepted from the competitive civil service, it is the intent of the Committee to assure that career employees will generally be used to fill important leadership positions. The 5-position limit applies to all appointments made to fill any of the positions within the Social Security Administration except those of Commissioner and Deputy Commissioner.

The Committee also notes the increasing practice at SSA in recent years of converting non-competitively appointed employees to positions within the competitive civil service. The result of such conversions is to encumber important mid-level managerial positions with appointees whose experience often leaves them unprepared for the technical demands of these positions. Such conversions also deny advancement to career SSA employees who do possess the technical knowledge required to successfully perform the duties of mid-level managers. To enable qualified career employees to advance within SSA, the Committee urges that non-career employees not be assigned to positions in the career civil service.

Appropriations requests for staffing and personnel of the Administration would be based upon a comprehensive work force plan, as determined by the Commissioner, and are authorized to be made on a biennial basis. Appropriated contingency funds would be apportioned upon the occurrence of the stipulated contingency, as determined by the Commissioner and reported to each House of the Congress.

The Committee expects that in formulating the appropriations requests for an independent SSA in the President's Budget, the Office of Management and Budget will be guided by the assessment of staffing needs set forth in SSA's comprehensive work force plan. It is the Committee's view that this plan should contain sufficient specific details to enable the Appropriations Committees of the Congress to assess the sufficiency of the appropriations requests approved by OMB for SSA. To facilitate the Appropriations Committees' reviews, SSA's work force plan should be submitted concurrently with the President's budget.

Section 105.—Transfers to the new Social Security Administration

Section 105 transfers assets and personnel from HHS to SSA, and continues under the authority of the independent agency all orders, rules, regulations, determinations, contracts, collective bargaining agreements (including ongoing negotiations), recognitions of labor organizations, and licenses in effect under the authority of the Secretary of HHS until modified or terminated in accordance

with law. HHS employees performing functions related to SSA on the date of enactment of independent agency legislation would be transferred to SSA if they were also so employed on the effective date of the new agency. Employees of HHS who, on the effective date of the legislation, were not performing such functions may be transferred to SSA after consultation by the Commissioner with the Secretary of HHS.

Section 106.—Transitional rules

Section 106 establishes interim authority for the appointment and compensation of officers whose positions are established under this bill. It also continues under the authority of the independent agency all orders, rules, regulations, determinations, collective bargaining agreements (including ongoing negotiations), recognitions of labor organizations, and licenses in effect under the authority of HHS until modified or terminated in accordance with law.

Within 6 months after enactment of the Committee bill, the Commissioner is required to advise the chairmen and ranking minority members of the Committee on Ways and Means in the House and the Committee on Finance in the Senate on the status of the transition to an independent Social Security Administration, including any delays in filling appointments, any difficulties encountered with the Department of Health and Human Services and other agencies, and any technical difficulties with the provisions of this bill related to creating an independent SSA.

The General Accounting Office is similarly required to monitor the transition to an independent agency and to report to the Congress, within 6 months of enactment, on any and all difficulties it observes.

Section 107.—Effective dates

Section 107 provides that generally the provisions of this bill would take effect on October 1, 1993.

III. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the following evaluation is made concerning the regulatory impact of carrying out the changes proposed in the Committee bill:

Individuals and businesses affected.—The Committee bill would have no appreciable regulatory impact on individuals and businesses.

Economic impact of regulations on individuals, consumers, and businesses.—Regulations resulting from the Committee bill would have no economic impact on individuals, consumers, and businesses.

Impact on personal privacy.—The Committee bill is not expected to have any effect on personal privacy.

Amount of additional paperwork.—The Committee bill would create no additional paperwork affecting individuals and entities outside the Federal Government. Some additional paperwork will be required, on a one-time basis, to implement internal organizational and related changes within the Social Security Administra-

tion and to provide for necessary technical changes in agreements and relationships between an independent SSA and other Federal agencies.

IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with paragraph 7 of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee to report the bill:

The bill was ordered favorably reported by voice vote, with a majority of the full membership of the Committee physically present.

V. BUDGETARY IMPACT OF THE BILL

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate and with sections 308 and 403 of the Congressional Budget Act, the following statement is made relative to the budgetary impact of the bill:

The only Federal agency which has transmitted to the Committee its estimate of the budgetary impact of the bill is the Congressional Budget Office (CBO). The CBO estimates that discretionary spending, in the form of requirements for administrative appropriations, may increase by \$4 million in each of the four fiscal years 1994-1997.

