

SOCIAL SECURITY ADMINISTRATION INDEPENDENCE ACT
OF 1993

JANUARY 25, 1994.—Ordered to be printed

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

REPORT

[To accompany S. 1560]

The Committee on Finance, to which was referred the bill (S. 1560) a bill to establish the Social Security Administration as an independent agency, and for other purposes, having considered the same, reports favorably thereon without 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 within 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 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 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 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 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 gave for arriving at this conclusion were stated as follows:

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.

Similarly, in a 1984 report to the Congressional Panel on Social Security (the Staats Panel), the National Academy of Public Administration concluded that:

1. In management terms, the most important point is that it is almost universally agreed that single administrators are far more effective and accountable than multi-person boards or commissions, bipartisan or otherwise.

2. Again in management terms, a board is not a necessity and is not desirable. Even if a board's role is carefully defined and its membership carefully selected, history strongly suggests that it is almost impossible to keep such a board from interjecting itself into the management of the organization which it stewards. While such interjections are occasionally useful, the likelihood is that they would end up confusing and debilitating the authority of the agency head, creating conflict for the staff, and becoming another layer of management which adds little and detracts much. Furthermore, the composition of such boards becomes an issue in itself, and all too often breeds preoccupation with diversionary issues of balance, representativeness, or political fairness, rather than the ability of such boards to contribute to the success of the program.

As a result of these studies, as well as testimony on the subject of an independent agency before the Committee, 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, and to enhance the agency's stature within the executive branch.

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 (OASDI) programs, and for the SSI program.

Under current law, the Social Security Administration is a subordinate component of the Department of Health and Human Serv-

ices, and is responsible for administering OASDI programs, SSI, and part B of the Black Lung program.

During recent 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. At the same time, SSA has undergone great change, which in part accounts for the difficulties the agency has experienced in achieving its mission. This change has included several major reorganizations and a substantial reduction in its workforce.

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 essential needs, 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 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 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. It is also the form recommended by the Staats Panel, the GAO, and National Academy of Public Administration. 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 five more have been acting. By establishing a fixed term of office for the Commissioner, 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. In addition, the Deputy Commissioner would serve as the Secretary of the Board of Trustees of the Old Age, Survivors, and Disability Insurance Trust Funds. The Deputy Commissioner would be compensated at the rate provided for in level II of the Executive Schedule.

In its testimony before the Finance Committee on September 14, 1993, the General Accounting Office offered a "cautionary note about filling SSA's top management positions with political appointees," and the Committee shares that concern. As the GAO has advised in the past, it is vitally important that the agency's top management include career civil service employees who can provide operational continuity and an institutional memory. It is the view of the committee that career employees and others who are qualified by virtue of their experience in Government and knowledge of social insurance programs, should be considered in filling SSA's top management positions.

The bill does not require the establishment of any other positions in the Administration. The Committee believes that it is preferable to give the Commissioner the authority to determine the most efficient administrative organization for an independent SSA. However, it is the Committee's view that an essential element in any administrative organization for SSA is the position of Chief Actuary. While such a position is not mandated legislatively, it is expected that SSA will continue to have a Chief Actuary, and that the Chief Actuary would remain available to consult with the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee.

The Committee 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, this office often must work with the committees of jurisdiction in the development of legislation.

Beginning with the appointment of the first chief actuary in 1936, the tradition was for a close and confidential working relationship between the individual who held that office and the committees of jurisdiction in the Congress, a relationship which the Committee values highly. 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 is 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.

Although the Committee has not legislatively established a position of Chief Actuary in the independent agency, the Committee recognizes the important role of the Office of the Actuary, and expects that in the independent SSA the office will be permitted to function with a high degree of independence and professionalism.

Section 103.—Social Security Advisory Board

Section 103 establishes a bipartisan, seven member part-time Advisory Board appointed for six year terms as follows: three appointed by the President (no more than 2 from the same political party); two each (no more than one 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 four year term that would coincide with the term of the President. The Board would meet at least six times each year to consider a specific agenda, as determined by the Chairman in consultation with the Board, and generally would be responsible for giving advice 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 (in addition, on meeting days 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: analyzing the Nation's retirement and disability systems and making recommendations with respect to how the Old-Age, Survivors, and Disability Insurance (OASDI) program and the SSI program, supported by other public and private systems, can most effectively assure economic security; studying and making recommendations relating to the coordination of programs that provide health security with the OASDI and SSI programs and with other public and private systems; making recommendations to the President and to the Congress with respect to policies that will ensure the solvency of the OASDI program, both in the short-term and the long-term; making recommendations to the President of candidates to consider in selecting nominees for the position of Commissioner and Deputy Commissioner; reviewing and assessing the quality of service that the Administration provides to the public; reviewing and making recommendations with respect to policies and regulations regarding the OASDI and SSI programs; increasing public understanding of the Social Security system; in consultation with the Commissioner, reviewing the development and implementation of a long-range research and program evaluation plan for the Administration; reviewing and assessing any major studies of Social Security that may come to the attention of the Board; and conducting such other reviews and assessments that the Board determines to 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 policy-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 Advisory Council on Social Security, which focused on health care issues. While the Advisory Board is required to review and assess the quality of service to the public provided by the Administration, it is expected that such reviews would not lead to the Board's involvement in management of the agency.

The Advisory Board is required to meet, at a minimum, 6 times annually. The duration of these meetings should be such as to provide the Board with ample opportunity to perform its duties, while remaining consonant with the Board's status as a part-time body.

The Committee expects that the Advisory Board would, in large measure, rely on SSA to provide such staff as is required to carry out its mission. Moreover, the number of staff employed by the Board should be consistent with the part-time nature of the Advisory Board.

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 an independent, bipartisan Advisory Board, the Committee expects that policy errors, such as those that were made in administering the disability program in the early 1980s, will be avoided in the future.

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

The Commissioner would appoint 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 a larger allotment of positions in the Senior Executive Service, 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 career 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 as an independent agency, commensurate with the agency's increased responsibilities.

This section limits to the equivalent of not more than 10 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 10 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 10-position limit applies to all appointments made to fill any of the positions within the Social Security Administration.

The Committee also notes the increasing practice at SSA in recent years of converting non-competitively appointed employees to positions at SSA within the competitive civil service. The result of such conversions is to encumber important 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. 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.

Section 105.—Transfers to the new Social Security Administration

Section 105 transfers all functions, assets and personnel related to the administration of Social Security programs from HHS to the independent SSA.

HHS employees who are not employed on the date of the enactment of this Act in connection with functions transferred to SSA, but who are so employed on the day before SSA is established as an independent agency, may be transferred from HHS to SSA by the Commissioner, after consulting with the Secretary of HHS, if the Commissioner determines such transfers to be appropriate.

HHS employees who are employed on the date of enactment of this Act, solely in connection with functions transferred by this title to SSA, and who are so employed on the day before the date SSA is established as an independent agency, shall be transferred from HHS to SSA.

This section abolishes the office of Commissioner of Social Security in the Department of Health and Human Services effective upon the appointment of a Commissioner of Social Security pursuant to this Act.

Section 106.—Transitional rules

Section 106 provides that the transition of SSA to its new status as an independent agency in the executive branch of the Government will be led by a Transition Director, selected on the basis of experience and knowledge of the operation of the Federal Government. Within 30 days after enactment, the President will appoint the Transition Director, who will be compensated at the rate provided for level IV of the Executive Schedule.

In conducting transition activities prior to the appointment of the Commissioner of Social Security, the Transition Director will consult regularly with the Director of the Office of Management and Budget. After such appointment, the Transition Director will conduct such activities at the direction of the Commissioner. Expenditures for necessary transition activities may be made out of the OASI and DI Trust Funds.

This section requires the President to appoint a Commissioner within 60 days of the enactment of this Act. Upon such appointment and confirmation by the Senate, the Commissioner appointed under this title will assume the duties of the HHS Commissioner of Social Security until SSA is established as an independent agency. Nominations and appointments provided under the provisions of the Act may be made at any time on or after enactment.

Within 120 days of enactment, the Transition Director and the Commissioner of Social Security are required to report to the Congress on the status of the transition and on any significant internal restructuring or management improvements that are proposed to be undertaken.

Section 106 provides 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. Collective bargaining agreements shall remain in effect until the date of termination specified in such agreement. Section 106 also provides for the continuation of proceedings and suits before the Secretary of HHS to the independent SSA for those that are pending before the Secretary immediately before SSA becomes an independent agency.

Section 107.—Effective dates

Section 107 provides that generally the amendments in this Act become effective 180 days after enactment, or if earlier, a date established by the President.

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 regulator 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 Administration 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. Mr. Chafee wished to be reported in the negative.

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 \$1 million in each of the five fiscal years 1994-1998.

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