

SOCIAL SECURITY DOMESTIC EMPLOYMENT REFORM ACT OF 1994

APRIL 19 (legislative day, APRIL 11), 1994.—Ordered to be printed

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

REPORT

[To accompany S.1231]

The Committee on Finance, to which was referred the bill (S. 1231), a bill to provide for simplified collection of employment taxes on domestic employment, and for other purposes, having considered the same, reports favorably thereon, with amendment, and recommends that the bill do pass.

I. PURPOSE AND SCOPE

The Committee bill improves Social Security coverage for domestic workers and simplifies payment of taxes on their behalf by: updating and increasing the wage threshold used since 1951 to determine whether the employer must pay Social Security taxes on wages paid to domestic employees; replacing the current requirements for quarterly filing of such taxes with a simplified annual reporting procedure, through the IRS form 1040; and exempting from Social Security taxes the wages paid to domestic workers under the age of 18. Finally, the bill includes three provisions aimed at improving the integrity of the Social Security and Supplemental Security Income programs.

II. BACKGROUND ON COVERAGE OF DOMESTIC EMPLOYEES

Social Security coverage was not extended to domestic employees when the Congress enacted the Social Security Act in 1935. The first Social Security Advisory Council, which was convened in 1938, recommended that coverage be extended to many of the major groups of uncovered workers, including domestic workers. However, the Social Security Amendments of 1939 did not extend coverage to domestic employees. Both the Committee on Ways and Means and the Committee on Finance expressed reservations in their re-

spective reports that it "would be unwise" to extend coverage to these workers at that time.

Domestic workers were first covered by the Social Security Amendments of 1950, which were effective beginning in 1951. This legislation provided that domestic workers would be covered only if they earned at least \$50 in a quarter and were regularly employed, which was defined as working for an employer for some portion of each of at least 24 days in a quarter. In its report, the Committee on Finance noted that employees in domestic service, "whose need for the protection of social insurance is very great," would generally be covered if they were "regular" workers, hired on a weekly or monthly basis, while casual or intermittent workers would be excluded. The \$50 limit was chosen because it was similar to the one that applied to home workers (people who work in their own home) and because it was the amount workers then needed to earn to receive a "quarter of coverage." A quarter of coverage is the unit of measure used to determine eligibility for Social Security benefits.

In 1954, the Congress removed the 24-day rule, leaving just the \$50-per-quarter test. In the Social Security Amendments of 1977, the Congress changed the rules regarding the amount of earnings required for a quarter of coverage, replacing the \$50-per-quarter rule with one that, beginning in 1978, granted one quarter of coverage for each \$250 of annual earnings, up to a limit of four in any year. The 1977 Amendments also provided that the amount required for a quarter of coverage would increase with the growth of average wages in the National economy, so that, in 1994, that amount had risen to \$620, and is projected to be \$630 in 1995. However, the 1977 Amendments made no change in the \$50-per-quarter coverage threshold for domestic workers.

In response to concerns over low compliance with reporting requirements—estimates indicate that fewer than one in four employers of domestic workers report wages paid to these employees—the Committee on Finance included a provision in H.R. 11, the Revenue Act of 1992, to increase the coverage threshold for domestic employees to \$300 per year and to require individuals who hire household employees to report any Social Security or Federal unemployment tax obligation on his or her income tax return for the year. However, the provision was not enacted because the bill was vetoed by the President. In 1993, the House-passed Omnibus Budget Reconciliation Act of 1993 (H.R. 2264) included a similar provision. However, it was dropped in conference because of procedural rules against consideration of Social Security measures on reconciliation legislation.

On July 21, 1993, the Committee on Finance held a hearing on S. 1231.

Representative Carrie Meek, of Florida, speaking in support of the coverage threshold proposed in S. 1231, stated:

We need to encourage better compliance with the law, not provide tax relief for employers. Too much lip service is paid to the needs of the working poor and there is not enough action on their behalf. A worker in this system who works day work and often gets paid to clean houses every 2 weeks for several

employers, would have a very hard time reaching a very high [coverage] threshold.

Mr. Randolph H. Hardock, speaking on behalf of the Department of the Treasury, testified that the simplification of the procedures used to report wages paid to domestic employees that were included in S. 1231 would help increase compliance with the reporting requirements. Mr. Hardock commented with respect to S. 1231:

In the aggregate, this change would eliminate the need for an estimated 1.4 million quarterly Forms 942 that are filed each year by household employers. It would also potentially reduce the number of filings of State unemployment forms.

In addition to the simplification of reporting and payment of employment taxes that would be achieved by the bill, the Department also believes that these changes could have positive compliance effects. Including these amounts on annual income tax returns will increase household employers' awareness of their employment tax obligations and remove compliance barriers by eliminating the complications of quarterly reporting and payment.

Mr. Robert J. Myers, former Chief Actuary of the Social Security Administration, testified that the result of enacting S. 1231 "would be to provide reasonable Social Security protection for this category of workers, while at the same time greatly reducing the administrative burden on the employer involved." He also said that, as a result of this bill, "Coverage compliance would be greatly improved."

Representatives for the National Council of Senior Citizens, the Older Women's League, and the National Women's Law Center also testified in favor of S. 1231.

III. EXPLANATION OF PROVISIONS

Section 2—Simplification of employment taxes on domestic services

Present law

Individuals who hire domestic employees, such as babysitters, housekeepers, and yard workers, are required to withhold and pay employment taxes when the worker's wages equal or exceed certain thresholds. (Individuals who hire independent contractors to provide domestic services are excluded from these requirements.) For Social Security, the wage threshold is reached, generally, when an employer pays \$50 or more per quarter to a domestic employee. However, wages paid to domestic employees hired by farm operators are subject to the thresholds that are used for determining coverage for agricultural employees. For these employees, the wage threshold is reached if either (1) the farm operator's total farm payroll for a year is \$2,500 or more or (2) the wages paid to an employee in a year are \$150 or more. (This latter test applies only if the farm operator's total payroll for a year is less than \$2,500.) For Federal unemployment insurance, the threshold is reached when an employer pays \$1,000 or more in a calendar quarter to one or more individuals employed as domestics.

When the \$50 threshold is reached, the employer must file a quarterly report (form 942) with the Internal Revenue Service, submitting with it the required Social Security tax for both the em-

ployer and the employee. (The employer may pay the employee's share of the Social Security tax in lieu of withholding it from the employee's wages.) The employer must also provide the employee and the Social Security Administration with a Wage and Tax Statement (form W-2) at the end of the year. When the \$1,000 FUTA threshold is reached in any calendar quarter, the employer must file a report (form 940) with the IRS at the end of the year. Employers who owe more than \$100 in FUTA tax at the end of a calendar quarter must deposit the amount due by the end of the following month.

In addition, employers of domestic workers must file and pay State unemployment insurance tax in each quarter in which the State unemployment insurance wage threshold (equal to the \$1,000 FUTA Federal threshold in 45 States) is reached.

Committee provision

The Committee provision:

Raises the threshold for withholding and paying Social Security taxes on domestic workers, including those employed by farm operators, to an annual threshold equal to the amount required for one Social Security quarter of coverage (\$620 in 1994, estimated to be \$630 in 1995), indexed in future years to increases in average wages;

Exempts from Social Security taxes any wages paid to a worker for domestic services performed in any year during which the worker is under age 18;

Eliminates the requirement for quarterly reporting of wages paid to domestic workers; allows employers of domestic workers to report on a calendar-year basis any Social Security obligations for wages paid to these workers; and authorizes the Secretary of the Treasury to revise Federal form 1040 to enable such employers to report both Social Security and Federal unemployment taxes on their annual Federal income tax returns;

Exempts wages paid to domestic employees from estimated tax payment requirements, thereby enabling employers of domestics to pay the applicable payroll taxes in a single payment at the same time that they file their annual income tax returns without payment of penalties and interest;

Authorizes the Secretary of the Treasury to enter into agreements with States to collect State unemployment taxes in the manner described above; and

Requires the Secretary of the Treasury to provide to employers of employees performing domestic services a comprehensive package of informational materials, including all requirements of Federal law and a notification that they may also be subject to State unemployment insurance and workers compensation laws.

The Committee notes that the Social Security Act includes a number of other coverage thresholds that are not automatically increased and that have remained unchanged for many years. The Committee believes that the Secretary of Health and Human Services, jointly with the Secretary of the Treasury, should study the effect of these thresholds on both compliance with reporting requirements and Social Security coverage for workers, and report

their findings to the Committee, along with any recommendations for change.

Effective date

The provision applies to remuneration paid and, with respect to domestic employees under age 18, services performed in calendar years beginning after December 31, 1994.

Section 3—Additional debt collection procedures

Present law

Under current law, certain debt collection procedures are available for use by most Federal agencies. Included in the law are provisions enabling Federal agencies to recover debts owed to them by offsetting other Federal payments to which the debtor may be entitled (called “administrative offset”); to report delinquent debtors to credit reporting agencies; and to contract with private debt collection agencies to recover delinquent debt. However, under current law, the Social Security Administration (SSA) is prohibited from using these three debt collection procedures.

Committee provision

As recommended by the National Performance Review (the Gore Report), SSA is authorized to use certain procedures that are available to other Federal agencies, including use of administrative offset, reporting delinquent debtors to credit reporting agencies, and contracting with private debt collection agencies.

These procedures will be available for use only for the purpose of recovering delinquent debt owed by former Old-Age, Survivors and Disability Insurance beneficiaries who were paid benefits not due, and would be used only after SSA’s current debt collection procedures are unsuccessful in recovering the past-due debts. The provisions will not apply to debts owed by former Social Security childhood beneficiaries who were overpaid while they were under age 18 and while receiving benefits through a parent or other representative payee. The Committee provision does not affect a beneficiary’s right to appeal a decision concerning an overpayment or to request waiver of the overpaid amount.

The Committee bill directs the Secretary of Health and Human Services to issue regulations defining unrecoverable debt. It is the Committee’s view that it would be inappropriate for these regulations to provide for reference to the referral of debts to credit bureaus or debt collection agencies in the initial overpayment notice sent to a Social Security beneficiary.

Effective date

This provision is effective with respect to debt collection activities undertaken by SSA on or after enactment and through September 30, 1999.

Section 4—Prohibition on payment of benefits to certain individuals confined by court order to public institutions

Present law

Generally, Social Security benefits may not be paid to any individual who is confined in a penal institution pursuant to a felony conviction. Under this provision, benefits to other family members continue to be paid. However, there is no provision that restricts payment of Social Security benefits to individuals confined to public institutions pursuant to verdicts related to felony offenses for which the individual was found to be not guilty by reason of insanity.

Committee provision

Payment of any Social Security benefit payable under title II of the Social Security Act will be suspended for any individual while confined in any public institution, if the individual has been found to be guilty of a felony offense but insane, or not guilty of a felony offense by reason of insanity or other similar disorder. Federal or State agencies having jurisdiction over institutions where such individuals are confined will be required to furnish such information as the Secretary of Health and Human Services may require to carry out this provision.

The Committee believes that successful administration of this provision depends on timely reports from State and Federal institutions of the admission of Social Security beneficiaries so that SSA can suspend benefits promptly. Accordingly, the Committee recommends that HHS require, and institutions provide *monthly* reports to SSA of all admissions of Social Security beneficiaries who are confined pursuant to verdicts or findings described in this provision.

Effective date

The provision applies with respect to benefits for months commencing after 90 days after enactment.

Section 5—Nursing homes required to report admissions of SSI recipients

Present law

Supplemental Security Income recipients, or their representative payees, are required to report any change in the recipient's status (e.g., income, resources, living arrangements) that may affect the amount of benefits to which the recipient is entitled. Generally, when an SSI recipient enters a nursing home for an extended period, and payment for the recipient's care is being provided by Medicaid, the amount of the recipient's SSI benefit is reduced to no more than \$30 per month, beginning with the first full month of residence. Because nursing home admissions are not always reported promptly to the Social Security Administration, some SSI recipients receive more SSI benefits than they are entitled to in the months following their admission.

Committee provision

Nursing home administrators will be required to report to SSA the admission of any SSI recipient within two weeks of the recipient's admission, so that SSA can make timely adjustment in the amount of the recipient's SSI benefit.

Effective date

The provision is effective for admissions to nursing homes occurring on or after October 1, 1995.

IV. 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 will reduce the burden on employers of domestic employees by eliminating the requirement that wages paid to these employees be reported, and payroll taxes owed be paid on a quarterly basis. Instead, reports and payments will be made only once a year, when the employer files his or her annual income tax return.

Economic impact of regulations on individuals, consumers, and businesses

Regulations resulting from the Committee bill will have a favorable impact on individuals by increasing coverage of domestic employees and reducing the number of reports that are required by employers who hire domestic employees. The bill requires nursing homes and other long-care treatment facilities to report the admission of Supplemental Security Income recipients to the Social Security Administration.

Impact on personal privacy

The Committee bill is not expected to affect personal privacy.

Amount of additional paperwork

The Committee bill would reduce the amount of paperwork required by employers who hire domestic employees. However, the Committee bill would increase reporting requirements for nursing homes and other long-care treatment facilities.

V. 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.

VI. 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 Committee includes the following report

prepared by the Congressional Budget Office on the budget effects of this bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 15, 1994.

Hon. Daniel Patrick Moynihan,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has prepared the enclosed revised cost estimate for S. 1231, the Social Security Employment Reform Act of 1994, as ordered reported by the Senate Committee on Finance on March 22, 1994. The bill would change the manner in which employment taxes are paid for domestic service workers, extend authority to the Social Security Administration (SSA) to use certain debt procedures, prohibit the payment of Social Security benefits for certain individuals confined by court order to mental health facilities, and require nursing homes to report SSA admissions of SSI recipients within 15 days of the admission.

The estimate for S. 1231 has been revised to reflect a change in the effective date of one provision. The Finance Committee staff provided new legislative language on April 14, 1994, to correct a drafting error in the language that had been previously supplied to CBO.

Enactment of S. 1231 would affect direct spending or receipts and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
for ROBERT D. REISCHAUER, Director

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S 1231.
2. Bill title: Social Security Employment Reform Act of 1994.
3. Bill status: As ordered reported by the Committee on Finance March 22, 1994.
4. Bill purpose: To provide for a simplified collection of employment taxes on domestic employment, and for other purposes.
5. Estimated cost to the Federal Government:

FEDERAL GOVERNMENT COSTS

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999
Revenues:					
On-budget	-72	14	15	15	16
Off-budget	-184	22	23	23	24
Total	-256	36	38	38	40
Direct Spending:					
On-budget	0	-8	-8	-9	-9
Off-budget	-33	-28	-25	-25	-25

FEDERAL GOVERNMENT COSTS—Continued

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999
Total	- 39	- 36	- 33	- 34	- 34
Deficit:					
On-budget	72	- 22	- 23	- 24	- 25
Off-budget	151	- 50	- 48	- 48	- 49
Total	223	- 72	- 71	- 72	- 74

The costs of this bill fall within budget function 650.

Basis of estimate

S. 1231 modifies the Social Security and Medicare payroll taxes related to the employment of domestic workers, extends authority for the Social Security Administration (SSA) to use certain debt collection procedures, restricts payments for persons committed to mental health facilities for criminal behavior, and requires nursing homes to report any admissions of Supplemental Security Income (SSI) recipients to SSA within 15 days. The estimated impacts of S. 1231 are based on an assumed enactment date of September 30, 1994.

Section 2. Simplification of Employment Taxes on Domestic Services. Under current law, employers are required to pay Social Security and Medicare payroll taxes for persons providing domestic services—for example, babysitting, lawn and garden care, snow shoveling, and similar tasks—if the employee earns more than \$50 in wages during a calendar quarter. S. 1231 changes the quarterly amount of \$50 to a calendar year level projected to equal \$620 in 1995. The annual amount is the wage required to earn a quarter of Social Security coverage for 1995. In future years, the domestic earnings threshold would increase by earnings growth, except that no increase would occur if it would be less than \$50.

In addition to the change in the minimum earnings that has to be reported, S. 1231 would also allow employers to pay these payroll taxes at the same time as they file their income taxes. This change would also apply to Federal Unemployment Tax Act (FUTA) payments made by employers of domestic workers.

According to estimates provided by the Joint Committee on Taxation (JCT), these changes would cause a revenue loss of \$256 million dollars in 1995 but would increase revenues each subsequent year, with a net 5-year revenue loss of \$104 million. The on-budget effects—Medicare and income taxes—are \$72 million in lost revenues in 1995 and \$12 million over the 1995–1999 period.

Because the increased earnings threshold would exempt some wages earned by domestic service workers, S. 1231 could potentially reduce the Social Security benefits to which these workers might later become entitled. The CBO expects these reduced benefits to have negligible outlay effects, however.

FEDERAL BUDGET EFFECTS BY SECTION

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999
Sec. 2. Domestic employment taxes					
On-budget revenues ¹	-72	14	15	15	16
Off-budget revenues ¹	-184	22	23	23	24
Total revenues	-256	36	38	38	40
Sec. 3. Debt collection procedures					
Off-budget	-25	-18	-14	-14	-14
Sec. 4. Restrict payments for beneficiaries confined pursuant to a finding of not guilty by reason of insanity					
Off-budget	-8	-10	-11	-11	-11
Sec. 5. Require nursing homes to report admissions of SSI recipients within 15 days					
On-budget (SSI)	0	-8	-8	-9	-9

¹ Estimates provided by the Joint Committee on Taxation

Section 3. Additional Debt Collection Practices. Under current law, the Social Security Administration (SSA) is prohibited from using all of the debt collection tools available to most federal agencies. S. 1231 would allow SSA to report to the credit bureaus the outstanding debts owed by former beneficiaries and to refer collection of their debts to private collection agencies. The bill would exempt overpayments made to minor children.

This provision is estimated to result in additional recoveries of \$25 million in 1995 and \$85 million over the 1995-1999 period. This estimate is based on data provided by SSA on its outstanding debts (about \$660 million of which about \$450 million is actively being pursued by SSA) and its current recovery rate on its delinquent debt. The exclusion of minor children is assumed to reduce this debt by 30 percent. SSA estimates that its recovery rate is around 7 percent to 8 percent and that private collection agencies recover about 22 percent. The CBO assumes that the additional collections should increase the recovery rate by about 7 percentage points by 1999. The relatively large recovery amount in 1995 reflects the referral of outstanding debts, including many older debts, to private collection services.

Section 4. Prohibition on Payment of Benefits to Certain Individuals Confined by Court Order to Public Institutions. Under current law, persons convicted of felonies are not allowed to receive Social Security disability benefits while in prison. S. 1231 would extend this treatment to persons confined by court order to mental health facilities following a finding of not guilty by reason of insanity (NGRI) or of guilty but insane.

The restriction on benefits for the NGRI cases is estimated to reduce Social Security benefit payments by \$8 million in 1995 and by \$51 million over the 1995-1999 period. The estimate is based on three studies, two of which were not directed toward the issue of how many Social Security recipients are confined under NGRI determination, but rather were directed toward the use of the NGRI plea. A Department of Health and Human Services report from the Inspector General's (IG) office in 1987 found that 26 percent of the mental disorder detainees in state forensic hospitals were Social Security recipients. This percentage, when applied to all mental disorder detainees, translated into 2,162 beneficiaries in 1985. In contrast, a study by Henry J. Steadman using data from a 1978

survey of states found that the average number of NGRI detainees was 3,140. Combining this with the IG's finding that 38 percent of NGRI detainees received Social Security benefits would yield about 1,190 recipients.

Because these data are out-of-date, it is difficult to know how to apply these results to the current Social Security beneficiary population. While the use of the NGRI plea has declined over the past 15 years and the mentally-impaired institutionalized population has also plummeted, the sentencing of NGRI detainees has become stricter and the proportion of the Social Security disabled population diagnosed with mental disorders has risen significantly. The estimated savings from this section of S. 1231 is based on the assumption that 1,500 NGRI detainees would be affected. Using the average benefit figure from the IG's report and inflating it to 1995 results in annual benefit savings of \$6,760 per detainee.

Section 5. Require Nursing Homes to Report Admissions of SSI Recipients. S. 1231 would require that nursing homes report admissions of SSI recipients to the Social Security Administration within 15 days of the admission. There is currently no reporting requirement. According to a 1992 report from the IG's office of DHHS, the primary responsibility for reporting nursing home admissions falls on the SSI beneficiary, although SSA tries to encourage the nursing homes to report these admissions on a voluntary basis.

The 15-day reporting requirement, which would become effective on October 1, 1995, is expected to save \$34 million over the five-year estimating period.

6. Pay-as-you-go considerations: The pay-as-you-go effects of the bill are as follows:

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998
Receipts	- 72	14	15	15
Outlays	0	- 8	- 8	- 9

The on-budget (including Medicare) revenue and outlay changes have an impact on the scorecard. The Social Security revenue and benefit changes are exempt from the pay-as-you-go rules.

7. Estimated cost to State and local government: None.

8. Estimate comparison: None.

9. Previous CBO estimate: An estimate of S. 1231 was provided to the Senate Committee on Finance on April 14, 1994. The estimate has been revised to reflect a change in the effective date of one provision. New legislative language was provided by the committee to correct a drafting error in the language previously supplied to CBO.

10. Estimate prepared by: Paul Cullinan and Patrick Purcell.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.