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REPORT
No. 94–550

SOCIAL SECURITY APPEALS AND ADMINISTRATION

DECEMBER 12, 1975.—Ordered to be printed

MR. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 10727]

The Committee on Finance, to which was referred the bill (H.R. 10727) to amend the Social Security Act to expedite the holding of hearings under titles II, XVI, and XVIII by establishing uniform review procedures under such titles, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

I. SUMMARY OF THE BILL

The bill as passed by the House of Representatives made certain modifications in the provisions of the Social Security Act dealing with the appeals process under programs administered by the Social Security Administration. The committee modified the effective date of one of the provisions in the House bill and added to the bill a number of amendments as described below.

SOCIAL SECURITY HEARINGS AND APPEALS

The programs administered by the Social Security Administration presently have a huge backlog of some 103,000 cases awaiting a hearing. The committee bill would attempt to alleviate this problem by making certain changes in the social security hearings and appeals processes. The bill would make the provisions of law governing hearings and judicial review under the supplemental security income (SSI) program virtually identical to those of the social security cash benefit and medicare programs. It would permit the Social Security Administration to use existing SSI hearing examiners to also hear

social security and medicare cases between now and the end of 1978. In addition, the bill would change the time in which a person could request a hearing after a claim had been disallowed. For both social security cases and SSI cases, the time would be 60 days—an increase from 30 days for SSI claims and a decrease from 6 months for social security claims. The bill as passed by the House and as approved by the committee is effective on enactment except that the effective date of the reduction in the time for filing a request for hearings in social security cases would be March 1, 1976.

Policemen and Firemen in West Virginia

The Social Security Amendments of 1972 included a provision which allowed the State of West Virginia to modify its social security coverage agreements so as to provide social security protection to certain policemen and firemen who had erroneously paid social security taxes in the belief that they were covered. Under the 1972 amendments, the State of West Virginia had to amend its agreement with the Social Security Administration before 1974. The State, however, has not made the necessary amendment in its agreement, and the committee bill provides an extension through 1977 of the time in which the agreement may be changed.

Deposit of Social Security Contributions by State and Local Governments

Under the committee bill, the Secretary of Health, Education, and Welfare would be required to give notice at least 18 months in advance of any changes he proposes to make in the way in which social security contributions are paid by State and local governments. This would assure that States would be given ample leadtime to implement any changes and would also give Congress an opportunity to review any changes which the Secretary might propose.

Annual Reporting of Social Security Wages

The committee bill includes a provision which is designed to reduce the tax reporting burdens of the nation's employers. Under the provision, the Secretaries of the Treasury and of Health, Education, and Welfare would be given the authority needed to exchange information so that social security reports of individual earnings could be made once each year rather than once each quarter.

The provision would not affect the responsibility of employers for collection and payment of social security taxes nor would it change the requirements as to when these payments are due. It would not have any effect on the way in which State and local Governments pay or report social security contributions to the Social Security Administration. Payments by both private employers and State and local Government units would continue to be made in the same way that they are made under existing law.

II. GENERAL EXPLANATION OF THE BILL

A. Social Security Hearings and Appeals

NEED FOR LEGISLATION

The programs administered by the Social Security Administration now have a huge backlog of some 103,000 cases awaiting hearing. Half of all hearings take more than seven months to process, and the average processing time from initial application to hearing decision is some 20 months. A major barrier to reducing the backlog is the inability to use the hearing examiners appointed for the supplemental security income program for cases involving eligibility under Title II of the Social Security Act. Although the major factor in both SSI and title II hearings is the title II definition of disability, the Civil Service Commission overruled the Department of Health, Education, and Welfare and refused to allow that agency to employ administrative law judges to conduct SSI hearings.

Within recent months the Social Security Administration Bureau of Hearings and Appeals has made significant gains in increasing the productivity of administrative law judges (ALJs) with the result that the current case backlog is being reduced by 1,000 cases a month. If the authority in this bill is enacted it has been estimated that the hearing backlog will be reduced by 3,000 a month so that in 18 months cases can be adjudicated within 90 days.

While the committee thus expects that this bill will significantly alleviate the current crisis situation with respect to social security hearings, it is aware that suggestions have been made for more basic structural changes in the hearings procedures and the administration of the disability programs. The committee notes that the report of the House of Representatives on this bill indicates an intent to undertake comprehensive social security legislation in 1976 in connection with which such changes could be considered. The House report also recommends that the Social Security Administration authorize the Center for Administrative Justice to make a study of the social security appeals procedures and make recommendations for any structural changes relating to improving both the speed and quality of social security adjudications. This study would address the issue of whether the current appeals system under the Administrative Procedure Act (APA) is in the public interest together with such subjects as the appropriate qualifications, method of appointment, and position and grade classification of social security ALJs.

CONFORMING SSI AND SOCIAL SECURITY APPEALS PROCEDURES

(Section 1 of the Bill)

The first provision of the bill would amend Section 1631(c) of the Social Security Act to provide the same rights to hearing and administrative and judicial review with respect to claims under title XVI (Supplemental Security Income) of the Act as apply to title II

(social security) and title XVIII (medicare) claims under section 205(b) and 205(g) of the Act. This is necessary to override an interpretation of the Civil Service Commission that the Administrative Procedure Act was not applicable to SSI hearings and which required the appointment of non-APA hearings officers who could not hear social security and medicare cases. This action greatly exacerbated the current hearing crisis and the validity of SSI hearings has been challenged in the courts as second class justice. The committee bill will put this matter to rest by clearly providing on-the-record administrative hearings and judicial review of a parallel nature for social security, SSI, and medicare claimants.

The principal modifications to section 1631(c), which now provides general authority to the Secretary of Health, Education, and Welfare to conduct hearings on SSI appeals, would be:

(1) the specific requirement that decisions after a hearing must be on the basis of evidence adduced at the hearing;

(2) an increase in the period during which requests for review must be filed from 30 days to 60 days;

(3) the addition of specific authority for the Secretary to hold hearings and make findings of fact, administer oaths, examine witnesses and receive evidence; and authority to receive evidence at a hearing even though inadmissible under the rules of evidence applicable to court procedure;

(4) to make the final determinations of the Secretary subject to the "substantial evidence rule" upon judicial review by eliminating language now in section 1631(c)(3) which provides that the determinations of the Secretary "as to any fact shall be final and conclusive and not subject to review by any court".

The principal effect of this last modification is to apply the same rules of judicial review to title XVI cases as apply to title II cases. By removing this language from title XVI, findings of fact of the Secretary in SSI cases, if supported by substantial evidence, shall be conclusive as are such findings under title II. The committee believes that both programs should be under the "substantial evidence rule", but that this should not be interpreted by the courts as a license to vary from strict adherence to its principles. With over 4,000 social security disability cases now pending in the United States District Courts, and the possibility of a similar caseload developing in the SSI program, when its appeals are fully felt, making *de novo* factual determinations at the judicial level could result in very serious problems for the federal judiciary and the social security program.

REPEAL OF SPECIAL APPOINTMENT AUTHORITY

(Section 2 of the Bill)

The committee bill would repeal section 1631(d)(2) of the Social Security Act.

This is the section of the law under which, pursuant to Civil Service Commission interpretation, non-APA hearing examiners have been appointed. The continuation of this authority is inappropriate inasmuch as title XVI cases in the future will require APA hearing officers. The committee believes that an adequate supply of APA

hearing officers can be obtained from the current pool of SSI hearing examiners and Black Lung ALJs who meet, or will meet, the requirements for regular appointments and through the on-going recruitment by the Civil Service Commission of ALJs in the private and governmental sectors.

USE OF SSI HEARING EXAMINERS FOR SOCIAL SECURITY AND MEDICARE CASES

(Section 3 of the Bill)

The committee bill also grants authority for those SSI hearing examiners (who have been appointed under section 1631(d)(2) to hear cases under titles II, XVI, and XVIII until December 31, 1978 as temporary administrative law judges if the Secretary of HEW finds it will promote the achievement of the objectives of these titles. It is the committee's understanding that the Secretary will make this finding as to all SSI hearing examiners who have been appointed. The committee also understands that now virtually all the temporary Black Lung judges hold SSI hearing examiner appointments and this would provide the Bureau of Hearings and Appeals the 200 judges it needs to reduce the backlog. Furthermore, by the end of 1978, all SSI examiners will have acquired sufficient adjudicative experience to meet the experience requirement for appointment as regular ALJs. They would, as they met the experience requirement, be afforded the opportunity to be placed on the register for regular ALJ appointment on a merit basis under the regular Civil Service procedures.

It is hoped that these requirements and procedures will be applied in a manner to effectively serve the needs of the Social Security Act programs. The performance of the Civil Service Commission Office of Administrative Law Judges in overruling the administering agency (HEW) in its legal opinion that SSI was under the APA does not reflect the will of Congress.

The Office of Administrative Law Judges should be mindful of its ministerial responsibilities in supplying registers from which adequate numbers of ALJs can be hired by HEW to adjudicate social security claims. There are indications that in the past these registers have not been supplied with the speed and with the number of candidates thereon which HEW needed to get better control over the hearings backlog. In evaluating current SSI hearings examiners for regular ALJ appointments great weight should be given to experience in actually adjudicating social security and Black Lung cases and roadblocks should not be created through unduly lengthy and bureaucratic appointment procedures.

To avoid any possible misinterpretation, the bill specifically provides that the temporary hearing officers authorized to conduct hearings under the bill would be subject to all the provisions of the Administrative Procedure Act that assure independence from agency control. These provisions would include: Subchapter II of chapter 5 of title 5 of the United States Code (the substantive provisions relating to APA adjudications); the second sentence of section 3105, of title 5 U.S.C. (assignment of cases in rotation and the prohibition of assignment to duties inconsistent with their responsibilities as hear-

ing officers); and the deeming of them as hearing examiners appointed under section 3105 so that, among other things, they would be exempt from agency performance rating requirements (5 U.S.C. 4301(2)(E)) and agency determination of performance acceptability for in-grade increases (5 U.S.C. 5335(a)(3)(B)) and making Civil Service responsible for determining their pay levels (5 U.S.C. 5362), removal for cause (5 U.S.C. 7521), and general administration (5 U.S.C. 1305). The committee is unaware of any prejudicial "agency control" exercised by HEW under the parallel provisions it has established for SSI hearing examiners. However, the specific application of these provisions of the APA, together with the provisions of the bill applying the same procedural safeguards to review proceedings under title XVI as apply under title II, should eliminate the possibility of the courts determining that SSI review procedures do not comply with the Administrative Procedure Act or due process.

Moreover, the specific enumeration of these provisions of the APA as applicable to the temporary ALJs should not be interpreted to make these adversary proceedings or otherwise "judicialize" procedures under title II, XVI, and XVIII. The enumeration of these provisions also should in no way suggest that they are not applicable to the regular Social Security ALJs. The committee and the Department of HEW consistently over the years have declared that the language in title II (and under the provisions of this bill, title XVI) of the Social Security Act call for "on-the-record" hearings which invoke the provisions of the Administrative Procedure Act.

Although the bill is silent on the grade level of temporary Administrative Law Judges, the committee notes that the report on this legislation received from the Department indicates agreement with the view expressed in the report of the House of Representatives on the bill that a grade level of GS–14 would be appropriate.

REDUCTION OF APPEAL PERIOD FOR SOCIAL SECURITY CLAIMS

(Section 4 of the Bill)

The Committee bill would reduce the period within which social security and medicare appeals may be taken at both the reconsideration and hearing level from six months to 60 days.

The committee believes that a 6-month time period is unnecessarily long for a claimant to appeal a title II or title XVIII decision on his claim. In fact, because a mandatory reconsideration has been adopted administratively under this authority, a double period may result. An individual whose claim has been initially denied has a full six months to decide whether to request a reconsideration and then another 6 months to decide whether to appeal to an administrative law judge.

More than 65 percent of the hearings requested are filed within 60 days after the claimants receive notification that their reconsideration had not resulted in the decision being overturned. If the time limit is reduced to 60 days, there may be a decrease in the number of hearing requests filed. Those individuals who do not file for review within 60 days may file a new application for benefits on the basis of new evidence or changed condition which in most instances can be adjudicated more speedily at the initial determination level. Also, reducing

the time limit would result in a reduction in administrative costs and, perhaps most importantly would be beneficial in that less case development would be needed at the hearing level. The need for additional development has played a major role in delaying decisions in appealed cases. Often hearings filed in the 4th, 5th, or 6th months following the reconsideration determination are virtually new cases and call for extensive medical and vocational development which takes the ALJ away from his primary role of deciding cases.

In order to assure that the rights of individuals are not adversely affected, the committee has provided that this change not be effective until March 1, 1976. This will allow the Social Security Administration time to advise social security applicants of the shortened length of time for filing an appeal.

B. West Virginia Policemen and Firemen

(Section 6 of the Bill)

The committee has been informed that certain policemen and firemen in West Virginia have been paying social security contributions but that the Social Security Administration ruled (and the courts have agreed) that the law does not provide for this coverage. Under the law, policemen in West Virginia are not allowed coverage if they are also covered under a State or local retirement program and firemen under a State or local retirement program are not allowed coverage unless certain specified conditions are met. The laws of West Virginia require certain local governments to provide a retirement program for their employees, including policemen and firemen, but some of the local governments have not provided the programs and instead have relied on social security coverage to provide retirement, disability, and survivor insurance for their employees. Because this coverage for policemen and firemen, but not for other employees has been determined to be in conflict with the present law, the committee bill includes a provision which will permit the State of West Virginia to modify its social security coverage agreements to provide retroactive coverage for the policemen and firemen who have paid social security contributions in the past and to continue this coverage in the future for those police and fire departments affected.

A similar provision was included in the Social Security Amendments of 1972 but the State did not make the necessary modifications in its social security coverage agreements within the time limits specified in that legislation. The present bill will extend the time when such a change may be made to 1977.

C. Deposit of Social Security Contributions by State and Local Governments

(Section 7 of the Bill)

Employees of State and local governments are not mandatorily covered under the social security program. Under legislation enacted in 1950, however, States are permitted on a voluntary basis to enter into agreements with the Department of Health, Education, and Welfare for the coverage under the program of State and local employees.

The extent of such coverage varies from State to State and the agreements under which each State covers certain of its employees and the employees of political subdivisions are quite complex. Under these coverage agreements, States are required to pay to the Social Security Administration contributions which are the equivalent of the social security taxes which the Internal Revenue Service collects from private employers.

The Social Security Act provides that, insofar as practicable, the Social Security Administration should require States to deposit these contributions in a manner consistent with the requirements for depositing social security taxes imposed on private employers. Up to the present, however, the requirements imposed upon the States with respect to the frequency of deposit have been quite different from the requirements imposed upon private employers. Large private employers are required to deposit social security taxes withheld as often as weekly, and moderate-sized employers must make these deposits monthly. Quarterly deposits are permitted for employers with quite small payrolls. In the case of State and local Government employees, however, the present regulations of the Department of Health, Education, and Welfare require that deposits be made by the middle of the second month after the end of each quarter.

The Social Security Administration has indicated that it is considering the promulgation of a regulation which would require the States to deposit social security contributions more frequently. The agency believes that such a change would result in significantly higher interest earnings for the social security trust funds and that the change would be consistent with the provision of law requiring that the State procedures be comparable with the procedures used by private employers. State social security administrators have expressed doubts that such a change is, in fact, practicable since many local governments have relatively unsophisticated accounting arrangements. Moreover, the argument is made that such a change represents a unilateral revocation of the voluntary agreements under which the State coverage was established many years ago.

The Committee is advised that the Social Security Administration and the State social security administrators are jointly undertaking a study designed to develop more adequate information as to the actual implications of a change in existing deposit procedures. To assure that this information will be available before any change is made and to assure that no change in deposit procedures will be abruptly instituted, the committee bill would prohibit the Department of Health, Education, and Welfare from making any significant changes in the deposit requirements without allowing lead time of at least 18 months from the time of publication in the Federal Register of the final regulations making such a change.

The committee believes that this amendment will permit the Department to develop whatever proposal with respect to the deposit of State and local contributions it may feel is justified on the basis of information obtained from the current study while at the same time assuring that Congress will have adequate notice of any such proposed change and will be able to enact further legislation as may appear appropriate.

D. Annual Reporting of Social Security Wages

(Section 8 of the Bill)

The committee added a provision to the House-passed bill which is designed to reduce the tax reporting burden of the Nation's employers. Under the committee provision, the Secretaries of the Treasury and of Health, Education, and Welfare would be provided with the authority they need to exchange information on a basis which would make it possible to change social security tax reporting from a quarterly basis to an annual basis. The committee provision originated in the recommendations of several Governmental study groups and its adoption would conclude approximately two decades of study and negotiation between the two departments involved.

Under existing Treasury department regulations, employers are required to submit quarterly reports of the wages paid to their employees which are subject to social security taxes. These reports, on Treasury Form 941–A, must list each employee by name, social security account number, and total wages paid to the employee with respect to which social security taxes are payable. The preparation and filing of this quarterly report involves considerable effort and expense on the part of employers particularly in the case of small and medium-sized companies which do not have the advantage of computerized payroll systems. An April 17, 1973 report issued by the Select Committee on Small Business stated that its Subcommittee on Government Regulation had found studies indicating that the annual cost to small employers of submitting this form might total as much as $235 million (Senate Report No. 93–125, p. 49).

The committee provision would make possible the elimination of quarterly reports by changing certain technical requirements of the social security program which currently depend on data from the Form 941–A and by providing the Internal Revenue Service and the Social Security Administration authority which would enable them to enter into an agreement for cooperative processing of a revised annual wage reporting form (i.e. Form W–2) in a manner which will most effectively and efficiently provide each agency with the information it requires. Thus, in place of the present requirement that each employer submit 5 reports per year with respect to each employee (4 quarterly reports on Form 941–A and 1 annual report on Form W–2), the committee provision makes possible a revision in Treasury Department regulations to permit employers to file a single consolidated annual wage report for each employee which will show both his total earnings for the year and the quarterly breakdown of his social security earnings.

The present Form 941–A provides for wage information used by the Social Security Administration as the source of data for computing the automatic increases in the amount of annual earnings subject to social security taxes (the social security "wage base") and in the amount of annual earnings which a beneficiary may have without any reduction in his social security benefits (the "exempt amount.") Under existing law, whenever an increase in the cost of living triggers an automatic

social security benefit increase, the Secretary of Health, Education, and Welfare is required to promulgate regulations increasing the wage base and the exempt amount.

Under current law these increases are based on the percentage rise in the average amount of taxable wages up to the first quarter of the year in which the determination of the amount of the increase is made, and the increases become effective as of the start of the following year. If employee wages are reported annually rather than quarterly, however, the necessary data to compute the increase in wage base and exempt amount would not be available until well after the beginning of the year in which the increases are to be effective. The committee provision, therefore, moves back by one year the base period to be used for determining the amount of increases in taxable wages so that the Secretary of Health, Education, and Welfare will have sufficient time to make his determinations on the basis of an annual wage report. (However, no change is made in the benefit increase provisions of present law.) Thus, for example, the increase in the wage base and exempt amount which is to be effective as of January 1, 1977 would be computed according to the growth rate in average taxable wages from the first quarter of 1974 to the first quarter of 1975 rather than according to the growth rate from the first quarter of 1975 to the first quarter of 1976.

Current law bases the automatic increases in the wage base and exempt amount on the rise in average taxable wages from the first quarter of one year to the first quarter of the next year rather than on the annual increase in wage levels generally because the Social Security Administration does not now receive the information necessary to make a determination based on average annual wages in all employment. When the revised reporting regulations made possible by the committee provision are implemented, this information will become available. Accordingly, the committee bill provides that, starting in 1978, determinations as to the amount of future automatic increases in the annual amount of earnings subject to social security taxes and in the amount of annual earnings a beneficiary can have without reduction in benefits will be based on the growth from year to year in average annual wages in all employment rather than on the growth of the amount of wages subject to social security taxes in the first quarter of each year. As a practical matter, it is estimated that there will be negligible impact on the way in which the automatic increase provisions will operate, since the annual rate of growth is approximately the same for average first quarter taxable wages, average annual wages in employment covered by social security, and average annual wages in the national economy.

The committee provision would not affect the responsibility of employers for the collection and payment of social security taxes nor would it alter in any way the requirements as to the dates on which payments of these taxes are due. The provisison would make no change in the amount of work required in order to qualify for social security benefits and no change would be made in the way benefits are computed. Moreover, it would not have any impact on the financial status of the social security program.

In addition, the committee amendment provides that the amendment would have no effect on the way in which State and local governments report earnings to the Social Security Administration. The situation with respect to State and local government employment covered by social security is different than the situation with respect to private employment, and the procedures for reporting wages are governed by agreements between the States and the Secretary of Health, Education, and Welfare. A wide variety of patterns exists with respect to the types of State and local employment which are or are not covered under a multiplicity of agreements between the States and the Federal government and, in turn, between the States and local governmental entities. The existing reporting procedures, therefore, serve not only the requirements of the Social Security Administration but also the requirements of the State agencies which are responsible for coordinating the activities with respect to social security of the various governmental employers within each State. Accordingly, the Committee bill would not authorize the Secretary of Health, Education, and Welfare to modify the regulations and procedures with respect to the reporting of social security wages in the case of State and local employees except to the extent that modifications may be agreed upon between him and the States involved.

III. COST OF CARRYING OUT THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out the bill.

The committee estimates that this legislation would have virtually no impact on Federal expenditures. The provision authorizing certain coverage for West Virginia policemen and firemen could have a negligible impact on social security benefit payments. The provisions relating to the social security hearing process, according to estimates received from the Department of Health, Education, and Welfare, would not affect benefit costs but could reduce administrative expenses by $16.3 million in fiscal years 1977 through 1981. The other provisions of the bill have no cost impact.

IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee to report the bill. The bill was ordered reported by voice vote.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND FEDERAL DISABILITY INSURANCE TRUST FUND

SEC. 201. (a) * * *

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(g) (1) (A) [There are authorized to be made available for expenditure, out of any or all of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII), such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI and title XVIII for which the Secretary of Health, Education, and Welfare is responsible. During each fiscal year or after the close of such fiscal year (or at both times), the Secretary of Health, Education, and Welfare shall analyze the costs of administration of this title, title XVI and title XVIII during the appropriate part or all of such fiscal year in order to determine the portion of such costs which should be borne by each of the Trust Funds and (with respect to title XVI) by the general revenues of the United States and shall certify to the Managing Trustee the amount, if any, which should be transferred among such Trust Funds in order to assure that (after appropriations made pursuant to section 1601, and repayment to the Trust Funds from amounts so appropriated) each of the Trust Funds and the general revenues of the United States bears its proper share of the costs incurred during such fiscal year for the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible. The Managing Trustee is authorized and directed to transfer any such amount (determined under the preceding sentence) among such Trust Funds in accordance with any certification so made.

[(B) The Managing Trustee is directed to pay from the Trust Funds into the Treasury the amounts estimated by him which will be expended, out of moneys appropriated from the general funds in the Treasury, during each calendar quarter by the Treasury Department for the part of the administration of this title and title XVIII for which the Treasury Department is responsible and for the administration of chapters 2 and 21 of the Internal Revenue Code of 1954. Such payments shall be covered into the Treasury as repayment to the account for reimbursement of expenses incurred in connection with such administration of this title and title XVIII and chapters 2 and 21 of the Internal Revenue Code of 1954.]

The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by him and the Secretary of Health, Education, and Welfare which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health, Education, and Welfare and the Treasury Department for the administration of titles II, XVI and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954, less.

(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of Health, Education, and Welfare which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health, Education, and Welfare specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.

(B) After the close of each fiscal year the Secretary of Health, Education, and Welfare shall determine the portion of the costs, incurred during such fiscal year, of administration of this title, title XVI, and title XVIII and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust

Funds, and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.".

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(4) *The Board of Trustees shall prescribe before January 1, 1981, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.*

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REDUCTION OF INSURANCE BENEFITS

MAXIMUM BENEFITS

SEC. 203. (a) * * *

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(f) For purposes of subsection (b)—

(1) * * *

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(8)(A) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the month of June following a cost-of-living computation quarter he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual's taxable year which ends after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

(B) The exempt amount for each month of a particular taxable year shall be whichever of the following is the larger—

(i) the exempt amount which was in effect with respect to months in the taxable year in which the determination under subparagraph (A) was made, or

(ii) the product of the exempt amount described in clause (i) and the ratio of (I) the average of the [taxable] wages of all employees as reported to the Secretary *of the Treasury* for [the first calendar quarter of] the calendar year *preceding the calendar year* in which the determination under subparagraph (A) was made to (II) the average of the [taxable] wages of all employees as reported to the Secretary *of the Treasury* for the [first calendar quarter of 1973] *calendar year 1973*, or, if later, the [first calendar quarter of] *calendar year preceding* the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under section 230(a), with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

For purpose of this clause (ii), the average of the wages for the calendar year 1977 (or any prior calendar year) shall, in the case of determinations made under subparagraph (A) prior to December 31, 1978, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.

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EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

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(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such decision must be filed within [such period after such decision as may be prescribed in regulations of the Secretary, except that the period so prescribed, may not be less than six months after notice of such decision is mailed to] *sixty days after notice of such decision is received by* the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissable under rules of evidence applicable to the court procedure.

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REDUCTION OF BENEFITS BASED ON DISABILITY ON ACCOUNT OF RECEIPT OF WORKMEN'S COMPENSATION

SEC. 224. (a) * * *

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(f) (1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 and any benefits under section 202 based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Secretary shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this title on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a)) shall be deemed to be the product of his average current earnings as initially determined under subsection (a) and the ratio of (i) the average of the taxable wages of all persons for whom taxable wages

were reported to the Secretary for the first calendar quarter of the calendar year *before the calendar year* in which such redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year *before the calendar year* in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability). Any amount determined under the preceding sentence which is not a multiple of $1 shall be reduced to the next lower multiple of $1.

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ADJUSTMENT OF THE CONTRIBUTION AND BENEFIT BASE

SEC. 230. (a) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the June following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) The amount of such contribution and benefit base shall be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) the contribution and benefit base which was in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) with respect to such particular calendar year was made, and

(2) the ratio of (A) the average of the [taxable] wages of all employees as reported to the Secretary *of the Treasury* for the [first calendar quarter of the] calendar year *preceding the calendar year* in which the determination under subsection (a) with respect to such particular calendar year was made to [the latest of] (B) the average of the [taxable] wages of all employees as reported to the Secretary *of the Treasury* [for the first calendar quarter of 1973 or the first calendar quarter of] *for the calendar year 1973 or, if later, the calendar year preceding* the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a).

with such product, if not a multiple of $300, being rounded to the next higher multiple of $300 where such product is a multiple of $150 but not of $300 and to the nearest multiple of $300 in any other case.

For purposes of this subsection, the average of the wages for the calendar year 1977 (or any prior calendar year) shall in the case of determinations made under subsection (a) prior to December 31, 1978, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.

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PROCESSING OF TAX DATA

SEC. 232. The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954, to the Secretary for the purposes of this title and title XI. The Secretary and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Secretary of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall make available to the Secretary such documents as may be agreed upon as being necessary for purposes of such processing. The Secretary shall process any withholding tax statements or other documents made available to him by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Secretary and the Secretary of the Treasury.

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TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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PART B—PROCEDURAL AND GENERAL PROVISIONS PAYMENTS AND PROCEDURES

PAYMENT OF BENEFITS

SEC. 1631. (a)(1) * * *

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Hearings and Review

(c)(1) *The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title.* The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within [thirty] *sixty* days after notice of such determination is received, *and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may*

administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissable under the rules of evidence applicable to court procedure.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves [the existence of] a disability (within the meaning of section 1614(a)(3)), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determinations under section 205 [; except that the determination of the Secretary after such hearing as to any fact shall be final and conclusive and not subject to review by any court].

Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a), (d), (e), and (f) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

[(2) To the extent the Secretary finds it will promote the achievement of the objectives of this title, qualified persons may be appointed to serve as hearing examiners in hearings under subsection (c) without meeting the specific standards prescribed for hearing examiners by or under subchapter II of chapter 5 of title 5, United States Code.]

[(3)](*2*) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this title, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge

or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

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INTERNAL REVENUE CODE OF 1954

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SUBTITLE F—PROCEDURE AND ADMINISTRATION

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CHAPTER 61—INFORMATION AND RETURNS

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SUBCHAPTER B—MISCELLANEOUS PROVISIONS

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SEC. 6103. PUBLICITY OF RETURNS AND DISCLOSURE OF INFORMATION AS TO PERSONS FILING INCOME TAX RETURNS

(a) * * *

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(*g*) *DISCLOSURE OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.—The Secretary or his delegate is authorized to make available to the Secretary of Health, Education, and Welfare information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective information return processing program.*

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