

SOCIAL SECURITY BENEFITS FOR PRISONERS

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ISSUE DEFINITION

On Mar. 24, 1983, the Congress adopted, as part of the Social Security Amendments of 1983 (P.L. 98-21), a measure to preclude virtually all incarcerated felons from receiving social security benefits of any kind, including retirement and survivor benefits. This action expanded previous legislation. In October 1980, legislation had been enacted (P.L. 96-473) that denied only social security disability benefits and student benefits to prisoners convicted of a felony.

Concern also arose in the 97th Congress about difficulties the Social Security Administration encountered in obtaining identifying information necessary to remove prisoners from the benefit rolls as required by the 1980 legislation. To remedy the latter situation, Congress included in P.L. 97-123, enacted in December 1981, a provision that requires government agencies to provide the name and social security number of prisoners to the Social Security Administration.

BACKGROUND AND POLICY ANALYSIS

HISTORY: LAW PRIOR TO OCTOBER 1980

Prior to the enactment of P.L. 96-473 on Oct. 19, 1980, prisoners of penal institutions or other incarcerated persons, such as the criminally insane who were confined to mental institutions, could become entitled to social security benefits if they met the several conditions required for benefits. The fact that they were convicted of crimes and were incarcerated, or were otherwise institutionalized, did not interfere with their rights to benefits.

Three related provisions of law and regulation did exist, however, which authorized the withholding of benefits to persons convicted of certain crimes. One originated as an amendment to the Social Security Act in 1956 (section 202 (u)), which allows a judge, as part of a sentence, to deny payment of social security benefits of any type to an individual convicted of subversive crimes against the U.S. Government (espionage, sabotage, treason, sedition, etc.). The individual does not necessarily have to be a prison inmate. Also, section 202(N) of the Social Security Act provides for terminating some benefits upon the deportation of the insured worker following violation of certain provisions of the Immigration and Nationality Act.

The third provision, provided for by regulation (as amended, 44 F.R. 34479 (June 15, 1979)), precludes paying benefits to people convicted of the felonious homicide of a relative, and then claiming benefits based on the earnings record of the person they killed. This prohibition extends to survivor benefits claimed by the convicted person or to dependents of that person. (This regulation was recently revised to include minors convicted in juvenile court of killing the workers -- see below.)

The 1956 Amendment

The question of the payment of social security benefits to persons who commit crimes was brought up in the mid 1950s when it became known that a Communist party official who had been convicted under the Smith Act was getting benefits while serving time in an Atlanta prison. This too raised a furor and Senator Williams of Delaware introduced a bill in 1956 similar to the bills introduced in the 96th Congress. The issue was discussed in the Senate Committee on Finance when the committee was considering the original disability insurance legislation that year, but was dropped due to concern that such denial of benefits might be unconstitutional. However, Senator Williams pressed the issue on the floor when the disability insurance amendments were brought up for Senate action, and his provision was adopted by voice vote. During the conference on the bill, Representative Mills of Arkansas again raised the question of the constitutionality of the provision, on the basis that such a measure might violate the "ex post facto" amendment of the Constitution. Specifically, it raised the question of whether a penalty possibly was being added to the sentence of the judge after the fact. In lieu of an across-the-board measure precluding benefits on account of a subversive criminal act, the conferees adopted a measure (section 202(u) of existing law), allowing a judge to deny social security benefits as part of a sentence for conviction of a subversive crime. It is not known whether a judge has ever exercised this authority.

Concerns Leading to Legislation in 1980

Congressional concern was stimulated by a number of press accounts, originally appearing in newspapers in Trenton, N.J. and New York City, suggesting that a large number of prisoners, perhaps 30,000 nationwide, were receiving some \$60 million in social security disability insurance benefits annually. One account suggested that prisoners in New Jersey were allegedly receiving such benefits on the basis of bogus mental illness. Another account reported that David Berkowitz, the so-called "Son of Sam," who was convicted of numerous murders in the New York City area, was receiving social security benefits and had applied for VA education benefits. (He subsequently had been terminated from the social security rolls.) Other stories highlighted cases of persons who had committed major crimes, but were found not guilty by way of insanity, and subsequently were able to obtain social security disability benefits due to their mental illnesses. They were found not to be able to engage in "substantial gainful activity" because of their conditions.

The thrust of the articles was that there was a moral question involved in the payment of benefits to prisoners, that prisoners were causing a sizable drain on the social security system at a time when it was having financial problems, and that since these individuals were in prisons, at public expense, they did not need such benefits.

At that time, the Social Security Administration was unable to provide a figure on the size of the prison population receiving social security benefits of any type -- retirement, disability, or survivors benefits. No such records had been kept, since no aspect of the existing program pertained specifically to prisoners as a distinct group of beneficiaries, and no studies have been done on the question. The only aggregate data that existed were from the 1970 census. These data indicated that possibly 4,000 prisoners were receiving social security benefits of one sort or another at that time. Data from a very small GAO sample showed that 224 prisoners in

Federal penal institutions, out of 17,000 for whom social security numbers were found, were receiving social security benefits as of April, 1980. This represented 1.3% of that group. If the same percentage had been applicable to the 450,000 or more persons in Federal, State and local penal institutions, the social security actuaries estimated that the number of prisoners in the United States receiving social security benefits of one form or another would have totaled about 5,000 to 6,000. Benefit payments would have amounted to \$20 to \$25 million per year.

The question of bogus mental illnesses resulting in the payment of disability benefits in New Jersey was the subject of questioning in the fall of 1979 by Representative Pickle, chairman of the Subcommittee on Social Security of the House Committee on Ways and Means. Officials of the New Jersey Disability Determination Service (which makes disability determinations for the Social Security Administration in that State) stated that they did not know the extent of their workload involving claims from prisoners or to what extent the prison population in New Jersey was receiving social security disability benefits. At the request of the subcommittee, the New Jersey agency subsequently compiled a report on the disability determinations involving prisoners which were currently pending in the agency (covering roughly a 4- to 6-month period). The report included the findings of a 100% review of pending prisoner cases (13 in all) -- most of which involved denials -- and all of which were found to be made correctly. While too small to draw conclusions from, the report indicated that the volume of disability claims made by prisoners in New Jersey was very small, and there seemed to be no question about the legitimacy of the decisions rendered.

LEGISLATION IN THE 96TH CONGRESS

In the spring of 1980 there was much legislative activity concerning the issue of prisoners receiving social security benefits. The Social Security Subcommittees of the House Committee on Ways and Means held hearings on the subject and numerous bills restricting benefits to prisoners were introduced in both Houses.

The 1981 Budget Reconciliation bill, S. 2885, passed by the Senate on June 30, 1980, included a measure recommended by the Senate Finance Committee that would deny benefits to prisoners convicted of crimes. court of law approved and the individual engaged in a plan of rehabilitation. Further, benefits would be denied to individuals who became disabled in the commission of a crime, or who were responsible for the death of a person on whose earnings record they were claiming survivors benefits. Benefits were to be paid to the dependents of the prisoners, and benefits to persons who became disabled while in prison could be paid once the individual's incarceration ended.

The Finance Committee also included this measure in an identical form in H.R. 5295, a bill amending the social security retirement test, which had been passed by the House earlier in the year. The full Senate passed this bill on Sept. 30, 1980. The next day (Oct. 1, 1980), the bill passed both the House and Senate, after a House floor amendment changed the language of the bill to deny benefits to prisoners convicted of felonies (rather than just convicted of crimes). This measure was signed by President Carter on Oct. 19, 1980, creating P.L. 96-473.

In summary, P.L. 96-473 provided:

- payment of disability insurance benefits cannot be made while individuals are imprisoned for conviction of a felony, except where the individual is participating in a court-approved rehabilitation program;
- student benefits are similarly withheld (based on any type of social security case -- OASI or DI);
- benefits can be paid to dependents of prisoners, just as if the prisoners were receiving benefits;
- impairments, to the extent that they arise from or are aggravated by the commission of a crime, cannot be considered in determining whether a person is disabled; and
- impairments arising while an individual is in prison cannot be considered for purposes of payment of disability benefits while the person remains in prison.

CONCERNS ARISING AND ACTION TAKEN IN THE 97TH CONGRESS

A number of bills were introduced in the 97th Congress, as well as a House resolution, calling for further action to be taken to remove or alter social security benefits that go to incarcerated persons. Some proposals provided that no social security benefits at all should be paid to prisoners, including those receiving or eligible for old age or survivors benefits (except for student benefits, such benefits were not affected by the 1980 legislation). Another measure precluded the payment of disability benefits under all circumstances (under the 1980 legislation, a person in a court-approved rehabilitation plan who is likely to engage in substantial gainful activity in a reasonable timeframe could possibly continue to receive disability benefits).

Other bills required Federal penal institutions, or alternatively penal institutions at all levels of government, to furnish the names and social security numbers of their inmates to the Social Security Administration (SSA) so that the agency could fully enforce the newly enacted provisions of the 1980 legislation requiring that certain prisoners be removed from the benefit rolls. This concern led to a Senate-passed floor amendment to a social security bill (H.R. 4331 restoring the minimum benefit) that requires Federal, State and local penal institutions to furnish SSA with the names and social security numbers of prisoners who have been convicted of felonies. This amendment, offered by Senators Danforth and Chiles, was approved by voice vote on Oct. 14, 1981. The bill to which this amendment was attached was sent back to the House for further action or conference.

This amendment arose out of concern that the Federal Bureau of Prisons might be precluded under the Federal Privacy Act from releasing the names to SSA of persons incarcerated in Federal prisons, as well as concerns that privacy statutes in certain States similarly might preclude the release of the names of persons in State and local prisons. Although such concerns seemed to have been addressed by recent regulations and agreements worked out by the Federal Bureau of Prisons and various States with SSA to make such names and social security numbers available to SSA, the possibility of court

challenges to the regulations and court rulings that State privacy laws might have precedence in these situations led Senators Danforth and Chiles to offer the amendment. On Dec. 14, 1981, House and Senate conferees, reconciling the two versions of H.R. 4331, included the Danforth-Chiles provision in the final bill. The Senate passed H.R. 4331 on Dec. 15, the Senate did likewise on Dec. 16, and the President signed it into law as P.L. 97-123 on Dec. 29, 1981.

Another issue received national attention in January 1982 when it became known that two individuals were receiving survivors benefits, even though they had been found to have willfully killed the parent on whose record they were entitled. Those two individuals were minors when the homicides occurred, and because their cases were handled within the juvenile court system, their crimes were not considered to be felonies and therefore not subject to current regulations that would preclude payment. HHS Secretary Schweiker subsequently ordered social security offices nationwide not to process claims from survivors who may have been involved in an intentional act which resulted in the death of a parent. The regulations were recently revised to preclude payment of benefits in these circumstances.

LEGISLATION IN THE 98TH CONGRESS

As part of the major legislation designed to solve social security's financing problems, the Senate Finance Committee on Mar. 10, 1983, recommended a provision to eliminate all benefits (including retirement and survivor benefits) to convicted felons during incarceration. During floor consideration, the Senate also adopted an amendment by Senator Humphrey that would prohibit payment of all benefits to inmates of facilities for the criminally insane. Since no similar provisions were included in the major social security legislation (H.R. 1900) passed by the House on Mar. 10, 1983, the matter was resolved in conference on Mar. 24, 1983. The conference agreement called for restricting the payment of OASI benefits to incarcerated felons in the same manner as are payments of DI benefits (under P.L. 96-473 -- see above). The end result is that social security benefits now cannot be paid to virtually all incarcerated individuals convicted of a felony. The new limitation was signed into law by President Reagan on Apr. 20, 1983, as P.L. 98-21, the Social Security Amendments of 1983.

RECENT DATA ON PRISONERS

A GAO study released in July, 1982, matched the names of prisoners in 13 States, the District of Columbia, and in Federal prisons with the entire social security benefit roll. The cross match involved 130,000 prisoners out of an estimated 314,000 persons incarcerated in Federal and State prisons throughout the United States in 1980 (local penal institutions were not involved in the match because it was felt that most such inmates would have been convicted only of misdemeanors). GAO estimated that 1.4% of the prisoners for whom a social security number could be identified were receiving social security disability benefits (as a worker or disabled child of a worker). If these percentages were extended to the entire Federal and State prison population (i.e., the 314,000 in 1980), it would indicate that about 4,300 persons in Federal and State penal institutions were receiving social security benefits in 1980 which, as P.L. 96-473 was enacted, become ineligible (this excludes possible social security recipients in prisons at the local level).

GAO also estimated that 1,376 incarcerated felons were receiving social security benefits which were unaffected by P.L. 97-473, i.e. they are receiving retirement or survivors benefits. GAO found that approximately 82% of prisoners receiving disability benefits had become disabled before their current period of incarceration. They further found that 41% of these disabled prisoners had families.

The GAO report recommended that the Secretary of HHS take action to encourage State prison systems to give periodic lists of prisoners and social security numbers (SSNs) to SSA and that SSA share validated data from that source with the VA (which also has prisoner benefit restrictions). Some progress has been made -- all Governors have been asked to assist in the effort, and SSN validation problems have been reduced from over 25% to about 16%.

Recent statistics supplied by SSA indicate that as of Dec. 31, 1982, 6,328 prisoner-beneficiaries had been identified for benefit suspension. Of that group, benefits had been suspended in 5,928 cases, and 400 other cases were in the process of being suspended. The fact that SSA has already suspended more prisoners than the GAO projections (above) anticipated is explained by inclusion of accretions to the prisoner population, improved SSN validation and some minor sampling error.

SSA further indicated that no prisoner has avoided having his benefits suspended because of participation in a court-approved plan of rehabilitation.

LEGISLATION

N/A

REPORTS AND CONGRESSIONAL DOCUMENTS

- U.S. Congress. House. Conference Report on H.R. 1900. The Social Security Amendments of 1983. Washington, U.S. Govt. Print. Off., Mar. 24, 1983. Report no. 98-47. 207 p.
- U.S. Congress. House. Committee on Ways and Means, Subcommittee on Social Security. Social Security benefits for prisoners, Washington, U.S. Govt. Print. Off., June 18, 1980. 31 p.
- U.S. Congress. Senate. Senate Finance Committee. Spending reductions: recommendations of the Committee on Finance. Washington, U.S. Govt. Print. Off., July 25, 1980. (C.P. 96-36). 239 p.

CHRONOLOGY OF EVENTS

- 04/20/83 -- President Reagan signed H.R. 1900 into law as P.L. 98-21.
- 03/24/83 -- House-Senate conferees approved H.R. 1900,

including measure to limit benefits to prisoners receiving OASI benefits.

- 03/10/83 -- Senate Finance Committee approved S. 1, including measure to limit benefits to prisoners receiving OASI benefits.
- 12/29/81 -- President Reagan signed H.R. 4331 into law as P.L. 97-123.
- 12/16/81 -- House approved H.R. 4331.
- 12/15/81 -- Senate approved H.R. 4331.
- 12/14/81 -- House and Senate conferees agreed to include in H.R. 4331 the provision to help SSA identify prisoners.
- 10/14/81 -- Senate agreed to H.R. 4331 with measure to facilitate SSA's access to names of prisoners in penal institutions.
- 10/19/80 -- President Carter signed H.R. 5295 into law as P.L. 96-473.
- 10/01/80 -- Both House and Senate approved H.R. 5295, with floor amendments (no conference), including measure limiting benefits to prisoners.
- 09/30/80 -- Full Senate passed H.R. 5295, a bill modifying the social security retirement test, with an additional measure identical to the one in S. 2885 limiting benefits to prisoners.
- 06/30/80 -- Full Senate passed S. 2885, the Budget Reconciliation bill, including the Finance Committee measure concerning the limitation of social security benefits to prisoners.
- 06/26/80 -- Senate Budget Committee ordered S. 2885, the Budget Reconciliation bill, reported favorably to Senate (including Finance Committee measure concerning prisoners receiving social security).
- 06/20/80 -- House Ways and Means Subcommittee on Social Security held hearings on prisoners receiving social security benefits.
- 06/19/80 -- Senate Finance Committee adopted measure limiting disability and student benefits to prisoners as part of Budget "reconciliation" measures.