

115TH CONGRESS
2D SESSION

H. R. 6532

To amend title II of the Social Security Act to update and improve eligibility criteria for the Social Security Disability Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2018

Mr. ROKITA (for himself and Mr. WEBSTER of Florida) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title II of the Social Security Act to update and improve eligibility criteria for the Social Security Disability Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Making DI Work For
5 All Americans Act of 2018”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—ADMINISTRATIVE CHANGES

- Sec. 101. Strengthening the administrative law judge quality review process.
- Sec. 102. Applying judicial code of conduct to administrative law judges.
- Sec. 103. Compensation for claimant representatives.
- Sec. 104. Minimum monthly withholding to recover overpayments.
- Sec. 105. Disqualification on receipt of disability insurance benefits in a month for which unemployment compensation is received.
- Sec. 106. Elimination of reconsideration review application stages.
- Sec. 107. Report on hiring new administrative law judges and staff.

TITLE II—ELIGIBILITY

- Sec. 201. Updating of medical-vocational guidelines.
- Sec. 202. Review of social media activity.
- Sec. 203. Updating data on work which exists in national economy.

TITLE III—CONTINUING DISABILITY REVIEWS

- Sec. 301. Study on impact of medical review standard.
- Sec. 302. Additional training relating to MIRS exceptions.
- Sec. 303. Increased frequency of continuing disability reviews.
- Sec. 304. Communication relating to termination of benefits.
- Sec. 305. Communication relating to reporting requirements.

TITLE IV—BENEFITS

- Sec. 401. Establishment of annual poverty guideline based disability insurance benefits.
- Sec. 402. Retroactive payment of benefits.
- Sec. 403. Inclusion of unearned income in determination of substantial gainful activity.

TITLE I—ADMINISTRATIVE CHANGES

SEC. 101. STRENGTHENING THE ADMINISTRATIVE LAW JUDGE QUALITY REVIEW PROCESS.

(a) REVIEW.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Division of Quality of the Office of Appellate Operations of the Social Security Administration shall conduct a review of a sample of determinations that individuals are entitled to disability insurance benefits by outlier administrative

1 law judges and identify any determinations that are not
2 supported by the evidence.

3 (b) REPORT.—Not later than December 1 of each
4 year in which a review described in subsection (a) is con-
5 ducted, the Division of Quality Review of the Office of Ap-
6 pellate Operations of the Social Security Administration
7 shall submit a report containing the results of such review,
8 including all determinations that were found to be unsup-
9 ported by the evidence, together with any recommenda-
10 tions for administrative action or proposed legislation that
11 the Division determines appropriate, to—

12 (1) the Inspector General of the Social Security
13 Administration;

14 (2) the Commissioner of the Social Security Ad-
15 ministration;

16 (3) the Committees on Ways and Means and
17 Oversight and Government Reform of the House of
18 Representatives; and

19 (4) the Committees on Finance and Homeland
20 Security and Governmental Affairs of the Senate.

21 (c) DEFINITION OF OUTLIER ADMINISTRATIVE LAW
22 JUDGE.—For purposes of this section, the term “outlier
23 administrative law judge” means an administrative law
24 judge within the Office of Disability Adjudication and Re-

1 view of the Social Security Administration who, in a given
 2 year—

3 (1) determines that the applicant is entitled to
 4 disability insurance benefits more often than 90 per-
 5 cent of administrative law judges making determina-
 6 tions under this title; or

7 (2) issues more decisions than 90 percent of ad-
 8 ministrative law judges making determinations
 9 under this title.

10 **SEC. 102. APPLYING JUDICIAL CODE OF CONDUCT TO AD-**
 11 **MINISTRATIVE LAW JUDGES.**

12 (a) IN GENERAL.—Section 3105 of title 5, United
 13 States Code, is amended—

14 (1) by striking “Each agency” and inserting
 15 “(a) Each agency”; and

16 (2) by adding at the end the following:

17 “(b) The Code of Conduct for United States Judges
 18 adopted by the Judicial Conference of the United States
 19 shall apply to administrative law judges appointed under
 20 this section.

21 “(c) If, in applying a standard of conduct to an ad-
 22 ministrative law judge appointed under this section, there
 23 is a conflict between the Code of Conduct for United
 24 States Judges and any other law or regulation, the stricter
 25 standard of conduct shall apply.

1 “(d) Pursuant to section 7301, the President may
2 issue such regulations as may be necessary to carry out
3 subsections (b) and (c).”.

4 (b) LIMITATION ON REGULATORY AUTHORITY.—Sec-
5 tion 1305 of title 5, United States Code, is amended by
6 striking “3105” and inserting “3105(a)”.

7 **SEC. 103. COMPENSATION FOR CLAIMANT REPRESENTA-**
8 **TIVES.**

9 (a) IN GENERAL.—Section 206 of the Social Security
10 Act (42 U.S.C. 406) is amended to read as follows:

11 “REPRESENTATION OF CLAIMANTS

12 “SEC. 206. (a)(1) The Commissioner of Social Secu-
13 rity may prescribe rules and regulations governing the rec-
14 ognition of agents or other persons, other than attorneys
15 as hereinafter provided, representing claimants before the
16 Commissioner of Social Security, and may require of such
17 agents or other persons, before being recognized as rep-
18 resentatives of claimants that they shall show that they
19 are of good character and in good repute, possessed of
20 the necessary qualifications to enable them to render such
21 claimants valuable service, and otherwise competent to ad-
22 vise and assist such claimants in the presentation of their
23 cases. An attorney in good standing who is admitted to
24 practice before the highest court of the State, Territory,
25 District, or insular possession of his residence or before
26 the Supreme Court of the United States or the inferior

1 Federal courts, shall be entitled to represent claimants be-
2 fore the Commissioner of Social Security.

3 “(2) Notwithstanding paragraph (1), the Commis-
4 sioner, after due notice and opportunity for hearing—

5 “(A) may refuse to recognize as a representa-
6 tive, and may disqualify a representative already rec-
7 ognized, any attorney who has been disbarred or
8 suspended from any court or bar to which he or she
9 was previously admitted to practice or who has been
10 disqualified from participating in or appearing be-
11 fore any Federal program or agency, and

12 “(B) may refuse to recognize, and may dis-
13 qualify, as a non-attorney representative any attor-
14 ney who has been disbarred or suspended from any
15 court or bar to which he or she was previously ad-
16 mitted to practice.

17 “(3) The Commissioner of Social Security may, after
18 due notice and opportunity for hearing, suspend or pro-
19 hibit from further practice before the Commissioner any
20 such person, agent, or attorney who refuses to comply with
21 the Commissioner’s rules and regulations.

22 “(b) In prescribing the rules and regulations de-
23 scribed in subsection (a), the Commissioner of Social Se-
24 curity may not prescribe any rules or regulations regard-
25 ing the permissible fees which may be charged for services

1 performed in connection with any claim before the Com-
2 missioner of Social Security under this title or title XVI.
3 In no case shall the Commissioner certify any amount for
4 payment to any representative out of any benefits payable
5 to a claimant under this title or title XVI.”.

6 (b) CONFORMING AMENDMENTS TO TITLE XVI.—
7 Section 1631(d)(2) of the Social Security Act (42 U.S.C.
8 1383(d)(2)) is amended—

9 (1) by amending subparagraph (A) to read as
10 follows:

11 “(A) The provisions of section 206 shall apply to this
12 part to the same extent as they apply in the case of title
13 II.”; and

14 (2) by redesignating subparagraph (D) as sub-
15 paragraph (B).

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply with respect to applications for
18 benefits filed on or after January 1, 2019.

19 **SEC. 104. MINIMUM MONTHLY WITHHOLDING TO RECOVER**
20 **OVERPAYMENTS.**

21 (a) IN GENERAL.—Section 204(a)(1) of the Social
22 Security Act (42 U.S.C. 404(a)(1)) is amended—

23 (1) by redesignating subparagraph (A) as
24 clause (i) of subparagraph (A);

1 (2) in subparagraph (A)(i) (as so redesignated),
2 by striking “With” and inserting “Subject to clause
3 (ii), with”; and

4 (3) by adding at the end the following:

5 “(ii) If the Commissioner determines that
6 withholding the full amount of a monthly dis-
7 ability insurance benefit payment to which an
8 individual is otherwise entitled under this title
9 to recover an overpayment pursuant to this sec-
10 tion would defeat the purpose of this title, the
11 Commissioner may withhold from such payment
12 an amount that is less than such full amount
13 but not less than 10 percent of such full
14 amount.”.

15 (b) REGULATIONS.—The Commissioner of Social Se-
16 curity shall prescribe such regulations and make any con-
17 forming changes to regulations as the Commissioner de-
18 termines appropriate to carry out the amendments made
19 by this subsection.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this subsection shall apply with respect to overpayments
22 made on or after January 1, 2019.

1 **SEC. 105. DISQUALIFICATION ON RECEIPT OF DISABILITY**
2 **INSURANCE BENEFITS IN A MONTH FOR**
3 **WHICH UNEMPLOYMENT COMPENSATION IS**
4 **RECEIVED.**

5 (a) IN GENERAL.—Section 223(d)(4) of the Social
6 Security Act (42 U.S.C. 423(d)(4)) is amended by adding
7 at the end the following:

8 “(D)(i) If for any week ending within a month an
9 individual is paid unemployment compensation, such indi-
10 vidual shall be deemed to have engaged in substantial
11 gainful activity for such month.

12 “(ii) For purposes of clause (i), the term ‘unemploy-
13 ment compensation’ means—

14 “(I) ‘regular compensation’, ‘extended com-
15 pensation’, and ‘additional compensation’ (as such
16 terms are defined by section 205 of the Federal-
17 State Extended Unemployment Compensation Act
18 (26 U.S.C. 3304 note)); and

19 “(II) trade readjustment allowance under title
20 II of the Trade Act of 1974 (19 U.S.C. 2251 et
21 seq.).”.

22 (b) TRIAL WORK PERIOD.—Section 222(c) of the So-
23 cial Security Act (42 U.S.C. 422(c)) is amended by adding
24 at the end the following:

25 “(6)(A) For purposes of this subsection, an individual
26 shall be deemed to have rendered services in a month if

1 the individual is paid unemployment compensation for any
2 week ending within such month.

3 “(B) For purposes of subparagraph (A), the term
4 ‘unemployment compensation’ means—

5 “(i) ‘regular compensation’, ‘extended com-
6 pensation’, and ‘additional compensation’ (as such
7 terms are defined by section 205 of the Federal-
8 State Extended Unemployment Compensation Act
9 (26 U.S.C. 3304 note)); and

10 “(ii) trade readjustment allowance under title II
11 of the Trade Act of 1974 (19 U.S.C. 2251 et
12 seq.).”.

13 (c) DATA MATCHING.—The Commissioner of Social
14 Security shall implement the amendments made by this
15 section using appropriate electronic data.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply with respect to individuals who ini-
18 tially apply for disability insurance benefits on or after
19 January 1, 2019, and are paid unemployment compensa-
20 tion for any week ending on or after January 1, 2019.

21 **SEC. 106. ELIMINATION OF RECONSIDERATION REVIEW AP-**
22 **PLICATION STAGES.**

23 (a) IN GENERAL.—Section 205(b) of the Social Secu-
24 rity Act (42 U.S.C. 405(b)) is amended—

1 (1) in paragraph (1), by adding at the end the
2 following new sentence: “Opportunity for a hearing
3 under this title in accordance with this subsection
4 with respect to any initial decision or determination
5 under this title shall be available without any re-
6 quirement for intervening reconsideration.”;

7 (2) by striking paragraph (2);

8 (3) by redesignating paragraph (3) as para-
9 graph (2); and

10 (4) in paragraph (2) (as so redesignated), by
11 striking “or an adverse determination on reconsider-
12 ation of such an initial determination”.

13 (b) CONFORMING AMENDMENTS.—Title II of such
14 Act (42 U.S.C. 401 et seq.), as amended by subsection
15 (a), is further amended—

16 (1) in section 201(j), by striking “reconsider-
17 ation interviews and”; and

18 (2) in section 221(i)(3)—

19 (A) by striking “reconsideration of such
20 initial termination or”; and

21 (B) by striking “reconsideration or” before
22 “hearing”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply with respect to any initial deter-
25 mination of entitlement to a benefit under title II of the

1 Social Security Act made on or after the date that is one
2 year after the date of the enactment of this Act.

3 **SEC. 107. REPORT ON HIRING NEW ADMINISTRATIVE LAW**
4 **JUDGES AND STAFF.**

5 Not later than 180 days after the date of the enact-
6 ment of this Act, the Commissioner of Social Security
7 shall submit to Congress a report that includes an esti-
8 mate of the number of new administrative law judges and
9 support staff that the Commissioner determines would be
10 necessary to make a final decision on the entitlement of
11 each individual for a disability insurance benefit under
12 title II of the Social Security Act not later than 6 months
13 after the date on which such individual applies for such
14 benefits.

15 **TITLE II—ELIGIBILITY**

16 **SEC. 201. UPDATING OF MEDICAL-VOCATIONAL GUIDE-**
17 **LINES.**

18 As soon as possible after the date of the enactment
19 of this Act, the Commissioner of Social Security shall pre-
20 scribe rules and regulations that update the medical-voca-
21 tional guidelines, as set forth in appendix 2 to subpart
22 P of part 404 of title 20, Code of Federal Regulations,
23 used in disability determinations, including full consider-
24 ation of new employment opportunities made possible by
25 advances in treatment, rehabilitation, and technology and

1 full consideration of the effect of prevalent languages on
2 education.

3 **SEC. 202. REVIEW OF SOCIAL MEDIA ACTIVITY.**

4 (a) IN GENERAL.—Section 205(b)(1) of the Social
5 Security Act (42 U.S.C. 405(b)(1)), as amended by sec-
6 tion 110(a), is further amended by inserting after the sec-
7 ond sentence the following: “In making any initial deter-
8 mination of disability under this title, the Commissioner
9 of Social Security shall consider any relevant evidence
10 from social media of which the Commissioner is made
11 aware prior to issuing a decision involving such determina-
12 tion.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply with respect to applications for
15 disability insurance benefits filed on or after January 1,
16 2019.

17 **SEC. 203. UPDATING DATA ON WORK WHICH EXISTS IN NA-**
18 **TIONAL ECONOMY.**

19 Not later than 5 years after the date of the enact-
20 ment of this Act, and every year thereafter, the Commis-
21 sioner of Social Security shall—

22 (1) update the data used by the Commissioner
23 to determine the jobs which exist in the national
24 economy (within the meaning of section
25 223(d)(2)(A) of the Social Security Act (42 U.S.C.

1 423(d)(2)(A))), to ensure that such data reflects the
2 full range of work which exists in the national econ-
3 omy, including newly-created jobs in emerging indus-
4 tries; and

5 (2) submit to Congress a report describing each
6 such update.

7 **TITLE III—CONTINUING** 8 **DISABILITY REVIEWS**

9 **SEC. 301. STUDY ON IMPACT OF MEDICAL REVIEW STAND-** 10 **ARD.**

11 (a) IN GENERAL.—The Commissioner of Social Secu-
12 rity shall conduct a study with respect to a large number
13 of beneficiaries—

14 (1) to determine whether the Social Security
15 Administration would consider such beneficiaries to
16 be disabled using the Initial Disability Standard
17 rather than the Medical Improvement Review Stand-
18 ard (MIRS) during continuing disability reviews;
19 and

20 (2) to analyze the cause of any difference of re-
21 sult between the two standards.

22 (b) REPORT.—Not later than 180 days after the date
23 of the enactment of this Act, the Commissioner of Social
24 Security shall submit a report to Congress on the study
25 described in subsection (a).

1 **SEC. 302. ADDITIONAL TRAINING RELATING TO MIRS EX-**
2 **CEPTIONS.**

3 The Commissioner of Social Security shall—

4 (1) provide training, as the Commissioner de-
5 termines to be appropriate, to employees of State
6 disability determination services and to Federal per-
7 sonnel involved in making disability determinations
8 on the application of exceptions to the Medical Im-
9 provement Review Standard (MIRS) during con-
10 tinuing disability reviews; and

11 (2) establish a procedure by which such employ-
12 ees and Federal personnel may request assistance
13 from the Social Security Administration in the appli-
14 cation of such exceptions.

15 **SEC. 303. INCREASED FREQUENCY OF CONTINUING DIS-**
16 **ABILITY REVIEWS.**

17 (a) IN GENERAL.—Section 221(i) of the Social Secu-
18 rity Act (42 U.S.C. 421(i)) is amended—

19 (1) in paragraphs (1) and (2), by striking “3
20 years” each place it appears and inserting “2
21 years”; and

22 (2) in paragraph (1), by striking “at such times
23 as the Commissioner of Social Security determines
24 to be appropriate” and inserting “at least every 7
25 years”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply with respect to applications for
3 disability insurance benefits filed on or after January 1,
4 2019.

5 **SEC. 304. COMMUNICATION RELATING TO TERMINATION**
6 **OF BENEFITS.**

7 (a) IN GENERAL.—The Commissioner of Social Secu-
8 rity shall ensure that each award letter informing an indi-
9 vidual of the individual’s initial entitlement to disability
10 insurance benefits under title II of the Social Security Act
11 includes—

12 (1) a description of all of the conditions under
13 which such benefits may be terminated; and

14 (2) except in any case in which a finding has
15 been made that the individual’s disability is perma-
16 nent, an explanation that disability insurance bene-
17 fits are temporary and that the individual is ex-
18 pected to return to work after medical improvement
19 has occurred.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply with respect to individuals who
22 become entitled to disability insurance benefits on or after
23 January 1, 2019.

1 **SEC. 305. COMMUNICATION RELATING TO REPORTING RE-**
2 **QUIREMENTS.**

3 The Commissioner of Social Security shall ensure
4 that each communication from the Social Security Admin-
5 istration made to an individual entitled to disability insur-
6 ance benefits includes a description of the individual's re-
7 sponsibility to report to the Commissioner of Social Secu-
8 rity any change of circumstance that may affect the indi-
9 vidual's entitlement to such benefits.

10 **TITLE IV—BENEFITS**

11 **SEC. 401. ESTABLISHMENT OF ANNUAL POVERTY GUIDE-**
12 **LINE BASED DISABILITY INSURANCE BENE-**
13 **FITS.**

14 (a) IN GENERAL.—Section 223(a) of the Social Secu-
15 rity Act (42 U.S.C. 423(a)(2)) is amended by inserting
16 after paragraph (2) the following new paragraph:

17 “(3) In the case of an individual who initially
18 becomes entitled to disability benefits in the calendar
19 year 2019 or any subsequent calendar year, and ex-
20 cept as provided in section 202(q) of this title, such
21 individual's disability insurance benefit for any
22 month shall be one-twelfth of the most recently pub-
23 lished annual poverty guideline for an individual (as
24 updated annually in the Fed. Reg. by the Depart-
25 ment of Health and Human Services under the au-

1 thority of section 673(2) of the Omnibus Budget
2 Reconciliation Act of 1981).”.

3 (b) EARLY RETIREMENT BENEFIT REDUCTION.—
4 Section 202(q)(2) of the Social Security Act (42 U.S.C.
5 423(a)(2)) is amended by striking subsection (q)(2) and
6 replacing it with the following:

7 “(2) If an individual is entitled to a disability
8 insurance benefit for a month after a month for
9 which such individual was entitled to an old-age in-
10 surance benefit, such disability insurance benefit for
11 each month shall be—

12 “(A) if such individual initially became en-
13 titled to disability benefits in any calendar year
14 before 2019, reduced by the amount such old-
15 age insurance benefit would be reduced under
16 paragraphs (1) and (4) for such month had
17 such individual attained retirement age (as de-
18 fined in section 416(l) of this title) in the first
19 month for which he most recently became enti-
20 tled to a disability insurance benefit; or

21 “(B) if such individual initially became en-
22 titled to disability benefits in the calendar year
23 2019 or any subsequent calendar year, equal to
24 the higher of the individual’s reduced old-age
25 insurance benefit under paragraph (1) and the

1 individual’s disability insurance benefit under
 2 section 423(a)(3).”.

3 (c) CONFORMING AMENDMENT.—Section 223(a)(2)
 4 of the Social Security Act (42 U.S.C. 423(a)(2)) is amend-
 5 ed by striking “Except” and inserting “In the case of an
 6 individual who initially becomes entitled for disability ben-
 7 efits in any calendar year before 2019, and except”.

8 **SEC. 402. RETROACTIVE PAYMENT OF BENEFITS.**

9 (a) IN GENERAL.—Section 223(b) of the Social Secu-
 10 rity Act (42 U.S.C. 423(b)) is amended by striking “12th
 11 month” and inserting “6th month”.

12 (b) EFFECTIVE DATE.—The amendment made by
 13 subsection (a) shall apply with respect to applications for
 14 disability insurance benefits filed on or after January 1,
 15 2019.

16 **SEC. 403. INCLUSION OF UNEARNED INCOME IN DETER-**
 17 **MINATION OF SUBSTANTIAL GAINFUL ACTIV-**
 18 **ITY.**

19 (a) IN GENERAL.—Section 223(d)(4) of the Social
 20 Security Act (42 U.S.C. 423(d)(4)), as amended by sec-
 21 tion 3(b), is further amended by adding at the end the
 22 following:

23 “(D)(i) If the amount of unearned income (as defined
 24 in section 1612) of an individual for a month is equal to
 25 or greater than the monthly income limit for such month,

1 the individual shall be deemed to have engaged in substan-
2 tial gainful activity for such month.

3 “(ii) For purposes of this subparagraph, the monthly
4 income limit is the amount of earnings derived from serv-
5 ices, prescribed by the Commissioner under regulations
6 issued pursuant to subparagraph (A), sufficient to dem-
7 onstrate an individual’s ability to engage in substantial
8 gainful activity for a month.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply with respect to monthly insur-
11 ance benefits paid for months beginning after the date
12 that is 1 year after the date of the enactment of this Act.

○