

112TH CONGRESS
1ST SESSION

H. R. 539

To amend title II of the Social Security Act and the Internal Revenue Code of 1986 to make improvements in the old-age, survivors, and disability insurance program, to provide for cash relief for years for which annual COLAs do not take effect under certain cash benefit programs, and to provide for Social Security benefit protection.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2011

Mr. DEUTCH (for himself, Mr. FRANK of Massachusetts, Mr. HASTINGS of Florida, Mr. CARNAHAN, Ms. PINGREE of Maine, and Mr. CRITZ) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, Rules, Transportation and Infrastructure, and Veterans' Affairs, 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 and the Internal Revenue Code of 1986 to make improvements in the old-age, survivors, and disability insurance program, to provide for cash relief for years for which annual COLAs do not take effect under certain cash benefit programs, and to provide for Social Security benefit protection.

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

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may cited as the “Pre-
3 serving Our Promise to Seniors Act”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of
5 this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—COST-OF-LIVING INCREASES

Sec. 101. Consumer price index for elderly consumers.

Sec. 102. Computation of cost-of-living increases.

TITLE II—GUARANTEED SUPPLEMENTAL PAYMENT

Sec. 201. Relief payments to recipients of social security, supplemental security income, railroad retirement benefits, and veterans disability compensation or pension benefits.

TITLE III—CONTRIBUTION AND BENEFIT FAIRNESS

Sec. 301. Determination of wages and self-employment income above contribu-
tion and benefit base after 2011.

Sec. 302. Inclusion of surplus earnings in social security benefit formula.

TITLE IV—SOCIAL SECURITY BENEFIT PROTECTION

Sec. 401. Point of order against privatization of Social Security or reductions
in Social Security benefits.

6 **TITLE I—COST-OF-LIVING**
7 **INCREASES**

8 **SEC. 101. CONSUMER PRICE INDEX FOR ELDERLY CON-**
9 **SUMERS.**

10 (a) **IN GENERAL.**—The Bureau of Labor Statistics
11 of the Department of Labor shall prepare and publish an
12 index for each calendar month to be known as the “Con-
13 sumer Price Index for Elderly Consumers” that indicates
14 changes over time in expenditures for consumption which
15 are typical for individuals in the United States who are
16 62 years of age or older.

1 (b) EFFECTIVE DATE.—Subsection (a) shall apply
2 with respect to calendar months ending on or after July
3 31 of the calendar year following the calendar year in
4 which this Act is enacted.

5 (c) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated such sums as are nec-
7 essary to carry out the provisions of this section.

8 **SEC. 102. COMPUTATION OF COST-OF-LIVING INCREASES.**

9 (a) IN GENERAL.—Section 215(i) of the Social Secu-
10 rity Act (42 U.S.C. 415(i)) is amended—

11 (1) in paragraph (1)(G), by inserting before the
12 period the following: “, and, solely with respect to
13 any monthly insurance benefit payable under this
14 title to an individual who has attained age 62, effec-
15 tive for adjustments under this subsection to the pri-
16 mary insurance amount on which such benefit is
17 based (or to any such benefit under section 227 or
18 228) occurring after such individual attains such
19 age, the applicable Consumer Price Index shall be
20 deemed to be the Consumer Price Index for Elderly
21 Consumers and such primary insurance amount
22 shall be deemed adjusted under this subsection using
23 such Index”; and

24 (2) in paragraph (4), by striking “and by sec-
25 tion 9001” and inserting “, by section 9001”, and

1 by inserting after “1986,” the following: “and by
2 section 102 of the Preserving Our Promise to Sen-
3 iors Act,”.

4 (b) CONFORMING AMENDMENTS IN APPLICABLE
5 FORMER LAW.—Section 215(i)(1)(C) of such Act, as in
6 effect in December 1978 and applied in certain cases
7 under the provisions of such Act in effect after December
8 1978, is amended by inserting before the period the fol-
9 lowing: “, and, solely with respect to any monthly insur-
10 ance benefit payable under this title to an individual who
11 has attained age 62, effective for adjustments under this
12 subsection to the primary insurance amount on which such
13 benefit is based (or to any such benefit under section 227
14 or 228) occurring after such individual attains such age,
15 the applicable Consumer Price Index shall be deemed to
16 be the Consumer Price Index for Elderly Consumers and
17 such primary insurance amount shall be deemed adjusted
18 under this subsection using such Index”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall apply to determinations made with re-
21 spect to cost-of-living computation quarters (as defined in
22 section 215(i)(1)(B) of the Social Security Act (42 U.S.C.
23 415(i)(1)(B))) ending on or after September 30 of the sec-
24 ond calendar year following the calendar year in which this
25 Act is enacted.

1 **TITLE II—GUARANTEED**
2 **SUPPLEMENTAL PAYMENT**

3 **SEC. 201. RELIEF PAYMENTS TO RECIPIENTS OF SOCIAL SE-**
4 **CURITY, SUPPLEMENTAL SECURITY INCOME,**
5 **RAILROAD RETIREMENT BENEFITS, AND VET-**
6 **ERANS DISABILITY COMPENSATION OR PEN-**
7 **SION BENEFITS.**

8 (a) **AUTHORITY TO MAKE PAYMENTS.—**

9 (1) **ELIGIBILITY.—**

10 (A) **IN GENERAL.—**The Secretary of the
11 Treasury shall disburse a cash payment equal
12 to \$250 (or such greater amount as may take
13 effect under paragraph (2)), for each non-
14 COLA year of a program providing benefit pay-
15 ments described in clause (i), (ii), or (iii) of
16 subparagraph (C) or in subparagraph (D), to
17 each individual who, for any month during such
18 year, is entitled to such a benefit payment
19 under such program.

20 (B) **NON-COLA YEAR.—**For purposes of
21 this section, the term “non-COLA year” means,
22 in connection with a program referred to in
23 subparagraph (A), a 12-month period, ending
24 with or during any calendar year after 2009,
25 for which—

1 (i) a cost-of-living adjustment is gen-
2 erally provided under such program in re-
3 lation to an index; and

4 (ii) such an adjustment does not take
5 effect by reason of the performance of such
6 index.

7 (C) BENEFIT PAYMENT DESCRIBED.—For
8 purposes of subparagraph (A):

9 (i) TITLE II BENEFIT.—A benefit pay-
10 ment described in this clause is a monthly
11 insurance benefit payable (without regard
12 to sections 202(j)(1) and 223(b) of the So-
13 cial Security Act (42 U.S.C. 402(j)(1),
14 423(b)) under—

15 (I) section 202(a) of such Act
16 (42 U.S.C. 402(a));

17 (II) section 202(b) of such Act
18 (42 U.S.C. 402(b));

19 (III) section 202(c) of such Act
20 (42 U.S.C. 402(c));

21 (IV) section 202(d)(1)(B)(ii) of
22 such Act (42 U.S.C.
23 402(d)(1)(B)(ii));

24 (V) section 202(e) of such Act
25 (42 U.S.C. 402(e));

1 (VI) section 202(f) of such Act
2 (42 U.S.C. 402(f));

3 (VII) section 202(g) of such Act
4 (42 U.S.C. 402(g));

5 (VIII) section 202(h) of such Act
6 (42 U.S.C. 402(h));

7 (IX) section 223(a) of such Act
8 (42 U.S.C. 423(a));

9 (X) section 227 of such Act (42
10 U.S.C. 427); or

11 (XI) section 228 of such Act (42
12 U.S.C. 428).

13 (ii) RAILROAD RETIREMENT BEN-
14 EFIT.—A benefit payment described in this
15 clause is a monthly annuity or pension
16 payment payable (without regard to section
17 5(a)(ii) of the Railroad Retirement Act of
18 1974 (45 U.S.C. 231d(a)(ii))) under—

19 (I) section 2(a)(1) of such Act
20 (45 U.S.C. 231a(a)(1));

21 (II) section 2(c) of such Act (45
22 U.S.C. 231a(c));

23 (III) section 2(d)(1)(i) of such
24 Act (45 U.S.C. 231a(d)(1)(i));

1 (IV) section 2(d)(1)(ii) of such
2 Act (45 U.S.C. 231a(d)(1)(ii));

3 (V) section 2(d)(1)(iii)(C) of such
4 Act to an adult disabled child (45
5 U.S.C. 231a(d)(1)(iii)(C));

6 (VI) section 2(d)(1)(iv) of such
7 Act (45 U.S.C. 231a(d)(1)(iv));

8 (VII) section 2(d)(1)(v) of such
9 Act (45 U.S.C. 231a(d)(1)(v)); or

10 (VIII) section 7(b)(2) of such Act
11 (45 U.S.C. 231f(b)(2)) with respect to
12 any of the benefit payments described
13 in clause (i) of this subparagraph.

14 (iii) VETERANS BENEFIT.—A benefit
15 payment described in this clause is a com-
16 pensation or pension payment payable
17 under—

18 (I) section 1110, 1117, 1121,
19 1131, 1141, or 1151 of title 38,
20 United States Code;

21 (II) section 1310, 1312, 1313,
22 1315, 1316, or 1318 of title 38,
23 United States Code;

1 (III) section 1513, 1521, 1533,
2 1536, 1537, 1541, 1542, or 1562 of
3 title 38, United States Code; or

4 (IV) section 1805, 1815, or 1821
5 of title 38, United States Code,

6 to a veteran, surviving spouse, child, or
7 parent as described in paragraph (2), (3),
8 (4)(A)(ii), or (5) of section 101, title 38,
9 United States Code, who received that ben-
10 efit during any month within the 3 month
11 period ending with the month which ends
12 prior to the month that includes the date
13 of the enactment of this Act.

14 (D) SSI CASH BENEFIT DESCRIBED.—A
15 SSI cash benefit described in this subparagraph
16 is a cash benefit payable under section 1611
17 (other than under subsection (e)(1)(B) of such
18 section) or 1619(a) of the Social Security Act
19 (42 U.S.C. 1382, 1382h).

20 (2) COST-OF-LIVING ADJUSTMENT TO PAY-
21 MENT.—

22 (A) IN GENERAL.—Effective for each 12-
23 month period referred to in paragraph (1)(B)(i)
24 in connection with a program referred to in
25 paragraph (1)(A) (irrespective of whether such

1 period is a non-COLA year) ending with or dur-
2 ing a calendar year after 2011, the dollar
3 amount determined under this paragraph shall
4 be substituted for the dollar amount specified in
5 paragraph (1)(A). The dollar amount shall be
6 determined by multiplying the dollar amount
7 specified in paragraph (1)(A) by the quotient
8 obtained by dividing—

9 (i) the Consumer Price Index for El-
10 derly Consumers (published by the Bureau
11 of Labor Statistics of the Department of
12 Labor) for the calendar quarter ending
13 with September preceding the 12-month
14 period for which the determination is
15 made, by

16 (ii) such Index for the calendar quar-
17 ter ending with September 2010.

18 (B) DETERMINATION OF QUARTERLY
19 INDEX.—For purposes of subparagraph (A), the
20 Consumer Price Index for Elderly Consumers
21 for a calendar quarter shall be the arithmetical
22 mean of such index for the 3 months in such
23 quarter.

24 (3) REQUIREMENT.—A payment shall be made
25 under paragraph (1) only to individuals who reside

1 in 1 of the 50 States, the District of Columbia,
2 Puerto Rico, Guam, the United States Virgin Is-
3 lands, American Samoa, or the Northern Mariana
4 Islands. For purposes of the preceding sentence, the
5 determination of the individual's residence shall be
6 based on the current address of record under a pro-
7 gram specified in paragraph (1).

8 (4) NO DOUBLE PAYMENTS.—An individual
9 shall be paid only 1 payment under this section, re-
10 gardless of whether the individual is entitled to, or
11 eligible for, more than 1 benefit or cash payment de-
12 scribed in paragraph (1).

13 (5) LIMITATION.—A payment under this section
14 shall not be made—

15 (A) in the case of an individual entitled to
16 a benefit specified in paragraph (1)(C)(i) or
17 paragraph (1)(C)(ii)(VIII) if, for the most re-
18 cent month of such individual's entitlement in
19 the 3-month period described in paragraph (1),
20 such individual's benefit under such paragraph
21 was not payable by reason of subsection (x) or
22 (y) of section 202 of the Social Security Act (42
23 U.S.C. 402) or section 1129A of such Act (42
24 U.S.C. 1320a–8a);

1 (B) in the case of an individual entitled to
2 a benefit specified in paragraph (1)(C)(iii) if,
3 for the most recent month of such individual's
4 entitlement in the 3 month period described in
5 paragraph (1), such individual's benefit under
6 such paragraph was not payable, or was re-
7 duced, by reason of section 1505, 5313, or
8 5313B of title 38, United States Code;

9 (C) in the case of an individual entitled to
10 a benefit specified in paragraph (1)(D) if, for
11 such most recent month, such individual's ben-
12 efit under such paragraph was not payable by
13 reason of subsection (e)(1)(A) or (e)(4) of sec-
14 tion 1611 (42 U.S.C. 1382) or section 1129A
15 of such Act (42 U.S.C. 1320a-8a); or

16 (D) in the case of any individual whose
17 date of death occurs before the date on which
18 the individual is certified under subsection (b)
19 to receive a payment under this section.

20 (6) TIMING AND MANNER OF PAYMENTS.—The
21 Secretary of the Treasury shall commence disbursing
22 payments under this section with respect to a non-
23 COLA year at the earliest practicable date but in no
24 event later than 120 days after the later of the date
25 of the enactment of this Act or the end of such non-

1 COLA year. The Secretary of the Treasury may dis-
2 burse any payment electronically to an individual in
3 such manner as if such payment was a benefit pay-
4 ment or cash benefit to such individual under the
5 applicable program described in subparagraph (C) or
6 (D) of paragraph (1).

7 (b) IDENTIFICATION OF RECIPIENTS.—The Commis-
8 sioner of Social Security, the Railroad Retirement Board,
9 and the Secretary of Veterans Affairs shall certify the in-
10 dividuals entitled to receive payments under this section
11 and provide the Secretary of the Treasury with the infor-
12 mation needed to disburse such payments. A certification
13 of an individual shall be unaffected by any subsequent de-
14 termination or redetermination of the individual's entitle-
15 ment to, or eligibility for, a benefit specified in subpara-
16 graph (C) or (D) of subsection (a)(1).

17 (c) TREATMENT OF PAYMENTS.—

18 (1) PAYMENT TO BE DISREGARDED FOR PUR-
19 POSES OF ALL FEDERAL AND FEDERALLY ASSISTED
20 PROGRAMS.—A payment under subsection (a) shall
21 not be regarded as income and shall not be regarded
22 as a resource for the month of receipt and the fol-
23 lowing 9 months, for purposes of determining the
24 eligibility of the recipient (or the recipient's spouse
25 or family) for benefits or assistance, or the amount

1 or extent of benefits or assistance, under any Fed-
2 eral program or under any State or local program fi-
3 nanced in whole or in part with Federal funds.

4 (2) PAYMENT NOT CONSIDERED INCOME FOR
5 PURPOSES OF TAXATION.—A payment under sub-
6 section (a) shall not be considered as gross income
7 for purposes of the Internal Revenue Code of 1986.

8 (3) PAYMENTS PROTECTED FROM ASSIGN-
9 MENT.—The provisions of sections 207 and
10 1631(d)(1) of the Social Security Act (42 U.S.C.
11 407, 1383(d)(1)), section 14(a) of the Railroad Re-
12 tirement Act of 1974 (45 U.S.C. 231m(a)), and sec-
13 tion 5301 of title 38, United States Code, shall
14 apply to any payment made under subsection (a) as
15 if such payment was a benefit payment or cash ben-
16 efit to such individual under the applicable program
17 described in subparagraph (C) or (D) of subsection
18 (a)(1).

19 (4) PAYMENTS SUBJECT TO OFFSET.—Notwith-
20 standing paragraph (3), for purposes of section
21 3716 of title 31, United States Code, any payment
22 made under this section shall not be considered a
23 benefit payment or cash benefit made under the ap-
24 plicable program described in subparagraph (C) or

1 (D) of subsection (a)(1) and all amounts paid shall
2 be subject to offset to collect delinquent debts.

3 (d) PAYMENT TO REPRESENTATIVE PAYEES AND FI-
4 DUCIARIES.—

5 (1) IN GENERAL.—In any case in which an in-
6 dividual who is entitled to a payment under sub-
7 section (a) and whose benefit payment or cash ben-
8 efit described in paragraph (1) of that subsection is
9 paid to a representative payee or fiduciary, the pay-
10 ment under subsection (a) shall be made to the indi-
11 vidual's representative payee or fiduciary and the en-
12 tire payment shall be used only for the benefit of the
13 individual who is entitled to the payment.

14 (2) APPLICABILITY.—

15 (A) PAYMENT ON THE BASIS OF A TITLE
16 II OR SSI BENEFIT.—Section 1129(a)(3) of the
17 Social Security Act (42 U.S.C. 1320a-8(a)(3))
18 shall apply to any payment made on the basis
19 of an entitlement to a benefit specified in para-
20 graph (1)(C)(i) or (1)(D) of subsection (a) in
21 the same manner as such section applies to a
22 payment under title II or XVI of such Act.

23 (B) PAYMENT ON THE BASIS OF A RAIL-
24 ROAD RETIREMENT BENEFIT.—Section 13 of
25 the Railroad Retirement Act (45 U.S.C. 2311)

1 shall apply to any payment made on the basis
2 of an entitlement to a benefit specified in para-
3 graph (1)(C)(ii) of subsection (a) in the same
4 manner as such section applies to a payment
5 under such Act.

6 (C) PAYMENT ON THE BASIS OF A VET-
7 ERANS BENEFIT.—Sections 5502, 6106, and
8 6108 of title 38, United States Code, shall
9 apply to any payment made on the basis of an
10 entitlement to a benefit specified in paragraph
11 (1)(C)(iii) of subsection (a) in the same manner
12 as those sections apply to a payment under that
13 title.

14 (e) APPROPRIATION.—Out of any sums in the Treas-
15 ury of the United States not otherwise appropriated, the
16 following sums are appropriated for each fiscal year begin-
17 ning on or after October 1, 2011, to remain available until
18 expended, to carry out this section:

19 (1) For the Secretary of the Treasury, such
20 sums as may be necessary for administrative costs
21 incurred in carrying out this section.

22 (2) For the Commissioner of Social Security—
23 (A) such sums as may be necessary for
24 payments to individuals certified by the Com-

1 missioner of Social Security as entitled to re-
2 ceive a payment under this section; and

3 (B) such sums as may be certified by the
4 Commissioner to the Secretary of the Treasury
5 for the Social Security Administration's Limita-
6 tion on Administrative Expenses as necessary
7 for administrative costs incurred in carrying out
8 this section.

9 (3) For the Railroad Retirement Board—

10 (A) such sums as may be necessary for
11 payments to individuals certified by the Rail-
12 road Retirement Board as entitled to receive a
13 payment under this section; and

14 (B) such sums as may be certified by the
15 Board to the Secretary of the Treasury for the
16 Railroad Retirement Board's Limitation on Ad-
17 ministration as necessary for administrative
18 costs incurred in carrying out this section.

19 (4)(A) For the Secretary of Veterans Affairs—

20 (i) such sums as may be necessary for
21 the Compensation and Pensions account,
22 for payments to individuals certified by the
23 Secretary of Veterans Affairs as entitled to
24 receive a payment under this section; and

1 (ii) such sums as may be certified by
 2 the Secretary of Veterans Affairs to the
 3 Secretary of the Treasury for the Informa-
 4 tion Systems Technology account and for
 5 the General Operating Expenses account
 6 as necessary for administrative costs in-
 7 curred in carrying out this section.

8 (B) The Department of Veterans Affairs Com-
 9 pensation and Pensions account shall hereinafter be
 10 available for payments authorized under subsection
 11 (a)(1)(A) to individuals entitled to a benefit payment
 12 described in subsection (a)(1)(C)(iii).

13 **TITLE III—CONTRIBUTION AND**
 14 **BENEFIT FAIRNESS**

15 **SEC. 301. DETERMINATION OF WAGES AND SELF-EMPLOY-**
 16 **MENT INCOME ABOVE CONTRIBUTION AND**
 17 **BENEFIT BASE AFTER 2011.**

18 (a) DETERMINATION OF WAGES ABOVE CONTRIBU-
 19 TION AND BENEFIT BASE AFTER 2011.—

20 (1) AMENDMENTS TO THE INTERNAL REVENUE
 21 CODE OF 1986.—Section 3121 of the Internal Rev-
 22 enue Code of 1986 is amended—

23 (A) in subsection (a)(1), by inserting “the
 24 applicable percentage (determined under sub-

1 section (c)(1)) of” before “that part of the re-
 2 muneration”; and

3 (B) in subsection (c), by striking “(c) IN-
 4 CLUDED AND EXCLUDED SERVICE.—For pur-
 5 poses of this chapter, if” and inserting the fol-
 6 lowing:

7 “(c) SPECIAL RULES FOR WAGES AND EMPLOY-
 8 MENT.—

9 “(1) APPLICABLE PERCENTAGE OF REMUNERA-
 10 TION IN DETERMINING WAGES.—For purposes of
 11 paragraph (1) of subsection (a), the applicable per-
 12 centage for a calendar year, in connection with any
 13 calendar year referred to in such subparagraph,
 14 shall be the percentage determined in accordance
 15 with the following table:

“In the case of:	The ap- plicable per- centage is:
Calendar year 2012	86%
Calendar year 2013	71%
Calendar year 2014	57%
Calendar year 2015	43%
Calendar year 2016	29%
Calendar year 2017	14%
Calendar years after 2017	0%.

16 “(2) INCLUDED AND EXCLUDED SERVICE.—For
 17 purposes of this chapter, if”.

1 (2) AMENDMENTS TO THE SOCIAL SECURITY
2 ACT.—Section 209 of the Social Security Act (42
3 U.S.C. 409) is amended—

4 (A) in subsection (a)(1)(I)—

5 (i) by inserting “and before 2012”
6 after “1974”; and

7 (ii) by inserting “and” after the semi-
8 colon;

9 (B) in subsection (a)(1), by adding at the
10 end the following new subparagraph:

11 “(J) The applicable percentage (deter-
12 mined under subsection (I)) of that part of re-
13 muneration which, after remuneration (other
14 than remuneration referred to in the succeeding
15 subsections of this section) equal to the con-
16 tribution and benefit base (determined under
17 section 230) with respect to employment has
18 been paid to an individual during any calendar
19 year after 2011 with respect to which such con-
20 tribution and benefit base is effective, is paid to
21 such individual during such calendar year;”;
22 and

23 (C) by adding at the end the following new
24 subsection:

1 “(l) For purposes of subparagraph (J) of subsection
 2 (a)(1), the applicable percentage for a calendar year, in
 3 connection with any calendar year referred to in such sub-
 4 paragraph, shall be the percentage determined in accord-
 5 ance with the following table:

“In the case of:	The ap- plicable per- centage is:
Calendar year 2012	86%
Calendar year 2013	71%
Calendar year 2014	57%
Calendar year 2015	43%
Calendar year 2016	29%
Calendar year 2017	14%
Calendar years after 2017	0%”.

6 (3) EFFECTIVE DATE.—The amendments made
 7 by this subsection shall apply with respect to remu-
 8 nation paid in calendar years after 2011.

9 (b) DETERMINATION OF SELF-EMPLOYMENT IN-
 10 COME ABOVE CONTRIBUTION AND BENEFIT BASE AFTER
 11 2011.—

12 (1) AMENDMENTS TO THE INTERNAL REVENUE
 13 CODE OF 1986.—Section 1402 of the Internal Rev-
 14 enue Code of 1986 is amended—

15 (A) in subsection (b)(1), by inserting “an
 16 amount equal to the applicable percentage (as
 17 determined under subsection (d)(2)) of” before
 18 “that part of the net earnings from self-employ-
 19 ment”; and

1 (B) in subsection (d)—
 2 (i) by striking “(d) EMPLOYEE AND
 3 WAGES.—The term” and inserting the fol-
 4 lowing:

5 “(d) RULES AND DEFINITIONS.—

6 “(1) EMPLOYEE AND WAGES.—The term”; and
 7 (ii) by adding at the end the fol-
 8 lowing:

9 “(2) APPLICABLE PERCENTAGE OF NET EARN-
 10 INGS FROM SELF-EMPLOYMENT IN DETERMINING
 11 SELF-EMPLOYMENT INCOME.—For purposes of para-
 12 graph (1) of subsection (b), the applicable percent-
 13 age for a taxable year beginning in any calendar
 14 year referred to in such paragraph shall be the per-
 15 centage determined in accordance with the following
 16 table:

“In the case of:	The ap- plicable per- centage is:
Calendar year 2012	86%
Calendar year 2013	71%
Calendar year 2014	57%
Calendar year 2015	43%
Calendar year 2016	29%
Calendar year 2017	14%
Calendar years after 2017	0%”.

17 (2) AMENDMENTS TO THE SOCIAL SECURITY
 18 ACT.—Section 211 of the Social Security Act (42
 19 U.S.C. 411) is amended—

1 (A) in subsection (b)(1)(I)—

2 (i) by striking “or” after the semi-
3 colon; and

4 (ii) by inserting “and before 2012”
5 after “1974”;

6 (B) in subsection (b)—

7 (i) by redesignating paragraph (2) as
8 paragraph (3); and

9 (ii) by inserting after paragraph (1)
10 the following:

11 “(2) For any taxable year beginning in any cal-
12 endar year after 2011, an amount equal to the appli-
13 cable percentage (as determined under subsection
14 (1)) of that part of net earnings from self-employ-
15 ment which is in excess of (A) an amount equal to
16 the contribution and benefit base (determined under
17 section 230) that is effective for such calendar year,
18 minus (B) the amount of the wages paid to such in-
19 dividual during such taxable year; or”;

20 (C) by adding at the end the following:

21 “(1) For purposes of paragraph (2) of subsection (b),
22 the applicable percentage for a taxable year beginning in
23 any calendar year referred to in such paragraph, shall be
24 the percentage determined in accordance with the fol-
25 lowing table:

“In the case of:	The applicable percentage is:
Calendar year 2012	86%
Calendar year 2013	71%
Calendar year 2014	57%
Calendar year 2015	43%
Calendar year 2016	29%
Calendar year 2017	14%
Calendar years after 2017	0%”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply with respect to taxable
3 years beginning during or after calendar year 2012.

4 **SEC. 302. INCLUSION OF SURPLUS EARNINGS IN SOCIAL SE-**
5 **CURITY BENEFIT FORMULA.**

6 (a) INCLUSION OF SURPLUS AVERAGE INDEXED
7 MONTHLY EARNINGS IN DETERMINATION OF PRIMARY
8 INSURANCE AMOUNTS.—

9 (1) IN GENERAL.—Section 215(a)(1)(A) of the
10 Social Security Act (42 U.S.C. 415(a)(1)(A)) is
11 amended—

12 (A) in clauses (i), (ii), and (iii), by insert-
13 ing “basic” before “average indexed monthly
14 earnings” each place it appears;

15 (B) in clause (ii), by striking “and” at the
16 end; and

17 (C) by inserting after clause (iii) the fol-
18 lowing new clauses:

1 “(iv) 3 percent of the individual’s surplus aver-
2 age indexed monthly earnings to the extent such
3 surplus average indexed monthly earnings do not ex-
4 ceed the excess of the amount established for pur-
5 poses of this clause by subparagraph (B) over $\frac{1}{12}$
6 of the contribution and benefit base for the last of
7 such individual’s computation base years, and

8 “(v) 0.25 percent of the sum of the individual’s
9 surplus average indexed monthly earnings plus $\frac{1}{12}$
10 of the contribution and benefit base for the last of
11 such individual’s computation base years, to the ex-
12 tent such sum exceeds the amount established for
13 purposes of clause (iv) by subparagraph (B).”.

14 (2) BEND POINT FOR SURPLUS EARNINGS.—
15 Section 215(a)(1)(B) of such Act (42 U.S.C.
16 415(a)(1)(B)) is amended—

17 (A) in clause (ii), by striking “the amounts
18 so established” and inserting “the amounts es-
19 tablished for purposes of clauses (i) and (ii) of
20 subparagraph (A)”;

21 (B) by redesignating clause (iii) as clause
22 (v);

23 (C) in clause (v) (as redesignated), by in-
24 serting “or (iv)” after “clause (ii)”; and

1 (D) by inserting after clause (ii) the fol-
2 lowing new clauses:

3 “(iii) For individuals who initially become eligible for
4 old-age or disability insurance benefits, or who die (before
5 becoming eligible for such benefits), in the calendar year
6 2012, the amount established for purposes of clause (iv)
7 of subparagraph (A) shall be \$11,933.

8 “(iv) For individuals who initially become eligible for
9 old-age or disability insurance benefits, or who die (before
10 becoming eligible for such benefits), in any calendar year
11 after 2012, the amount established for purposes of clause
12 (iv) of subparagraph (A) shall equal the product of the
13 amount established with respect to the calendar year 2012
14 under clause (iii) of this subparagraph and the quotient
15 obtained by dividing—

16 “(I) the national average wage index (as de-
17 fined in section 209(k)(1)) for the second calendar
18 year preceding the calendar year for which the de-
19 termination is made, by

20 “(II) the national average wage index (as so de-
21 fined) for 2010.”.

22 (b) BASIC AIME AND SURPLUS AIME.—

23 (1) BASIC AIME.—Section 215(b)(1) of such
24 Act (42 U.S.C. 415(b)(1)) is amended—

1 (A) by inserting “basic” before “average”;
2 and

3 (B) in subparagraph (A), by striking
4 “paragraph (3)” and inserting “paragraph
5 (3)(A)” and by inserting before the comma the
6 following: “to the extent such total does not ex-
7 ceed the contribution and benefit base for the
8 applicable year”.

9 (2) SURPLUS AIME.—

10 (A) IN GENERAL.—Section 215(b)(1) of
11 such Act (as amended by paragraph (1)) is
12 amended—

13 (i) by redesignating subparagraphs
14 (A) and (B) as clauses (i) and (ii), respec-
15 tively;

16 (ii) by inserting “(A)” after “(b)(1)”;
17 and

18 (iii) by adding at the end the fol-
19 lowing new subparagraph:

20 “(B)(i) An individual’s surplus average indexed
21 monthly earnings shall be equal to the quotient obtained
22 by dividing—

23 “(I) the total (after adjustment under para-
24 graph (3)(B)) of such individual’s surplus earnings
25 (determined under clause (ii)) for such individual’s

1 benefit computation years (determined under para-
2 graph (2)), by

3 “(II) the number of months in those years.

4 “(ii) For purposes of clause (i) and paragraph (3)(B),
5 an individual’s surplus earnings for a benefit computation
6 year are the total of such individual’s wages paid in and
7 self-employment income credited to such benefit computa-
8 tion year, to the extent such total (before adjustment
9 under paragraph (3)(B)) exceeds the contribution and
10 benefit base for such year.”.

11 (B) CONFORMING AMENDMENT.—The
12 heading for section 215(b) of such Act is
13 amended by striking “Average Indexed Monthly
14 Earnings” and inserting “Basic Average In-
15 dexed Monthly Earnings; Surplus Average In-
16 dexed Monthly Earnings”.

17 (3) ADJUSTMENT OF SURPLUS EARNINGS FOR
18 PURPOSES OF DETERMINING SURPLUS AIME.—Sec-
19 tion 215(b)(3) of such Act (42 U.S.C. 415(b)(3)) is
20 amended—

21 (A) in subparagraph (A), by striking “sub-
22 subparagraph (B)” and inserting “subparagraph
23 (C)” and by inserting “and determination of
24 basic average indexed monthly income” after
25 “paragraph (2)”;

1 (B) by redesignating subparagraph (B) as
2 subparagraph (C); and

3 (C) by inserting after subparagraph (A)
4 the following new subparagraph:

5 “(B) For purposes of determining under paragraph
6 (1)(B) an individual’s surplus average indexed monthly
7 earnings, the individual’s surplus earnings (described in
8 paragraph (2)(B)(ii)) for a benefit computation year shall
9 be deemed to be equal to the product of—

10 “(i) the individual’s surplus earnings for such
11 year (as determined without regard to this subpara-
12 graph), and

13 “(ii) the quotient described in subparagraph
14 (A)(ii).”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply with respect to individuals who ini-
17 tially become eligible (within the meaning of section
18 215(a)(3)(B) of the Social Security Act) for old-age or dis-
19 ability insurance benefits under title II of the Social Secu-
20 rity Act, or who die (before becoming eligible for such ben-
21 efits), in any calendar year after 2011.

1 **TITLE IV—SOCIAL SECURITY**
2 **BENEFIT PROTECTION**

3 **SEC. 401. POINT OF ORDER AGAINST PRIVATIZATION OF**
4 **SOCIAL SECURITY OR REDUCTIONS IN SO-**
5 **CIAL SECURITY BENEFITS.**

6 (a) IN GENERAL.—It shall not be in order in the
7 House of Representatives or the Senate to consider any
8 bill, joint resolution, amendment, motion, or conference re-
9 port if the enactment of that bill or resolution, as reported,
10 the adoption and enactment of that amendment, or the
11 enactment of that bill or resolution in the form rec-
12 ommended in that conference report would have the effect
13 of—

14 (1) establishing or maintaining a program—

15 (A) under which benefits under title II of
16 the Social Security Act are reduced, in whole or
17 in part, in connection with contributions made
18 to individual accounts of beneficiaries under
19 such title established or maintained in the pri-
20 vate sector or in connection with returns on in-
21 vestment of amounts credited to such accounts,
22 or

23 (B) which provides for administration of
24 the old-age, survivors, and disability insurance

1 program under such title, in whole or in part,
2 by any entity in the private sector,

3 (2) otherwise reducing benefits under title II of
4 the Social Security Act in the case of any present or
5 future beneficiary below the level of such benefits
6 that would be in effect without the enactment of
7 such bill, resolution, or amendment, or

8 (3) providing for investment of amounts held in
9 the Federal Old-Age and Survivors Insurance Trust
10 Fund and the Federal Disability Insurance Trust
11 Fund in any investment vehicle other than interest-
12 bearing obligations of the United States or obliga-
13 tions guaranteed as to both principal and interest by
14 the United States.

15 (b) WAIVER AND APPEAL.—Subsection (a) may be
16 waived or suspended in the Senate only by an affirmative
17 vote of three-fifths of the Members, duly chosen and
18 sworn. An affirmative vote of three-fifths of the Members
19 of the Senate, duly chosen and sworn, shall be required
20 in the Senate to sustain an appeal of the ruling of the
21 Chair on a point of order raised under this section.

22 (c) EXERCISE OF RULEMAKING POWERS.—The Con-
23 gress adopts the provisions of this section—

24 (1) as an exercise of the rulemaking power of
25 the House of Representatives and the Senate and as

1 such they shall be considered as part of the rules of
2 each House or of that House to which they specifi-
3 cally apply, and these rules shall supersede other
4 rules only to the extent that they are inconsistent
5 with other such rules; and

6 (2) with full recognition of the constitutional
7 right of either the House of Representatives or the
8 Senate to change those rules at any time, in the
9 same manner, and to the same extent as in the case
10 of any other rule of the House of Representatives or
11 the Senate.

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