

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue top and bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The text is centered within the hourglass.

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*Social Security: Substantial Gainful Activity for the Blind*

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**Abstract.** In the Social Security disability program, the level of earnings that constitute "substantial gainful activity" (SGA), and therefore disqualifies a person from receiving benefits, is set by regulation at \$940 a month for 2008. However, for the blind, the law provides a different SGA level, \$1,570 a month for 2008, which is adjusted annually to reflect growth in average wages. This report discusses the reasons for these differing amounts and proposals to change them.

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## CRS Report for Congress

# Social Security: Substantial Gainful Activity for the Blind

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### Summary

In the Social Security disability program, the level of earnings that constitute “substantial gainful activity” (SGA), and therefore disqualifies a person from receiving benefits, is set by regulation at \$940 a month for 2008. However, for the blind, the law provides a different SGA level, \$1,570 a month for 2008, which is adjusted annually to reflect growth in average wages. This report discusses the reasons for these differing amounts and proposals to change them.<sup>1</sup> It will be updated as events warrant.

Under the Social Security law, disabled individuals qualify for benefits only if they are determined to be unable to engage in “substantial gainful activity” (SGA). Under Section 223 (d) of the Social Security Act, the Commissioner of Social Security is given the authority to promulgate regulations prescribing the criteria for determining when earnings demonstrate an individual’s ability to engage in SGA. Since July 1999, the SGA amount is adjusted annually to reflect the growth in average wages. In 2008, this amount is \$940 a month. However, the same section of the law specifies that a different definition of SGA applies to individuals disabled by blindness. These individuals are considered to be engaging in SGA if their earnings exceed \$1,570 a month, adjusted annually to reflect growth in average wages.

This different treatment for the blind began with enactment of P.L. 95-216 in 1977. During consideration of H.R. 9346, the Social Security Amendments of 1977, the Senate adopted by a voice vote an amendment by Senator Bayh that provided disability benefits for blind individuals regardless of their ability to work or of the amount of money they actually earned. The amendment was identical to S. 753, a bill introduced by Senator

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<sup>1</sup> This report was written by former CRS staff member Geoffrey Kollmann and previously updated by April Grady.

Humphrey earlier in the year. Speaking in support of this amendment on the Senate floor, Senator Bayh stated:

Social security disability insurance was designed to partially replace income loss due to a disability. Congress has previously recognized blindness as a distinct and unique condition. Certain economic consequences predictably follow the disability of blindness. It is comparable with the social security insurance concept to protect the blind from these adverse affects. If persons with a high earning capacity can return to work at all after becoming blind, they do so, almost without exception, at a much lower salary, and continue to suffer an adverse impact on their earning power. Moreover, working in a society adapted to vision entails extra costs for supportive services and special devices.<sup>2</sup>

The House-passed version of H.R. 9346 contained no similar provision. In conference, it was agreed that the house would recede with an amendment that struck the provisions of the Senate amendment but provided that the amount of earnings under the test of SGA that would terminate a blind individual's benefits would be increased to the monthly exempt amount for persons at or above the full retirement age (FRA) under the Social Security earnings test.<sup>3</sup> The conferees stated that they were aware that this established a different test of SGA for blind persons than is applied administratively for persons with other disabilities. They went on to say that they did not intend that the new SGA level established for the blind should be applied to other types of disabilities. When the provision became effective in 1978, the SGA for non-blind recipients was \$260 a month; for the blind it became \$334 a month, a difference of about 28%.

In subsequent years, the different SGA amounts occasionally became subject to debate. In 1988, the Social Security Advisory Council found that the preferential treatment for the blind was inappropriate and recommended that for new applicants the SGA level be lowered to that for all other disabled recipients. The Council also recommended that the SGA level for blind persons already on the rolls be frozen at the then-current level (\$700 a month). In 1992, the United States District Court for the District of Wyoming found that the higher SGA amount for the blind was unconstitutional because it violated the guarantee of equal protection under the law. The United States Court of Appeals for the 10<sup>th</sup> Circuit overturned the District Court's ruling, saying that there was a rational basis for Congress to place preferences for blind persons in the law. The Supreme Court refused to review the Appeals Court's decision.

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<sup>2</sup> 123 Cong. Rec. S18786 (daily ed. Nov. 4, 1977) (statement of Sen. Bayh).

<sup>3</sup> The earnings test reduces the benefits of recipients who have not attained the "full retirement age" (FRA — currently age 65 and four months but scheduled to increase to age 67 by 2027) and who earn income from work in excess of an exempt amount. In 2006, the law provides that recipients who receive benefits in a year before the year they attain the FRA may earn up to \$12,480 a year in wages or self-employment income without having their benefits affected. There is a different exempt amount (\$33,240 in 2006) for months preceding the month of attainment of the FRA in the year in which a recipient reaches the FRA. The test does not apply to recipients over the FRA, or to the disabled. The exempt amounts rise each year at the same rate as average wages in the economy. For more on the earnings test and proposals to liberalize or eliminate it, see CRS Report 98-789, *Social Security: Proposed Changes to the Earnings Test*, by Debra Whitman.

In 1996, the General Accounting Office (GAO) was asked to examine whether the legislative rationale for an earnings limit for the blind that was higher than for individuals who have other disabilities was warranted. It concluded that the legislative rationale was based on the assumption that adverse employment experiences for the blind, including high job-related costs and unemployment, were greater than for persons who have other disabilities. However, the GAO found that such experiences do not appear to be unique to the blind compared to other disabled recipients. The GAO repeated this conclusion in a hearing on the topic held by the Social Security Subcommittee of the House Committee on Ways and Means on March 23, 2000.

Also in 1996, when Congress enacted legislation (P.L. 104-121) to increase substantially the earnings test limit for those who have attained retirement age over a period of five years, reaching \$30,000 in 2002, it removed the linkage between the SGA level of the blind and the exempt amount for individuals who have attained the full retirement age. Instead their SGA level continued as before (i.e., adjusted annually to reflect growth in average wages). SGA for the blind is \$1,500 a month in 2007. If the link had not been broken, then the SGA limit for the blind in 2007 would be \$2,870 a month.

During deliberation of P.L. 104-121, advocates of the blind sought to have the link maintained. During the mark up of the bill in the Ways and Means Subcommittee on Social Security, an amendment was offered to do so. The projected cost of \$1.8 billion over seven years led to the proposal being rejected.

On April 7, 2000, President Clinton signed H.R. 5, the Senior Citizens' Freedom to Work Act, which eliminates the Social Security earnings test for recipients who have reached the full retirement age, effective in 2000. The new law (P.L. 106-182) continues the severance between the earnings test and the SGA level of the blind enacted in P.L. 104-121. The Social Security Administration estimates that if the SGA amount for the blind were totally eliminated, as would happen if the linkage were restored, the long-range cost to the program would be 0.03% of taxable payroll. If the linkage of the blind SGA to the earnings test applicable to those above the full retirement age were restored, and the non-blind SGA level were brought up to that of the blind, the long-range cost to the program would be 0.45 % of taxable payroll (equivalent to an increase of about 23% in the long-range actuarial deficit).

Proponents of liberalizing the SGA limit for the blind maintain that the reasons given in 1977 to provide a different limit for the blind are just as valid today. Blindness is still a distinct and special condition, and they believe that the blind still merit being singled out for compensatory help. They point out that Congress has recognized the special nature of blindness by writing into law different disability criteria for the blind in regard to (1) insured status, (2) continued eligibility for benefits beyond age 54 regardless of the level of work activity<sup>4</sup>, and (3) the use of functional capacity as part of the test of meeting the definition of disability. They say that what Congress established then was that the "retirement test" (as the earnings test is sometimes called) for older workers should be applied to the blind, and therefore that they should be treated just like retired older workers whenever Congress makes changes to the retirement test. They say that if any

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<sup>4</sup> Cash benefits are suspended, however.

change is made to lessen or eliminate the difference in SGA amounts, it should be to raise the SGA limits of the non-blind.

Opponents of liberalizing the SGA limit for the blind maintain that the blind already receive enough preferential treatment and that to expand it further would be inequitable. Many of them think that even current law is too generous, because they see no logical reason that a particular group of disabled individuals should receive advantages over another. In their view, there are many other impairments that could just as easily be viewed as needing special compensatory relief (quadriplegia, cancer, etc.) They dispute that the blind suffer higher rates of unemployment or work-related expenses. They point out that the very definition of disability is that a person is unable to perform substantial work, and that the purpose of the SGA limit is to determine if, regardless of a person's medical condition, he or she demonstrates by work that he or she is not in fact disabled. From their perspective if the SGA for the blind were further liberalized, especially to the point where it would approach or exceed the average wage of all workers, the concept of disability would become meaningless, and vitiate the basic concept of the disability program as a whole.