

## Social Security and Medicare: It Just Keeps Changing

David J. Lillesand, Esq.  
[www.DavidLillesand.com](http://www.DavidLillesand.com)  
Lillesand and Wolasky, P.L.  
Miami and Gainesville, Florida

Change is inevitable - except from a vending machine. ~Robert C. Gallagher

If you're in a bad situation, don't worry it'll change. If you're in a good situation, don't worry it'll change. ~John A. Simone, Sr.

Things alter for the worse spontaneously, if they be not altered for the better designedly.  
~Francis Bacon

I put a dollar in one of those change machines. Nothing changed. ~George Carlin

The Social Security Act, passed in 1935, has been amended in major ways over two hundred times in the last 73 years, with countless minor adjustments. Who initiates the changes: Congress (expanding SSA programs), the President (the Reagan 1983 mass purging of the disability rolls), the Commissioner of Social Security (new regulations), science (in vitro births after husband's death), SSA employees (refusal to enforce SSI rules), society (same sex marriages), you and me collectively (having fewer kids, having them later in life, working longer, living longer), foreign wars, natural catastrophes (Katrina), foreign political upheavals (Cuban-Haitian Adjustment Act), and on and on and on.

Sometimes, it's just "I've got a better idea."

After you've done a thing the same way for two years, look it over carefully. After five years, look at it with suspicion. And after ten years, throw it away and start all over.  
~Alfred Edward Perlman, *New York Times*, 3 July 1958

Sometimes it's a new opportunity, for example, the mass availability of the Internet and communication by email (with my homeless clients).

So, obviously we can't prevent change, or perhaps even anticipate specific changes, but we can divine "trends" that guide us in determining the skills or responses we need to adapt and prosper, professionally and personally, to be able to serve our clients better. At a minimum, accepting the concept of change makes us be aware that if we don't accept change, we'll be buried by it.

So, what are the trends, and some specific changes, that we see in the Social Security system that have occurred this year, and are coming down the pike now and in the very near future.

Good news! Most of the changes coming are going to improve our client's lives; only a couple are potentially troublesome if you let them be so.

Of course, having said we're going to talk about "change," the first thing I'm going to talk about is "non-change."

## Non-Change

### A note about the myths and realities of the general health of the Social Security system.

In a recent 2008 study by the Department of the Navy, the author, Russell Beland, who is the deputy assistant secretary of the Navy for manpower analysis, started his exposition with this quote:

“If you’re bought into the following myths – about the bust in Medicare and Social Security that the baby boom is supposed to usher in – you may be surprised”

He then goes on to list Five Myths about baby boomers’ effects on our social welfare system.

**Myth #1.** Supporting baby boomers will break the backs of the younger workers. Not true. We have already passed periods of time when there was a smaller percentage of employed workers to retired workers than we will experience in the coming years for a number of reasons. First, the number of employed workers in the 1970s and 1980s was between 51% and 54%. During the baby boom generation’s retirement, the number of employed workers is and will continue to be 55%. Secondly, a much higher percentage of retirement age persons continue to work past retirement age, some because they feel they have to, to maintain their status of living, and others because they just like to. Thirdly, forty years ago most women did not work outside the home. Now 60% do.

**Myth #2.** We are running out of time to fix senior-citizen programs. Actually, we already ran out of time. Many baby boomers are now collecting benefits. Small minor adjustments to current programs will resolve the non-existent “crisis.”

**Myth #3.** Boomers’ retirement will be bad for the economy. Actually, it will be good, since it will create job opportunities for younger workers, and employers will compete for their labor, pushing wages up, while boomers continue to consume goods and services.

**Myth #4.** Politicians know what has to be done, they just lack the will to do it. No, they are clueless. It’s so complex that social technicians are the only ones who can foresee the law of unintended consequences, and anticipate changes. For every action, there is a reaction. For example, providing a national health insurance program, based on “Medicare for All” would permit some workers who want to retire early at age 62, but can’t because their Medicare doesn’t in until age 65, regardless of when they retire, would take early retirement and would stop paying payroll taxes. However, Medicare for All, would result in a significant drop, perhaps by as much as 50%, of persons applying for disability benefits, which would provide less of a drain on Social Security Trust Funds. These numbers and predictions are attainable and explainable, but not in 60-second sound bites.

**Myth #5.** Saving the budget requires reduction in senior’s benefits, or tax increases, or both. Not true. As the workforce shrinks, and the supply side of labor goes down, the demand side, wages paid goes up, increasing both the intake of payroll tax dollars, and the number of persons who voluntarily choose to begin or stay working, because they are receiving attractive wages.

The Navy’s manpower analyst ends with the recommendation that we should not all be too scared. The baby boomers will change the numbers in the social welfare system, but not in a vacuum, and the system will respond due to what he calls proven “natural economic forces.”

Let’s now look at changes that you can expect in your dealings with the Social Security Administration on behalf of your clients. To see why these changes are coming, let’s understand what the workload is like.

**Drivers of Change at SSA. Currently SSA:**

- Pays 60 million beneficiaries to pay each month
- A total of \$650 Billion per year
- Which represents 20% of all federal spending, and when added with Medicare and Medicaid whose benefits are most often determined by eligibility for retirement or disability under SSA rules, accounts for 44% of federal spending, which is 5% of the nations Gross Domestic Product.

To accomplish this task, for an ever growing population, SSA has fewer employees than when John Kennedy was President in 1960 when 150 million persons living in the United States. Just in the last 4 years, SSA staff declined from 63,600 employees to 60,200 employees. Between 1960 and 2008, the population doubled to 300 million.

What will be your typical experience, as a guardian, in dealing with the Social Security Administration? It is typically through contact at the local SSA office. In 2006, SSA had 800,000 visitors to its local offices each week. This year, that number has risen to One Million Persons visiting SSA each week.

What are SSA employees' duties? What services do they render? In 2008, SSA local staff will:

- Process over 6.9 million claims for benefits
- Issue 14 million Social Security cards
- Conduct 1.1 million continuing disability reviews for medical eligibility, and 1.2 million SSI financial eligibility redeterminations
- Accept and process reports of earnings on all wage earners in the United States
- Supply claimants, Congress, and other agencies with information on the status of specific claims
- Update millions of claimant addresses, phone numbers and direct deposit bank data for timely payment of benefits
- Present important Social Security information to community groups.

SSA has therefore had to prioritize its responsibilities, and have targeted getting new claims process, and given low priority to program integrity actions such as adjusting payments, and determining and processing past overpayments of benefits.

To keep up with demand – twice the customers with half the staff – SSA has extensively used technology, and will be using more and more and more, and this will affect your experience with SSA, particularly the way you will contact and process claims and appeals for your clients.

## **Information Access**

Eighty million baby boomers will file for retirement in the next 20 years. They need information. SSA rolled out on July 17<sup>th</sup>, 2008, a sophisticated benefit estimator that uses actual wage histories, not estimates, to predict how much a person can expect to receive monthly if they retire this year, next year, etc. This information can be accessed from your home or office computer.

## **Application for benefits**

Next month, September 2008, SSA rolls out a new online retirement application. In the recent past, 10% of people applying for retirement did so online. In 2008, there has been a 20% increase in use of the online application. The new, simplified application takes the average person 15 minutes to complete instead of the 45 minutes the old application required.

For disability insurance benefit applications, SSA is struggling to reduce the backlog of claims that has risen during the years that staff positions were frozen. Part of that process is stopping the flow of claims that should just be paid immediately. Spinning the lucky wheel of deadly diseases, if your client has certain serious conditions, such as certain types of debilitating cancer, claims will be paid in days not months or years. SSA developed the QDD – Quick Disability Determination – that right now identifies 2.3% of all claims filed, and pays 96% of them within 8 days! Another group, called “compassionate allowances” identifies persons with diseases or conditions so consistently devastating that SSA can presume that the claimant is disabled just by confirming a valid diagnosis.

## **Appeal processing**

For those claims that have been denied and are appealed, SSA has statistically determined that each Administrative Law Judge can handle, on average, 360 cases per year – or 30 hearings per month. In addition to scheduling, coordinating witnesses, hearing monitors, and other staff, the ALJ has to spend time reviewing hundreds of pages of medical records per case, and write a detailed review of those records in support of the judge’s decision, whether awarding or denying benefits.

The backlog of unheard cases for the existing 1,082 judges has risen to 750,000 cases, in addition to the new cases being filed every day. To address this backlog, SSA has undertaken various measures:

- The completion of a project to go totally paperless. All medical records are scanned and recorded on a central record. The claimant and his or her attorney receives a CD with the entire medical and administrative record on it. Each hearing room is equipped with multiple computers, one each for the judge, medical witnesses, vocational witnesses, the hearing monitor/assistant, the claimant, and the claimant’s attorney.
- All new claims are processed from the outset as paperless files. The old “paper files” which require storage, transportation between local offices, state DDS offices, local judges’ offices, the Appeals Council in Washington D.C., and other locations, were choking the system. Now files are “transferred” by mere electronic notification to the next agency person in charge of the next task. No envelopes, mailing, sorting, opening, filing, assembling anew, processing, and closing, sending for permanent storage, etc.
- In 2008, SSA identified a basic flaw in their “whip” to drive staff towards faster and faster processing. By focusing on numbers, specifically, the number of claims processed

at each stage, the agency was inadvertently encouraging the processing of the “thin” uncomplicated files. Thus, the more difficult disability cases with hundreds of pages of medical records, were put on the back burner so staff could quickly dispose of the “easy” cases and up their numbers. When SSA realized it, they classified the oldest cases as “aged” cases. There were 63,000 cases that had languished at the judge’s offices for 1,000 days or more. This year, all of those cases were resolved. Now they are working on the cases that are 900 days and older.

- Eliminating the “aged” cases which were primarily the inefficient “paper” files, will do two things: merge the two systems (paper versus electronic processing) and eventually result in total electronic processing.
- SSA also identified past inequities in the distribution of SSA judge positions around the country. The Chicago and Atlanta regions were given fewer judges per claims filed than other parts of the country. New judges are now assigned in disproportionate numbers to the understaffed regions.
- SSA also created a system for video hearings, so that judges in California can conduct Florida hearings, with the claimant and attorney appearing at the Miami or Orlando or Jacksonville judge’s office, in a hearing room with a large screen, on which they see the California judge. This also speeds up hearings in rural, remote areas. SSA also has allowed attorneys to purchase approved video equipment and conduct hearings with their client in the attorney’s office, with the “video” judge at the Office of Disability Adjudication and Review, at great convenience to claimants and their representatives.
- SSA has created a National Hearing Office and staffed it with ALJs who can conduct such video hearings from the national office, to reduce spot backlogs in different areas of the country, and SSA is developing a core of medical professionals and vocational experts that can testify and act as professional resource persons to ALJ and other decision makers deciding disability claims.
- Currently attorneys can submit medical and other evidence to SSA electronically through a fax-to-digital format. But when the representative needs a copy of “the file” a Social Security staff person must prepare a CD and mail it to the attorney. Through the attorneys’ organization, the National Organization of Social Security Claimants Representatives, a procedure is being tested to allow Internet access by the client’s attorney to the claim file directly.
- Many required disability forms are being transitioned to Internet, including appeal notices through the iAppeal project. In fact, SSA is contemplating requiring client representatives to use iAppeals only. SSA is also working on eScheduling to incorporate electronic scheduling of cases, coordinating the schedules and availability of the judge, translators, the medical expert, the vocational expert, the attorney, the client and the availability of the hearing room.
- The federal court system, which ultimately decides SSA claims, has gone totally paperless.

## **“Standard” changes – COLAs for benefit amounts, tax rates, etc.**

Every year there are certain financial changes that affect nearly everyone, those who receive benefits as well as those who pay into the system. Many of these changes are now automatic, and yearly, based on the Cost of Living Adjustment determine by the Consumer Price Index (CPI) comparison of the 3<sup>rd</sup> quarter of the last year with the 3<sup>rd</sup> quarter of the current year, with the changes taking effect in January of the following year. These changes are usually announced in the middle of October. Medicare cost changes, however, are based on the rise in the cost of services, not the CPI.

**Social Security Benefit increases in 2008.** Benefits were increased by 2.3% beginning with the Social Security checks received January 3, 2008. SSI was increased to a payment of \$637 per month for an individual, and \$956 for a couple.

**Tax rate changes.** The amount of wages taxed for Social Security increased from \$97,500 in 2007 to \$102,000 in 2008. Unlike the amount taxed, the rate of the tax has not changed for many, many years. It is still 6.2% for the retirement and disability benefit funds, and 1.45% without a cap, for the Medicare fund, for employees, matched by the employer. Self employed persons pay both halves.

**Retirement Earnings Test.** If you retire at “full retirement age” and do not take “early retirement” for Social Security retirement benefits, there is no deduction for earnings from employment. However, if you retire early, there is an annual exempt amount where there is no reduction in your early retirement SSA check. That number increased from \$12,960 for 2007 to \$13,560 for 2008. Once you reach normal retirement age (which is gradually increasing from 65 to age 67 for workers born after 1959), there is no reduction in your Social Security benefits for employment income.

**Amounts Needed to Earn a Quarter of Coverage (have your earnings count towards retirement and disability eligibility).** The amount of earnings needed to receive one coverage credit for the year will rise from \$1000 in 2007 to \$1050 in 2008. Workers who earn at least \$4200 in Social Security-covered employment (or self-employment) during 2008 will receive the maximum four coverage credits for the year.

**Medicare Co-payments and other changes.** Medicare program amounts change automatically every year, based on changes in the program costs not the Consumer Price Index. The inpatient hospital deductible per "benefit period" rose from \$992 in 2007 to \$1024 in 2008; daily coinsurance amount for days 61-90 of hospitalization during any benefit period will rise from \$248 to \$256. The coinsurance amount for each of 60 "lifetime reserve" days will rise from \$496 to \$512. The daily coinsurance amount for days 21-100 in a skilled nursing facility (SNF) during any benefit period will rise from \$124 to \$128

**Medicare Premium Payments.** The standard monthly premium for Medicare Part B (Supplementary Medical Insurance, which pays part of the cost of doctors' bills and outpatient care) will rise from \$93.50 in 2007 to \$96.40 in 2008. Most people pay the standard premium, which is intended to cover 25 percent of the costs of the Part B program. However a new provision requires high-income persons to pay higher monthly premiums, starting in 2007. In 2008, additional premiums are payable by enrollees with incomes exceeding \$82,000 if single and \$164,000 if married and filing a joint tax return, and the maximum additional premium of \$142.00 per month is payable by people with incomes exceeding \$205,000 if single and \$410,000 if married filing jointly. The additional Part B premiums are rising over a 3-year transition period. Part B monthly premiums are ordinarily deducted from enrollees' Social Security benefit payments. The Part B annual deductible will rise from \$131 in 2007 to \$135 in 2008.

## Recent 2008 Medicare Changes

**Beneficial, Significant and Recent Changes in Medicare Services.** On July 17, 2008, Congress over-rode President Bush's veto of a Medicare bill that would cut pay for doctors. But more importantly for our clients, the bill made three significant and positive changes for our clients:

1. **Mental health coverage.** Previously, Medicare beneficiaries had a 50% co-pay for mental health treatment, including therapy. This co-pay will be phased in to 20%, the same as beneficiaries pay for doctor visits, over the next few years.

2. **Preventive care.** Medicare currently provides a well-care checkup for persons newly enrolled on Medicare, with a six month limitation, that under the new legislation, increases that time limit to 12 months. In addition, CMS will be able in 2009 and after, to decide which additional preventive services to cover without special authorization by Congress. It is expected that intensive weight-loss counseling for the obese will be one of the first things CMS approves.

3. **Drugs.** Beginning in 2013, Two classes of drugs will be added to the Medicare drug benefit. One class is benzodiazepines, which includes anti-anxiety drugs like Xanax and Valium. The other is barbiturates, which are sleep aids and anti-convulsants. These drugs are to be limited to persons with chronic mental-health conditions, cancer and epilepsy.

## SSI Special Needs Trust Changes

We are expecting three changes in the SSA Program Operations Manual System (POMS) in the near future that will affect trust administration:

1. **Payment of parents as caretakers.** Ken Brown, SSA's point person for issuing federal regulations and new POMS (the staff manual), advised in March 2008 that they are looking at new POMS to limit the employment of parents as caretakers of their disabled children. I suggested that if the parents were actually employed through an agency, certified or licensed, as the case may be, SSA should look at that differently.

2. **Payment of alimony and child support claims.** Ken also suggested that they were going to issue a POMS permitting the payment of alimony and child support that is pursuant to a court order. Clearly, the "sole benefit rule" as described in the Special Needs Trust statute, OBRA '93, does not insulate the disabled grantor's funds from the claims of creditors, such as the Internal Revenue Service, court-ordered fines, judgments, etc. I suggested to Ken that the proposed POMS, if based on the disabled spouse's or disabled parent's legal obligation, would also extend to protecting the disabled parent from criminal claims of child neglect and failure to support a spouse. Furthermore, the law favors settlement of claims. If a disabled husband is happily married and living with his wife and children, we should not require that the dependent spouse and dependent minor children should have to institute a court action against their beloved spouse and father, just to acquire a court order of support. The obligation for support of legal dependents is already there, and it is backed up by criminal sanctions for failure to do so. See our six page description of the sole benefit rule and support of dependents posted on our lawblog, [www.DavidLillesand.com](http://www.DavidLillesand.com), on July 11<sup>th</sup>.

3. **Structured Settlement Annuities.** SSA is still struggling to issue a POMS that resolves some conflicts in counting personal injury structured settlement annuities for SSI income and SSI resource purposes. Besides the annuities that are assigned and paid to the disabled person, there is an issue of settlement annuities paid to the parents of a disabled minor child, who is subject to deeming of parents'

assets. Since annuities can be sold, the annuity agreement itself has a value. If that value is over \$2,000 (and invariably, structured settlement annuities are always purchased for more than \$2,000), the parents' annuity is a "countable resource" deemed against the child, and potentially disqualifying the child from both SSI and Medicaid health insurance.

For more on this topic, see Patrick Hindert's excellent blog on annuities – [www.s2kmblog.typepad.com](http://www.s2kmblog.typepad.com) – and particularly his discussions of annuity problems raised by the recent Deficit Reduction Act that attempts to outlaw annuities in Medicaid planning.

### **Your Responsibility to Report Change**

Speaking of changes, guardians must remember that there is a responsibility to report changes, within 10 days, of claimant information to SSA. Some clients handle their own benefits, some have "Representative Payees" and sometimes that is the guardian. The penalties for failure to report can be significant, both to the claimant (ward) and also to the Representative Payee. Do not get caught short.

# 2008 SOCIAL SECURITY CHANGES

## ***Cost-of-Living Adjustment (COLA):***

Based on the increase in the Consumer Price Index (CPI-W) from the third quarter of 2006 through the third quarter of 2007, Social Security and Supplemental Security Income (SSI) beneficiaries will receive a 2.3 percent COLA for 2008. Other important 2008 Social Security information is as follows:

<u>Tax Rate</u>	<b>2007</b>	<b>2008</b>
<b>Employee</b>	7.65%	7.65%
<b>Self-Employed</b>	15.30%	15.30%
NOTE: The 7.65% tax rate is the combined rate for Social Security and Medicare. The Social Security portion (OASDI) is 6.20% on earnings up to the applicable taxable maximum amount (see below). The Medicare portion (HI) is 1.45% on all earnings.		

<b>Maximum Earnings Taxable:</b>	<b>2007</b>	<b>2008</b>
<u>Social Security</u> (OASDI only)	\$97,500	\$102,000
<b>Medicare (HI only)</b>	No Limit	

<u>Quarter of Coverage:</u>	<b>2007</b>	<b>2008</b>
<b>Earnings required</b>	\$ 1,000	\$1,050

<u>Retirement Earnings Test Exempt Amounts:</u>	<b>2007</b>	<b>2008</b>
<b>Under full retirement age</b> NOTE: One dollar in benefits will be withheld for every \$2 in earnings above the limit.	\$12,960/yr. (\$1,080/mo.)	\$13,560/yr. (\$1,130/mo.)
<b>The year an individual reaches full retirement age</b> NOTE: Applies only to earnings for months prior to attaining full retirement age. One dollar in benefits will be withheld for every \$3 in earnings above the limit.	\$33,440/yr. (\$2,870/mo.)	\$36,120/yr. (\$3,010/mo.)
There is no limit on earnings beginning the month an individual attains full retirement age.		

<b><u>Social Security Disability Thresholds:</u></b>		<b>2007</b>	<b>2008</b>
<b>Substantial Gainful Activity (SGA)</b>	<b>Non-Blind</b>	\$ 900/mo.	\$ 940/mo.
	<b>Blind</b>	\$1,500/mo.	\$1,570/mo.
<b>Trial Work Period (TWP)</b>		\$ 640/mo.	\$ 670/mo.

<b>Maximum Social Security Benefit: Worker Retiring at <u>Full Retirement Age</u> in</b>	<b>2007</b>	<b>2008</b>
	\$2,116/mo.	\$2,185/mo.

<b><u>SSI Federal Payment Standard:</u></b>	<b>2007</b>	<b>2008</b>
<b>Individual</b>	\$ 623/mo.	\$ 637/mo.
<b>Couple</b>	\$ 934/mo.	\$ 956/mo.

<b>SSI Resources Limits:</b>	<b>2007</b>	<b>2008</b>
<b>Individual</b>	\$2,000	\$2,000
<b>Couple</b>	\$3,000	\$3,000

<b><u>SSI Student Exclusion Limits:</u></b>	<b>2007</b>	<b>2008</b>
<b>Monthly Limit</b>	\$1,510	\$1,550
<b>Annual Limit</b>	\$6,100	\$6,240

<b>Estimated Average Monthly Social Security Benefits Payable in January 2008:</b>	<b>Before 2.3% COLA</b>	<b>After 2.3% COLA</b>
<b>All Retired Workers</b>	\$1,055	\$1,079
<b>Aged Couple, Both Receiving Benefits</b>	\$1,722	\$1,761
<b>Widowed Mother and Two Children</b>	\$2,192	\$2,243
<b>Aged Widow(er) Alone</b>	\$ 1,017	\$1,041
<b>Disabled Worker, Spouse and One or More Children</b>	\$1,652	\$1,690
<b>All Disabled Workers</b>	\$ 981	\$ 1,004