107th Congress, 2d Session – – – – – – – – – – – – House Document 107–186

# AGREEMENT WITH THE GOVERNMENT OF AUSTRALIA ON SOCIAL SECURITY

## MESSAGE

FROM

# THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA ON SOCIAL SECURITY, WHICH CONSISTS OF TWO SEPARATE INSTRUMENTS: A PRINCIPAL AGREEMENT AND AN ADMINISTRATIVE AGREEMENT, PURSUANT TO 42 U.S.C. 433(e)(1)

MARCH 13, 2002.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

99–011 WASHINGTON : 2002

*To the Congress of the United States*

Pursuant to section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (Public Law 95–216, 42 U.S.C. 433(e)(1)), I transmit herewith the Agreement Between the Government of the United States of America and the Government of Australia on Social Security, which consists of two separate instruments: a principal agreement and an administrative arrangement along with a paragraph-by-paragraph explanation of each provision. The Agreement was signed at Canberra on September 27, 2001.

The United States-Australia Agreement is similar in objective to the social security agreements already in force with Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, Korea, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual social security coverage and taxation, and to help prevent the lost benefit protection that can occur when workers divide their careers between two countries. The United States-Australia Agreement contains all provisions mandated by section 233 and other provisions that I deem appropriate to carry out the purposes of section 233, pursuant to section 233(c)(4).

I also transmit for the Information of the Congress a report prepared by the Social Security Administration explaining the key points of the Agreement. Annexed to this report is the report required by section 233(e)(1) of the Social Security Act, a report on the effect of the Agreement on income and expenditures of the U.S. Social Security program and the number of individuals affected by the Agreement. The Department of State and the Social Security Administration have recommended the Agreement and related documents to me.

I commend the United States-Australia Social Security Agreement and related documents.

GEORGE W. BUSH.

THE WHITE HOUSE, *March 12, 2002.*

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

# AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA ON SOCIAL SECURITY

The Government of the United States of America and the Government of Australia (hereinafter "the Parties"),

Being desirous of regulating the relationship between their two countries with respect to social security benefits and coverage, have agreed as follows:

The document is described as an "Agreement" with the understanding that it will enter into force for Australia as a formal treaty subject to approval by the Australian Parliament and for the United States as an executive agreement under authority of Section 233 of the Social Security Act. Upon entry into force, the Agreement will have the effect of law in both countries and will be binding on both countries.

## PART I

## General Provisions

### Article 1

### Definitions

1. For the purpose of this Agreement:

Article 1 defines key terms used in the Agreement.

(a) "Agency" means,

"Agency," as used in the Agreement, refers to the administrative body in each country responsible for taking and processing claims and making coverage determinations under each country's Social Security laws.

as regards the United States, the Social Security Administration, and

The Social Security Administration is the agency for the United States. However, the U.S. Internal Revenue Service's responsibility for

| PRINCIPAL AGREEMENT | ANNOTATIONS AND COMMENTS |
| --- | --- |
| | determining Social Security tax liability in light of SSA coverage determinations under the Agreement is not affected. |
| as regards Australia, the institution or agency responsible for the administration of the laws; | Centrelink, which administers the Australian Social Security program on behalf of the Department of Family and Community Services, is the primary Australian agency. Centrelink has a network of offices throughout Australia but responsibility for processing claims under the Agreement will rest with Centrelink International Services located in Hobart. In addition, the Australian Taxation Office is considered an agency since it is responsible for administering the provisions of Part II of the Agreement. |
| (b) "benefit" means, in relation to a Party, a benefit, pension or allowance for which provision is made in the laws of that Party, and includes any additional amount, increase or supplement for which a beneficiary is qualified but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee; | "Benefit" refers to old-age, survivors, and disability benefits provided under the Social Security laws of either country, but does not include benefits under Australia's Superannuation Guarantee (SG) program. The SG program, which requires Australian employers to contribute to private retirement plans for their employees at specified minimum levels or else pay a charge to the Government, is not included in the benefit provisions of the Agreement (see comments on Articles 2.1(b) and 8). With respect to the United States, the term also includes the lump-sum death payment under section 202(i) of the Social Security Act, but excludes special age-72 payments provided for certain uninsured persons under section 228 of the Social Security Act. |
| (c) "carer payment" means, in relation to Australia, a carer payment payable to the partner of a person in receipt of an Australian benefit; | Under Australian law, a person who provides home care for a disabled person is eligible for a benefit called a "carer payment". The carer payment may normally be made to anyone who provides such home care. As a result of this definition, however, a person must be the partner (e.g., the spouse or common-law spouse) of an old-age or disability support pensioner who is severely disabled to qualify for a carer payment by virtue of the Agreement. |

| PRINCIPAL AGREEMENT | ANNOTATIONS AND COMMENTS |
| --- | --- |
| (d) "Competent Authority" means,<br><br>as regards the United States, the Commissioner of Social Security, and<br><br>as regards Australia, the Secretary of the Commonwealth Department responsible for the laws specified in subparagraph 1(b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorized representative of the Commissioner; | "Competent Authority," as used throughout this Agreement, refers to the Government official in each country with ultimate responsibility for administering the Social Security program, including the provisions of the Agreement. |
| (e) "laws" means,<br><br>as regards the United States, the laws and regulations specified in subparagraph 1(a) of Article 2; and<br><br>as regards Australia, the laws specified in subparagraph 1(b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(b)(ii) of Article 2; | The term "laws," as used in the Agreement, refers to the laws and regulations of each country as set forth in Article 2. |
| (f) "national" means,<br><br>as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and<br>as regards Australia, a citizen of Australia; | Under section 101(a)(22) of the Immigration and Nationality Act, "the term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." Those in category (B) include natives of American Samoa.<br>An Australian national means any person who is accorded nationality by Australia, including, but not limited to, a person who carries a valid Australian passport or other valid identity document designating the person as an Australian national. |

| PRINCIPAL AGREEMENT | ANNOTATIONS AND COMMENTS |
|---|---|
| (g) "period of Australian working life residence", in relation to a person, means, unless otherwise provided in this Agreement, a period:<br>(i) defined as such in the laws of Australia; and<br>(ii) during which the person was employed or self-employed or the person's employer was subject to the laws specified in subparagraph 1(b)(ii) of Article 2;<br>but does not include any United States period of coverage deemed pursuant to Article 9 to be a period in which that person was an Australian resident. | Under Australian law, a "period of Australian working life residence" generally means a period of residence in Australia that occurs while the person is between age 16 and normal retirement age (known in Australia as "age pension age": 65 for men and, as of July 2001, 61½ for women). However, Article 1.1(g) makes clear that, for purposes of this Agreement, a "period of Australian working life residence" will only include periods of residence between age 16 and retirement age during which the person worked. This distinction is important in Part III of the Agreement, which establishes rules for determining entitlement to U.S. and Australian benefits based on combined Social Security coverage in both countries. Article 11 contains a broader definition of "Australian working life residence" that applies exclusively to Articles 9 and 10. |
| (h) "social security laws" means, in relation to Australia, all the Acts forming the social security law without any limitation, including the limitation imposed by Article 2. | Article 1.1(e) stipulates that the term "laws," when used in reference to Australia, includes the Social Security benefits listed in Article 2.1(b)(i). However, certain provisions of the Agreement (see Article 17.2, for example) are intended to apply to other categories of Australian Social Security benefits not mentioned in Article 2.1(b)(i), such as unemployment benefits. The term "social security laws," as defined in Article 1.1(h), includes all categories of Australian Social Security benefits and is, therefore, used in provisions that apply to the broader range of benefits. |
| (i) "United States period of coverage" means a period credited as a quarter of coverage under the laws of the United States, or any equivalent period that may be used to establish the right to a benefit under the laws of the United States; | The term "United States period of coverage" means any period which is credited under the laws of the United States for purposes of determining benefit eligibility, including periods of covered employment and self-employment. |
| (j) "widowed person" means, in relation to Australia, a person who stops being a partnered person because of the death of the person's partner, but does not include a person who has a new partner. | Under Australian law, a "partnered" person is a person who is a member of a couple, whether married or not. Article 1.1(j) makes clear that, when used in this Agreement, the term "widowed person" refers to an individual whose partner has died and who does not have a new partner. |
| 2. Any term used in this Agreement and not defined in this Article shall have the meaning assigned to it in the applicable laws. | Each country will assign to any undefined terms used in the Agreement the same meaning as they are given under its national laws. |

**PRINCIPAL AGREEMENT**

Article 2

Scope

1. For the purpose of this Agreement, the applicable laws are:

(a) As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:

-- Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,

-- Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;

(b) As regards Australia,

(i) the Acts forming the social security law insofar as the law provides for, applies to or affects the following benefits:

(A) age pension;
(B) disability support pension for the severely disabled;
(C) pensions payable to widowed persons; and
(D) carer payment.

**ANNOTATIONS AND COMMENTS**

Article 2 specifies the laws to which the Agreement applies.

For the United States, the Agreement applies to title II of the U.S. Social Security Act and the corresponding tax laws (the Federal Insurance Contributions Act and the Self-Employment Contributions Act of 1954) and any regulations pertaining to those laws. However, the Agreement does not apply to Medicare provisions (section 226 and 226A of the Social Security Act) or provisions for special payments to uninsured individuals age 72 or over under section 228 of the Social Security Act. Persons to whom the Agreement applies who qualify independently for Medicare hospital insurance or age-72 payments will be entitled to receive such benefits.

Although the Agreement does not apply to Medicare, a worker who is subject only to Australian laws by virtue of Part II of the Agreement will be exempt not only from U.S. retirement, survivors and disability insurance contributions but also from health insurance contributions under the Federal Insurance Contributions Act (FICA) and the Self-Employment Contributions Act (SECA).

For Australia, the Agreement applies to the laws on the Social Security benefits listed in Article 2.1(b)(i) and to the laws on Superannuation Guarantee (SG) in Article 2.1(b)(ii). The "age pension" referred to in Article 2.1(b)(i)(A) is payable at age 65 to men and age 61 ½ (as of 2001) to women and is referred to in these annotations as an "old-age pension".

In accordance with Article 1.1(e), the provisions of Part II of the Agreement, which eliminate dual Social Security coverage and taxation, do not apply to the Australian benefit programs listed in Article 2.1(b)(i) since these benefits are financed entirely from general revenues and not from earmarked payroll taxes. Instead, Part II applies to the

**PRINCIPAL AGREEMENT**

(ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations).

2. Notwithstanding the provisions of paragraph 1(b), this Agreement shall apply to women who are receiving wife pension at the date this Agreement comes into force and who are the wives of:

   (a) persons receiving age pension; or

   (b) persons receiving disability support pension for the severely disabled.

3. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include treaties or other international agreements on social security that may be concluded between one of the Parties and a third State, or laws or regulations promulgated for their specific implementation.

**ANNOTATIONS AND COMMENTS**

Superannuation Guarantee, which is the Government-regulated program requiring employers either to pay contributions to employee retirement plans at specified minimum rates or pay a special SG charge. As a result, when a worker is subject to U.S. laws and exempt from Australian laws in accordance with Part II, the worker's employer will be exempt from the SG requirements.

The benefit provisions in Part III of the Agreement establish rules for determining eligibility for the Australian Social Security benefits listed in Article 2.1(b)(i) in the case of people who have divided their careers between Australia and the United States. Since the SG program requires that Superannuation benefits be immediately vested, the provisions of Part III do not affect SG benefits.

The "wife pension" is a benefit payable to the female partner of either an Australian disability support or an old-age pensioner. Because the wife pension is being phased out (there have been no new entitlements since July 1995), it is not included among the Australian benefits listed in Article 2.1(b) above. Under Australian law, women who were already entitled to the wife pension as of June 1995 can continue to receive it. Article 2.2 ensures that women in the United States who are receiving the wife pension at the time this Agreement enters into force will be subject to the more favorable income test provided for in Article 10.1.

The laws to which the Agreement applies do not include treaties or other international agreements or laws to implement them--for example, either country's Social Security agreements with third countries. The purpose of this provision is to ensure that in cases where a person has Social Security coverage credits in the United States and Australia and coverage credits in a third country with which the United States or Australia has a Social Security agreement, neither the United States nor Australia will be obligated to combine coverage from all three countries to determine entitlement to its benefits. (See Part III.)

PRINCIPAL AGREEMENT

4. This Agreement shall also apply to future laws which amend or supplement the laws specified in paragraph 1 of this Article.

Article 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or
(b) is or has been subject to the laws of Australia, or
(c) is or has been subject to the laws of the United States

and, where applicable, to other persons in regard to the rights they derive from a person described above.

Article 4

Equality of Treatment

Persons designated in Article 3 who reside in the territory of a Party shall receive equal treatment with nationals of that Party in the application of its laws regarding eligibility for and the payment of benefits.

ANNOTATIONS AND COMMENTS

Article 2.4 makes clear that the Agreement will automatically apply to future laws that amend provisions of the Social Security laws set forth in Article 2.1.

Article 3 specifies the categories of persons to whom the Agreement applies. They include persons currently covered by U.S. Social Security, as well as those who have been credited with periods of U.S. coverage in the past. In addition, they include persons who are or have been residents of Australia, or who have been covered by Australia's Superannuation Guarantee program. The Agreement also applies to the dependents and survivors of such persons when the dependents or survivors derive rights under the laws of one or both countries based on a relationship to such persons.

Article 4 provides that persons to whom the Agreement applies who reside in the United States or Australia will be accorded the same treatment regarding benefit rights under that country's Social Security laws as that country accords its own nationals. This provision is not intended to affect the coverage provisions of either country's laws, since these are dealt with specifically in Part II of the Agreement.

**PRINCIPAL AGREEMENT**

**ANNOTATIONS AND COMMENTS**

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, any provision of the laws of a Party which restricts entitlement to or payment of benefits solely because the person resides outside or is absent from the territory of that Party shall not be applicable to the persons who reside in the territory of the other Party.

Article 5.1 provides that where the laws of either country require a person to be resident or present in that country in order to qualify for or receive Social Security benefits, the person may also qualify for or receive those benefits during periods of residence in the other country. Article 5.1 will permit the United States to pay benefits to certain Australian and third country nationals during periods of residence in Australia even though they would otherwise be subject to the alien nonpayment provisions of section 202(t) of the Social Security Act. Similarly, it permits Australia to pay benefits to certain persons residing in the United States who could not otherwise receive them.

2. Where the laws of a Party provide or allow that a benefit be payable in a third country, then that benefit, when payable by virtue of Part III, is also payable in that third country.

This provision was included at the request of Australia to make clear that benefits payable in a third country under Australian national law will also be payable in that third country when entitlement is established under the provisions of this Agreement.

3. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the United States when that benefit is payable by virtue of this Agreement.

Under Australian national law, certain benefits, such as the parenting payment for a single person and the carer payment, terminate once the beneficiary is outside Australia for 26 weeks. The Agreement removes this 26-week time limit for beneficiaries in the United States, permitting them to receive these payments indefinitely. Article 5.3 applies to people who have been receiving such benefits in the United States as a result of the Agreement and then leave U.S. territory. By equating U.S. and Australian territory, Article 5.3 permits them to continue receiving their benefits during absences from the United States of up to 26 weeks. Thus, Australian beneficiaries in the U.S. will be treated the same as beneficiaries in Australia if they leave the country temporarily.

**PRINCIPAL AGREEMENT**

4. A benefit payable by a Party by virtue of this Agreement or under its laws shall be paid by that Party without the deduction of administrative fees and charges by the government or the corresponding Competent Authority for processing and paying that benefit, when the person qualifying for the benefit is in the territory of the other Party.

5. Any provisions of Australian laws which prohibit the payment of an Australian benefit to a former Australian resident who:

   (a) returns to Australia to again become an Australian resident;
   (b) claims an Australian benefit; and
   (c) departs Australia within a period specified in that law,

   shall not apply to a person who receives that benefit by virtue of the Agreement.

6. Section 202(t)(11)(E) of the Social Security Act of the United States shall not apply to an Australian national unless he or she is a resident of the United States, Australia or a third country with which the United States has a Social Security agreement in force concluded pursuant to section 233 of the Social Security Act.

**ANNOTATIONS AND COMMENTS**

Article 5.4 provides that benefits shall be paid in the full amount due without deductions for expenses incurred by either country in the payment of such benefits. Since both U.S. and Australian Social Security benefits are already paid without deduction for administrative expenses, this provision merely affirms current practice.

Under Australian law, a former resident who returns to Australia and claims a benefit is prohibited from receiving that benefit outside Australia if he or she leaves again within 2 years. Article 5.5 ensures that former Australian residents who return to Australia and qualify for benefits under the Agreement will not be subject to this provision of Australian law.

Under Section 202(t)(11) of the Social Security Act, dependent and survivors benefits generally may not be paid to individuals who are not citizens or nationals of the United States and who are outside the United States for more than six consecutive months unless they satisfy certain U.S. residency requirements. However, under paragraph (E) of section 202(t)(11), citizens or residents of a country with which the United States has concluded a Social Security agreement are exempt from these residence requirements, unless the agreement includes a provision that limits the scope of the exemption. Article 5.6 is intended to limit the scope of the exemption.

Under Article 5.6, the exemption in section 202(t)(11)(E) will only apply to residents of Australia and to Australian citizens who reside in a third country with which the United States has a Social Security agreement in force. This limitation is similar in effect to the provision on Australian benefits in Article 8.1. Although Article 8.1 will overcome certain portability restrictions in Australian law, it will only do so for people who are resident or physically present in the United States or in a third country with which Australia has concluded a Social Security agreement.

**PRINCIPAL AGREEMENT**

PART II

Provisions Concerning Applicable Laws

Article 6

Coverage Provisions

**ANNOTATIONS AND COMMENTS**

Part II is intended to eliminate dual coverage, the situation that occurs when a worker is covered under the laws of both countries with respect to the same services. In so doing, the Agreement preserves the existing coverage provisions of the laws of both countries to the greatest extent possible. The provisions in this Part are intended to eliminate dual coverage by continuing the worker's coverage and taxation under the system of the country to whose economy he or she has the more direct connection and exempting the worker from coverage and taxation under the other country's system.

A worker who is subject only to Australian laws by virtue of Part II of the Agreement will be exempt, together with his or her employer, from U.S. Social Security contributions and from hospital insurance contributions under Medicare. When a worker is subject only to U.S. laws, the worker's employer will be exempt from paying Superannuation Guarantee (SG) contributions. (The provisions of Part II do not apply to the Australian Social Security program since it is financed from general revenues. See annotation to Article 2.1(b).)

Article 6.2 establishes a general rule for eliminating dual coverage and contributions for persons employed in either the United States or Australia. Article 6.3 contains an exception to this general rule, which applies in the case of employees sent by an employer in one country to work temporarily in the other country. Articles 6.7 and 6.8 provide for the elimination of dual coverage in the case of self-employed persons. Article 6.10 precludes dual coverage that might otherwise occur for employees in international shipping and air transportation. Articles 6.11 and 6.12 establish rules applicable to persons employed in U.S. or Australian Government service.

**PRINCIPAL AGREEMENT**

1. This Part only applies, with respect to an employee, or the employer of that employee, where either or both of the following circumstances occur:

   (a) without the application of this Part an employee or the employer of that employee would otherwise be covered by both the laws of Australia and the United States;

   (b) the employee has been sent from the territory of the United States to the territory of Australia in accordance with paragraph 3 and, based upon documentation issued by the agency of the United States, the employee and employer are subject to United States laws.

2. Except as otherwise provided in this Article, a person employed within the territory of one of the Parties and the person's employer shall, with respect to that employment, be subject to the laws of only that Party.

3. Where a person who is normally employed in the territory of one Party by an employer in that territory is sent by that employer to the territory of the other Party for a temporary period, the person and the person's employer shall be subject to the laws of only the first Party as if the employee were employed in the territory of the first Party provided that the period of employment in the territory of the other Party is not expected to and does not exceed 5 years. After 5 years, any further period of employment shall be subject to the laws of the other Party.

**ANNOTATIONS AND COMMENTS**

Article 6.1(a) makes clear that the rules set forth in this Part are intended to apply in cases where an employed person or the person's employer would be subject to dual coverage under the laws of both countries. Article 6.1(b) represents an exception to this general principle. It permits certain employees who are transferred from the United States to Australia in accordance with Article 6.3 to continue their coverage under the U.S. system even though dual coverage would not otherwise exist.

Article 6.2 establishes a general territoriality rule, which stipulates that ordinarily a person's employment in one country will be compulsorily covered by only that country. Thus, a person working in employment that would otherwise be covered under the laws of both countries will remain covered under the laws of the country where the employment takes place and will be exempt from coverage under the laws of the other country.

Under Article 6.3, an employee who normally works for an employer located in the United States or Australia who is temporarily transferred to work in the other country for the same employer will continue to be covered by the laws of the country from which the employee has been transferred. This rule will apply only if the transfer is expected to last 5 years or less.

For purposes of measuring the length of a transfer for workers who were sent from one country to the other before the Agreement entered into force, any period of work before the Agreement's entry into force will be disregarded. (See Article 23.1.)

**PRINCIPAL AGREEMENT**

4. For the purposes of applying paragraph 3 in the case of an employee who is sent from the territory of the United States by an employer in that territory to the territory of Australia, that employer and an affiliated company of the employer (as defined under the laws of the United States) shall be considered one and the same, provided that the employment would have been covered under United States laws in the absence of this Agreement.

5. For the purposes of applying paragraph 3 in the case of an employee who is sent from the territory of Australia by an employer in that territory to the territory of the United States, that employer and a related entity of the employer shall be considered one and the same. An entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

6. Paragraph 3 shall apply where a person who has been sent by his or her employer from the territory of a Party to the territory of a third State is subsequently sent by that employer from the territory of the third State to the territory of the other Party.

**ANNOTATIONS AND COMMENTS**

Article 6.4 provides that Article 6.3 will also apply to employees who are sent by an employer in the United States to work for a subsidiary or other affiliate of that employer in Australia. U.S. law permits American companies to extend U.S. Social Security coverage to U.S. citizens and resident aliens employed by an affiliated company in another country. To do this, the parent company in the United States must enter into an agreement with the Internal Revenue Service (IRS) to pay Social Security contributions on behalf of all U.S. citizens and residents employed by the foreign affiliate. Under Article 6.4, U.S. citizens or resident aliens who are sent by an American employer to work for an affiliated company in Australia for 5 years or less will continue to be covered by the United States and the employer of the employee will be exempt from Australian Superannuation Guarantee (SG) contributions, provided the affiliate is covered by an IRS agreement.

Article 6.5 provides that Article 6.3 will also apply to employees who are sent by an employer in Australia to work for a related entity of that employer in the United States. In addition, it stipulates that a "related entity" must be a member of the same wholly or majority owned group as the sending employer under the applicable provisions of Australian law.

Under Article 6.6, the provisions of Article 6.3 will apply even if an employee has not been sent directly from one country to the other but is first assigned to work in a third country.

| PRINCIPAL AGREEMENT | ANNOTATIONS AND COMMENTS |
| --- | --- |
| 7. Where a person who is a resident of the United States works in the capacity of a self-employed person, the person shall be subject to the laws of only the United States. | Articles 6.7 and 6.8 apply to workers who are considered to be self-employed under U.S. law. Since self-employment is not covered under Australia's SG program, these provisions will have no effect on Australian law. |
| 8. Where a national of the United States who is a resident of Australia works in the capacity of a self-employed person, the person shall not be subject to the laws of the United States. | Under U.S. law, self-employed workers are covered by U.S. Social Security if they are nationals or residents of the United States. Article 6.7 makes clear that the Agreement will not affect self-employed U.S. residents, i.e., they will remain subject to U.S. Social Security coverage and taxation. On the other hand, Article 6.8 is intended to alter the coverage status of self-employed U.S. nationals residing in Australia by exempting them from U.S. Social Security coverage. Since residents of Australia, including U.S. nationals, are generally liable for Australian income and other taxes and can become eligible for benefits under Australia's residence-based Social Security program, it is an unnecessary burden for them to pay U.S. Social Security taxes for duplicate benefit protection. |
| 9. Where the same activity is considered to be self-employment under the laws of one Party and employment under the laws of the other Party, that activity shall be treated according to the provisions of this Article concerning self-employment. | Article 6.9 eliminates dual coverage in cases where a person's work activity is considered to be self-employment under the laws of one country and employment under the laws of the other and is compulsorily covered by both countries. It eliminates dual coverage in this situation by assigning the worker's coverage to one country or the other in accordance with the provisions of Articles 6.7 and 6.8. As a result, a person who is a resident of the United States will be subject only to U.S. law and a resident of Australia will be subject only to Australian law. |
| 10. A person, or that person's employer, who would otherwise be covered under the laws of both Parties with respect to employment of that person as an officer or member of a crew on a ship or aircraft shall, with respect to that employment, be subject only to the laws of the Party of which that person is a resident. | Under Article 6.10, a person employed on a ship or aircraft who would otherwise be covered under the laws of both the United States and Australia will be covered only under the laws of the country where he or she resides. |

**PRINCIPAL AGREEMENT**

11. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

12. If an employee:

    (i) is subject to the laws of one Party ("the first Party");
    (ii) was sent, whether before, on or after the entry into force of this Agreement, by the Government of the first Party to work in the territory of the other Party ("the second Party");
    (iii) is working in the territory of the second Party in the employment of the Government of the first Party;
    (iv) is not working permanently in the territory of the second Party; and
    (v) is not exempt from the laws of the second Party by virtue of the conventions mentioned in paragraph 11;

    the Government of the first Party and the employee shall be subject only to the laws of the first Party, and, if the spouse of the employee also meets the conditions specified in subparagraphs (iii)-(v), the

**ANNOTATIONS AND COMMENTS**

Articles 6.11 and 6.12 provide coverage rules applicable to employees of the U.S. and Australian Governments. Article 6.11 is intended to make clear that, in general, the categories of persons mentioned in the Vienna Conventions on diplomatic and consular relations will not be affected by the coverage provisions of the Agreement. The Conventions, to which both the United States and Australia are parties, apply to members of the staff of a diplomatic or consular mission, including the diplomatic, consular, administrative and technical staffs; family members of such staff who form part of their households; the domestic service staff of the mission; and private servants employed by the members of such missions.

In general, the Vienna Conventions exempt such persons from Social Security coverage and contributions under the laws of the host country unless specific arrangements have been made to waive their immunity from taxation. Persons whose immunity has been waived would be subject to the laws of the host country, including the coverage provisions of this Agreement.

Article 6.12 is intended to eliminate dual coverage of Government employees, should it occur. It provides that a person employed by the Government of one country, who is sent to work temporarily in the territory of the other country and who is not exempt from host country coverage by virtue of the Vienna Conventions (for example, because the person is not employed in a diplomatic or consular mission), will be subject to the laws of only the sending country. With respect to the United States, this provision applies not only to U.S. Government employees, but also to persons working for a U.S. Government instrumentality.

Article 6.12 may also apply in the case of a spouse who accompanies a Government employee to the other country. If the spouse of a Government worker exempt from host country coverage under

**PRINCIPAL AGREEMENT**

spouse and the Government of the first Party shall be subject only to the laws of the first Party for that employment. For the purposes of this paragraph, "Government" includes, in relation to the United States, an instrumentality of the United States and, in relation to Australia, a political subdivision or local authority of Australia.

13. The Competent Authorities of the two Parties may for the purposes of this Article by agreement in writing:

    (a) extend the period of 5 years referred to in paragraph 3 for any employee; or

    (b) provide that an employee is deemed to work in the territory of a particular Party or on a ship or aircraft in international traffic under the laws of a particular Party and is subject only to the laws of that Party.

14. Any agreement made under paragraph 13 may apply to either or both of the following:

    (a) a class of employees;

    (b) particular work or a particular type of work (including work that has not occurred at the time such agreement is made).

**ANNOTATIONS AND COMMENTS**

Article 6.12 begins working temporarily for the Government of his or her country in the host country, the spouse will also be exempt from host country coverage.

Under Article 6.13, either country may extend the 5-year exemption referred to in Article 6.3 or grant an exception to the coverage rules of the Agreement, provided that the other country agrees in writing. This provision is designed to permit the Competent Authorities to correct anomalous coverage situations that may arise to the disadvantage of workers or to eliminate dual coverage in unforeseen circumstances.

The Competent Authorities may grant an extension or exception under Article 6.13 on behalf of an individual worker or on behalf of all workers employed under similar circumstances, e.g., in the same profession or for the same employer.

**PRINCIPAL AGREEMENT**

PART III

Provisions on Benefits

Article 7

United States Benefits

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, the Agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of Australian working life residence which do not coincide with periods of coverage already credited under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the Agency of the United States shall credit one quarter of coverage for every three months of Australian working life residence certified by the Agency of Australia; however, no period of Australian working life residence shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

**ANNOTATIONS AND COMMENTS**

Part III establishes the basic rules for determining entitlement to U.S. and Australian benefits for people who have Social Security coverage in both countries, and the rules for determining benefit amounts when entitlement is based on combined coverage credits. Article 7 deals with the U.S. system, and Articles 8, 9 and 10 contain rules specifically applicable to the Australian system.

Article 7 contains rules for determining U.S. benefit eligibility and amounts in the case of people who have periods of working life residence in Australia (see the annotation to Article 1.1(g)) and at least six quarters of coverage in the United States, but who do not have enough U.S. coverage to qualify for U.S. benefits. In such cases, the Social Security Administration, in accordance with Article 7.1, will take into account any periods of Australian working life residence, insofar as these periods do not coincide with quarters of coverage already credited under U.S. laws.

Article 7.2 establishes the procedure that SSA will follow in converting periods of working life residence under the Australian system into periods of coverage under the U.S. system. Periods of coverage under the U.S. system are measured in terms of calendar quarters while Australian working life residence is measured in months. Beginning in 1978, U.S. quarters of coverage are based on the amount of a person's annual earnings (e.g., for 2001, $830 in earnings equals one quarter of coverage). Under Article 7.2, SSA will credit one quarter of coverage in a calendar year for every 3 months of Australian working life residence certified for that year by the Australian agency. However, SSA will not credit months of Australian working life residence which fall within a calendar quarter that has already been credited as a U.S. quarter of coverage. In addition, SSA will not credit more than 4 quarters of coverage for any calendar year.

**PRINCIPAL AGREEMENT**

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

**ANNOTATIONS AND COMMENTS**

Article 7.3 describes the method of computing U.S. benefit amounts when entitlement is established by totalizing (i.e., combining) periods of U.S. coverage and periods of Australian working life residence. As stipulated in Article 7.1, persons who qualify for U.S. benefits based solely on their U.S. coverage are not eligible for U.S. totalization benefits.

Under the procedure outlined in Article 7.3, the amount of the worker's benefit depends on both the level of his or her earnings and the duration of his or her coverage under U.S. Social Security. This computation procedure is described in detail in SSA regulations (20 CFR 404.1918 as revised July 24, 1984). The first step in the procedure is to compute a theoretical benefit amount as though the worker had spent a full coverage lifetime (i.e., full career) under U.S. Social Security at the same level of earnings as during his or her actual periods of U.S. covered work. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime completed under the U.S. program. A coverage lifetime is defined in the regulations as the number of the worker's benefit computation years, i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.

Article 7.4 provides that when a worker who is entitled to a pro rata totalization benefit from the United States acquires additional U.S. coverage which enables the person to qualify for an equal or higher benefit based solely on his or her U.S. coverage, the Social Security Administration will pay the regular national law benefit rather than the Totalization benefit.

PRINCIPAL AGREEMENT

Article 8

Residence or Presence in the United States or a Third State for Australian Benefits

ANNOTATIONS AND COMMENTS

To qualify for old-age, survivors or disability benefits under the Australian system, a person must generally meet certain length-of-residence requirements and be an Australian resident and present in Australia when the claim is filed. Under the rules established in Articles 8-11, Australia will add a person's U.S. Social Security credits to his or her periods of Australian residence, if necessary, to meet the minimum residence requirements. These rules also permit a person to file a claim for Australian Social Security benefits while resident and present in the United States or in certain other countries. In addition, they establish the method of computing Australian benefit amounts when entitlement is based on the provisions of this Agreement.

AUSTRALIAN SOCIAL SECURITY BENEFITS

GENERAL

Under the Australian Social Security system, eligibility for benefits is based on residence and financial need. Benefits are paid in flat-rate amounts that are adjusted twice a year for inflation. These amounts are reduced if a beneficiary's income or assets exceed specified levels. If the amount of income or assets changes, the benefit amount is adjusted accordingly.

Australian Social Security beneficiaries are eligible for various supplemental benefits. Rental assistance, pharmaceutical allowances, remote area supplements, telephone allowances and reduced rates for certain federal, state and local government services are available to qualified individuals. In addition, beneficiaries with dependent children receive child supplement benefits.

OLD-AGE PENSION

Australian old-age pensions are payable to men at age 65 and to women at age 61½ as of 2001. (Retirement age for women is being increased gradually and will reach age 65 in 2013.) To qualify for an old-age

pension, a person must be resident and physically present in Australia when the claim is filed. In addition, he or she must have resided in Australia for a minimum of 10 years, including a continuous period of at least 5 years.

DISABILITY SUPPORT PENSION

To qualify for an Australian disability support pension, a person must be between age 16 and normal retirement age and have a physical or mental impairment that will prevent him or her from working for at least 2 years. The person must also be resident and physically present in Australia on the date of application. There are no minimum residence requirements if the disability occurs while the claimant is a permanent resident of Australia. If the disability occurs while the person is outside Australia (other than during a temporary absence), then he or she must meet the same residence requirements that apply to the old-age pension.

CARER PAYMENT

A "carer payment" is payable to an individual who provides constant care at home for a disabled Social Security beneficiary. The maximum amount of the carer payment is the same as for other Australian pensions, and the same income and assets tests apply.

PENSIONS PAYABLE TO WIDOWED PERSONS

Parenting Payment Single

Although the "parenting payment single" is the primary benefit payable to a surviving spouse, it is also paid to other categories of beneficiaries. To be eligible, a person must be a sole parent (e.g., a widow or widower, separated or divorced spouse, single parent) with at least one dependent child who is under age 16 or disabled. In addition, the sole parent must be resident and physically present in Australia on the date of application. No minimum period of residence is necessary if the couple was residing

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

permanently in Australia on the date of the qualifying event (death, divorce, etc.). Otherwise, they must have been Australian residents and in Australia for at least 2 years at any time.

Bereavement Allowance.

A bereavement allowance is paid to a person whose partner has died if the survivor does not qualify for parenting payment single or certain other benefits. The survivor must have been living with the deceased partner immediately before death. There are no residence requirements if the survivor and his or her deceased partner were Australian residents on the date of death; otherwise, the survivor must meet the same residence requirements that apply to the old-age pension. The maximum amount of the bereavement allowance is the same as for other Australian pensions, and the same income and assets tests apply. The bereavement allowance is paid for a maximum of 14 weeks from the partner's date of death.

SUPERANNUATION GUARANTEE

In 1992, Australia introduced a Government-regulated program, called the Superannuation Guarantee (SG), to provide employed persons with additional income upon retirement. Under the SG program, employers are required to contribute a specified minimum percentage of each employee's salary into funds run by banks, insurance companies and other private financial institutions. An employer who fails to make the minimum contribution must pay a charge to the Government to cover the shortfall plus administrative expenses. The Government then distributes the shortfall and interest to a Superannuation fund established for the employees. Employees are not required to make contributions, but may do so voluntarily to increase future benefits.

Benefits under SG-qualified plans must be payable to retired individuals as early as age 55, but the minimum retirement age will increase to 60 in gradual steps. Benefit amounts are generally determined based on an

**PRINCIPAL AGREEMENT**

**ANNOTATIONS AND COMMENTS**

individual's account balance at the time of retirement, including total employer contributions plus accrued investment returns. Employees may elect to receive their benefit as a lump sum or as an annuity, but the Government encourages the annuity option by providing tax concessions for those who choose periodic payments.

Since benefits under the SG program must be immediately vested (i.e., there is no minimum coverage requirement) and be payable outside Australia without restriction, Articles 8-11 do not affect SG benefits.

1. Where a person would be qualified under the laws of Australia or by virtue of this Agreement for a benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

   (a) is an Australian resident or residing in the United States or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the assessment and determination of claims for benefits; and

   (b) is in Australia, or the United States or that third State,

   that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

Under Australian law, a person must be both resident and physically present in Australia to file a claim for benefits. Article 8.1 removes this restriction for people who are resident and physically present in the United States, or in a third country with which Australia has concluded a Social Security agreement that provides for mutual administrative assistance. (As of January 2001, Australia had such agreements with 10 countries: Austria, Canada, Cyprus, Denmark, Ireland, Italy, Malta, the Netherlands, Portugal and Spain.)

As a result of this provision, a person who is a resident of Australia, the United States or a designated third country, and who is present in any one of those countries, will be able to file a claim for Australian benefits.

2. For the purposes of qualification for a carer payment as defined in this Agreement, which is payable by virtue of this Agreement, a person who is in the United States shall be regarded as being in Australia.

Ordinarily, the Australian carer payment is only paid to persons in Australia. However, Article 8.2 permits it to be paid to qualified persons in the United States as well.

**PRINCIPAL AGREEMENT**

**ANNOTATIONS AND COMMENTS**

Article 9

Totalization in Relation to Australian Benefits

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:

   (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, for that benefit under the laws of Australia;

   (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and

   (c) a United States period of coverage,

   then for the purposes of a claim for that Australian benefit, that United States period of coverage shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the laws of Australia, to be a period as an Australian resident.

Article 9.1 applies where a person has periods of coverage under the U.S. Social Security system and periods of residence in Australia, but does not meet the minimum residence requirement for Australian benefits. In such cases, Australia will count the person's U.S. coverage credits as periods of Australian residence for purposes of determining benefit eligibility. When counting U.S. periods, Australia will grant 3 months of Australian residence for each quarter of U.S. coverage. This provision only applies to people who meet the minimum Australian working life residence requirement set forth in Article 9.4.

2. For the purposes of paragraph 1, where a person:

   (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the laws of Australia for entitlement of that person to a benefit; and

   (b) has accumulated United States periods of coverage in two or more separate periods that equal or exceed in total the period referred to in subparagraph (a),

To qualify for certain types of Australian benefits, a person must meet both a minimum-residence test and a continuous-residence test. For example, a person claiming an old-age pension must have resided in Australia for a minimum of 10 years, including a continuous period of at least 5 years. Article 9.2 is intended to make clear that Australia will treat all U.S. coverage as continuous for purposes of meeting the continuous residence test.

**PRINCIPAL AGREEMENT**

the total of the United States periods of coverage shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period as an Australian resident and a United States period of coverage coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident but when it is not possible for the United States Agency to determine the time when specific periods of coverage were completed in any one calendar year, it shall be assumed that those periods of coverage do not coincide with periods in that year as an Australian resident but in no case shall the total of all those periods exceed one calendar year.

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be:

   (a) for the purposes of an Australian benefit that is payable to a person who is outside Australia, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and

   (b) for the purpose of an Australian benefit that is payable to a person who is in Australia, there shall be no minimum period.

**ANNOTATIONS AND COMMENTS**

Article 9.3 stipulates that Australia will not count U.S. periods of coverage that coincide with periods of residence in Australia. However, it is not always possible to determine exactly when certain periods of coverage under the U.S. system were earned. Beginning in 1978, for example, the method of crediting quarters of coverage under the U.S. system changed from a quarterly to an annual method. Before 1978, a worker was credited with one quarter of coverage for every calendar quarter in which he or she was paid at least $50 in covered wages, while now a worker earns up to 4 quarters of coverage in a year based on the amount of annual earnings. Thus, the U.S. earnings record indicates the total number of quarters of coverage earned in each year after 1977, but not the actual calendar quarters in which they were earned.

Under Article 9.3, the Australian agency will presume that U.S. quarters of coverage in a calendar year do not overlap with months of Australian residence in the same year, although they will credit no more than 12 months of residence in any one year.

Article 9.4 establishes a minimum residence requirement that a claimant must meet in order to have his or her U.S. periods of coverage counted as Australian residence in accordance with Article 9.1. Article 9.4(a) stipulates that a person outside Australia must have a minimum of 12 months of Australian working life residence, at least 6 of which must be continuous. Like the similar 6-quarter-of-coverage requirement for Totalization by the United States under Article 7.1, this provision is intended to avoid the considerable administrative burden that would result from processing claims for very small benefits based on short periods of residence. Article 9.4(b) makes clear that a person in Australia does not have to meet a minimum residence requirement to have U.S. coverage taken into account.

**PRINCIPAL AGREEMENT**

Article 10

Calculation of Australian Pro-Rata Benefits

1. Subject to paragraphs 2, 3 and 4, where an Australian benefit is payable by virtue of this Agreement or otherwise, to a person who is outside Australia the rate of that benefit shall be determined according to the laws of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any United States benefit paid to that person under the laws specified in Article 2(1)(a) shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of working life residence in Australia (not exceeding 300) by the amount of that United States benefit and dividing that product by 300.

**ANNOTATIONS AND COMMENTS**

Article 10 describes the method of computing Australian benefit amounts when entitlement is established by virtue of the Agreement, and modifies the national law income test rules as they apply to U.S. benefits.

Under Australian national law, Social Security benefits are paid in flat-rate amounts that are reduced if a beneficiary's income or assets exceed specified levels. For example, if an old-age pensioner who lives in Australia has income that exceeds the income-test limit, his or her pension would be calculated by subtracting a portion (40 percent under current law) of the excess income from the maximum flat-rate amount.

The benefit of a person living outside Australia is subject to further reduction unless he or she has at least 300 months (25 years) of Australian working life residence (AWLR), i.e., residence in Australia between age 16 and normal retirement age. For a person with less than 300 months, the maximum flat-rate amount is first reduced for any excess income or assets as described above. The remaining benefit amount is then prorated by multiplying it by the beneficiary's AWLR and dividing the result by 300.

The Agreement will not affect the proportional reduction that applies to people outside Australia who have less than 300 months of Australian working life residence. However, for people subject to this reduction, Article 10.1 will improve the way U.S. Social Security benefits are treated under the Australian income test. Under Article 10.1, when Australia pays a reduced benefit in proportion to a person's AWLR, the amount of that person's U.S. benefit that is taken into account under the income test will now be reduced by a similar proportion. For example, a person with 150 months of AWLR will have only one-half (i.e., 150/300) of his or her U.S. benefit taken into account.

**PRINCIPAL AGREEMENT**

2. A person referred to in paragraph 1 shall be entitled to receive the concessional assessment of income described in that paragraph only for any period during which the rate of that person's Australian benefit is proportionalized under the laws of Australia.

3. When an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is outside Australia, benefits payable under the Supplemental Security Income program of the United States and other benefits of a similar character payable under the laws of the United States or any political subdivision thereof shall not be counted as income for the purposes of calculating the rate of an Australian benefit.

4. The provisions in paragraphs 1 and 3 shall continue to apply for 26 weeks where a person returns temporarily to Australia.

5. Subject to the provisions of paragraphs 6 and 7, where an Australian benefit is payable by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

   (a) calculating that person's income according to the laws of Australia but disregarding in that calculation any United States benefit received by that person and by the partner of that person;

   (b) deducting the amount of the United States benefit received by that person from the maximum rate of that Australian benefit; and

**ANNOTATIONS AND COMMENTS**

Article 10.2 makes clear that the more favorable treatment accorded to income in the form of U.S. Social Security benefits under Article 10.1 will only apply to persons who receive a "proportionalized" Australian benefit, i.e., a benefit that is reduced because the person has less than 300 months of working life residence.

Article 10.3 provides that Australia will not count U.S. Federal, State or local public assistance benefits as income in calculating the amount of an Australian benefit payable to beneficiaries outside Australia.

Articles 10.1 and 10.3 modify the Australian legal provisions for calculating benefits payable to persons outside Australia. Article 10.4 stipulates that these two provisions will continue to apply for the first 26 weeks after a person who has been outside Australia returns temporarily to Australia. After 26 weeks, the person's benefits will be recalculated under the provisions that normally apply to persons inside Australia.

Article 10.5 describes the method Australia will use to calculate the benefit amount of people in Australia who qualify as a result of this Agreement. It is the same as the national law method except in the case of claimants who receive a U.S. Social Security benefit. In that case, the U.S. benefit will not be treated like other income for the purpose of applying the Australian income test, but will instead be deducted in full from the maximum rate Australian benefit. The remaining amount will then be subject to further reduction if the beneficiary has other income (not counting the U.S. benefit) that exceeds the allowable income-test limit. Any excess income will be treated in the same manner as under national law, i.e., 40 percent of the excess will be deducted from the remaining amount to determine the benefit payable.

PRINCIPAL AGREEMENT

(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the laws of Australia, using as the person's income the amount calculated under subparagraph (a).

6. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

7. Where the rate of a benefit calculated in accordance with paragraph 5 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.

8. Where a member of a couple is, or both that person and his or her partner are, entitled to a United States benefit or benefits, each of them shall be deemed, for the purpose of paragraphs 1 and 5 and for the laws of Australia, to be entitled to half of either the amount of that benefit or total of both of those benefits, as the case may be.

## Article 11

### Australian Working Life Residence

For the purposes of Articles 9 and 10, a period of Australian working life residence in relation to a person means a period defined as such in the laws of Australia.

ANNOTATIONS AND COMMENTS

When a person receiving an Australian benefit calculated under Article 10.5 leaves Australia temporarily, there is a 26-week waiting period before the benefit is recalculated using the method that applies to a person outside Australia.

Article 10.7 guarantees that a person in Australia who qualifies for an Australian benefit under the Agreement will not receive less than the benefit he or she would receive under paragraph 1 if outside Australia.

Article 10.8 is intended to ensure that the calculation methods described in Articles 10.1 and 10.5 are applied in a manner consistent with Australian national law in determining the amount of benefits payable to couples. It has the effect of dividing the total U.S. Social Security benefits payable to one or both members of a couple between them equally for purposes of applying Australia's income test. Thus, if only one member of a couple receives a U.S. Social Security benefit, one-half of that benefit will be assigned to each as income when calculating their Australian benefits. If both receive a U.S. benefit, one-half of their total benefits will be assigned to each.

Under Australian law, a "period of Australian working life residence" generally means a period of residence in Australia that occurs while the person is between age 16 and normal retirement age. However, the definition in Article 1.1(g) restricts the meaning of this phrase for

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

purposes of the Agreement to work-related periods of residence (see related Annotation). Article 11 provides an exception to Article 1.1(g) so that references to a "period of Australian working life residence" in Articles 9 and 10 have the broader meaning assigned to the term under Australian law. As a result, Australia will count a person's periods of working life residence, whether or not the person worked during those periods, when determining benefit eligibility under the Agreement.

PART IV

Miscellaneous Provisions

Article 12

Administrative Arrangements

The Competent Authorities of the two Parties shall:

(a) make all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;

(b) communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 12 outlines various duties of the Competent Authorities under the Agreement. Paragraph (a) authorizes the Competent Authorities to make any administrative arrangements that may be necessary to implement and administer the Agreement. Paragraph (b) requires the Competent Authorities to notify each other of measures they have taken unilaterally to implement the Agreement. Paragraph (c) obligates the Competent Authorities to notify each other of any changes in their respective Social Security laws that may affect the application of the Agreement.

**PRINCIPAL AGREEMENT**

**ANNOTATIONS AND COMMENTS**

Article 13

Exchange of Information and Mutual Assistance

1. The Competent Authorities and the Agencies of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.

Article 13.1 provides authority for the two countries to furnish each other nonreimbursable assistance in administering the Agreement. Such assistance may include the taking of benefit applications and the gathering and exchanging of information relevant to claims filed under the Agreement. Although Article 13.1 establishes the general principle that mutual administrative assistance will be free of charge, it also authorizes the two sides to agree to exceptions, such as the exception regarding medical examinations in Article 7.3 of the Administrative Arrangement.

2. Unless otherwise required by the national statutes of a Party, information about an individual which is transmitted in accordance with the Agreement to that Party by the other Party shall be used exclusively for purposes of implementing the Agreement. Such information received by a Party shall be governed by the national statutes of that Party for the protection of privacy and confidentiality of personal data.

Both the United States and Australia have statutes and regulations that govern disclosure and provide safeguards for maintaining the confidentiality of information pertaining to individuals which is in the possession of their respective Governments. In the United States, these statutes include the Freedom of Information Act, the Privacy Act, section 6103 of the Internal Revenue Code, and pertinent provisions of the Social Security Act and other related statutes. Article 13.2 provides that personal information pertaining to an individual which one country furnishes to the other under the Agreement will be protected in accordance with the applicable provisions of the receiving country's privacy and confidentiality laws.

3. In no case shall paragraphs 1 or 2 be construed so as to impose on the Competent Authority or an Agency of a Party the obligation:

   (a) to carry out administrative measures at variance with the statutes or the administrative practice of that or of the other Party; or

Article 13.3 is intended to make clear that the preceding two paragraphs do not require either country to furnish information or administrative assistance which would be contrary to either country's laws or normal administrative practice.

**PRINCIPAL AGREEMENT**

(b) to furnish information which is not obtainable under the statutes or in the normal course of the administrative practice of that or of the other Party.

Article 14

Documents

1. Where the laws of a Party provide that any document which is submitted to the Competent Authority or Agency of that Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or Agency of the other Party in the application of this Agreement.

2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

3. Copies of documents which are certified as true and exact copies by the Agency of one Party shall be accepted as true and exact copies by the Agency of the other Party, without further certification. The Agency of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

**ANNOTATIONS AND COMMENTS**

Article 14.1 provides that if the laws of one country exempt documents submitted in connection with a Social Security claim from fees or charges, that exemption shall also apply if such documents are sent to the other country by or on behalf of a claimant or beneficiary.

Some countries require that the authenticity of documents that are submitted to their Social Security authorities by or on behalf of persons in another country be certified by a diplomatic, consular or other official representative in the other country. (The United States has no such requirements.) Under Article 14.2, neither the United States nor Australia will require such authentication of documents submitted under the Agreement.

If the agency of one country certifies that a copy of a document it furnishes to an agency of the other country is a true and exact copy of an original document, the other country will accept this certification. Nevertheless, the agency of each country will remain the final judge of the probative value of any documents submitted to it.

**PRINCIPAL AGREEMENT**

**ANNOTATIONS AND COMMENTS**

Article 15

Correspondence

The Competent Authorities and Agencies of the Parties may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement.

Article 15 authorizes direct correspondence between the Competent Authorities and agencies of the two countries and between these bodies and any person with whom they may need to communicate.

Article 16

Applications for Benefits

1. A written application for benefits filed with the Agency of one Party shall protect the rights of the claimants under the laws of the other Party if the applicant requests that it be considered an application under the laws of the other Party.

Under Article 16.1, a written application submitted to an agency of one country will protect a claimant's right to benefits under the laws of the other country as if the application had been presented in the other country, provided the applicant expresses an intent to file for benefits in the other country when the application is filed.

2. If an applicant has filed a written application for benefits with the Agency of one Party and has not explicitly requested that the application be restricted to benefits under the laws of that Party, the application shall also protect the rights of the claimants under the laws of the other Party if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods under the laws of the other Party, as defined in subparagraphs 1(g)(i) or 1(i) of Article 1.

Because an applicant may not be fully aware of his or her benefit rights in the other country, Article 16.2 provides that, in the absence of an expression of intent, the application will also protect the claimant's rights in the other country if the applicant indicates at the time of filing that the person on whose record benefits are claimed has been covered under Social Security in the other country.

3. The provisions of Part III shall apply to benefits under United States laws only if an application is filed on or after the date this Agreement enters into force.

Article 16.3 requires that a person claiming U.S. benefits under the Agreement file an application either on or after the date the Agreement enters into force.

**PRINCIPAL AGREEMENT**

**ANNOTATIONS AND COMMENTS**

Article 17

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

   (a) a period as an Australian resident and a United States period of coverage; and

   (b) any event which is relevant to that eligibility or entitlement,

   shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before, on or after the date on which this Agreement enters into force. However, neither Party shall take into account such periods of coverage or residence that occurred prior to the earliest date for which periods of coverage or residence may be credited under its laws.

In determining benefit eligibility and amounts under the Agreement, Article 17.1 provides that periods of U.S. coverage or periods of Australian residence occurring before, on or after the Agreement enters into force will be taken into account. However, neither country will consider periods completed prior to the earliest date for which these periods may be credited under its laws. In addition, events material to the determination of benefit rights, such as marriage, death, disability or attainment of a certain age, that occurred before, on or after the effective date of the Agreement will be considered in applying the Agreement.

2. Where:

   (a) a benefit is paid by the United States to a person in respect of a past period whether by virtue of this Agreement or otherwise; and

   (b) for all or part of that period, Australia has paid to that person a pension, benefit or allowance under its social security laws; and

Most Australian Social Security benefits are paid in flat-rate amounts that are reduced if a beneficiary's income or assets, including any Social Security benefits received from another country, exceed specified levels. Under Article 17.2, if a person receives retroactive U.S. benefit payments that would have reduced his or her Australian benefit had the U.S. benefit been paid timely, the amount by which the Australian benefit would have been reduced will be considered an overpayment that Australia may recover from future Australian benefit payments.

| PRINCIPAL AGREEMENT | ANNOTATIONS AND COMMENTS |
|---|---|
| (c) the amount of the pension, benefit or allowance paid by Australia would have been reduced had the benefit paid by the United States been paid during that period; | |
| then | |
| (d) the amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to Australia and may be recovered by Australia; and | |
| (e) Australia may recover all or part of that debt under the provisions of the Acts forming the social security law of Australia. | |
| 3. This Agreement shall not establish any claim to payment of a benefit for any period before the date of the entry into force of the Agreement, or to a lump-sum death benefit under United States laws if the person died before the date of entry into force of the Agreement. | Under Article 17.3, periodic benefits payable as a result of the Agreement will be paid only for periods beginning with the date on which the Agreement enters into force. Any lump-sum death payments provided by section 202(i) of the U.S. Social Security Act will be payable under the Agreement only if the death occurs on or after the date the Agreement enters into force. |
| Article 18 | |
| Prescribed Time Limits and Appeals | |
| 1. Any claim, notice or written appeal which, under the laws of one Party, must have been filed within a prescribed period with the Agency of that Party, but which is instead filed within the same period with the Agency of the other Party, shall be considered to have been filed on time. | Article 18.1 provides that a claim, notice or written appeal which must be filed within a prescribed time limit with an agency of one country will be considered to have been filed on time if it is filed within such limit with an agency of the other country. |

| PRINCIPAL AGREEMENT | ANNOTATIONS AND COMMENTS |
|---|---|
| 2. A written appeal against a decision made by the Agency of one Party may be validly filed with the Agency of either Party. The appeal shall be dealt with according to the procedure and laws of the Party whose decision is being appealed. | Both the United States and Australia have formal procedures for appealing adverse determinations of their agencies. Under Article 18.2, an appeal of a decision made by an agency of one country may be filed with the agency of that country or with the agency of the other country. In either case, the agency of the country whose decision is being appealed would consider the appeal based on its own laws and procedure. |
| 3. In relation to a decision made by the agency of Australia, the reference in paragraph 2 to a written appeal is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia. | Appeals of decisions on Australian claims are generally dealt with under an administrative appeals process established by Australian social security laws. However, in some cases, appellants may have additional appeal rights under other statutes that are not part of the social security laws. Article 18.2 makes clear that the provisions of this Agreement do not affect those other statutes. |
| Article 19<br>Currency | |
| 1. Payments under this Agreement may be made in the currency of the Party making the payments. | Benefits to be paid by a country under this Agreement may be paid in the currency of that country. This corresponds to the current U.S. practice regarding benefit payments. |
| 2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Party, the Governments of both Parties shall immediately take measures necessary to ensure the transfer of sums owed by either Party under this Agreement. | Should either country impose restrictions on the exchange of its currency, steps shall be taken to assure the payment of amounts due under the Agreement. |
| Article 20<br>Resolution of Disputes | |
| Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities. | Article 20 obligates the Competent Authorities to attempt to resolve any dispute between them regarding the Agreement through direct consultation or negotiation. |

**PRINCIPAL AGREEMENT**

Article 21

Supplementary Agreements

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such agreements may be given retroactive effect if they so specify.

Article 22

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the country to which that request was made.

PART V

Transitional and Final Provisions

Article 23

Transitional Provisions

1. In applying paragraph 3 of Article 6, in the case of persons who were sent to the territory of a Party prior to the date of entry into force of this Agreement, the period of employment referred to in that paragraph shall be considered to begin on that date.

**ANNOTATIONS AND COMMENTS**

Article 21 provides that the Agreement may be amended by future supplementary agreements and that such agreements may have retroactive effect. After a supplementary agreement becomes effective, it will be considered an integral part of the Agreement.

If either country requests the other to meet to review the provisions of the Agreement, the meeting will be held within 6 months from the date of the request. The meeting will take place in the country that receives the request unless both sides agree to other arrangements.

Under Article 6.3, an employee who is transferred by his or her employer in one country to work in the other country for 5 years or less will remain subject to the laws on compulsory coverage of the first country and the employer and employee will be exempt from coverage and contributions in the host country. Article 23.1 provides that the 5-year period will be measured beginning no earlier than the date the Agreement enters into force. Thus, for persons to whom Article 6.3

**PRINCIPAL AGREEMENT**

2. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

Article 24

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the third month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalized.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party received from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to the benefit entitlements of all persons who:

   (a) at the date of termination, are in receipt of benefits; or

   (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement.

**ANNOTATIONS AND COMMENTS**

applies who were transferred to the other country before the effective date of the Agreement, the period prior to that date will not be counted for purposes of the 5-year limit.

A decision to award or deny a claim which was rendered prior to the effective date of the Agreement will not prevent a person from filing a new application for additional benefits that may be payable as a result of the Agreement.

Each country will follow its own constitutional procedures for approval of the Agreement. Once each country has completed its internal approval process, the two Governments will exchange formal instruments of approval. The Agreement will enter into force on the first day of the third calendar month after each Government has received the notification of approval from the other Government.

Article 24.2 provides for the Agreement to remain in effect until the expiration of 12 calendar months after the date notice of intent to terminate is given by one of the countries.

Article 24.3 provides that, even if the Agreement is terminated, it will continue to apply to people who qualified for or applied for benefits under its provisions before the termination date. Such people will not lose benefit rights as a result of the termination.

**PRINCIPAL AGREEMENT**

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE in duplicate at Canberra_ on September 27, 2001.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

J. Thomas Schieffer

FOR THE GOVERNMENT OF AUSTRALIA:

Amanda Vanstone

**ANNOTATIONS AND COMMENTS**

The Agreement was signed on September 27, 2001, in Canberra by the U.S. Ambassador to Australia, J. Thomas Schieffer, and the Australian Minister for Family and Community Services, Senator Amanda Vanstone.

ANNEX B

# ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA ON SOCIAL SECURITY

The Competent Authority of the United States of America and

the Competent Authority of Australia,

In conformity with Article 12, paragraph (a), of the Agreement between the United States of America and Australia on Social Security of this date, hereinafter referred to as the "Agreement", have agreed as follows:

## CHAPTER I

## General Provisions

### Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 1 provides that the terms used in both the Agreement and this Administrative Arrangement, whether defined in the Agreement or not, will have the same meaning as they have in the Agreement.

### Article 2

1. The liaison agencies referred to in Article 12, paragraph (a), of the Agreement shall be:

   (a) for the United States, the Social Security Administration,

   (b) for Australia, Centrelink, except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Australian Taxation Office.

Article 2.1 designates the agencies in each country that will have primary responsibility for coordinating implementation and administration of the coverage and benefit provisions of the Agreement. The Social Security Administration is the designated liaison agency for the United States. Australia will have two liaison agencies. Centrelink will coordinate the benefit provisions, while the Australian Taxation Office will be responsible for provisions dealing with coverage and contributions under the Superannuation Guarantee (SG) program.

2. The liaison agencies designated in paragraph 1 shall agree upon the joint procedures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

Article 2.2 authorizes and requires the liaison agencies of the United States and Australia to agree upon those procedures and forms that must be prepared jointly for the implementation of the Agreement and Administrative Arrangement.

## CHAPTER II

### Provisions on Coverage

### Article 3

1. Where the laws of a Party are applicable in accordance with any of the provisions of Article 6 of the Agreement, the Agency of that Party, upon request of the employer or self-employed person, shall, in circumstances agreed upon by the Parties, issue a certificate stating that the employee, or the employer with respect to that employee, or self-employed person is subject to those laws and indicating the duration for which the certificate shall be valid. This certificate shall be proof that the named worker and the employer in respect of the named worker are exempt from the laws on compulsory coverage of the other Party.

Under Article 3.1, the agency of the country whose coverage laws will continue to apply to a person in accordance with the various rules set forth in Article 6 of the Agreement will issue a certificate to that effect when requested to do so by an employer or a self-employed person. When presented to the appropriate agency of the other country, the certificate will establish the basis for the exemption of the person from the coverage laws of that country. Retroactive recovery of U.S. contributions paid with respect to services for which a coverage exemption has been in effect would be subject to the time limitations for refunds of taxes in the Internal Revenue Code.

2. The certificate referred to in paragraph 1 shall be issued:

   (a) in the United States, by the Social Security Administration,

   (b) in Australia, by the Commissioner of Taxation or an authorized representative of the Commissioner.

Article 3.2 designates the agencies responsible for issuing coverage certificates.

3. The Agency of a Party which issues a certificate referred to in paragraph 1 shall furnish a copy of the certificate or agreed details of the certificate to the liaison agency of the other Party as needed by the latter Agency.

Article 3.3 provides that the agency issuing a coverage certificate will furnish a copy of the certificate or information from the certificate to the liaison agency in the other country when needed.

## CHAPTER III

### Provisions on Benefits

#### Article 4

1. Applications for benefits under the Agreement shall be submitted on forms to be agreed upon by the liaison agencies of the two Parties.

The U.S. and Australian liaison agencies will agree on special application forms to be used by individuals who wish to file for benefits based on the Agreement.

2. The Agency of the Party with which an application for benefits is first filed in accordance with Article 16 of the Agreement shall provide the liaison agency of the other Party with such evidence and other information as may be required to complete action on the claim.

3. The Agency of a Party which receives an application that was first filed with an Agency of the other Party shall without delay provide the liaison agency of that other Party with such evidence and other available information as may be required for it to complete action on the claim.

Articles 4.2 and 4.3 outline the procedures to be followed by both countries for the exchange of pertinent information needed to process claims filed under the Agreement.

4. The Agency of the Party with which an application for benefits has been filed shall verify the information pertaining to the applicant and the applicant's family members. The types of information to be verified shall be agreed upon by the liaison agencies of both Parties.

Article 4.4 deals with the verification of claims information. Both U.S. and Australian laws require that certain information about individuals claiming benefits be verified (e.g., age and family relationship) before the claim can be approved. Article 4.4 provides that when a claim for benefits under the Agreement is filed in one country, the agency of that country will verify the relevant information and inform the agency of the other country of its findings. The liaison agencies will agree upon the specific types of information which must be verified.

The purpose of this provision is to expedite the claims process by avoiding the duplication of effort that would result if the agencies of both countries were required to verify the same information. Although an agency may accept the findings of the other agency concerning the accuracy of information, it may, at its discretion, request documentary evidence to support those findings.

## CHAPTER IV

## Miscellaneous Provisions

### Article 5

In accordance with measures to be agreed upon pursuant to Article 2, paragraph 2, of this Administrative Arrangement, the Agency of one Party shall, upon request of the Agency of the other Party, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 5 provides that the agency of one country may, upon request, furnish claims-related information to the agency of the other country in accordance with agreed upon procedures. Such procedures will be agreed upon by the liaison agencies and will be consistent with the governing statutes of both countries.

### Article 6

The liaison agencies of the two Parties shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon.

Article 6 provides for an exchange of statistics concerning the number of coverage certificates issued pursuant to Article 3 of this Administrative Arrangement and the payments made to beneficiaries under the Agreement.

Article 7

1. Where administrative assistance is requested under Article 13 of the Agreement, expenses other than regular personnel and operating costs of the Agency providing the assistance shall be reimbursed, except as may be agreed to by the Competent Authorities or liaison agencies of the Parties.

Under Article 7.1, expenses incurred in responding to requests for administrative assistance which require an agency to go outside its own organization--for example, to conduct special field investigations or arrange medical examinations—will be paid by the requesting agency, unless the two countries agree on a different arrangement. Expenses for regular personnel and operating costs will not be reimbursed.

2. Upon request, the liaison agency of either Party shall furnish without cost to the liaison agency of the other Party any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

When the liaison agency in one country requests medical information from the liaison agency in the other country, the latter agency will furnish the requesting agency any pertinent medical records it has in its possession free of charge.

3. Where the Agency of a Party requires that a person in the territory of the other Party who is receiving or applying for benefits under the Agreement submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the liaison agency of the other Party in accordance with the rules of the Agency making the arrangements and at the expense of the Agency which requests the examination.

Article 7.3 provides that where a medical examination is necessary to establish eligibility for or continuing entitlement to a country's benefits that are payable under the Agreement, and the claimant or beneficiary is located in the other country, the liaison agency of the other country will, upon request, arrange for the examination at the expense of the agency requesting the examination, pursuant to Article 7.1 above.

4. The liaison agency of one Party shall reimburse amounts owed under paragraph 1 or 3 of this Article upon presentation of a statement of expenses by the liaison agency of the other Party.

In order to receive reimbursement for the cost of administrative assistance, the liaison agency which provides the assistance must furnish the requesting agency with a detailed statement of expenses.

Article 8

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE in duplicate at Canberra on September 27, 2001.

For the Competent Authority of the United States of America:

J. Thomas Schieffer

For the Competent Authority of Australia:

Amanda Vanstone

The Administrative Arrangement will enter into force on the same date as the Agreement and will remain in effect for the same period as the Agreement.

The Administrative Arrangement was signed on September 27, 2001, in Canberra by the U.S. Ambassador to Australia, J. Thomas Schieffer, and the Australian Minister for Family and Community Services, Senator Amanda Vanstone.

ANNEX C

# REPORT TO CONGRESS ON THE FINANCIAL EFFECT OF THE U.S.-AUSTRALIAN SOCIAL SECURITY AGREEMENT

The following tables present estimates on the effects of the proposed U.S.-Australian Social Security agreement on the income and expenditures of both countries' Social Security programs and the number of people who will be affected by the agreement. The estimates were prepared based on the assumption that the agreement would become effective on October 1, 2002.

Table 1 shows the estimated additional costs that would accrue to each country's system as a result of the agreement. These costs arise under the respective systems due to: (1) benefit payments that become payable by each system solely because of the agreement, and (2) tax contributions on behalf of temporary workers in the respective countries that would be forgone under the agreement.

Table 2 shows the number of people who would become eligible for a partial retirement, survivors, or disability benefit from the United States or Australia under the agreement. Also shown in Table 2 is the number of employees in each country who, along with their employers, would no longer be subject to dual coverage and taxation for Social Security purposes.

# REPORT TO CONGRESS
# TO ACCOMPANY THE SOCIAL SECURITY AGREEMENT
# BETWEEN THE UNITED STATES AND AUSTRALIA

## I. INTRODUCTION

The Social Security agreement between the United States and Australia is intended to provide limited coordination of the U.S. and Australian Social Security programs. The agreement is similar in content and objective to Social Security agreements already in force between the United States and 19 other countries, including Canada, Chile, South Korea and most Western European nations. Like earlier U.S. agreements, the agreement with Australia is designed to eliminate dual Social Security coverage and taxation of the same work and to help fill gaps in benefit protection for people who have divided their careers between the two countries.

The U.S.-Australian agreement consists of two separate instruments: (1) a principal agreement setting forth the basic rules for coordinating the two countries' systems; and (2) an administrative arrangement establishing policies and procedures to implement the principal agreement. These two documents, which were signed by representatives of the U.S. and Australian Governments on September 27, 2001, are now being transmitted to Congress for review in accordance with section 233(e) of the Social Security Act.

Accompanying this report are paragraph-by-paragraph explanations of the provisions of the principal agreement (Annex A) and related administrative arrangement (Annex B). A report required by section 233(e)(1) of the Social Security Act on the effect of the agreement on income and expenditures of the U.S. Social Security program and the number of individuals affected by the agreement is also included (Annex C).

## II. STATUTORY REQUIREMENTS

U.S. Social Security agreements are negotiated under authority of section 233 of the Social Security Act. Section 233(c)(1) requires that international agreements concluded pursuant to that section provide for the elimination of dual coverage of the same work under the Social Security systems of the United States and the other country party to the agreement, and for combining Social Security credits earned by a worker under the two systems for benefit eligibility purposes. In addition, the law stipulates that when eligibility for U.S. Social Security benefits is established on the basis of combined credits, the amount of the U.S. benefit payable must be based on the proportion of the worker's periods of coverage completed under title II of the Social Security Act. The U.S.-Australian agreement includes these required provisions.

## III. COVERAGE PROVISIONS

In conformity with section 233(c)(1)(B) of the Social Security Act, Part II of the principal agreement sets forth rules designed to eliminate dual coverage and taxation of the same work under the U.S. and Australian Social Security systems. These rules apply to coverage and taxes under the U.S. Social Security program and under Australia's "Superannuation Guarantee" (SG) program. Australia does not have an earmarked Social Security payroll tax; however, under the SG program, employers are required to pay contributions at specified minimum rates to government-regulated employee pension plans, or else pay a special tax to cover the shortfall. When the coverage rules of the agreement provide that an employer and employee will be subject to U.S. Social Security taxes, the employer will be relieved of the additional burden of paying Australian SG contributions.

### A. Rules Governing Employees

The rules which apply to employed persons would generally eliminate dual coverage under the laws of the United States and Australia by maintaining an employee's coverage under the laws of the country where the work is performed and exempting the employee from compulsory coverage under the laws of the other country.

Special rules would apply, however, for employees who are temporarily transferred by their employer in one country to work in the other country for a period of 5 years or less. In this situation, an employee who was covered in one country before the transfer would continue to be covered under that country's laws and would be exempt from coverage in the host country. Thus, a person working for a U.S. employer who is temporarily transferred by that employer to Australia would only be covered under and pay contributions to the U.S. Social Security program, and the U.S. employer would be exempt from Australian SG contribution requirements. (Employees are not required to pay contributions to the SG program.)

### B. Rules Governing Other Workers

Other rules set forth in the agreement would eliminate dual coverage and contributions for persons employed by the Governments of the two countries, for persons employed in international air and ship transportation and for self-employed persons.

## IV. BENEFIT PROVISIONS

Part III of the principal agreement establishes the basic rules for determining entitlement to and the amount of U.S. and Australian benefits for persons who have worked in both countries. These benefit provisions are included pursuant to sections 233(c)(1)(A) and (C) of the Social Security Act.

### A. Provisions Applicable to the United States

#### 1. Totalization of Periods of Coverage

Under the rules that apply to the United States, if a worker has credit for at least 6 quarters of coverage under the U.S. Social Security program but not enough credits to qualify for a retirement, survivors or disability benefit, the worker's coverage credits from both the United States and Australia could be totalized (i.e., combined) to permit him or her to qualify for a partial U.S. benefit. Since periods of coverage under the Australian Social Security system are measured in terms of months, the United States would credit one quarter of coverage for every three months of Australian coverage in a calendar year. The United States would not, however, credit months of coverage under Australian law if they coincide with quarters of coverage already credited under the U.S. system.

#### 2. Computation of U.S. Totalization Benefit Amounts

The amount of a U.S. benefit for which a person may qualify based on totalized periods of coverage depends on both the duration of the worker's coverage under the U.S. Social Security system and the level of his or her earnings. A detailed description of the Totalization benefit computation procedure is contained in regulations of the Social Security Administration (20 CFR 404.1918). The first step in the procedure is to compute a theoretical benefit amount as though the worker had worked a full coverage lifetime (i.e., a full career) under U.S. Social Security at the same earnings level as during his or her actual periods of U.S. covered work. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime the worker completed under the U.S. program. A coverage lifetime is defined in the regulations as the number of the worker's benefit computation years, i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.

B. Provisions Applicable to Australia

1. Australian Benefits

Under the Australian Social Security system, eligibility for benefits is based on residence and financial need. Benefits are paid in flat-rate amounts that are adjusted twice a year for inflation. These amounts are reduced if a beneficiary's income or assets exceed specified levels.

To qualify for old-age, survivors or disability benefits under the Australian system, a person must generally satisfy certain length-of-residence requirements and, depending on the type of benefit, also meet a continuous-residence test. For example, a person claiming an old-age pension must have resided in Australia for a minimum of 10 years, including a continuous period of at least 5 years. In addition to meeting the minimum residence requirements, a person must also be resident and physically present in Australia at the time the claim is filed.

2. Totalization of Periods of Coverage

Under the rules of the agreement, Australia will add a person's U.S. Social Security credits to his or her periods of Australian residence, if necessary, to meet the minimum residence requirements. These rules also permit a person to file a claim for Australian Social Security benefits while resident and present in the United States or in certain other countries. In addition, they establish the method of computing Australian benefit amounts when entitlement is based on the provisions of the agreement. The agreement does not include rules applicable to benefits under the SG program since Australian law already requires that these benefits be immediately vested, i.e., there is no minimum coverage requirement, and the benefit must be payable outside Australia without restriction.

C. Benefit Portability

Section 233(c)(2) of the Social Security Act permits agreements to contain provisions suspending the application of the alien nonpayment provisions of the Social Security Act (section 202(t)) for persons residing in a foreign country with which the United States has an agreement in force. The U.S.-Australian agreement would provide an exemption from these nonpayment provisions for insured persons and their dependents or survivors, regardless of their citizenship, if they reside in Australia.

The agreement also includes a provision that can help overcome the requirement in Australian law that a claimant be resident and present in Australia at the time of filing a claim for Australian benefits. Under the agreement, residence in the

United States or a third country with which Australia has a Social Security agreement will be considered equivalent to residence in Australia, and presence in the United States or such a third country will be considered equivalent to presence in Australia.

V. OTHER PROVISIONS

Section 233(c)(4) of the Social Security Act authorizes agreements to contain other provisions not inconsistent with title II of the Act which are appropriate to carry out the purposes of the agreements. In accordance with this provision, the principal agreement and administrative arrangement contain a number of articles designed to permit each country to render free or reimbursable assistance to the other country in implementing the agreement.

○