to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget.

Copies of the information collection package associated with this rule may be obtained from Katie Lewin, Office of Management and Budget, Room 3235, NECB, Washington, DC 20503, (202) 395-7231.

C. Effective Date

Section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that rules promulgated by an agency may not be made effective less than thirty days afer publication in the **Federal Register** except, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction." In proposing these amendments, the Commission stated that, because they essentially relieved a restriction, the Commission may determine that the amendments may take effect on less than thirty days notice. In this connection, NFA has advised the Commission that it is prepared to assume responsibility for processing floor broker registration applications on September 29, 1986. Therefore, the Commission, pursuant to 5 U.S.C. 553(d), has determined that these rule amendments shall take effect on that date.

List of Subjects in 17 CFR Part 3

Registration requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Fingerprinting, Associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants, Leverage transaction merchants, Petitions for review.

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: Secs. 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23 (1982).

2. Section 3.2 is amended by revising paragraph (d) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

* * * * *

(d) The registration of each leverage transaction merchant shall expire on the thirty-first day of March following the date on which registration was granted.

* * * * *

3. Section 3.11 is revised to read as follows:

§ 3.11 Registration of floor brokers.

(a) *Application for registration.* (1) Application for registration as a floor broker must be on Form 8-R, completed and filed with the National Futures Association in accordance with the instructions thereto. Each Form 8-R filed in accordance with this paragraph (a) must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association, except that a fingerprint card need not be filed by any applicant who has a current Form 8-R on file with the Commission or the National Futures Associations.

(2) An applicant for registration as a floor broker will not be registered as such unless the applicant has been granted trading privileges by a board of trade designated as a contract market by the Commission.

(3) When the Commission or the National Futures Association determines than an applicant for registration as a floor broker is not disqualified from such registration, the National Futures Association will provide notification in writing to the applicant and to any contract market that has granted the applicant trading privileges that the applicant's registration as a floor broker is granted.

(b) *Duration of registration.* A person registered as a floor broker in accordance with paragraph (a) or (c) of this section, and whose registration has neither been suspended, revoked nor withdrawn, will continue to be so registered so long as such person has trading privileges on a contract market.

(c) *Special registration for certain persons.* Any person whose registration as a floor broker has terminated within the proceeding sixty days and who is granted trading privileges by another contract market will be registered as, and in the capacity of, a floor broker upon mailing to the National Futures Association of a Form 8-R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor broker on a fingerprint card provided by the National Futures Association for that purpose.

4. Section 3.31 is amended by adding a new paragraph (d) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes to be reported.

* * * * *

(d) Each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker must notify the National Futures Association within twenty days after such person has ceased having trading privileges on such contract market.

Issued in Washington, DC, on September 23, 1986, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 86-21897 Filed 9-26-86; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231 and 261

[Release Nos. 33-6661; 39-2038]

Securities Issued or Guaranteed by United States Branches or Agencies of Foreign Banks; Interpretive Release

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation of section 3(a)(2) of the Securities Act of 1933.

SUMMARY: The Commission is issuing an interpretive release regarding the application of the registration provisions of the Securities Act of 1933 to the offer and sale of securities by United States branches and agencies of foreign banks.

EFFECTIVE DATE: September 23, 1986.

FOR FURTHER INFORMATION CONTACT: William E. Morley or William H. Carter, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549, (202) 272-2573.

SUPPLEMENTARY INFORMATION: For more than twenty years the Division of Corporation Finance (the "Division") and, in two particular instances, the Commission, have addressed the applicability of the section 3(a)(2) exemption under the Securities Act of 1933 (the "Securities Act") to the issuance and/or guarantee of securities by United States branches or agencies of foreign banks. There has been an increasing number of requests for staff no-action letters with respect to an expanding array of instruments issued by such branches and agencies.

Section 3(a)(2) exempts from the application of the registration provisions of the Securities Act "any security issued or guaranteed by any bank" and defines "bank" to mean "any national bank, or any banking institution organized under the law of any State, Territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking Commission or similar officials." Branches and agencies of foreign banks are operational arms of foreign banks conducting business in the United States under licenses granted either by the Comptroller of the Currency or a State authority. However, such agencies and branches are not separate legal entities from the foreign bank and technically may not be national banks or be organized under the laws of any State. Therefore, they may not fall literally within the definition of a "bank" under section 3(a)(2).

In 1964, the Commission reviewed the availability of the section 3(a)(2) exemption for United States branches of foreign banks, particularly with respect to their day-to-day normal banking operations. After review of the issues involved, particularly the comparability of regulation of these branches, the Commission was satisfied that the foreign bank branches in question were subject to the type and extent of supervision contemplated by section 3(a)(2) for domestic banks and authorized the Division to issued no-action letters with respect to the sale without registration of various instruments. The Division then granted the first no-action letter with respect to certificates of deposit and pass book accounts issued by a New York State branch. Other letters involving state-licensed branches and agencies followed.[1]

In 1974, the no-action policy was reexamined. The Commission reaffirmed the previous position, in part as a policy decision intended to implement the "principle of national treatment," that foreign and domestic banks should have the same privileges and be subject to the same rules in this country. In addition, the Commission determined that the branches and agencies in question appeared to be virtually indistinguishable from their domestic counterparts.

In 1978, Congress passed the International Banking Act ("IBA").[2] Prior to the IBA, the only branches and agencies of foreign banks in the United States were those licensed by the States. Under the IBA a foreign bank can establish a "Federal" branch or agency licensed and supervised by the Comptroller of the Currency. Congress enacted the IBA to establish "the principle of parity of treatment between foreign and domestic banks in like circumstances" (the principle of national treatment).[3]

To date more than 100 no-action letters have been issued with regard to a wide variety of securities issued and/or guaranteed by foreign bank branches or agencies, including certificates of deposit, unsubordinated notes, and letters of credit (as well as the underlying securities to which the letters of credit relate).[4] In each of the no-action letters since 1984, the Division's favorable response has been conditioned upon the receipt of an opinion of counsel that the nature and extent of Federal and State regulation and supervision of the branch or agency in question were substantially equivalent to that applicable to Federal or State chartered domestic banks doing business in the same jurisdiction.

The unifying principle underlying these repeated no-action positions by the Division is that, where they are subject to domestic regulation by federal or state banking authorities that is substantially equivalent to that applied to domestic banks, such branches and agencies are functionally indistinguishable from their domestic counterparts.

In view of the increasing number of requests for guidance on this issue and the wide variety of instruments involved, and to assure clear and consistent application of the Act, the Commission believes it appropriate to formalize its position on the application of the section 3(a)(2) exemption from the registration requirements of the Securities Act to securities issued or guaranteed by branches and agencies of foreign banks located in this country. The Commission's interpretation, which underlies the more than 20 years of no-action positions taken by the Division of Corporation Finance, is that, for purposes of the exemption from registration provided by section 3(a)(2) of the Securities Act,[5] the Commission deems a branch or agency of a foreign bank located in the United States to be a "national bank," or a "banking institution organized under the laws of any State, Territory or the District of Columbia," provided that the nature and extent of Federal and/or State regulation and supervision of the particular branch or agency is substantially equivalent to that applicable to Federal or State chartered domestic banks doing business in the same juridiction.[6] The determination

[1] *See* examples of no-action letters cited in footnote 4, *infra*.

[2] 12 U.S.C. 3101 *et seq.*

[3] S. Rep. No. 1073, 95th Cong., 2d Sess. 2 (1978).

[4] The following are some examples of the types of securities covered by no-action letters issued to date; the letters are listed in chronological order to show how these requests have evolved, with the year a representative no-action letter was granted shown parenthetically:

(a) First no-action letter, certificates of deposit and passbook accounts (1964);

(b) Certificates of deposit, $100,000 minimum denominations, sold only to institutions, "varying" maturities (1971);

(c) Letters of credit guaranteeing short-term notes themselves exempt from registration under section 3(a)(3) (1973);

(d) Notes, unspecified denominations, maturities up to 360 days (1973);

(e) Certificates of deposit, $100,000 minimum denominations, 360 day maturities (1975);

(f) Certificates of deposit, $100,000 minimum denominations, five year maturities (1975);

(g) Certificates of deposit, seven year maturities (1978);

(h) Certificates of deposit, minimum denominations of $25,000 (1978);

(i) Letters of credit guaranteeing notes of branch's commercial and industrial customers (1979);

(j) Letters of credit guaranteeing one year promissory notes (1980);

(k) Letters of credit guaranteeing industrial development bonds (1980);

(l) Notes, maturities up to two years, $100,000 minimum denominations (1983);

(m) Irrevocable guarantees by branch of parent foreign bank's certificates of deposit (1984);

(n) Letters of credit guaranteeing certificates of deposit issued by parent foreign bank (1984);

(o) Letters of credit guaranteeing non-exempt bonds where the term of the bonds exceeded the term of the original letter of credit (with the proviso that if the orignal letter of credit was not replaced with a substantially equivalent letter the issuer was obligated to redeem the bonds with the original letter guaranteeing the redemption) (1985);

(p) Letters of credit guaranteeing participation certificates evidencing fractional undivided interests in a trust composed of industrial development bonds, housing bonds, and mortgages (1985); and

(q) Letters of credit guaranteeing non-exempt notes with maturities of 20 to 30 years (1985).

[5] The exemption provided by section 304(a)(4)(A) of the Trust Indenture Act of 1939 is also available to branches and agencies of foreign banks under the same circumstances.

However, this interpretation does not affect in any way the status of foreign banks (or U.S. branches, agencies or subsidiaries of foreign banks) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq*). *See, e.g.*, Investment Company Act Release No. 15314 (September 17, 1986), proposing an exemption from the Investment Company Act of 1940 for the offer or sale of debt securities and non-voting preferred stock by foreign banks or foreign bank finance subsidiaries.

[6] The passage of legislation adopting the recommendation of the Task Group on Regulation of Financial Services, chaired by Vice President

Continued

with respect to the requirement of "substantially equivalent regulation," as well as the determination as to whether the business of the branch or agency in question "is substantially confined to banking and is supervised by the State or territorial banking commission or similar official" is the responsibility of issuers and their counsel. Of course, these determinations will have to be made with regard to the banking regulations in effect at the time the securities are issued or guaranteed.

In light of the issuance of this interpretive release, no-action letters regarding securities issued or guaranteed by foreign bank branches and agencies will no longer be granted.[7]

List of Subjects in 17 CFR Parts 231 and 261

Reporting and recordkeeping requirements, Securities, Registration Requirements, Banks.

PARTS 231 AND 261—[AMENDED]

Parts 231 and 261 of Title 17 of the Code of Federal Regulations are amended by adding this Interpretive Release [Release Nos. 33–6661 and 39–2038] to the lists of Interpretive Releases.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: September 23, 1986.

[FR Doc. 86–21942 Filed 9–26–86; 8:45 am]

BILLING CODE 8010-01-M

George Bush, to narrow the section 3(a)(2) exemption would narrow the effective scope of this interpretive release. The Commission Continues to urge the adoption of this Task Group recommendation. Nonetheless, the Commission believes that comparably regulated foreign bank agencies and branches and domestic banks should be given parity of treatment within whatever regulatory framework exists at any particular time.

[7] Moreover, the Division will not act on any pending no-action requests with respect to the registration under the Securities Act of instruments issued or guaranteed by branches or agencies of foreign banks whether based on section 3(a)(2), the definition of a security, or otherwise.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Exclusion of Underpayments from Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations reflect the provisions of section 2614 of Pub. L. 98–369, the Deficit Reduction Act of 1984, which amended section 1613(a) of the Social Security Act (the Act). Section 2614 provides for excluding title XVI and title II retroactive payments from resources for 6 months following the month of receipt. A written notice of the 6-month exclusion limitation must be sent to the recipient at the same time as the retroactive payment. These final regulations also include two technical changes that are not related to the statutory exclusion.

EFFECTIVE DATES: These regulations are effective October 1, 1986, but the statutory change which these regulations reflect was effective October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION: We published a Notice of Proposed Rulemaking (NPRM) which reflected the provisions of section 2416 of Pub. L. 98–369 on August 28, 1985 (50 FR 34862) and provided a 60-day comment period. The comments are discussed below.

Section 1613(a) of the Act specifies a list of exclusions to be used in determining the resources of an individual (and eligible spouse, if any). The existing regulations are silent concerning the exclusion of retroactive payments. Operating instructions interpreting the Act provided that, prior to October 1, 1984, the effective date of section 2614 of Pub. L. 98–369, retroactive Supplemental Security Income (SSI) payments were not counted as resources for 3 months following the month of receipt. Retroactive title II payments resulting from the Secretary's April 13, 1984, decision to suspend the continuing disability review process were not counted as resources for 3 months following the month of receipt.

Section 2614 of Pub. L. 98–369 adds a resource exclusion to section 1613(a) of the Act. Effective October 1, 1984, the amount of any title XVI or title II underpayment due for one or more prior months is excluded from resources for 6 months following the month of receipt. (It is our practice to use the term "retroactive payment" for the types of underpayments addressed by this amendment. Under our current regulations at 20 CFR 416.536, and for purposes of this exclusion, "underpayments" include federally administered State supplementary payments.) The exclusion applies to retroactive payments received by an individual (and spouse, if any) and by any other person whose resources are subject to deeming. A written notice of the 6-month exclusion limitation will be given to the recipient when the payment is made.

The 6-month exclusion applies only to the unspent portion of funds from a title II or title XVI retroactive payment. The exclusion gives recipients time to use the funds from past benefits due to pay bills which may have accumulated because the recipient had no means with which to discharge his or her financial obligations. Once the money from a retroactive payment is spent, the exclusion does not apply to items purchased with the money unless those items are otherwise excluded, even if the 6-month period has not yet expired. However, any unspent portion of funds from a retroactive payment is excluded for the full 6-month period.

To be consistent with the treatment of other excluded funds, we are requiring that money from a retroactive payment be kept identifiable from other resources. If retroactive-payment funds cannot be distinguished from other resources, they will be counted toward the nonexcludable resources limit as described in § 416.1205.

These regulations add 20 CFR 416.1233 to reflect the new exclusion from resources. In addition, we have added a reference to 20 CFR 416.1233 to the list of resource exclusions found in 20 CFR 416.1210.

While there are no substantive changes, we have modified the format of 20 CFR 416.1233 from the version that was published in the NPRM by adding subparagraphs to clarify some aspects of the provision. These modifications include an explanation, in response to comments, that retroative-payment funds may be "identifiable" even if commingled with other funds; a specification that the exclusion applies ony to the unspent portion of retroactive-payment funds; and a fuller description of the retroactve payments.

These final regulations also include two technical changes that are not related to the statutory exclusion of certain underpayments from resources. We are revising 20 CFR 416.211(c)(5)(iii) to correct a statement that was the result of the recodification several years ago. The language of this particular paragraph was unintentionally changed to the second person. We are changing the language to the original third person for clarification. We are also making a clarifying revision to 20 CFR 416.1144 by cross-referring that section to 20 CFR 416.1101. We are doing this to clear up an apparent ambiguity with respect to the definition in 20 CFR 416.1144 of "nonprofit retirement home or similar institution." It is our policy of long standing that a "nonprofit retirement home or similar institution" referred to in 20 CFR 416.1144 must meet the general definition of an "institution" as defined in 20 CFR 416.1101. 20 CFR 416.1101 provides that the definition applies for purposes of the entire Subpart K, but some question nevertheless has been raised as to the applicability to 20 CFR 416.1144. Therefore, in order to eliminate any possible ambiguity as to what a nonprofit retirement home or similar institution is, we are adding the cross-reference.

Comments Received Following Publication of the Notice of Proposed Rulemaking on Exclusion of Underpayments From Resources (Published August 28, 1985 (50 FR 34862))

We received a total of 11 comments from 6 different sources: 5 State departments dealing with health and human services and 1 bi-county health and welfare coalition. In general, the commenters expressed approval of the exclusion. However, they had some concerns about its implementaton.

Comment: One commenter stated that the proposed regulation would allow a retroactive underpayment for title XVI or title II benefits to be excluded as a countable resource for 6 months after the month of receipt. While this is fine for an individual living in the community it is not reasonable for institutional situations. A State Medicaid program would have paid for the individual's care for the retroactive period and then be denied the ability seek restitution for overpayments made on behalf of the individual. In addition, the State would be responsible for continuing to provide Medicaid benefits for up to 6 months during which the individual's resources exceeded the appropriate limit.

Response: We have reviewed the legislative background of the existing law (which excludes retroactive under payments from countable resources for 6 months after the month of receipt). The proposed regulation was intended to inform the public of existing law, as set out in section 2614 of Pub. L. 98–369. We can find no evidence that the Congess intended to differentiate between individuals living in the community and those in nursing homes. (In fact, the House bill provided for such exclusion for 12 months, but the conference agreement limited it to 6 months.) The situation the commenter notes arises because the title II benefits were not received when they were due and therefore could not be counted as income in determining an individual's Medicaid eligibility or as income for purposes of post-eligibility reduction of payments on behalf of institutionalized individuals. Under SSI income policies, which apply under Medicaid as specified below, income is considered in determining eligibility (as well as in the Medicaid post-eligibility process) no earlier than in the month in which it become available. As such there was no "overpayment" under Medicaid. It is, from a Medicaid standpoint, important that this regulation excludes underpayments from resources for 6 months after the month of receipt. Any title II underpayment does represent income in the month of receipt. Receipt of such income may affect whether an individual (institutionalized or otherwise) maintains Medicaid eligibility for the budget period and will affect the Medicaid post-eligibility reduction of payments on behalf of institutionalized individuals in the month of receipt. States which grant Medicaid eligibility to all SSI recipients (42 CFR 435.120) must apply the SSI rules to determine eligibility of the their Medicaid-only aged, blind, and disabled population including the policy as set forth in this regulation. States which elect to offer Medicaid eligibility to aged, blind, and disabled individuals under section 1902(f) of the Act (42 CFR 435.121) may employ a more restrictive policy provided that policy is no more restrictive than the policy in effect under the State's January 1, 1972 Medicaid State plan. Any more restrictive provision must be included under the State's title XIX plan.

Comment: The NPRM stated that the exclusion would apply only to the extent that the retroactive-payment funds were kept "identifiable" from other resources. Four commenters objected to what they understood as a requirement to keep the retroactive-payment funds in separate accounts. Based on that misunderstanding, they variously protested the cost and inconvenience to individuals as well as the potential for losing the exclusion and, thereby, losing eligibility under the Medicaid program as well as under title XVI. One of those four, recognizing that it might be difficult to identify the excluded amount if the funds were not kept in separate accounts, suggested that, during the exclusion period, we simply deduct the retroactive-payment amount from any account balance involved.

Response: For title XVI purposes, the term "identifiable" does not mean that funds must be kept in separate accounts. If retroactive-payment funds can be identified through use of personal or bank records, for example, they may be commingled with other resources and continue to benefit from the 6-month exclusion. This is clear in our operating instructions and, as a result of these comments, we have also clarified the point in the regulation.

The policy that excluded resources must be identifiable, though not necessarily kept in separate accounts, is not new with this particular exclusion. Thus far we have not experienced any great administrative difficulty in identifying excluded funds using this rule. Operationally, we assume that any expenditure of commingled funds is made first from nonexcluded funds, regardless of what the expenditure is for. In fact, if an individual's resources even without benefit of excluding certain commingled funds, do not exceed the limit, there is no need to "identify" the excluded amounts. Consequently, it is not unusual for us to determine that someone is eligible without having to identify such funds at all. However, to do as is suggested and exclude a flat amount from an individual's commingled account, would in our view exceed the authority of the statutory provision, since it authorizes an exclusion only for the title II or title XVI underpayment.

Comment: Two commenters stressed the importance of very careful wording of the written notices so that recipients would understand the exclusion and its limitation to 6 months and to title II/title XVI retroactive payments only.

Response: We agree with the commenter about the importance of careful wording of the notices on this issue and have made a concerted effort to provide this. Since the statutory provision took effect on October 1, 1984, recipients have been receiving the required written notices about this exclusion. In addition, a separate notice has been created for use is title XVI cases involving interim assistance reimbursement (IAR) to States. These notices were developed in conjunction with agency-wide efforts to improve written communication with recipients, and they appear to have been understood.

Comment: One commenter suggested that an individual's receiving the notice of the 6-month exclusion before receiving the retroactive payment itself might help to avoid losing the benefit of the exclusion.

Response: As we have indicated previously, the recipient of a retroactive payment does not lose the benefit of the exclusion simply because he or she combined those funds with other funds which are not excluded. Whether the retroactive payment involved is made under title II or title XVI, the exclusion notice is generated as part of the title XVI notice and states when the payment was sent and when the exclusion will expire. Although it is not feasible for the notice to accompany the actual payment, it arrives within 2 weeks of the payment. Because we are able to identify excluded funds commingled with other funds as in a bank account (the most common form of commingling) there is almost no likelihood that the retroactive payment funds will not be identifiable upon receipt of the notice and subsequently.

Comment: One commenter felt that the exclusion period should be limited to 3, rather than 6, months but that it should apply to any retroactive payments an individual might receive.

Response: The 6-month exclusion period and its limitation to title II/title XVI retroactive payments are specified by statute and are not subject to regulatory change.

Comment: One commenter pointed out the need for a procedure to minimize confusion when a title XVI retroactive payment is sent to a State welfare agency under the terms of an IAR agreement. This occurs when there is an IAR agreement with the State and the individual has agreed in writing to have the State reimbursed out of the first SSI check. Once the State has deducted its reimbursement for the interim assistance it provided, the balance is forwarded to the individual.

Response: Although the same basic policy applies to IAR situations as to situations where the first SSI check goes directly to the individual, the commenter is correct that procedures are needed to deal with IAR situations. Such operating instructions appear in our program manual. Basically, the manual says that any amount that a State welfare agency sends to an individual after deducting IAR is considered a retroactive title XVI payment for purposes of this exclusion. The 6-month exclusion period begins the month following the month in which the individual receives the State agency's check. In addition, as noted above, we have created a special notice for use in IAR cases.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements requiring the Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: August 18, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 22, 1986.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

Subpart B of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

Subpart B—[Amended]

1. The authority citation for Subpart B of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1110. 1602, 1611, 1614, 1616, 1618, 1619, 1631, and 1634 of the Social Security Act, as amended, Secs. 211 and 212 of Pub. L. 93-66, 49 Stat. 647, 94 Stat. 474, 86 Stat. 1465 and 1474, 90 Stat. 2901, 94 Stat. 445, 86 Stat. 1478, and 87 Stat. 154-156 (42 U.S.C. 1302, 1310, 1381a, 1382, 1382c, 1382e, 1382g, 1382h, 1383, 1383c, and 1396).

2. Paragraph (c)(5)(iii) of § 416.211 is revised to read as follows:

§ 416.211 You are a resident of a public institution.

* * * * *

(c) * * *

(5) * * *

(iii) A jail or other facility where the personal freedom of anyone who lives there is restricted because that person is a prisoner, is being held under court order, or is being held until charges against that person are disposed of; or

* * * * *

Subpart K—[Amended]

Subpart K of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

3. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614, amd 1631, of the Social Security Act, as amended, sec. 211 of Pub. L. 93-66; 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471, 1473, and 1475, 87 Stat. 154, (42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c, and 1383). Sec. 202 of Pub. L. 96-265, 94 Stat. 449, (42 U.S.C. 1382a).

4. Section 416.1144 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

§ 416.1144 If you live in a nonprofit retirement home or similar institution.

(a) * * *

(1) "Nonprofit retirement home or similar institution" means a nongovernmental institution as defined under § 416.1101, which is, or is controlled by, a private nonprofit organization and which does not provide you with—

* * * * *

Subpart L—[Amended]

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

5. The authority citation for Subpart L of Part 416 continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f) and 1631(d) of the Social Security Act, as amended; 49 Stat. 647, as amended; 86 Stat. 1465, 1466, 1468, 1470, and 1473; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f) and 1383(d).

6. In § 416.1210, the introductory text of the section is republished and a new paragraph (m) is added to read as follows:

§ 416.1210 Exclusions from resources; general.

In determining the resources of an individual (and spouse, if any) the following items shall be excluded:

* * * * *

(m) Title XVI or title II retroactive payments as provided in § 416.1233.

7. Section 416.1233 is added to read as follows:

§ 416.1233 Exclusion of certain underpayments from resources.

(a) *General.* In determining the resources of an eligible individual (and spouse, if any), we will exclude, for 6 months following the month of receipt, the unspent portion of any title II or title XVI retroactive payment received on or after October 1, 1984. This exclusion also applies to such payments received by any person whose resources are subject to deeming under this Subpart L.

(b) *Retroactive payments.* For purposes of this exclusion, a retroactive payment is one that is paid after the month in which it was due. A title XVI retroactive payment includes any retroactive amount of federally-administered State supplementation.

(c) *Limitation on exclusion.* This exclusion applies only to any unspent portion of retroactive payments made under titles II and XVI. Once the money from the retroactive payment is spent, this exclusion does not apply to items purchased with the money, even if the 6-month period has not expired. However, other exclusions may be applicable. As long as the funds from the retroactive payment are not spent, they are excluded for the full 6-month period.

(d) *Funds must be identifiable.* Unspent money from a retroactive payment must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds but, if this is done in such a fashion that the retroactive amount can no longer be separately identified, that amount will count toward the resource limit described in § 416.1205.

(e) *Written notice.* We will give each recipient a written notice of the 6-month exclusion limitation when we make the retroactive payment.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR 390

[Docket No. R-86-1271; FR-2135]

Guaranty of Mortgage-Backed Securities

AGENCY: Office of the President of the Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing the date for the first scheduled monthly payment of principal and interest for a mortgage in a pool backing mortgage-backed securities. Under this rule, a mortgage must have a date of first scheduled monthly payment that is no more than 24 months before the issue date of the securities. The current rule requires this date to be no more than 12 months before the date on which GNMA commits to guarantee the issue of securities. This technical revision is being made to help implement GNMA's Commitment Line System, an automated system for handling the issuance of commitments for mortgage-backed securities which is currently being developed.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publicaton, but not before further notice of the effective date is published in the **Federal Register.** Notice of the effective date will not be published until the Commitment Line System is operational.

FOR FURTHER INFORMATION CONTACT: Richard W. Dyas, Vice President, Office of Mortgage-Backed Securities, Government National Mortgage Association, Room 6224, 451 Seventh Street SW., Washington, DC 20410-9000. Telephone: (202) 755-8772. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 21, 1986, GNMA published a proposed rule to revise the method for determining the date of the first scheduled monthly payment of principal and interest for a mortgage in a pool backing mortgage-backed securities. This revision was proposed to help implement the Commitment Line System, an automated system for handling the issuance of commitments for mortgage-backed securities. GNMA received two public comments in response to the proposed rule, both of which endorsed the proposed revision. This final rule, accordingly, amends 24 CFR 390.7, 390.27 and 390.43, as provided in the proposed rule.

The Commitment Line System is still in development. The Department will therefore delay announcement of the effective date of this rule until the System is operational.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The change to be effected by this rule is a technical revision. It is intended to help implement an automated tracking system; it should have little or no economic impact on any entity participating in the affected program.

The rule was listed as Item 928 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 390

Mortgages, Securities.

Accordingly, GNMA amends 24 CFR Part 390 as follows:

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. The authority citations for Part 390 continues to read as follows:

Authority: Secs. 306(g) and 309(a) of the National Housing Act, 12 U.S.C. 1721(g) and 1723a(a); sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. In § 390.7, paragraph (b) is revised to read as follows:

§ 390.7 Mortgages.

* * * * *

(b) Have a date for the first scheduled monthly payment of principal and interest, or a date of purchase from an Association-approved auction, that is no more than 24 months before the issue date of the securities.

* * * * *

3. In § 390.27, paragraph (b) is revised to read as follows:

§ 390.27 Mortgages.

* * * * *

(b) Have a date for the first scheduled monthly payment of principal and interest that is no more than 24 months before the issue date of the securities.

* * * * *

4. In § 390.43, paragraph (c) is revised to read as follows: