404.1592a(a) to provide that if any other person is receiving monthly benefits on the earnings record of an individual receiving disability insurance benefits, that person will not be paid benefits for any month for which the disabled individual cannot be paid benefits during the reentitlement period. We also are revising the heading of § 404.401a to conform to the change to the text of that section.

Regulatory Procedures

Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because the regulations simply reflect a statutory change that is self-executing. The amendments to the regulations to reflect this change are not discretionary and do not involve the setting of any policy. Therefore, we have determined that opportunity for prior public comment is unnecessary. Consequently, these amendments are being issued as final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security Disability Insurance; No. 93.803 Social Security-Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: July 23, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts E and P of part 404 of chapter III, title 20 of the Code of Federal Regulations are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.401a is amended by revising the section heading and by adding a new sentence immediately after the second sentence of that section to read as follows:

§ 404.401a When we do not pay benefits because of a disability beneficiary's work activity.

* * * If anyone else is receiving monthly benefits based on your earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period.* * *

3. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Public Law 96–265, 94 Stat. 473, secs. 2(d)(2), 5, 6, and 15 of Public Law 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

4. Section 404.1592a is amended by adding immediately after the third sentence of paragraph (a), which begins "(See §§ 404.316 * * *)," a new sentence to read as follows:

§ 404.1592a The reentitlement period.

(a) *General.* * * * If anyone else is receiving monthly benefits based on your earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period. * * *

[FR Doc. 93–30153 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Parts 404 and 416

RIN 0960–AC87

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Representation of Claimants for Benefits Under Title II and/or Title XVI

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends our existing regulations on the representation of parties to implement the provisions of section 10307(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA). Section 10307(b) amended the Social Security Act (Act) to require that notices of adverse determinations made by the Social Security Administration (SSA) on or after January 1, 1991, under the Social Security program of title II and the supplemental security income (SSI) program of title XVI, notify claimants of the options for obtaining attorney representation in presenting their cases before us and of the availability, to qualifying claimants, of legal services organizations that provide legal services free of charge.

EFFECTIVE DATE: These final regulations are effective December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1769.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking (NPRM) published October 28, 1991 (56 FR 55475), we proposed to implement section 10307(b) by adding new § 404.1706 to subpart R of part 404 and new § 416.1506 to subpart O of Part 416. We have carefully analyzed the comments received in response to the NPRM and have modified the final rule based on our consideration of those comments.

The regulations currently in effect do not require SSA to notify claimants of the options for obtaining attorney representation in presenting their cases

or of the availability, to qualifying claimants, of legal services organizations that provide legal services free of charge. However, it has long been our practice to inform claimants and beneficiaries of their right to be represented, if they choose, by an attorney or nonattorney at each step of the administrative review process, and to provide more detailed information, including lists of attorney referral and legal services organizations and of community organizations that might provide nonattorney representation, to claimants and beneficiaries who inquire about representation or request a hearing before an administrative law judge (ALJ).

We provide such notice and additional information in furtherance of the provisions of sections 206 and 1631(d) of the Act permitting the representation of claimants by attorneys and nonattorneys, and in accordance with our longstanding practice of neither encouraging nor discouraging claimant representation. In addition, as a result of the amendment of section 206 and 1631(d) by OBRA section 10307(b), we have revised our notices of adverse determinations and decisions subject to the administrative review process to inform claimants and beneficiaries of the options for obtaining attorneys and of the availability, to qualifying claimants, of legal services organizations that provide legal services free of charge.

We proposed the following heading for new §§ 404.1706 and 416.1506: "Notification of options for obtaining attorney representation." The proposed regulations stated—

> Whether or not you have advised us that you are represented by an attorney, if we make a determination or decision that is subject to the administrative review process provided under subpart (J/N) of these regulations and it does not grant all of the benefits or other relief you requested or it adversely affects any (entitlement to/eligibility for) benefits that we have established or may establish for you, we will include with the notice of that determination or decision information about your options for obtaining an attorney to represent you in dealing with us. We will also tell you that a legal services organization may provide you with legal representation free of charge if you satisfy the qualifying requirements applicable to that organization.

Final Regulations

After considering the comments on the NPRM, we are publishing final regulations that differ from those proposed in one respect. We have revised the introductory clause of the first sentence of §§ 404.1706 and 416.1506 to state: "If you are not represented by an attorney and we make a determination or decision that is subject to the administrative review process provided under subpart (J/N) of these regulations and it does not grant all of the benefits or other relief you requested or it adversely affects any (entitlement to/eligibility for) benefits that we have established or may establish for you, * * *." This change removes the requirement from the proposed regulations that the OBRA information be included with the notices of adverse determinations and decisions described in the regulations when the claimant or beneficiary is already represented by an attorney. We have made this change because we believe that the purpose of section 10307(b) of OBRA can be construed so as not to require that we give notification of the options for obtaining attorney representation to a claimant who has already appointed an attorney to represent him or her. We also agree with the commenters, as discussed below under the heading Public Comments and Responses, that sending such notification to a claimant who is already represented might lead to confusion in the attorney-client relationship.

Public Comments and Responses

We received comments from three private attorneys, two law firms, a private attorney commenting on behalf of a disability law project, and a national association of representatives. In addition, a State agency disability determination service (DDS) reported that it had no significant problem with the proposed new regulations and that it was including the language provided by SSA with its personalized disability notices.

In analyzing the comments in terms of the issues raised and the changes recommended, we have identified two principal comments and several secondary issues and recommendations, as discussed below. The DDS raised no issues and did not recommend any changes; therefore, we are not treating it as a commenter for the purpose of the following discussion.

Comment: Do not require inclusion of the OBRA information with notices of adverse determinations and decisions sent to individuals who have already appointed attorney representatives.

Each of the seven commenters favored not requiring provision of the OBRA information when the claimant or beneficiary is already represented by an attorney. One commenter also favored not providing that information when the claimant or beneficiary is represented by a nonattorney, and another thought individuals represented by nonattorneys should not receive the same information as unrepresented individuals. These latter two commenters favored having the final regulations expressly prohibit SSA from providing the OBRA information to represented claimants.

The commenters agreed that including the OBRA information with notices sent to claimants or beneficiaries who have appointed attorney representatives would cause confusion. Some of the specific problems anticipated were that some notice recipients would think their attorneys had abandoned their claims and that others would think the Agency was suggesting they should seek different counsel.

Two commenters thought that providing the OBRA information in these circumstances could interfere with established attorney-client relationships, and another concluded that it represented an action by SSA to compound the difficulties of private practitioners.

Also, the commenters generally thought that including the OBRA information with all the notices described in the proposed rules was unnecessary. Most expressed concerns that doing so would generate claimant inquiries and that responding to those inquiries would involve unnecessary work for both the Agency and claimant counsel. Several commenters stressed the importance of not placing additional, unnecessary burdens on SSA's field offices.

Response: Section 10307(b) requires us to provide information on the options for obtaining attorney representation to "each claimant" receiving an adverse determination and applies to "adverse determinations made on or after January 1, 1991."

Therefore, in the NPRM we proposed including that information with all adverse determinations and decisions subject to the administrative review process to ensure compliance with the statute.

A strict reading of the statutory language could result in our sending notices to claimants, who we know are represented by attorneys in proceedings before us, that advise them that they can appoint an attorney to represent them in proceedings before us. Such a result would not seem consistent with the purpose of section 10307(b). These claimants have already exercised their options to appoint lawyers to represent them. Rather, it seems reasonable to construe the statutory language as not requiring that such claimants be notified that they can appoint counsel, particularly when such an interpretation

would void the possibility of confusing claimants already represented by attorneys and seeming possibly to interfere in the relationship already established between such claimants and their attorneys. It would also seem to follow that if such claimants should not be notified of an option to seek an attorney because they already have an attorney, that they need not be advised of the availability of free legal services, particularly in those instances where they are already represented by organizations providing free legal services.

After assessing the comments received, we have modified the final regulations as discussed above—i.e., not to require inclusion of the OBRA information with notices of adverse determinations or decisions if the claimant or beneficiary is represented by an attorney. As indicated above, we believe that OBRA section 10307(b) is primarily directed at ensuring the availability of information on the options for obtaining attorney representation to individuals who do not have attorneys. Continuing to advise individuals who are represented by an attorney of their options concerning attorney representation after they obtain such representation could cause confusion and would not seem to further the purpose of section 10307(b). Doing so could also generate time consuming work, for the Agency and claimant counsel.

Very few claimants appoint an attorney representative until after they have received at least one notice of an adverse determination. Therefore, almost all claimants who receive a notice under this final rule will receive the information on options for obtaining attorney representation at least once. Only those claimants who have already obtained attorney representatives before the first adverse determinations on their claims will not be sent at least one OBRA notice on attorney representation.

Because we believe § 10307(b) should not be construed to require notification of the options for obtaining attorney representation except where the claimant already has an attorney, the final regulations require provision of this information when the claimant is unrepresented or is represented by a nonattorney. However, as we noted in the preamble of the NPRM, these statutory amendments and these regulations do not limit our ability to provide additional information on representation, including information on the right to represent oneself or to be represented by a nonattorney. Moreover, given the lack of a specific limitation in the statutory amendments, we have not adopted the suggestion of the two commenters to state in the final rule when we might not provide representational information.

Comment: The regulation should prescribe criteria concerning the representation referral lists SSA provides and expressly obligate SSA to provide complete information on the options for obtaining attorneys.

Stating that the proposed rule seemed to envision providing the names of attorney referral services, legal services organizations and community organizations which provide representation, and that these are not-for-profit sources, one commenter recommended expanding the regulations to state explicitly that only not-for-profit organizations may be included. Another commenter stated that the lists of representation referral sources provided by different SSA offices are not always complete and that, to the extent the lists are incomplete, the Agency may be seen to be directing claimants to certain sources to the disadvantage of others. This commenter thought the statute imposes an affirmative obligation on the Agency to ensure that the information it provides on the options for obtaining an attorney is complete and that the final regulations should express this obligation.

Response: We did not plan to provide in the OBRA notices the names of specific legal services organizations, attorney referral services, or community organizations that may provide representation. Rather, the notices will advise claimants of the options for obtaining attorneys to represent them and of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

One of a claimant's options for obtaining attorney representation is, we believe, to use the services of organizations that can assist them in obtaining counsel or, if they qualify, free legal services. Therefore, as the preamble to the NPRM noted, the OBRA notice will advise claimants of this option and further advise them that local Social Security offices have additional information about specific organizations in their local area. Though not required by statute, we believe that providing lists of specific organizations at the local level will make it easier for those claimants who wish to pursue this option.

Under the existing procedures, as the NPRM pointed out, we provide representation referral lists to claimants who inquire about representation or request an ALJ hearing. If a claimant has not reached the ALJ level, we make the provision of such a list contingent on an inquiry by the claimant; at the ALJ hearing level we take the initiative of providing representation referral lists in acknowledging receipt of requests for hearing filed by individuals who have not appointed representatives.

We provide referral lists at the ALJ level to facilitate the orderly operation of the hearing process by promoting prompt decisions about representation by individuals who generally decide to appoint representatives during the later stages of the administrative review process. (We instituted that procedure in 1979 after representation rates at the hearing step had risen substantially). We do not take the initiative of providing lists before the hearing step because individuals at the initial and reconsideration steps of the process do not usually choose to be represented.

While the procedures differ, each conforms to our longstanding practice of neither encouraging nor discouraging claimant representation. We provide representation referral lists to claimants who inquire about representation to assist individuals who have already indicated an interest in representation. We provide such lists at the hearing level on our initiative to promote the orderly operation of the hearing process.

We do not believe representation referral lists themselves must be provided as part of the notice of the options for obtaining attorney representation. Therefore, we have not modified the regulations to so provide in these final regulations.

While our reason for not changing the regulations in this respect is that we believe representation referral lists are not required under section 10307(b), there are also practical reasons for not including such lists with our notices. Representation referral lists need to provide locale-specific information. Inclusion of lists providing such information with notices of adverse determinations or decisions would involve operational problems in that we generate many of these notices centrally on large computerized systems. Providing such lists with notices of adverse determinations and decisions would also involve ongoing administrative costs.

We believe it would be inappropriate to prescribe criteria for representation referral lists in regulations implementing the statutory notice requirement established in section 10307(b). We plan to continue providing representation referral lists to claimants who inquire about representation or who request an ALJ hearing because we have been able to provide such lists

with little controversy to the benefit of many individuals. However, we do not believe that defining these lists in regulations at this time would be helpful.

With the changes as noted above, the regulations as proposed are adopted.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible administrative costs and savings. 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 will affect only individuals. 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 new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 and 93.774, Medicare; 93.802–93.805 Social Security; and 93.807 Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements.

20 CFR Part 416

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

Dated: July 23, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart R of part 404 and subpart O of part 416 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 406, and 1302.

2. New § 404.1706 is added to read as follows:

§ 404.1706 Notification of options for obtaining attorney representation.

If you are not represented by an attorney and we make a determination or decision that is subject to the administrative review process provided under subpart J of this part and it does not grant all of the benefits or other relief you requested or it adversely affects any entitlement to benefits that we have established or may establish for you, we will include with the notice of that determination or decision information about your options for obtaining an attorney to represent you in dealing with us. We will also tell you that a legal services organization may provide you with legal representation free of charge if you satisfy the qualifying requirements applicable to that organization.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631(d) of the Social Security Act; 42 U.S.C. 1302 and 1383(d).

2. New § 416.1506 is added to read as follows:

§ 416.1506 Notification of options for obtaining attorney representation.

If you are not represented by an attorney and we make a determination or decision that is subject to the administrative review process provided under subpart N of this part and it does not grant all of the benefits or other relief you requested or it adversely affects any eligibility to benefits that we have established or may establish for you, we will include with the notice of that determination or decision information about your options for obtaining an attorney to represent you in dealing with us. We will also tell you that a legal services organization may provide you with legal representation free of charge if you satisfy the qualifying requirements applicable to that organization.

[FR Doc. 93–30152 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

20 CFR Part 404

RIN 0960–AC68

Federal Old-Age, Survivors, and Disability Insurance; Suspension of Benefits Where Individual is Deported; Exemption From Social Security Because of Religious Beliefs

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules are being issued to reflect provisions of the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, and the Immigration Act of 1990. These provisions concern: The suspension of Social Security benefits if an individual is deported under certain provisions of the Immigration and Nationality Act, an exemption from Social Security for employees and employers who are both members of certain religious faiths opposed to acceptance of insurance benefits including those provided by Social Security, and an exemption from Social Security for certain employees of churches and church-controlled organizations.

EFFECTIVE DATE: These final rules are effective December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 3–B–1 Operations Buildings, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: These final rules make several technical changes in our rules. First, they reflect the provision of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647, that provided for the nonpayment of Social Security benefits if an individual is ordered deported from the United States because of certain past activities performed under the direction of or in association with the Nazi government of Germany or one of its allies. Second, they reflect the provisions of the Immigration Act of 1990, Public Law 101–649, that amended section 241 of the Immigration and Nationality Act concerning the grounds for deportation and made conforming changes in section 202(n) of the Social Security Act. Section 202(n) concerns the nonpayment of Social Security benefits if an individual is deported under certain provisions of section 241(a) of the Immigration and Nationality Act.

The final rules also reflect the provision of TAMRA that provided an exemption from Social Security for an

employee and his or her employer if both belong to a religious faith and are adherents to established tenets and teachings of that faith opposed to acceptance of insurance benefits including those provided by the Social Security program. Additionally, the final rules reflect the provisions of the Omnibus Budget Reconciliation Act of 1989 (OBRA), Public Law 101–239, that provided an exemption from Social Security for (1) an employee of a partnership if both the employee and the members of the partnership (each of the partners) belong to a religious faith and are adherents to the established tenets and teachings of that faith opposed to acceptance of insurance benefits including those provided by the Social Security program and (2) persons who have religious convictions in opposition to the acceptance of insurance benefits including those provided by Social Security and who are employees of churches or church-controlled organizations, but who are treated as self-employed individuals because the employing church or organization has exercised its option to be exempt from paying the employer portion of the Social Security tax.

On May 28, 1991, we published a notice of proposed rulemaking at 56 FR 24043 reflecting the provisions of TAMRA and OBRA that are discussed briefly above and in more detail below. We received no comments on the proposed rules, which we are now publishing as final rules. The proposed rules, however, did not reflect the provisions of the Immigration Act of 1990 which amended section 241 of the Immigration and Nationality Act with respect to the grounds for deportation and section 202(n) of the Social Security Act. Section 202(n) was amended to conform to the changes made with respect to the grounds for deportation set out in section 241 of the Immigration and Nationality Act. In these final rules we are further amending § 404.464 of our regulations to reflect these statutory amendments.

Nonpayment of Benefits Where Individual Is Deported

Section 202(n) of the Social Security Act provides that no monthly benefits shall be paid to a beneficiary entitled to old-age or disability insurance benefits on his or her wages or self-employment income who is ordered deported from the United States under certain provisions of the Immigration and Nationality Act. It also provides that if such a beneficiary is ordered deported under one of those provisions, no lump sum death benefit shall be paid on the basis of his or her earnings record and other benefits that may be payable on his or her earnings record may not be paid to a non-United States citizen outside the United States.

Section 8004 of TAMRA amended section 202(n) of the Social Security Act by adding a reference to paragraph 19 of section 241(a) of the Immigration and Nationality Act and thereby adding Nazi war criminals to the list of individuals to whom benefits are not payable due to their deportation. Section 602 of the Immigration Act of 1990 revised the grounds for deportation set forth in section 241(a) of the Immigration and Nationality Act. The new law replaced the 19 grounds for deportation previously listed in the Immigration and Nationality Act with five classes of deportable aliens, with a number of grounds for deportation listed within those five classes. The legislative history of section 602 states that one of the purposes of this "comprehensive" revision was "to make the law more rational and easy to understand." See H.R. Conf. Rep. No. 101–955, 101st Cong., 2nd Sess. 128 (1990).

Section 603(b) of the Immigration Act of 1990 made a conforming amendment to section 202(n) of the Social Security Act to provide for the nonpayment of benefits to individuals deported under the provisions of section 241(a) (other than under paragraph (1)(C) or (1)(E)) of the Immigration and Nationality Act. Paragraph (1)(C) provides for the deportation of aliens who violate certain conditions of entry and of aliens admitted as nonimmigrants who fail to maintain that status. Paragraph (1)(E) provides for the deportation of aliens who assist other aliens entering or attempting to enter the United States illegally. As amended by the Immigration Act of 1990, section 202(n) of the Social Security Act continues to provide for the nonpayment of benefits to individuals deported because of acts of persecution committed under the direction of or in association with the Nazi government of Germany or its allies. The Immigration Act of 1990, which became law on November 29, 1990, provides that the amendments it made which are discussed above shall not apply to deportation proceedings for which notice had been provided to the alien prior to March 1, 1991. We are amending § 404.464 of our regulations to reflect these statutory changes.

Exemption From Social Security for Employees and Employers Who Are Both Members of Certain Religious Faiths

Section 8007 of TAMRA added a new section 3127 to the Internal Revenue Code (the Code) and a conforming amendment to section 202(v) of the Social Security Act. Under this statutory change, an employee and his or her employer may file applications with the Internal Revenue Service (IRS) for exemption from their respective shares of the Federal Insurance Contributions Act taxes on the employee's wages based upon their religious convictions in opposition to acceptance of insurance benefits including those provided by Social Security. In order for the exemption to be granted, both the employee and his or her employer must have applications filed and approved and both must submit waivers of their right to receive benefits under title II and part A of title XVIII of the Social Security Act. Under section 202(v) of the Social Security Act, no benefits or other payments are payable under title II and part A of title XVIII to the individual who files such a waiver and receives such an exemption. In addition, no benefits or other payments are payable under title II and part A of title XVIII on the basis of the exempted individual's wages and self-employment income to any other person after the filing of the waiver.

Prior to the enactment of TAMRA, the availability of a Social Security tax exemption on religious grounds was limited under sections 202(v) and 211(c)(6) of the Social Security Act and section 1402(g) of the Code to individuals who were self-employed. Sections 404.1075 and 404.305 of the regulations implement the exemption from the Social Security self-employment tax and the corresponding waiver of benefits. The TAMRA enactment extends to an employee and his or her employer the right to request a Social Security tax exemption if they both have religious convictions in opposition to participation in insurance programs including Social Security. Additionally, it provides that no exemption will be granted if the employee would be receiving benefits but for suspension of his or her benefits under section 203 or section 222(b) of the Social Security Act. This rule already applied to the exemption for self-employed persons, but was not reflected in the regulations. We are therefore revising § 404.1075 to reflect this rule for the self-employed and to describe the circumstances under which the tax exemption will cease to be effective and the effect of such a termination on the corresponding waiver of benefits. We are also amending § 404.305(a), which discusses the effect of the waiver of benefits, to revise a reference to the regulatory section describing the tax exemption on

religious grounds for self-employed persons to reflect that that section currently appears in § 404.1075, and to clarify that, in order for a waiver of benefits to be applicable, it is necessary for the applicant to be granted a tax exemption in addition to filing the waiver.

Section 10204(b) of OBRA amended section 3127 of the Code to provide that the tax exemption is available when an employee of a partnership and each partner in that partnership have religious convictions in opposition to participation in insurance programs including Social Security and file applications for exemption which include waivers of their right to receive benefits under title II and part A of title XVIII of the Social Security Act.

To reflect these new statutory provisions concerning the employee and employer, we are adding a cross-reference to § 404.305(a) of subpart D and adding a new section to subpart K, § 404.1039, which is modeled after § 404.1075, to state that, in order for the tax exemption to be granted, both an employee and his or her employer (or, if the employer is a partnership, each of its partners) must—

1. Belong to a recognized religious sect or a division thereof; and

2. Adhere to the tenets or teachings of that sect or division of the sect and for that reason conscientiously oppose the acceptance of insurance benefits from any public or private insurance including Social Security that—

a. Makes payment in the event of death, disability, old-age, or retirement; or

b. Makes payment for the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act); and

3. File applications with IRS for exemption from Social Security taxation (which includes a waiver of the right to receive benefits under title II and part A of title XVIII of the Social Security Act) that IRS approves pursuant to section 3127 of the Code.

In order for an application to be approved, we must find that the sect or division of the sect has established tenets or teachings which cause the applicant to be conscientiously opposed to receiving the types of insurance benefits described above, that the sect or division of the sect has continuously been in existence since December 31, 1950, and that its members make provision for dependent members that is reasonable in view of their general level of living.

An application for exemption will be approved by the IRS only if no benefits became payable (or, but for section 203 or section 222(b) of the Social Security Act, would have become payable) to the applicant at or before the time the application was filed. Once IRS approves the tax exemption authorized under section 3127 of the Code, the exemption continues until the exemption requirements are no longer met. If the exemption ceases to be in effect, the waiver of the right to receive Social Security and Medicare benefits will also no longer apply. However, earnings for years before the waiver ceases to apply cannot be used for Social Security benefit purposes.

The exemption provided under these statutory amendments applies to wages paid after December 31, 1988.

Exemption From Social Security of Workers in Churches and Church-Controlled Organizations

Section 10204(a) of OBRA amended section 1402(g) of the Code. Under this statutory change, employees of churches and church-controlled organizations who are treated as self-employed individuals because the employing church or church-controlled organization has been approved for exemption from payment of the Federal Insurance Contributions Act tax on religious grounds are exempt from payment of the Self-Employment Contributions Act tax effective for tax years beginning January 1, 1990, if the worker has an approved application for exemption as described in § 404.1075.

Prior to the enactment of OBRA, these church employees, who are treated as self-employed individuals, were subject to payment of the Self-Employment Contributions Act tax. We are therefore revising § 404.1068 to reflect this statutory change.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. Therefore, a regulatory impact analysis is not required. The statutory amendments reflected in these final regulations will cause a reduction in estimated Social Security tax revenues of $14 million each for FY 1993, FY 1994, and FY 1995.

Paperwork Reduction Act

Sections 404.1039 and 404.1075 of these final regulations reflect an information collection requirement. That requirement is contained in section 3127 of the Code and is applicable only to the IRS. The IRS has received OMB approval to collect the required information by using form IRS–4029 (Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits, OMB No. 1545–0064).

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they only apply to individuals and certain partnerships. Consequently, these regulations will have a minimal overall economic impact and a regulatory flexibility analysis, as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security—Disability Insurance; No. 93.803 Social Security—Retirement Insurance; No. 93.805 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: June 17, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228 (a)-(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428 (a)-(e), and 1302.

2. Section 404.305 is amended by revising paragraph (a) to read as follows:

§ 404.305 When you may not be entitled to benefits.

* * * * *

(a) *Waiver of benefits.* If you have waived benefits and been granted a tax exemption on religious grounds as described in §§ 404.1039 and 404.1075, no one may become entitled to any benefits or payments on your earnings record and you may not be entitled to

benefits on anyone else's earnings record; and

* * * * *

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424, 427, and 1302.

4. Section 404.464 is amended by revising paragraphs (a) and (c) to read as follows:

§ 404.464 Nonpayment of benefits where individual is deported; prohibition against payment of lump sum based on deported individual's earnings records.

(a) *Old-age or disability insurance benefits.* When an individual is deported under the provisions of section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) or (1)(E) thereof), no old-age or disability insurance benefit is payable to the individual for any month occurring after the month in which the Secretary is notified by the Attorney General of the United States that the individual has been deported and before the month in which the individual is thereafter lawfully admitted to the United States for permanent residence. An individual is considered lawfully admitted for permanent residence as of the month he enters the United States with permission to reside here permanently.

* * * * *

(c) *Lump sum death payment.* No lump-sum death payment is payable on the basis of the earnings of an individual deported under section 241(a) of the Immigration and Nationality Act (other than paragraph (1)(C) or (1)(E) thereof) if the individual dies in or after the month in which the Secretary receives notice that he has been deported and before the month in which the individual is thereafter lawfully admitted to the United States for permanent residence.

5. The authority citation for subpart K of part 404 is revised to read as follows:

Authority: Secs. 202(v), 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 402(v), 405(a), 409, 410, 411, 429(a), 430, 431, and 1302.

6. A new undesignated centerheading and § 404.1039 are added to read as follows:

Exemption From Social Security By Reason of Religious Belief

§ 404.1039 Employers (including partnerships) and employees who are both members of certain religious groups opposed to insurance.

(a) You and your employer (or, if the employer is a partnership, each of its partners) may file applications with the Internal Revenue Service for exemption from your respective shares of the Federal Insurance Contributions Act taxes on your wages paid by that employer if you and your employer (or, if the employer is a partnership, each of its partners)—

(1) Are members of a recognized religious sect or division of the sect; and

(2) Adhere to the tenets or teachings of the sect or division of the sect and for that reason are conscientiously opposed to receiving benefits from any private or public insurance that—

(i) Makes payment in the event of death, disability, old-age, or retirement; or

(ii) Makes payment for the cost of, or provides services for, medical care including the benefits of any insurance system established by the Act.

(b) Both your application and your employer's application (or, if your employer is a partnership, each partner's application) must be filed with and approved by the Internal Revenue Service pursuant to section 3127 of the Internal Revenue Code. An application must contain or be accompanied by the applicant's waiver of all benefits and payments under title II and part A of title XVIII of the Act. See § 404.305 for the effect of the filing of the waiver and the granting of the exemption.

(c) Regardless of whether the applicant meets all these conditions, the application will not be approved unless we find that—

(1) The sect or division of the sect has established tenets or teachings which cause the applicant to be conscientiously opposed to the types of insurance benefits described in paragraph (a)(2) of this section; and

(2) For a substantial period of time it has been the practice for members of the sect or division of the sect to make provision for their dependent members that is reasonable in view of their general level of living; and

(3) The sect or division of the sect has been in existence continuously since December 31, 1950.

(d) An application for exemption will be approved by the Internal Revenue Service only if no benefit or payment under title II or part A of title XVIII of the Act became payable (or, but for section 203 or section 222(b) of the Act, would have become payable) to the applicant at or before the time of the filing of the application for exemption.

(e) The tax exemption ceases to be effective with respect to wages paid beginning with the calendar quarter in which either the employer (or if the employer is a partnership, any of its partners) or the employee involved does not meet the requirements of paragraph (a) of this section or the religious sect or division of the sect is found by us to no longer meet the requirements of paragraph (c) of this section. If the tax exemption ceases to be effective, the waiver of the right to receive Social Security and Medicare Part A benefits will also no longer be effective. Benefits may be payable based upon the wages of the individual, whose exempt status was terminated, for and after the calendar year following the calendar year in which the event occurred upon which the cessation of the exemption is based. Benefits may be payable based upon the self-employment income of the individual whose exempt status was terminated for and after the taxable year in which the event occurred upon which the cessation of the exemption is based.

7. Section 404.1068 is amended by revising paragraph (f) to read as follows:

§ 404.1068 Employees who are considered self-employed.

* * * * *

(f) *Employees of a church or church-controlled organization that has elected to exclude employees from coverage as employment.* If you perform services that are excluded from employment as described in § 404.1026, you are engaged in a trade or business. Special rules apply to your earnings from those services which are known as church employee income. If you are paid $100 or more in a taxable year by an employer who has elected to have its employees excluded, those earnings are self-employment income (see § 404.1096(c)(1)). In figuring your church employee income you may not reduce that income by any deductions attributable to your work. Your church employee income and deductions may not be taken into account in determining the amount of other net earnings from self-employment. Effective for taxable years beginning on or after January 1, 1990, your church employee income is exempt from self-employment tax under the conditions set forth for members of certain religious groups (see § 404.1075).

8. Section 404.1075 is amended by revising paragraphs (b) and (d) and by adding paragraph (e) to read as follows:

§ 404.1075 Members of certain religious groups opposed to insurance.

* * * * *

(b) Your application must be filed under the rules described in 26 CFR 1.1402(h). An application must contain or be accompanied by the applicant's waiver of all benefits and payments under title II and part A of title XVIII of the Act. See § 404.305 for the effect of the filing of the waiver and the granting of the exemption.

* * * * *

(d) Your application for exemption will be approved by the Internal Revenue Service only if no benefit or other payment under title II or part A of title XVIII of the Act became payable or, but for section 203 or section 222(b) of the Act, would have become payable, to you or on your behalf at or before the time of the filing of your application for exemption.

(e) The tax exemption ceases to be effective for any taxable year ending after the time you do not meet the requirements of paragraph (a) of this section or after the time we find the religious sect or division of the sect of which you are a member no longer meets the requirements of paragraph (c) of this section. If your tax exemption ceases to be effective, your waiver of the right to receive Social Security and Medicare part A benefits will also no longer be effective. Benefits may be payable based upon your wages for and after the calendar year following the calendar year in which the event occurred upon which the cessation of the exemption is based. Benefits may be payable based upon your self-employment income for and after the taxable year in which the event occurred upon which the cessation of the exemption is based.

[FR Doc. 93–30150 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Part 404

[Regulations No. 4]

RIN 0960–AD31

Federal Old-Age, Survivors and Disability Insurance; Continued Entitlement to Benefits of Deemed Spouse and Legal Spouse; Treatment of Divorce in Invalid Marriage; Treatment of Multiple Entitlements Under the Family Maximum

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are revising several rules to reflect statutory enactments that permit the simultaneous entitlement of a spouse based on a "deemed" valid marriage and a spouse based on a valid or a "putative" marriage and provide that when a putative spouse and/or a deemed spouse is/are entitled simultaneously with a spouse based on a valid marriage, the spouse based on the valid marriage is paid outside the family maximum. We are further revising our rules to reflect section 203(a)(3)(C) of the Social Security Act which provides that an individual entitled to divorced spouses' benefits is also paid outside the family maximum.

EFFECTIVE DATE: These rules are effective December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: Section 5119 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Public Law (Pub. L.) 101–508, contains several amendments to section 216(h)(1) of the Social Security Act (the Act) which permit the simultaneous entitlement to benefits under title II of the Act of a spouse, widow(er), divorced spouse, surviving divorced spouse, mother/father or surviving divorced mother/father based on a deemed valid marriage (i.e., a ceremonial marriage entered into in good faith that is invalid because of the existence of a legal impediment) and a spouse, widow(er) divorced spouse, surviving divorced spouse, mother/father, or surviving divorced mother/father based on a valid marriage or a putative marriage (i.e., an invalid marriage that is recognized under State law for inheritance purposes).

Prior to the enactment of section 5119 of OBRA 1990, a deemed spouse could receive benefits only if no legal or putative spouse was receiving benefits on the worker's earnings record.

A secondary result of the OBRA 1990 legislation was to limit the effect of acquiescence rulings in *Rosenberg* v. *Richardson* as reaffirmed by *Capitano* v. *Secretary of HHS*, AR 86–2R(2), and *Woodson* v. *Schweiker*, AR 86–18R(5) and AR 86–19R(11), to benefits payable prior to January 1991. These rulings permit the entitlement or continued entitlement of a deemed spouse where the full benefit is not payable to the legal spouse and allow a deemed spouse to become entitled despite the prior entitlement of the legal spouse. The OBRA 1990 amendments are more generous to beneficiaries than the *Rosenberg*, *Capitano*, and *Woodson* decisions were.

To reflect the amendments made to section 216(h)(1) of the Act by section 5119 of OBRA 1990, we are amending our regulations as follows:

We are amending § 404.331 with regards to entitlement to wife's or husband's benefits as a divorced spouse to reflect that a deemed valid marriage meets the 10-year duration of marriage requirement for divorced and surviving divorced spouses.

We are amending § 404.332, which sets out our rules as to when wife's and husband's benefits begin and end, to remove the provision which required the termination of the entitlement of a spouse or divorced spouse based on a deemed valid marriage if a spouse or divorced spouse based on a valid marriage or a putative marriage became entitled to benefits on the same worker's record.

We are amending § 404.336, which discusses entitlement to widow's or widower's benefits as a surviving divorced spouse, to reflect that payments under this section may be based on a deemed valid marriage.

We are amending § 404.337, which sets out our rules as to when widow's and widower's benefits begin and end, to remove the provision which required the termination of the entitlement of a widow or widower based upon a deemed valid marriage when a person becomes entitled to benefits on the same worker's record based upon a valid marriage or a putative marriage under State law as explained in § 404.345.

We are amending § 404.340, which describes entitlement to mother's or father's benefits as a surviving divorced spouse, to reflect that payments under this section may be based on a deemed valid marriage.

We are amending § 404.341, which sets out our rules as to when mother's and father's benefits begin and end, to remove the provision which required the termination of mother's or father's benefits based upon a deemed valid marriage when another person becomes entitled to mother's or father's benefits on the same worker's record based upon a valid marriage or a putative marriage under State law as explained in § 404.345.

We are amending § 404.346 regarding the relationship of certain individuals based upon a deemed valid marriage to remove the provision which precluded the entitlement of a wife, husband, widow, or widower based upon a deemed valid marriage when another person was entitled on the same worker's record as a wife, husband, widow, widower based upon a valid

marriage or a putative marriage under State law as explained in § 404.345. We are further amending § 404.346 to indicate that once a marriage has been deemed to be a valid marriage, it shall continue to be deemed valid if the insured and the person entitled to benefits as a spouse are no longer living together when the insured dies.

Section 5119 of OBRA 1990 also amended section 203(a) of the Act. We are amending the family maximum provision set out in § 404.403 to reflect this amendment to indicate that a spouse, widow(er) or mother/father based upon a deemed valid marriage and/or a marriage recognized under State law for inheritance rights will be paid within the family maximum payable, whereas the spouse, widow(er) or mother/father based on a valid marriage will be paid outside the family maximum when a spouse of a deemed valid marriage or a putative marriage is entitled simultaneously with a spouse based on a valid marriage on the same worker's record.

We are further amending § 404.403 to reflect our current practice under section 203(a)(3)(C) of the Act, which provides that an individual entitled to divorced spouses' benefits under section 202 (b) or (c) of the Act or surviving divorced spouses' benefits under section 202 (e) or (f) of the Act is also paid outside of the family maximum.

Section 5119 of OBRA 1990 is effective with respect to benefits for months after December 1990. In addition, unless the spouse of a deemed valid marriage was entitled on the same earnings record to a benefit under sections 202 (b), (c), (e), or (f) of the Act for December 1990, he or she must file an application after December 31, 1990, to obtain the benefit of section 5119 of OBRA 1990.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because we are only reflecting statutory changes which are not discretionary and do not involve the setting of any policy. Therefore, we have determined that opportunity for prior public comment is unnecessary. Consequently, these amendments are being issued as a final rule.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. We estimate the program costs to be $5 million in FY 1992, $11 million in FY 1993, $15 million in FY 1994 and $16 million in FY 1995 with negligible associated administrative costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not needed.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security Disability Insurance; No. 93.803 Social Security Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: July 26, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

2. Section 404.331 is amended by revising paragraph (a)(1) to read as follows:

§ 404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.

* * * * *

(a) * * *

(1) You were validly married to the insured under State law as described in § 404.345 or you were deemed to be validly married as described in § 404.346; and

* * * * *

3. Section 404.332 is amended by revising paragraph (b)(6) to read as follows:

§ 404.332 When wife's and husband's benefits begin and end.

* * * * *

(b) * * *

(6) If your benefits are based upon a deemed valid marriage and you have not divorced the insured, you marry someone other than the insured.

* * * * *

4. Section 404.336 is amended by revising paragraph (a)(1) to read as follows:

§ 404.336 Who is entitled to widow's or widower's benefits as a surviving divorced spouse.

* * * * *

(a) * * *

(1) You were validly married to the insured under State law as described in § 404.345 or are deemed to be validly married as described in § 404.346; and

* * * * *

5. Section 404.337 is amended by removing paragraph (b)(3) and redesignating former paragraph (b)(4) as paragraph (b)(3).

6. Section 404.340 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 404.340 Who is entitled to mother's or father's benefits as a surviving divorced spouse.

* * * * *

(a) You were validly married to the insured under State law as described in § 404.345 or you were deemed to be validly married as described in § 404.346 but the marriage ended in a final divorce and—

* * * * *

7. Section 404.341 is amended by removing paragraph (b)(4), redesignating paragraph (b)(5) as new paragraph (b)(4) and removing in paragraph (c) the

reference "(4) or (5)" and adding in its place "or (4)".

8. Section 404.346 is amended by revising paragraph (b) to read as follows:

§ 404.346 Your relationship as wife, husband, widow, or widower based upon a deemed valid marriage.

* * * * *

(b) *Entitlement based upon a deemed valid marriage.* To be entitled to benefits as a wife, husband, widow or widower as the result of a deemed valid marriage, you and the insured must have been living in the same household (see § 404.347) at the time the insured died or, if the insured is living, at the time you apply for benefits. However, a marriage that had been deemed valid, shall continue to be deemed valid if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of death of the insured individual.

Subpart E—Deductions; Reductions; and Nonpayments of Benefits

9. The authority citation for Subpart E of Part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424, 427, and 1302.

10. Section 404.403 is amended by adding new paragraphs (a)(3) and (4) to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

(a) * * *

(3) The benefits of an individual entitled as a divorced spouse or surviving divorced spouse will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record will be determined under this section as if no such divorced spouse or surviving divorced spouse were entitled to benefits.

(4) In any case where more than one individual is entitled to benefits as the spouse or surviving spouse of a worker for the same month, and at least one of those individuals is entitled based on a marriage not valid under State law (see §§ 404.345 and 404.346), the benefits of the individual whose entitlement is based on a valid marriage under State law will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record (unless excluded by paragraph (a)(3) of this section) will be determined under this section as if such validly married individual were not entitled to benefits.

* * * * *

[FR Doc. 93–30154 Filed 12–9–93; 8:45 am]
BILLING CODE 4190–29–P

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20 CFR Part 416

RIN 0960–AC77

Supplemental Security Income for the Aged, Blind, and Disabled; Redeterminations of Supplemental Security Income Eligibility

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations amend the policy on how we establish the beginning of the supplemental security income (SSI) redetermination period when reviewing a recipient's eligibility to ensure that he or she continues to be eligible and receives the correct SSI benefit amount. This new policy eliminates gaps that occur in the redetermination process under current regulations. The effects of these final regulations are administrative simplification and increased payment accuracy.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

Section 1611(c)(1) of the Social Security Act (the Act) provides that eligibility for and the amount of SSI benefits shall be redetermined at such time or times as may be provided by the Secretary of Health and Human Services (the Secretary). Regulations at § 416.204(c) state the period for which a redetermination applies by explaining which months the first and subsequent redetermination periods include.

These regulations currently provide that the first redetermination period includes: (1) The month in which we make the redetermination, (2) all the months after the month of first eligibility, and (3) future months until the second redetermination.

The current regulations further provide that subsequent redetermination periods include: (1) The month in which we make the redetermination, (2) all the months after the last time we made a redetermination, and (3) future months until the next redetermination.

These current regulations do not provide for the consideration of all factors of eligibility for the entire relevant period because the review period does not begin with the first day of the month of the last determination of eligibility.

The redetermination period, therefore, omits a month or part of a month. Factors which could affect continued eligibility or payment amounts potentially go undetected. For example: The last redetermination review period was initiated on September 4, 1989. The next redetermination period of review includes all months after the month we last initiated a redetermination; i.e., it begins October 1, 1989. As a result, the period September 5 through September 30, 1989, is never reviewed to see if the individual was eligible for that period or if he or she was receiving the correct SSI benefit amount.

Final Regulations

We are amending the regulations at § 416.204(c)(1)(ii) to include in the first redetermination period all months beginning with the first day of: the most recent month of eligibility/re-eligibility; or application; or deferred/updated development (applicable when nonmedical issues in a disability case are not fully developed until a disability allowance is made).

In addition, we are amending § 416.204(c)(2)(ii) to include in subsequent redetermination periods all months beginning with the first day of the month the last redetermination was initiated.

Comments

These regulations were published as a Notice of Proposed Rulemaking on November 20, 1992 (57 FR 54732). A 60-day comment period was provided. We received one public comment which was from an organization. This public comment supported the regulations and did not raise any issues. We are, therefore, adopting the regulations as proposed.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. The program savings and the administrative costs will be insignificant and are estimated at less than $1 million a year. 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. 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 and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 93.807—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: August 19, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: October 4, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for part 416, subpart B continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. In § 416.204, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 416.204 Redeterminations of SSI eligibility.

* * * * *

(c) * * *

(1) * * *

(ii) All months beginning with the first day of the latest of the following:

(A) The month of first eligibility or re-eligibility; or

(B) The month of application; or

(C) The month of deferred or updated development; and

* * * * *

(2) * * *

(ii) All months beginning with the first day of the month the last redetermination was initiated; and

* * * * *

[FR Doc. 93–30151 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Part 416

RIN 0960–AD60

Supplemental Security Income Maximum Payment Limit ($30) When Medicaid Is Not Paying Toward the Cost of Institutional Care Because the Individual Transferred a Resource

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect amendments to the Social Security Act (the Act) made by section 303(c)(2) of the Medicare Catastrophic Coverage Act of 1988. The Act, as amended by that section, provides, for supplemental security income (SSI) purposes, that the reduced SSI payment rate of $360 a year ($720 for a couple) which is applied to residents of certain medical care facilities which are receiving Medicaid payments for the cost of care of those residents, must also be applied to residents for whom Medicaid payments are denied because they transferred a resource for less than fair market value.

EFFECTIVE DATE: These rules are effective on December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–759.

SUPPLEMENTARY INFORMATION:

Background

Public Law 100–360, the "Medicare Catastrophic Coverage Act of 1988," was enacted on July 1, 1988. Section 303(c)(2) of this law amended section 1611(e)(1)(B) of the Act and provides that the reduced SSI payment rate of $360 a year ($720 for a couple) which is applied to residents of certain medical care facilities which are receiving Medicaid payments for the cost of care of those residents, must also be applied to residents for whom Medicaid payments are denied because they transferred a resource for less than fair market value. In these final regulations, we are reflecting this statutory change.

Prior to enactment of Public Law 100–360, the SSI payment amount was reduced to $360 a year for individuals and to $720 a year for couples in medical care facilities only when more than 50 percent of the cost of their care was paid under a State plan approved under title XIX of the Act (Medicaid). Under Medicaid rules, if an individual applying for or receiving nursing facility services or their equivalent disposes of resources for less than fair market value, with some exceptions, Medicaid will not cover the cost of such services for a period of time. See section 1917(c) of the Act. Since the general Medicaid rule required the denial or suspension of this assistance when such a disposal of resources occurred and the reduced SSI payment amounts were used only if Medicaid contributed to the cost of the institutional medical care, an SSI claimant in a private medical care facility who disposed of resources for less than fair market value and became ineligible for Medicaid prior to the enactment of Public Law 100–360 could have been eligible for an unreduced SSI payment amount. On the other hand, under section 1611(e)(1)(A) of the Act, an SSI claimant in a public medical care facility who became ineligible for Medicaid on this basis, would have become ineligible for SSI altogether. Section 1611(e)(1)(B) of the Act, as amended by section 303(c)(2) of Public Law 100–360, addressed the anomaly presented by the private institution situation and the elimination of SSI in the public institution situation by providing that the same reduced benefit rate must be applied when Medicaid payments are not being made because of the provisions of section 1917(c) of the Act which preclude Medicaid contributions for the costs of certain types of care when the individual transferred a resource for less than fair market value.

We are amending § 416.414 of the regulations to reflect the changes made by Public Law 100–360 to section 1611(e)(1)(B) of the Act. Specifically, § 416.414 is being amended to provide that the reduced benefit rate will apply to individuals who are in medical care facilities and for whom Medicaid is not paying more than 50 percent of the cost of care because of application of the provisions of section 1917(c) of the Act.

Regulatory Procedures

Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides