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, Aged, Blind, Death benefits, Disability benefits, Insurance, 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: November 19, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 8, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

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

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

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

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302.

§ 404.999c [Amended]

2. In § 404.999c(c) introductory text, the reference to "41 CFR part 101–7" is revised to read "41 CFR chapter 301".

3. Section 404.999c is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 404.999c What travel expenses are reimbursable.

* * * * *

(d) * * *

(3) For travel expenses incurred on or after April 1, 1991, the amount of reimbursement under this section for travel by your representative to attend a disability hearing or a hearing before an administrative law judge shall not exceed the maximum amount allowable under this section for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

(i) The geographic area of the office having jurisdiction over the hearing means, as appropriate—

(A) The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

(B) If a Federal disability hearing officer holds the disability hearing, the geographic area of the State (which includes a State as defined in § 404.2(c)(5) and also includes the Northern Mariana Islands) in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing; or

(C) The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the hearing before an administrative law judge.

(ii) We or the State agency determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area. In determining the maximum amount allowable for travel between these two points, we or the State agency apply the rules in paragraphs (a) through (c) of this section and the limitations in paragraph (d) (1) and (4) of this section. If the distance between these two points does not exceed 75 miles, we or the State agency will not reimburse any of your representative's travel expenses.

* * * * *

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

1. The authority citation for subpart N of part 416 is revised to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b.

§ 416.1498 [Amended]

2. In § 416.1498(c) introductory text, the reference to "41 CFR part 101–7" is revised to read "41 CFR chapter 301".

3. Section 416.1498 is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 416.1498 What travel expenses are reimbursable.

* * * * *

(d) * * *

(3) For travel expenses incurred on or after April 1, 1991, the amount of reimbursement under this section for travel by your representative to attend a disability hearing or a hearing before an administrative law judge shall not exceed the maximum amount allowable under this section for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

(i) The geographic area of the office having jurisdiction over the hearing means, as appropriate—

(A) The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

(B) If a Federal disability hearing officer holds the disability hearing, the geographic area of the State (as defined in § 416.120(c)(9)) in which the claimant resides or, if the claimant is not a resident of a State, in which the hearing officer holds the disability hearing; or

(C) The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the hearing before an administrative law judge.

(ii) We or the State agency determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area. In determining the maximum amount allowable for travel between these two points, we or the State agency apply the rules in paragraphs (a) through (c) of this section and the limitations in paragraph (d) (1) and (4) of this section. If the distance between these two points does not exceed 75 miles, we or the State agency will not reimburse any of your representative's travel expenses.

* * * * *

[FR Doc. 94–3961 Filed 2–22–94; 8:45 am]

BILLING CODE 4190–29–P

---

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD12

Reopening Determinations and Decisions

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules revise our regulations to clarify the longstanding

policy of the Social Security Administration (SSA) that the Agency on its own initiative, as well as at the request of any person claiming a right under the Social Security or supplemental security income (SSI) programs, may reopen and revise a final administrative determination or decision.

EFFECTIVE DATE: The final regulations are effective February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: We are revising §§ 404.987 and 416.1487 of our regulations to clarify that we may reopen and revise a final administrative determination or decision either on our own initiative or at the request of a person who was a party to the determination or decision.

Prior to August 5, 1980, our regulations expressly provided that we had the discretion to reopen and revise a final determination or decision, including a final revised determination or decision, either on our own motion or upon the request of any party to the determination or decision. See 20 CFR 404.956, 404.957, 416.1475 and 416.1477 (1980). On August 5, 1980, however, we published, pursuant to the notice of proposed rulemaking procedures, final regulations which reorganized and restated in simpler language our rules on the administrative review process, including our rules for reopening and revising final determinations and decisions. This recodification was undertaken as part of a Department-wide effort to make the rules clearer and easier for the public to use and understand (45 FR 52078, August 5, 1980).

Our existing regulations on the procedures for reopening and revising a determination or decision were a part of the recodification that was published and became effective on August 5, 1980. Although no substantive changes were intended with regard to the authority to reopen on our own initiative, the regulations, as recodified, have been read by some to permit reopening and revision of a final determination or decision only when the beneficiary or claimant requests reopening.

With respect to the reopening and the revising of a final determination or decision, §§ 404.987 and 416.1487 of our existing regulations state that "[y]ou may ask that a determination or a decision to which you were a party be revised." These sections have created some confusion and have been read by some courts to mean that we may not reopen and revise a final determination or decision on our own initiative.

The final rules eliminate the ambiguity that exists in our regulations regarding our authority to reopen and revise a final determination or decision on our own initiative. The final rules revise §§ 404.987 and 416.1487 to state explicitly that we may reopen a determination or decision that has become final on our own initiative or at the request of an individual who was a party to the determination or decision.

Public Comments

We published the proposed rules with a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 28, 1991 (56 FR 55477). Interested persons and organizations were given 60 days to comment. The comment period closed on December 27, 1991. We received comments from six commenters: Two State agencies which make disability determinations, and three legal services organizations and one private attorney who represent claimants and beneficiaries.

One commenter supported the proposed rules without modification. This commenter agreed with our view that the proposed rules clarified our longstanding policy regarding our authority to reopen a final determination or decision on our own initiative.

The other commenters either opposed the proposed changes to the regulations or conditioned their support for the proposed rules upon our making additional changes to our regulations. Most of these commenters generally perceived the proposed rules to be a policy change that would confer upon SSA a new or expanded authority to reopen and revise determinations or decisions on its own initiative. Many of the comments which were provided by these commenters also reflected a misunderstanding of the requirements and procedures for reopening a determination or decision. Some of these commenters recommended that the proposed rules be modified or withdrawn. Some recommended that they be expanded to clarify or further limit the specific conditions, which are stated elsewhere in our regulations, under which a final determination or decision may be reopened.

We considered carefully all of the comments which we received on the proposed rules. However, for the reasons stated below, we did not adopt the recommendation to withdraw the proposed rules or any of the recommendations to modify or expand the changes to the regulations. The changes to the regulations do not represent a substantive change in policy. The sole purpose of the changes is to clarify in the regulations our longstanding policy that we may reopen and revise a final determination or decision on our own initiative as well as upon the request of a party to the determination or decision. Accordingly, the final rules are the same as the proposed rules.

A summary of the comments that raised issues concerning the proposed rules and our responses to the comments are provided below. For ease of comprehension, we have consolidated the comments and organized them according to the general issues raised in the comments.

Comment: Three commenters thought that the proposed rules would be inconsistent with a decision of a circuit court which had concluded that our regulations should be interpreted to allow the Appeals Council to reopen a final decision of an administrative law judge (ALJ) only on the basis of a request by a claimant or beneficiary. One commenter stated that the proposed rules would circumvent judicial decisions, but did not mention any specific court decisions.

Response: As discussed earlier in this preamble and in the preamble to the NPRM, the regulations which we are revising, §§ 404.987 and 416.1487, were a part of the regulations that were published on August 5, 1980, which reorganized and restated in simpler language all of our rules on the administrative review process. Although no substantive changes were intended with regard to our authority to reopen final determinations or decisions on our own initiative, this authority was not stated as clearly in the recodified rules as it had been in the longer, more detailed prior rules. As a result, several lawsuits were brought challenging our authority under the recodified regulations to continue our longstanding policy to reopen and revise final determinations or decisions on our own initiative. All but one of the circuit courts that have directly addressed this issue have concluded, however, that our regulations on reopening do provide authority for us to reopen and revise final determinations or decisions on our own initiative, including authority for the Appeals Council to reopen and revise a final decision of an ALJ on its own initiative. Only the circuit court mentioned by the three commenters above and some Federal district courts have concluded that our existing regulations should be interpreted to allow the reopening and revision of a final determination or decision only

when a claimant or beneficiary requests reopening. These final rules revise the regulations to eliminate the ambiguity which led these courts to interpret the regulations to mean that only a claimant or beneficiary may initiate reopening. We are revising §§ 404.987 and 416.1487 to state explicitly that we may reopen a final determination or decision either on our own initiative or at the request of a party to the determination or decision.

Comment: Several commenters thought that the time periods within which a final decision of an ALJ may be reopened under current § 404.988 (a) or (b) or § 416.1488 (a) or (b), which we did not propose to change, are measured from the date of the ALJ decision. Some commenters opposed the proposed revisions of §§ 404.987 and 416.1487 because they believed that the Appeals Council would have the discretion under § 404.988(b) or § 416.1488(b) to reopen a final decision of an ALJ on its own initiative within 4 years of the date of the ALJ decision if the Council finds good cause to reopen. One commenter stated that the proposed rules would render meaningless the 60-day time limit within which the Appeals Council may decide to review a decision by an ALJ on its own initiative under §§ 404.969 and 416.1469. This statement was based on the commenter's belief that §§ 404.988(a) and 416.1488(a), when read together with the proposed rules, give the Appeals Council the discretion to reopen a final decision of an ALJ on its own initiative within 1 year of the date of the ALJ decision for any reason.

Response: Sections 404.988 and 416.1488 state the conditions under which we may reopen final determinations or decisions under the Social Security and SSI programs, respectively. We are not making any changes to these sections of our regulations. Sections 404.988(a) and 416.1488(a) provide that a determination or decision may be reopened within 12 months of the date of the notice of the initial determination for any reason. Sections 404.988(b) and 416.1488(b) provide that a determination or decision may be reopened within 4 years (2 years for SSI cases) of the date of the notice of the initial determination if we find good cause, as defined in §§ 404.989 and 416.1489, to reopen the case. The time periods within which a final decision of an ALJ may be reopened under these sections, therefore, are measured from the date of the notice of the initial determination, not from the date of the ALJ decision. Under these sections, the Appeals Council may reopen a final decision of an ALJ within 12 months of the date of the notice of the initial determination for any reason, or within 4 years (only 2 years for SSI cases) of the date of the notice of the initial determination if the Council finds good cause to reopen.

These final rules, like the proposed rules, revise §§ 404.987 and 416.1487 to clarify that we may reopen and revise a final determination or decision either on our own initiative or upon the request of a person who was a party to the determination or decision. While the final rules clarify that the Appeals Council has the discretion to reopen a final decision of an ALJ on its own initiative, as well as at the request of a party to the decision, under the conditions specified in §§ 404.988 and 416.1488, they do not make the reopening authority under §§ 404.988(a) and 416.1488(a) inconsistent with the authority provided under §§ 404.969 and 416.1469 for Appeals Council own-motion review of an ALJ decision. Sections 404.988 and 416.1488 state the conditions under which a determination or decision that has become final may be reopened. Sections 404.969 and 416.1469, on the other hand, authorize the Appeals Council to initiate review of an ALJ decision that has not become final. A decision by an ALJ becomes final unless a person who was a party to the decision requests Appeals Council review of the decision within the stated time period, see §§ 404.968 and 416.1468, or the Council itself decides to review the decision within the time period provided in §§ 404.969 and 416.1469. The latter sections provide that any time within 60 days after the date of an ALJ decision or dismissal of a hearing request, the Appeals Council may decide on its own initiative to review the decision or dismissal. By contrast, §§ 404.988(a) and 416.1488(a) allow the Appeals Council to reopen a final decision of an ALJ for any reason only within 12 months of the date of the notice of the initial determination made in the case. In almost all cases in which an ALJ decision becomes final, this 12-month period for reopening for any reason will have expired due to the normal processing time required for the disposition of the case through the reconsideration and ALJ hearing steps of the administrative review process. Therefore, a final decision of an ALJ seldom can be reopened under the conditions specified in §§ 404.988(a) and 416.1488(a).

Comment: Some commenters expressed the view that the proposed rules were unfair to claimants and beneficiaries because they permitted SSA to reopen on its own initiative a final determination or decision that was favorable to the individual and make a revised determination or decision that could be unfavorable to the individual. One commenter stated that fairness requires that only claimants and beneficiaries be permitted to initiate the reopening and revision of a final determination or decision.

Response: Our authority to initiate reopening gives us the discretion to reopen and revise a final determination or decision on our own initiative under the conditions described in §§ 404.988 and 416.1488 whether such final determination or decision was favorable or unfavorable to the individual. The revised determination or decision which we make may be less favorable or more favorable to the individual than the prior determination or decision, or it may involve merely a technical revision that does not affect the ultimate conclusion regarding the individual's rights under the Social Security or SSI program.

The policy that we may reopen and revise final determinations or decisions on our own initiative is advantageous to many claimants and beneficiaries. While an individual may request that a final determination or decision that was unfavorable to the individual be reopened and revised, it is often SSA, and not the individual, that discovers that an error was made, or that new and material evidence exists, that provides a basis to reopen and revise a final determination or decision that was unfavorable to the individual. The authority to reopen on our own initiative allows us to reopen and revise the determination or decision in these cases even though the individual has not requested reopening. Indeed, in many, if not most, cases in which we reopen and revise a final determination or decision on our own initiative, we do so for the sole purpose of making a revised determination or decision that would be more favorable to the individual than the prior determination or decision.

Our longstanding policy regarding the authority to reopen on our own initiative is intended to ensure that the final determinations and decisions which we make about the rights of individuals under the Social Security and SSI programs are fair and proper. It enables us to protect the integrity of these programs by allowing us to reopen and revise final determinations or decisions on our own initiative, as well as at the request of a party to the determination or decision, in cases where, for example, the determination or decision was obtained by fraud, the

evidence that was considered in making the determination or decision clearly shows on its face that an error was made in the determination or decision, or new and material evidence shows that the determination or decision is incorrect. See §§ 404.988, 404.989, 416.1488 and 416.1489. In addition, if we reopen and revise a final determination or decision on our own initiative, any person who was a party to the revised determination or decision has the opportunity under §§ 404.994 and 416.1494 to request that the revision be reviewed. Under these sections, if an individual is dissatisfied with a revised determination or decision made in his or her case, he or she may request further administrative or judicial review, as appropriate, of our revised determination or decision.

Comment: Two commenters believed that some of the conditions for reopening determinations and decisions provided in §§ 404.988 and 416.1488 are too broad. One of the commenters stated that the criteria in §§ 404.989 and 416.1489 for determining whether good cause exists to reopen under §§ 404.988(b) and 416.1488(b) should be clarified to provide more precise standards for determining good cause to reopen. The other commenter urged that the criteria for determining good cause be modified to limit further the conditions under which a determination or decision may be reopened. This commenter also recommended the elimination of the provisions of §§ 404.988(a) and 416.1488(a) which permit the reopening of a determination or decision within 12 months of the date of the notice of the initial determination for any reason.

Response: We do not believe that there is any need at this time to modify or clarify the specific criteria in §§ 404.989 and 416.1489 for determining whether good cause exists to reopen a determination or decision under §§ 404.988(b) and 416.1488(b). In addition, we believe that the conditions for reopening provided in §§ 404.988 and 416.1488, including the provisions of §§ 404.988(a) and 416.1488(a), are sufficiently restrictive. These sections of the regulations provide that a determination or decision may be reopened only within limited time periods and/or under limited circumstances. They limit the conditions under which we may reopen a final determination or decision either on our own initiative or on the request of a person who was a party to the determination or decision.

The final rules, like the proposed rules, only revise §§ 404.987 and 416.1487. The sole purpose of the revisions is to clarify our longstanding policy that we may reopen and revise final determinations or decisions on our own initiative as well as at the request of a party to the determination or decision. These final rules, therefore, do not make any changes to § 404.988, § 404.989, § 416.1488 or § 416.1489. For the foregoing reasons, the proposed rules are being adopted as final regulations.

Regulatory Procedures

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect determinations or decisions about the rights of individuals under the Social Security and SSI programs. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Dated: November 4, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

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

20 CFR part 404, subpart J, is amended as follows:

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

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302.

2. Section 404.987 is revised to read as follows:

§ 404.987 Reopening and revising determinations and decisions.

(a) *General.* Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review and that determination or decision becomes final. However, a determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us.

(b) *Procedure for reopening and revision.* We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen the determination or decision, we may revise that determination or decision. The conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request, are explained in § 404.988.

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

20 CFR part 416, subpart N, is amended as follows:

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

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

2. Section 416.1487 is revised to read as follows:

§ 416.1487 Reopening and revising determinations and decisions.

(a) *General.* Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review and that determination or decision becomes final. However, a

determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us.

(b) *Procedure for reopening and revision.* We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen the determination or decision, we may revise that determination or decision. The conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request, are explained in § 416.1488.

[FR Doc. 94–3958 Filed 2–22–94; 8:45 am]
BILLING CODE 4190–29–P

20 CFR Part 416

RIN 0960–AB86

Supplemental Security Income For the Aged, Blind, and Disabled; Indian Judgment Funds and Per Capita Distributions

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations update the lists of types of income and resources that are excluded under the supplemental security income (SSI) program by Federal laws other than the Social Security Act (the Act) by reflecting the provisions of Public Law 97–458, enacted January 12, 1983, Public Law 98–64, enacted August 2, 1983, and Public Law 100–241, enacted February 3, 1988. In addition, we are making two minor technical changes. The effects of these final regulations are, in certain cases, to provide additional exclusions from income and resources permitting eligibility for, or increases in the payment of, SSI benefits.

EFFECTIVE DATE: February 23, 1994.

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:

Public Law 97–458

Public Law 97–458 was enacted January 12, 1983. Section 4 of this legislation provides that certain Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress are excluded from income and resources under the SSI program. Indian judgment funds include interest and investment income accrued while the funds are held in trust. The exclusion extends to initial purchases made with Indian judgment funds. The exclusion does not apply to the proceeds from sales or conversions of initial purchases or to subsequent purchases made with funds derived from sales or conversions of originally excluded purchases, because Congress sought to protect only the distributions made by the Secretary of the Interior.

Section 4 of Public Law 97–458 also excludes from resources any interests of Indians in trust or restricted Indian lands. Our current regulations address only those lands that such individuals may possess. These final regulations now also exclude from resources nonpossessory interests in such lands.

Public Law 98–64

Public Law 98–64 was enacted August 2, 1983. This legislation excludes all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed on a per capita basis from income and resources for SSI purposes.

The Social Security Administration (SSA) sought advice from the Department of the Interior on the issue of whether Alaska Native Regional and Village Corporation (ANRVC) dividends not excluded under the Alaska Native Claims Settlement Act (ANCSA) could be excluded under Public Law 98–64. SSA issued interim instructions directing that ANRVC dividend distributions paid on or after August 2, 1983, whether or not excluded under ANCSA, would be excluded for SSI purposes pending resolution of the issue.

The Department of the Interior has since advised SSA that funds held by ANRVCs are not "funds held in trust by the Secretary of the Interior" within the purview of Public Law 98–64. We therefore concluded that these ANRVC dividend distributions could not qualify for exclusion for SSI purposes under that law.

Public Law 100–241

A new law, Public Law 100–241, was enacted on February 3, 1988. Under this law, none of the following, received from a Native Corporation, is considered income or resources of an individual Alaska Native or a descendant of an Alaska Native: cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year (the exclusions are applied each year to the amount received in such year); stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust.

Public Law 100–241 specifically provides that cash received from a Native Corporation (including cash dividends on stock received from a Native Corporation), to the extent that it does not, in the aggregate, exceed $2,000 per individual per year, shall not be considered or taken into account as an asset or resource. Although this statutory provision does not explicitly mention "income," the legislative history clearly shows that such cash should not be considered a resource or "otherwise utilized in determining eligibility." H.R. Rep. No. 31, 100th Cong., 1st Sess. 20 (1987). This language seems to require the exclusion of the distributions from income as well as resources, to the extent that they do not, in the aggregate, exceed $2,000 per individual per year in determining eligibility and payment amount. To exclude a portion of the distributions only from resources would result in benefit reductions or ineligibility in months in which the distributions are received and would be contrary to congressional intent. Therefore, we have changed the income provisions of the appendix to subpart K to reflect the exclusion.

In accordance with Public Law 100–241, we exclude ANRVC cash (including cash dividends on stock received from a Native Corporation) to the extent that this ANRVC cash does not, in the aggregate, exceed $2,000 per individual per year. With respect to resources, we apply the exclusion to each calendar year without regard to the prior year, so that retained cash not exceeding $2,000 which an individual received from a Native Corporation in a prior year will not be counted in a subsequent year. This interpretation is consistent with the policy of the Aid to Families with Dependent Children program. Any retained cash exceeding $2,000 per year will be counted toward the SSI resource limit.

Regulations Changes

The appendix to subpart K lists the types of income that are excluded under the SSI program by Federal laws other than the Act and explains how exclusions provided by other Federal statutes apply to income deemed from a sponsor to an alien. We are amending

the appendix to subpart K, *IV. Native Americans*, on the basis of the legislation discussed above by revising paragraph (a), deleting paragraph (b)(4), redesignating paragraphs (b)(5) through (b)(13) as (b)(4) through (b)(12), and adding new paragraphs (g) and (h). In addition, paragraphs (g) and (h) provide that the exclusion applies to the sponsor's income only if the alien lives with the sponsor, because the statute authorizing the exclusions applies only to benefits to which the household or member of the household would be eligible.

Similarly, we are amending subpart L of the regulations, which deals with resources and exclusion of resources under the SSI program, to reflect the above legislation. Specifically, we are amending § 416.1234 regarding exclusion of Indian lands and, § 416.1236, which encompasses resource exclusions provided by other statutes.

Public Comment

A Notice of Proposed Rulemaking (NPRM) was published on July 27, 1992 (57 FR 33137). A 60-day comment period was provided. The comment period ended September 25, 1992. We received 9 comments. The comments generally supported the NPRM. We have summarized and responded to the issues raised in the comments below.

Comment: Seven commenters expressed concern that the Secretary of Health and Human Services (the Secretary) might begin to apply a $2,000 annual limit to all exclusions of Indian judgment funds and per capita distributions. They stated that the proposed regulations were unclear as to whether ANCSA, as amended by Public Law 100–241, might adversely affect the SSI benefits of Native Americans other than Alaska natives.

Response: ANCSA provides for the exclusion of ANRVC cash to the extent that it does not, in the aggregate, exceed $2,000 per individual per year. The provisions of ANCSA apply only to ANRVC distributions to Alaska Natives. We believe this is clearly explained in the amended regulations at paragraph IV(a) of the appendix to subpart K and at § 416.1236(a)(10). In accordance with Public Law 97–458 and Public Law 98–64, the Secretary totally excludes all judgment fund and per capita distributions made pursuant to those public laws.

Comment: One commenter asked why the proposed regulations did not refer to a $2,000 limit for per capita distributions to Indian tribal members other than Alaska Natives, because Public Law 97–458 appears to include such a limit. Five commenters suggested that instead of applying a $2,000 annual limit on Indian judgment fund and per capita distributions, the Secretary should apply a $2,000 per payment limit, in accordance with Public Law 97–458 and Public Law 98–64. Consequently, only Indian judgment funds or per capita distributions in excess of $2,000 per payment would be countable for SSI purposes.

Response: There appears to be some confusion over whether, as a result of the proposed regulations, SSA would or could begin to apply a $2,000 exclusion limit to other than ANSCA distributions. SSA never intended to apply a $2,000 limit to such other distributions and these final regulations clearly do not do so.

Public Law 97–458 provides that any Federal or federally assisted program, other than Social Security Act programs, shall not consider Indian judgment funds except for per capita shares in excess of $2,000, as income or resources. However, the statute does not limit the amount of payments that can be excluded under the Social Security Act programs. Public Law 98–64 does not provide a $2,000 limit on exclusion of funds covered by that statute.

Accordingly, for SSI purposes the Secretary excludes from income and resources all judgment fund and per capita distributions made under Public Law 97–458 and Public Law 98–64.

Comment: One commenter proposed that foster care payments paid to tribal members to help defray the costs of basic needs, and that General Assistance payments from the Bureau of Indian Affairs be excluded from income and resources under the SSI program.

Response: We believe that the exclusions proposed by the commenter would require the enactment of new legislation. Accordingly, in the absence of such authority, we have not revised the regulations to incorporate such exclusions.

Comment: One commenter suggested that the proposed regulations not limit the exclusion of purchases contained in Pub. L. 97–458 to initial purchases made with Indian judgment funds and per capita distributions, because that law refers to "* * * any purchases made with such funds * * *"

Response: The exclusion of purchases in Pub. L. 97–458 does not apply to proceeds from the sales or conversions of initial purchases or to purchases made with the money derived from the sales or conversions of initial purchases. As indicated earlier in this preamble, this policy reflects Congressional intent to protect only the distributions made by the Secretary of the Interior. Any purchases made subsequent to initial purchases would not be made from distributions made by the Secretary of the Interior. Furthermore, tracking the funds beyond the initial purchase would be administratively difficult, if not impossible.

Comment: One commenter suggested that the Secretary correct a conflict between § 416.1210(i) and § 416.1234 as proposed. Section 416.1210 provides a list of resource exclusions with corresponding regulatory citations. Specifically, § 416.1210(i), states that the resource exclusion of restricted allotted land applies to "an enrolled member of an Indian tribe as provided in § 416.1234." Section 416.1234 states that the exclusion applies to "an individual * * * who is of Indian descent from a federally recognized Indian tribe," and does not limit its exclusion to an enrolled member of an Indian tribe.

Response: We agree that § 416.1210(i) may appear to be in conflict with § 416.1234. Although a change to correct this possible inconsistency was not included in the NPRM, we believe a technical change to correct our oversight and make our intent clear is appropriate. Therefore, we are making a technical change to the regulations at § 416.1210(i) to read, "Restricted allotted Indian lands as provided in § 416.1234;" to provide a simplified and more accurate cross-reference.

Other Regulations Changes

The provisions of Public Law 98–64 regarding the exclusion of certain funds from income are reflected in the appendix to Subpart K, *IV. Native Americans*, by the addition of paragraph (h) to these final regulations. This obviates the need for continuance of paragraph (c)(3) which only partially reflects the income exclusion provisions of Public Law 98–64. Paragraph (c)(3) is duplicative and no longer needed. Therefore, we are making a technical change to the regulations by deleting paragraph (c)(3).

Except for the technical change in response to an issue raised by a public comment and the technical change to remove a duplicative provision, we are adopting these regulations as proposed.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

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

(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: November 19, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 8, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. In the appendix following subpart K of part 416, under the heading *IV. Native Americans*, the text preceding the note in paragraph (a) is revised, paragraph (b)(4) and the note following it are removed, paragraphs (b)(5) through (b)(13) are redesignated (b)(4) through (b)(12) respectively, paragraph (c)(1) is amended by adding the word "and" after the semicolon, paragraph (c)(2) is amended by removing the semicolon and the word "and" and adding a period, paragraph (c)(3) is removed, and new paragraphs (g) and (h) are added to read as follows:

Appendix to Subpart K of Part 416—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act

* * * * *

IV. Native Americans

(a) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, to the extent that it does not, in the aggregate, exceed $2,000 per individual each year; stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100–241 (43 U.S.C. 1626(c)), effective February 3, 1988.

* * * * *

(g) Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93–134 as amended by Public Law 97–458 (25 U.S.C. 1407). Indian judgment funds include interest and investment income accrued while such funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion does not apply to sales or conversions of initial purchases or to subsequent purchases.

Note—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(h) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe are excluded from income under Public Law 98–64 (25 U.S.C. 117b). Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from countable income under this exclusion. For ANRVC dividend distributions, see paragraph IV(a) of this Appendix.

Note—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

3. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

4. Section 416.1210(i) is revised to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(i) Restricted allotted Indian lands as provided in § 416.1234;

* * * * *

5. Section 416.1234 is revised to read as follows:

§ 416.1234 Exclusion of Indian lands.

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, we will exclude any interest of the individual (or spouse, if any) in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the Federal Government.

6. In § 416.1236, paragraphs (a)(3) and (a)(10) are revised and paragraph (a)(12) is added to read as follows:

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) * * *

(3) Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93–134, as amended by Public Law 97–458 (25 U.S.C. 1407). Indian judgment funds include interest and investment income accrued while the funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion will not apply to proceeds from sales or conversions of initial purchases or to subsequent purchases.

* * * * *

(10) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, is disregarded to the extent that it does not, in the aggregate, exceed $2,000 per individual each year (the $2,000 limit is applied separately each year, and cash distributions up to $2,000 which an individual received in a prior year and retained into subsequent years will not be counted as resources in those years); stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to the exclusion under section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100–241 (43 U.S.C. 1626(c)), effective February 3, 1988.

* * * * *

(12) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under Public Law 98–64. Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from resources under this exclusion. For treatment of ANRVC dividend distributions, see paragraph IV(a)(10) of this appendix.

* * * * *

[FR Doc. 94–3960 Filed 2–22–94; 8:45 am]
BILLING CODE 4190–29–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2625

Restoration of Terminating and Terminated Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations regarding plan restoration obligations and procedures to reflect a change in the Treasury regulations that are referenced therein and to make several corrections.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1301 *et seq.*). Part 2625 of its regulations (29 CFR part 2625), along with Treasury regulations under section 412 of the Internal Revenue Code (26 U.S.C. 412, minimum funding standards), describes certain legal obligations that arise incidental to a plan restoration under section 4047 of ERISA (29 U.S.C. 1347) and establishes procedures with respect to these obligations.

Provisions of part 2625 currently reference temporary Treasury regulations for applying the minimum funding requirements to terminating or terminated single-employer plans restored by the PBGC (26 CFR 1.412(c)(1)–3T). The Internal Revenue Service ("IRS") has now issued final regulations (26 CFR 1.412(c)(1)–3, TD 8494, 58 FR 54489, October 22, 1993). (The provisions of the final regulations on the restoration funding method differ from those referenced in part 2625 only in minor clarifications made by the IRS in response to comments.) The PBGC is amending §§ 2625.1(a) and 2625.2 (b) through (d) to reflect that action by substituting the final Treasury regulations for the temporary regulations.

This rule also corrects the spelling of two words in § 2625.2(b) ("amortization" and "restoration") and adds language erroneously omitted from § 2625.3(c) ("following a plan year"). (As worded, § 2625.3(c) states that a restored plan may not use the alternative calculation method in § 2610.23(c) of the premium regulation for any plan year for which Form 5500, Schedule B was not filed because the plan was terminated. However, as indicated in the premium regulation, the alternative calculation method requires use of a plan's Schedule B for the preceding plan year. Hence, this method is not available for a plan year that follows a plan year for which Schedule B was not filed, rather than for that plan year.)

Because these amendments only reflect a change in the pertinent Treasury regulations (which were the subject of notice and comment rulemaking) and make corrections, the PBGC has for good cause found advance notice and public procedure thereon and a delayed effective date to be unnecessary (5 U.S.C. 553 (b)(B) and (d)(3)), and it is issuing these amendments as a final rule, effective immediately.

E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

List of Subjects in 29 CFR Part 2625

Employee pension plans, Pension insurance, Pensions.

For the reasons set forth above, the PBGC is amending 29 CFR part 2625 as follows:

PART 2625—RESTORATION OF TERMINATING AND TERMINATED PLANS

1. The authority citation for part 2625 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1347.

§ 2625.1 and § 2625.2 [Amended]

2. Paragraph (a) of § 2625.1 and paragraphs (b), (c), and (d) of § 2625.2 are amended by removing "26 CFR 1.412(c)(1)–3T" each time it appears and adding, in its place, "26 CFR 1.412(c)(1)–3".

§ 2625.2 [Amended]

3. Paragraph (b) of § 2625.2 is amended by removing "amoratization" and adding, in its place, "amortization" in the first sentence and by removing "restorative" and adding, in its place, "restoration" in the second sentence.

§ 2625.3 [Amended]

4. Paragraph (c) of § 2625.3 is amended by adding "following a plan year" after "for any plan year".

Issued in Washington, DC, this 17th day of February 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–4065 Filed 2–22–94; 8:45 am]
BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM94–2; Order No. 1004]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final Rule.

SUMMARY: In order to expedite litigation of revenue-related issues presented by Postal Service rate change requests, the Commission amends its rules governing the Postal Service's rate filings to require that they include complete descriptions of the data, procedures, and assumptions that underlie the Postal Service's estimate of domestic mail revenues.

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Legal Advisor, Postal Rate Commission, suite 300, 1333