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**Jean A. Webb,**

*Secretary of the Commission.*

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 416

[Regulations No. 16]

RIN 0960-AE71

#### Effective Date of Application for Supplemental Security Income (SSI) Benefits

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Proposed rules.

**SUMMARY:** We propose to revise our regulations to reflect and implement section 204 of Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Section 204 changed the date an SSI application is effective so that the earliest month for which benefits can be paid is the month following the month in which the application is filed. Section 204 also made related changes concerning emergency advance payments (EAPs), interim assistance reimbursements (IARs) and in the definition of "eligible spouse".

**DATES:** To be sure that your comments are considered, we must receive them no later than October 9, 1998.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by e-mail to "regulations@ssa.gov," or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Loretta Tabacca, Social Insurance Specialist, Office of Program Benefits Policy, Division of Eligibility and Enumeration Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-9881.

**SUPPLEMENTARY INFORMATION:**

#### Background

These proposed regulations would reflect and implement section 204 of Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which applies to applications for SSI benefits filed on or after August 22, 1996.

Section 204(a), which amended section 1611(c)(7)(A) and (B) of the Social Security Act (the Act), changed the effective date of an SSI application. For applications for SSI benefits filed on or after August 22, 1996, the effective date of an SSI application is the first day of the month following the later of: the date the application is filed; or, the date the individual becomes eligible for such benefits with respect to such application. The change in law affects the point at which SSI benefits can begin. Before the change in law, an individual could receive SSI benefits for the month in which an application for benefits was filed, and the amount of benefits for that month was prorated based on the number of days in that month that the individual met all factors of eligibility. Under section 204(a), the first month for which benefits can be paid is the month following the month that all eligibility requirements, including filing an application, are met. In view of this era of heightened fiscal responsibility, Congress enacted the change to the SSI application effective date, which has a minimal (less than 30 days of benefits) effect on an individual's benefit amount.

Effective August 22, 1996, section 204(b) of Pub. L. 104-193, which amended section 1631(a)(4)(A) of the Act, made some changes to the EAP process. It added the authority to make EAPs in the month of application to individuals who would be at least presumptively eligible for benefits the month following the date that the application is filed. Section 204(b) also provided that these EAPs are to be repaid through proportional deductions in SSI benefit payments over a period of not more than 6 months.

Since January 1974, when it first became effective, title XVI of the Act has authorized issuance of EAPs in situations of marked financial need among new claimants. These EAPs are expedited payments of funds based upon an applicant's status as presumptively meeting all of the requirements for eligibility. These EAPs will continue to be recovered from any retroactive SSI benefit payments.

Section 204(c)(1) of Pub. L. 104-193, which amended section 1614(b) of the Act, made a conforming change in the definition of an "eligible spouse" to

conform to the change made by section 204(a) with respect to the effective date of an application. Under this change, in order for couple computation rules to apply in determining the amount of benefits to be paid in the first month that both members of a couple are eligible for payment of SSI benefits, the couple must be living in the same household on the first day of the month following the date the application for benefits was filed. Prior to this change, the couple had to be living in the same household on the date the application was filed in order for the couple computation rules to apply to the first month both members of the couple were eligible for payment.

Section 204(c)(2) also made a conforming amendment to section 1631(g)(3) of the Act concerning reimbursement of States under IAR agreements. Consistent with the change made by section 204(a) in the effective date of an application for SSI benefits, States may continue to be reimbursed for interim assistance furnished for meeting basic needs during the period beginning with the month the individual becomes eligible for payment of SSI benefits.

#### Explanation of Revisions

To reflect and implement section 204(a), we propose amending §§ 416.200, 416.203, 416.211, 416.262, 416.305, 416.315, 416.330, 416.335, 416.420, 416.421, 416.501, 416.502, 416.1160, 416.1163, 416.1165, 416.1245 and 416.1335 as follows:

We propose to revise §§ 416.200 and 416.203 to reflect the statutory change made by section 204(a) under which the first month for which an individual who meets all the basic eligibility requirements listed in § 416.202 may receive SSI benefits is the month after the month he or she meets these eligibility requirements (see § 416.501). An individual cannot become eligible for payment of SSI benefits until the month after the month in which the individual first becomes eligible for SSI benefits. We also propose to amend the last sentence of § 416.200 to update a cross-reference.

We also propose conforming amendments to paragraph (a)(1) of § 416.211. As a result of the statutory change, an individual who is a resident of a public institution at the time he or she first applies for and meets all other eligibility factors for SSI benefits, will be ineligible for payment of SSI benefits until the first day of the month following the day of the individual's release from the institution.

We propose to revise § 416.262 to clarify, consistent with section 1619 of

the Act, that in order for an individual to be eligible for special SSI cash benefits, the individual must have been eligible for payment of a regular SSI benefit in a prior month. As noted previously, the earliest month in which an individual can become eligible for payment of SSI benefits is the month after the month in which the application for benefits was filed.

We propose to revise § 416.305(a) to clarify that filing an application assures that the individual receives benefits for any months that individual is determined eligible to receive payment. This clarification reflects the statutory change which ended payment of benefits for the first month in which an individual becomes eligible for benefits.

We also propose to revise the example in paragraph (c) of § 416.315 to illustrate that the earliest month for which benefits can be paid is the month following the month in which the individual first becomes eligible for benefits.

We also propose an amendment to our regulations at § 416.330(a) to reflect the statutory change affecting the first month for which benefits can be paid. We propose to revise § 416.330(a) to state that when an individual files an application before all the requirements for eligibility are met, the earliest month for which the application can be effective for payment is the month following the month that all requirements are met. We also propose to delete the language describing proration of benefits in the first month of eligibility to reflect the fact that section 204 ended such proration. In addition, we also propose to amend § 416.330(b) to state that if an individual meets all the requirements for eligibility after the period for which the application was in effect and a new application is filed, the earliest month for which benefits can be paid is the first month following the month that all the eligibility requirements are met based on the filing of the new application.

We propose to revise § 416.335 to state that when an individual files an application in or after the month all the other requirements for eligibility are met, the application cannot be the basis for payment before the first day of the month following the month that the application was filed. We also propose to delete the language that pertains to proration of benefits in the first month of eligibility.

We also propose to amend §§ 416.420 and 416.421 to clearly state the different policies on when SSI benefits can be paid based on the filing of an application and a resumption of benefits

after at least one month of ineligibility. The change in law which is effective for applications filed on or after August 22, 1996, effectively ends the proration of SSI benefits based on the day of the month that an application was filed. Proration of benefits continues to apply to resumption of benefits in posteligibility situations.

Additionally, we propose to revise §§ 416.501 and 416.502 to clarify that when an individual files an application for SSI benefits, the earliest month for which payment can be made is the month following the month of initial eligibility. When eligibility is reestablished after at least one month of ineligibility, benefits can be prorated for the first month of reeligibility.

We propose to revise §§ 416.1160(b)(2), 416.1163(e), and 416.1165(f) to clarify that, in initial claims situations, the first month in which deeming applies for purposes of determining the amount of a benefit is the month an individual is first eligible for payment. These revisions conform to the legislative change affecting the date an SSI application is effective for payment. We also propose to correct the cross-references in § 416.1166(d) to accurately reflect the current reference in the regulations.

We propose to revise § 416.1245(b) to conform to the legislative change affecting the date an individual can receive SSI payments, specifically conditional benefits, following the application effective date. As a result of the legislative change, the months of payment eligibility may not coincide with the months of the conditional benefits disposal period. Additionally, the payment period, and thus the resulting overpayment, may be different for initial claims and posteligibility situations. Therefore, we are eliminating references to 9 months of conditional benefit payments and revising the regulations to refer only to benefits received during the conditional benefits period.

Finally, in order to implement section 204(a), we propose to amend § 416.1335 to reflect the fact that, as a result of the statutory change, a period of benefit suspension can begin when an individual is no longer eligible for SSI benefits even though that person had not received any SSI benefits because the person's only month of eligibility was prior to the effective date of the application.

To reflect the provisions of section 204(b) which expanded the authority of SSA to issue EAPs, we propose to amend § 416.520(a), (b), and (c) to clarify that we have the authority to issue an EAP in the month that an

application is filed even though that month is prior to the effective date of the application and prior to when the individual can be eligible to receive SSI benefits. We also propose to revise § 416.520(d) to reflect the amendment made by section 204(b) providing that an EAP shall be repaid through proportional reduction in benefits payable over a period of not more than 6 months. Consistent with our longstanding policy and this new statutory provision, if past-due SSI benefits awarded to the individual exceed the amount of the EAP, the entire amount of the EAP will be deducted from the past-due benefits. Finally, we propose to amend the definition of "presumptively eligible" in § 416.520(b)(4) to clarify that all of the requirements for eligibility are involved.

To reflect the changes made by section 204(c)(1), we propose to revise the definition of "eligible spouse" in § 416.1801(c). The law changed the point at which SSA determines whether an eligible individual and eligible spouse are an eligible couple. Eligible couple determinations in these situations previously were made when an application was filed but now will be made as of the first day of the month following the date the application is filed. In addition, we propose to amend § 416.1801(c) to correct an erroneous cross-reference in the definition of "spouse".

To reflect the conforming amendment made by section 204(c)(2), we propose to amend the definition of interim assistance in § 416.1902 to state that interim assistance begins with the first month of eligibility for payment of SSI benefits.

#### *Electronic Versions*

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

#### **Regulatory Procedures**

##### *Regulatory Flexibility Act*

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Executive Order 12866*

These proposed rules reflect and implement the provisions of sections 204(a), (b) and (c) of Pub. L. 104-193. The Office of Management and Budget (OMB) has reviewed these proposed rules and determined that they meet the criteria for an economically significant regulatory action under Executive Order 12866. These proposed regulations also meet the definition of a "major rule" under 5 U.S.C. 801 ff., and the following cost and benefit assessment fulfills the requirements of those provisions as well. In addition, SSA has determined, as required under the aforementioned statute, that these proposed regulations do not create any unfunded mandates for State or local entities pursuant to sections 202-205 of the Unfunded Mandates Act of 1995.

*Projected Costs*

Under the statutory change, individuals who file an SSI application on or after August 22, 1996 cannot receive SSI benefits for the first month of eligibility; therefore, benefits will begin later. The cost to individuals is illustrated in the following example: Assuming section 204(a) had not been enacted, an individual who filed an SSI application on August 22, 1996, having met all the requirements for eligibility in that month, would have received an August 1996 SSI benefit amount of \$121.80. (The SSI benefit amount was computed using the national average SSI monthly payment amount for the total SSI population for August 1996 of \$377.58 and prorating that amount for 10 days (August 22 through August 31).) Since section 204(a) was enacted, the same individual would have received

no payment for August 1996, the first month of eligibility. The cost to this individual would be \$121.80.

*Potential Benefits*

Since these proposed rules reflect statutory changes which delay the effective date of payment of SSI benefits, we project that there will be reduced outlays from general revenues.

*Program Costs*

There are no program costs associated with these proposed rules.

*Program Savings*

It is estimated that due to the legislation there will be reduced program outlays resulting in the following savings (in millions of dollars) to the SSI program (\$780 million in a 6 year period):

FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	Total
\$120	\$125	\$130	\$130	\$135	\$140	\$780

There are no costs or savings to the Medicaid program as a result of the change to the application effective date. Though the Health Care Financing Administration (HCFA) had initially projected Medicaid savings from this provision due to the loss of coverage resulting from the elimination of payment of SSI benefits for the month in which the SSI application is filed, subsequent manual guidance from HCFA allowed States to provide Medicaid coverage during this month (as well as the usual 3-month retroactive period). Consequently, the initial estimated savings have been eliminated and, overall, there is no Medicaid cost effect.

*Administrative Costs*

We anticipate negligible administrative costs (i.e., less than \$1 million and 30 workyears). The administrative costs are the net of additional workyears related to systems changes to reflect the point at which benefits can now begin.

*Administrative Savings*

We do not anticipate any administrative savings to result from these proposed regulations since eligibility must be determined from the filing date as was the case before the effective date of these proposed rules.

*Policy Alternatives*

There are no discretionary policies involved in implementing section 204 (a), (b) and (c). Therefore, we find no need to consider alternative policies.

*Paperwork Reduction Act*

These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.006, 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 (SSI).

Dated: May 15, 1998.

**Kenneth S. Apfel,**  
*Commissioner of Social Security.*

For the reasons set forth in the preamble, we are proposing to amend subparts B, C, D, E, K, L, M, R, and S of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

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

**Subpart B—[Amended]**

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

**Authority:** Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93-66, 87 Stat. 154 and

155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94-241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99-643, 100 Stat. 3574 (42 U.S.C. 1382h note).

2. Section 416.200 is revised to read as follows:

**§ 416.200 Introduction.**

You are eligible for SSI benefits if you meet all the basic requirements listed in § 416.202. However, the first month for which you may receive SSI benefits is the month after the month in which you meet these eligibility requirements. (See § 416.501.) You must give us any information we request and show us necessary documents or other evidence to prove that you meet these requirements. We determine your eligibility for each month on the basis of your countable income in that month. You continue to be eligible unless you lose your eligibility because you no longer meet the basic requirements or because of one of the reasons given in §§ 416.210 through 416.216.

3. Section 416.203 is amended by revising paragraph (b) to read as follows:

**§ 416.203 Initial determinations of SSI eligibility.**

\* \* \* \* \*

(b) *How we determine your eligibility for SSI benefits.* We determine that you are eligible for SSI benefits for a given month if you meet the requirements in § 416.202 in that month. However, you cannot become eligible for payment of SSI benefits until the month after the month in which you first become eligible for SSI benefits (see § 416.501).

In addition, we usually determine the amount of your SSI benefits for a month based on your income in an earlier month (see § 416.420). Thus, it is possible for you to meet the eligibility requirements in a given month but receive no benefit payment for that month.

4. Section 416.211 is amended by revising paragraph (a)(1) to read as follows:

**§ 416.211 You are a resident of a public institution.**

(a) *General rule.* (1) Subject to the exceptions described in paragraphs (b), (c), and (d) of this section and § 416.212, you are not eligible for SSI benefits for any month throughout which you are a resident of a public institution as defined in § 416.201. In addition, if you are a resident of a public institution when you apply for SSI benefits and meet all other eligibility requirements, you cannot be eligible for payment of benefits until the first day of the month following the day of your release from the institution.

\* \* \* \* \*

5. Section 416.262 is amended by revising paragraph (a) to read as follows:

**§ 416.262 Eligibility requirements for special SSI cash benefits.**

\* \* \* \* \*

(a) You were eligible to receive a regular SSI benefit or a federally administered State supplementary payment (see § 416.2001) in a month before the month for which we are determining your eligibility for special cash benefits as long as the month was not in a prior period of eligibility which has terminated according to §§ 416.1331 through 416.1335;

\* \* \* \* \*

**Subpart C—[Amended]**

6. The authority citation for subpart C of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, and 1631(a), (d), and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382, and 1383(a), (d), and (e)).

7. Section 416.305 is amended by revising paragraph (a) (2) to read as follows:

**§ 416.305 You must file an application to receive supplemental security income benefits.**

(a) \* \* \*

(2) Assure that you receive benefits for any months you are eligible to receive payment; and

\* \* \* \* \*

8. Section 416.315 is amended by revising the example in paragraph (c) to read as follows:

**§ 416.315 Who may sign an application.**

\* \* \* \* \*

(c) \* \* \*

Example: Mr. Smith comes to a Social Security office to file an application for SSI disability benefits for Mr. Jones. Mr. Jones, who lives alone, just suffered a heart attack and is in the hospital. He asked Mr. Smith, whose only relationship is that of a neighbor and friend, to file the application for him. We will accept an application signed by Mr. Smith since it would not be possible to have Mr. Jones sign and file the application at this time. SSI benefits can be paid starting with the first day of the month following the month the individual first meets all eligibility requirements for such benefits, including having filed an application. If Mr. Smith could not sign an application for Mr. Jones, a loss of benefits would result if it is later determined that Mr. Jones is in fact disabled.

9. Section 416.330 is revised to read as follows:

**§ 416.330 Filing before the first month you meet the requirements for eligibility.**

If you file an application for SSI benefits before the first month you meet all the other requirements for eligibility, the application will remain in effect from the date it is filed until we make a final determination on your application, unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

(a) If you meet all the requirements for eligibility while your application is in effect, the earliest month for which we can pay you benefits is the month following the month that you first meet all the requirements.

(b) If you first meet all the requirements for eligibility after the period for which your application was in effect, you must file a new application for benefits. In this case, we can pay you benefits only from the first day of the month following the month that you meet all the requirements based on the new application.

10. Section 416.335 is revised to read as follows:

**§ 416.335 Filing in or after the month you meet the requirements for eligibility.**

When you file an application in the month that you meet all the other requirements for eligibility, the earliest month for which we can pay you benefits is the month following the month you filed the application. If you file an application after the month you first meet all the other requirements for eligibility, we cannot pay you for the month in which your application is filed or any months before that month. See §§ 416.340, 416.345 and 416.350 on

how a written statement or an oral inquiry made before the filing of the application form may affect the filing date of the application.

**Subpart D—[Amended]**

11. The authority citation for subpart D of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

12. Section 416.420 is amended by revising paragraphs (b)(1) through (3) to read as follows:

**§ 416.420 Determination of benefits; general.**

\* \* \* \* \*

(b) *Exceptions to the general rule—(1) First month of initial eligibility for payment or the first month of eligibility after a month of ineligibility.* We use your countable income in the current month to determine your benefit amount for the first month you are initially eligible for payment of SSI benefits (see § 416.501) or for the first month you again become eligible for SSI benefits after at least a month of ineligibility. Your payment for a first month of reeligibility after at least one month of ineligibility will be prorated according to the number of days in the month that you are eligible beginning with the date on which you regain eligibility.

Example: Mrs. Y applies for SSI benefits in September and meets the requirements for eligibility in that month. (We use Mrs. Y's countable income in September to determine if she is eligible for SSI in September.) The first month for which she can receive payment is October (see § 416.501). We use Mrs. Y's countable income in October to determine the amount of her benefit for October. If Mrs. Y had been receiving SSI benefits through July, became ineligible for SSI benefits in August, and again became eligible for such benefits in September, we would use Mrs. Y's countable income in September to determine the amount of her benefit for September. In addition, the proration rules discussed above would also apply to determine the amount of benefits in September in this second situation.

(2) *Second month of initial eligibility for payment or second month of eligibility after a month of ineligibility.* We use your countable income in the first month prior to the current month to determine how much your benefit amount will be for the current month when the current month is the second month of initial eligibility for payment or the second month of reeligibility following at least a month of ineligibility. However, if you have been

receiving both an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your Social Security benefit in January exceeds the amount of your Social Security benefit in December.

Example: Mrs. Y was initially eligible for payment of SSI benefits in October. Her benefit amount for November will be based on her countable income in October (first prior month).

(3) *Third month of initial eligibility for payment or third month of eligibility after a month of ineligibility.* We use your countable income according to the rule set out in paragraph (a) of this section to determine how much your benefit amount will be for the third month of initial eligibility for payment or the third month of reeligibility after at least a month of ineligibility.

Example: Mrs. Y was initially eligible for payment of SSI benefits in October. Her benefit amount for December will be based on her countable income in October (second prior month).

\* \* \* \* \*

13. Section 416.421 is amended by removing the first sentence of paragraph (a) and by removing the example at the end of paragraph (b).

#### Subpart E—[Amended]

14. The authority citation for subpart E of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

15. Section 416.501 is revised to read as follows:

#### § 416.501 Payment of benefits: General.

Payment of SSI benefits will be made for the month after the month of initial eligibility and for each subsequent month provided all requirements for eligibility (see § 416.202) and payment (see § 416.420) are met. In the month the individual re-establishes eligibility after at least a month of ineligibility, benefits are paid for such a month beginning with the date in the month on which the individual meets all eligibility requirements. In some months, while the factors of eligibility based on the current month may be established, it is possible to receive no payment for that month if the factors of eligibility for payment are not met. Payment of

benefits may not be made for any period that precedes the first month following the date on which an application is filed or, if later, the first month following the date all conditions for eligibility are met.

16. Section 416.502 is amended by revising the first sentence to read as follows:

#### § 416.502 Manner of payment.

For the month an individual reestablishes eligibility after a month of ineligibility, an SSI payment will be made on or after the day of the month on which the individual becomes reeligible to receive benefits. \* \* \*

17. Section 416.520 is amended by revising the first two sentences in paragraph (a) and by revising paragraphs (b)(1) and (b)(4), (c) introductory text, (c)(1) and (d) to read as follows:

#### § 416.520 Emergency advance payment.

(a) *General.* We may pay a one-time emergency advance payment to an individual initially applying for benefits who is presumptively eligible for SSI benefits and who has a financial emergency. The amount of this payment cannot exceed the Federal benefit rate (see §§ 416.410 through 416.414) plus the federally administered State supplementary payment, if any (see § 416.2020), which apply for the month for which the payment is made. \* \* \*

(b) \* \* \*

(1) *Emergency advance payment* means a direct, expedited payment by a Social Security Administration field office to an individual or spouse who is initially applying (see paragraph (b)(3) of this section), who is at least presumptively eligible (see paragraph (b)(4) of this section), and who has a financial emergency (see paragraph (b)(2) of this section). \* \* \*

\* \* \* \* \*

(4) *Presumptively eligible* is the status of an individual or spouse who presents strong evidence of the likelihood of meeting all of the requirements for eligibility including the income and resources tests of eligibility (see subparts K and L of this part), categorical eligibility (age, disability, or blindness), and technical eligibility (United States residency and citizenship or alien status—see subpart P of this part).

(c) *Computation of payment amount.* To compute the emergency advance payment amount, the maximum amount described in paragraph (a) of this section is compared to both the expected amount payable for the month for which the payment is made (see paragraph (c)(1) of this section) and the

amount the applicant requested to meet the emergency. The actual payment amount is no more than the least of these three amounts.

(1) In computing the emergency advance payment amount, we apply the monthly income counting rules appropriate for the month for which the advance is paid, as explained in § 416.420. Generally, the month for which the advance is paid is the month in which it is paid. However, if the advance is paid in the month the application is filed, the month for which the advance is paid is considered to be the first month of expected eligibility for payment of benefits.

\* \* \* \* \*

(d) *Recovery of emergency advance payment where eligibility is established.* When an individual or spouse is determined to be eligible and retroactive payments are due, any emergency advance payment amounts are recovered in full from the first payment(s) certified to the United States Treasury. However, if no retroactive payments are due and benefits are only due in future months, any emergency advance payment amounts are recovered through proportionate reductions in those benefits over a period of not more than 6 months. (See paragraph (e) of this section if the individual or spouse is determined to be ineligible.)

\* \* \* \* \*

#### Subpart K—[Amended]

18. The authority citation for subpart K of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

19. Section 416.1160 is amended by revising paragraph (b)(2)(i), and redesignating paragraphs (b)(2)(ii) and (b)(2)(iii) as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively, and adding a new paragraph (b)(2)(ii), to read as follows:

#### § 416.1160 What is deeming of income.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) We use the income from the first month you are initially eligible for payment of SSI benefits (see § 416.501) to determine your benefit amount for that month. In the following month (the second month you are eligible for payment), we use the same countable income that we used in the preceding

month to determine your benefit amount.

(ii) To determine your benefit amount for the first month you again become eligible after you have been ineligible for at least a month, we use the same countable income that we use to determine your eligibility for that month. In the following month (the second month of reeligibility), we use the same countable income that we used in the preceding month to determine your benefit amount.

\* \* \* \* \*

20. Section 416.1163 is amended by revising paragraph (e)(1) to read as follows:

**§ 416.1163 How we deem income to you from your ineligible spouse.**

\* \* \* \* \*

(e) *Determining your SSI benefit.* (1) In determining your SSI benefit amount, we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for payment of an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility for payment (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

\* \* \* \* \*

21. Section 416.1165 is amended by revising paragraph (f) to read as follows:

**§ 416.1165 How we deem income to you from your ineligible parent(s).**

\* \* \* \* \*

(f) *Determining your SSI benefit.* In determining your SSI benefit amount, we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible parents' income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for payment of an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility for payment (or re-eligibility) we deem your ineligible parents' income in the current month to determine both whether you are eligible for a benefit and the amount

of your benefit. In the second month we deem your ineligible parents' income in that month to determine whether you are eligible for a benefit but we again use your countable income (including any that was deemed to you) in the first month to determine the amount of your benefit.

\* \* \* \* \*

22. Section 416.1166 is amended by revising paragraph (d) to read as follows:

**§ 416.1166 How we deem income to you and your eligible child from your ineligible spouse.**

\* \* \* \* \*

(d) *Determining your eligibility for SSI benefits and benefit amount.* We then follow the rules in § 416.1163(c) to find out if any of your ineligible spouse's current monthly income is deemed to you and, if so, to determine countable income for a couple. Next, we follow paragraph (e) of this section to determine your child's eligibility. However, if none of your spouse's income is deemed to you, none is deemed to your child. Whether or not your spouse's income is deemed to you in determining your eligibility, we determine your benefit amount as explained in § 416.1163(e).

\* \* \* \* \*

**Subpart L—[Amended]**

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

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

24. Section 416.1245 is amended by revising paragraphs (b)(1), (b)(2)(v) and (b)(5) to read as follows:

**§ 416.1245 Exceptions to required disposition of real property.**

\* \* \* \* \*

(b) *Reasonable efforts to sell.* (1) Excess real property is not included in countable resources for so long as the individual's reasonable efforts to sell it have been unsuccessful. The basis for determining whether efforts to sell are reasonable, as well as unsuccessful, will be a 9-month disposal period described in § 416.1242. If it is determined that reasonable efforts to sell have been unsuccessful, further SSI payments will not be conditioned on the disposition of the property and only the benefits paid during the 9-month disposal period will be subject to recovery. In order to be eligible for payments after the

conditional benefits period, the individual must continue to make reasonable efforts to sell.

(2) \* \* \*

(v) The 9-month disposal period has expired.

\* \* \* \* \*

(5) An individual who has received conditional benefits through the expiration of the 9 month disposal period and whose benefits have been suspended as described at § 416.1321 for reasons unrelated to the property excluded under the conditional benefits agreement, but whose eligibility has not been terminated as defined at §§ 416.1331 through 416.1335, can continue to have the excess real property not included in countable resources upon reinstatement of SSI payments if reasonable efforts to sell the property resume within 1 week of reinstatement. Such an individual will not have to go through a subsequent conditional benefits period. However, the individual whose eligibility has been terminated as defined at §§ 416.1331 through 416.1335 and who subsequently reapplies would be subject to a new conditional benefits period if there is still excess real property.

**Subpart M—[Amended]**

25. The authority citation for subpart M of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611-1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382-1382d, 1382h, and 1383).

26. Section 416.1335 is amended by revising the second sentence to read as follows:

**§ 416.1335 Termination due to continuous suspension.**

\* \* \* We will count the 12-month suspension period from the start of the first month that you are no longer eligible for SSI benefits (see § 416.1321(a)) or the start of the month after the month your special SSI eligibility status described in § 416.265 ended. \* \* \*

**Subpart R—[Amended]**

27. The authority citation for subpart R of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382c(b), (c), and (d), and 1383(d)(1) and (e)).

28. Section 416.1801(c) is amended by revising paragraph (3)(i) in the definition of "Eligible spouse" and by correcting a cross-reference in the

definition of "Spouse" to read as follows:

**§ 416.1801 Introduction.**

\* \* \* \* \*

(c) \* \* \*

*Eligible Spouse* \* \* \*

(3) \* \* \*

(i) The first day of the month following the date the application is filed (for the initial month of eligibility for payment based on that application);

\* \* \* \* \*

*Spouse* means a person's husband or wife under the rules of § 416.1806.

\* \* \* \* \*

**Subpart S—[Amended]**

29. The authority citation for subpart S of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5) and 1631 of the Social Security Act (42 U.S.C. 902(a)(5) and 1383).

30. Section 416.1902 is amended by revising the definition of "interim assistance" to read as follows:

**§ 416.1902 Definitions.**

\* \* \* \* \*

*Interim assistance* means assistance the State gives you, including payments made on your behalf to providers of goods or services, to meet your basic needs, beginning with the first month for which you are eligible for payment of SSI benefits and ending with, and including, the month your SSI payments begin, or assistance the State gives you beginning with the day for which your eligibility for SSI benefits is reinstated after a period of suspension or

termination and ending with, and including, the month the Commissioner makes the first payment of benefits following the suspension or termination if it is determined subsequently that you were eligible for benefits during that period. It does not include assistance the State gives to or for any other person. If the State has prepared and cannot stop delivery of its last assistance payment to you when it receives your SSI benefit payment from us, that assistance payment is included as interim assistance to be reimbursed. Interim assistance does not include assistance payments financed wholly or partly with Federal funds.

\* \* \* \* \*

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