

requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAIEASA Airworthiness Directive 2006-0257, dated August 24, 2006; Airbus Service Bulletin A300-53-6154, including Appendix 01, dated June 20, 2006; and Airbus A300-600 Airworthiness Limitations Items Document AI/SE-M2/95A.0502/06, Issue 11, dated April 2006; for related information.

Issued in Renton, Washington, on July 25, 2007.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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BILLING CODE 4910-13-M

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007-0040]

### 20 CFR Part 404

RIN 0960-AG50

#### Sixty-Month Period of Employment Requirement for Government Pension Offset Exemption

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** To implement section 418 of the Social Security Protection Act of 2004 (SSPA), we propose to revise our regulations to explain that a State or local government worker will be subject to the Government Pension Offset (GPO) provision under title II of the Social Security Act (the Act), if any part of the last 60 months of government service was not covered by Social Security. We also propose to replace the words “receiving” and “received” with the word “payable” when referring to the eligibility to or payout from a government pension. This wording change will make the regulatory and statutory language consistent and help clarify when the GPO is applicable. In addition, we propose to revise our regulations to reflect a separate 60-month requirement that was made applicable to Federal employees by a 1987 law.

**DATES:** To be sure that we consider your comments, we must receive them by October 2, 2007.

**ADDRESSES:** You may give us your comments by: Internet through the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may

also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal eRulemaking Portal, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

**FOR FURTHER INFORMATION CONTACT:** Ines Riley, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, RRCC #126, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-4138. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

##### Background

If you receive a pension from a Federal, State or local government that is based on work that was not covered by Social Security, then the GPO may reduce certain kinds of Social Security benefits that you might also be eligible to receive. The GPO applies to Social Security wife's, husband's, widow's, widower's, mother's or father's, and divorced or surviving divorced spouse's benefits. For the sake of simplicity, these benefits are often referred to as spouse's benefits, even though other benefits, as described in the previous sentence, are affected. These benefits may be reduced, to zero if necessary, by two-thirds of the amount of your government pension from noncovered work. See section 202(k)(5) of the Act, codified at 42 U.S.C. 402(k)(5). The GPO does not apply to Social Security retirement or disability benefits that you earned through your own covered employment.

The GPO was enacted in 1977 to reduce the Social Security spouse's benefit of workers who have a government pension based on noncovered employment. Congress believed that persons who received a government pension based on their own noncovered work would receive a “windfall” if they also could receive unreduced Social Security spouse's benefits, regardless of their dependency on the insured spouse. (See S. Rep. No.

95-572, 95th Cong., 1st Sess., at 28.) The GPO treats these government workers similar to workers in jobs covered by Social Security. Workers who earn their own Social Security retirement benefit, and who are eligible to receive a spouse's benefit, have the spouse's benefit, in effect, offset by their retirement benefit. They receive the larger of the two benefits. They do not receive both their own Social Security retirement benefit and a spouse's benefit. Therefore, the GPO prevents individuals who receive a government pension based on noncovered earnings from receiving more in combined pension and Social Security spouse's benefits than individuals who worked in covered employment and also were eligible for spouse's benefits. The GPO adjusts the spouse's benefit of a government worker to prevent a “windfall.” (See H. Rep. No. 100-391(I), 100th Cong., 2nd Sess., at 2313-466.)

Before enactment of the SSPA, Public Law 108-203, on March 2, 2004, the law allowed an exception to the application of the GPO, referred to as the “last day” exception. Under this exception, State or local government workers could avoid application of the GPO by working 1 day in Social Security covered employment at the end of their career.

Section 418 of the SSPA phases out the “last day” exception. Applications for spouse's benefits filed on or after April 1, 2004 will be subject to the GPO unless the individual's last 60 months of government employment are covered by Social Security. Therefore, if there is any noncovered government employment during the last 60 months of government service on which a pension is based, the GPO will apply. State or local government workers who filed an application for spouse's benefits before April 1, 2004, or whose last day of government employment was before July 1, 2004, are exempt from the GPO if they worked in covered employment on the last day of the government service on which their pension is based.

The last 60-month requirement established by section 418 of the SSPA is similar to a requirement established by the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), Public Law 100-203, section 9007. That law specified that Federal employees who transfer from the Civil Service Retirement System to the new Federal Employees Retirement System must work for at least 60 months in the aggregate in covered employment in order to avoid application of the GPO.

For workers whose last day of State or local government employment occurs within 5 years after the date of

enactment (that is, between March 2, 2004 and March 1, 2009), the 60-month requirement will be reduced (but not to less than 1 month) by the total number of months that the worker served in covered employment on or before March 2, 2004. The remaining month(s) of service needed to fulfill this 60-month requirement must be performed after March 2, 2004. Therefore, even if a worker had 60 or more months of covered government service on or before March 2, 2004, that worker would still have to work his or her last month of covered government service after March 2, 2004.

### Explanation of Proposed Changes

We propose to revise the regulations in 20 CFR 404.408a as described below to reflect the changes enacted under section 418 of the SSPA and section 9007 of OBRA 1987.

*Section 404.408a(a) When reduction is required.* This paragraph describes the conditions under which we will apply the GPO. This paragraph also explains how we will determine what the monthly pension amount is if the pension is not paid monthly or is paid in a lump sum. We propose to revise this paragraph to explain that we will apply the GPO:

1. To the monthly Social Security wife's, husband's, widow's, widower's, mother's or father's, or divorced or surviving divorced spouse's benefit for each month a monthly pension from the Federal government based on noncovered employment is payable, unless the individual meets one of the exceptions in paragraph (b) of this section;

2. To the monthly Social Security wife's, husband's, widow's, widower's, mother's or father's, or divorced or surviving divorced spouse's benefit if the State or local government employee's application for benefits was filed before April 1, 2004, or his or her last day of employment was worked before July 1, 2004, and the last day was not covered by Social Security; and

3. To the monthly Social Security wife's, husband's, widow's, widower's, mother's or father's, or divorced or surviving divorced spouse's benefit if the State or local government employee's application for benefits was filed on or after April 1, 2004 and any portion of the last 60 months of government service was not covered by Social Security. However, if the individual files an application for benefits on or after April 1, 2004 and the individual's last day of service occurs after June 30, 2004 and before March 2, 2009, we propose to reduce the 60-month requirement (but not to less than

1 month) by the total number of months of Social Security covered employment under the State or local retirement system worked on or before March 2, 2004. We also propose to revise this paragraph to explain that, for the purposes of this transitional rule, we will count as a month of employment any month in which the individual worked in covered government employment for at least one day.

We also propose to revise this paragraph to explain that if an individual's Social Security benefit is reduced because of GPO and he or she later returns to work for a government agency, his or her Social Security benefit will continue to be reduced unless he or she works at least 60 months in covered employment for the same employer or in the same pension plan. We are proposing this revision to clarify that a person who worked for one government agency could not return to work for another agency and earn an exemption from the GPO unless the work was covered by the same pension plan.

We also propose to revise this paragraph to better explain how we treat government pensions that are not paid monthly or in a lump sum and how this information is obtained.

*Section 404.408a(b) Exceptions.* This paragraph describes the conditions under which the GPO does not apply. We propose to revise this paragraph to include an exception for 60 months or more of Federal government employment covered under Social Security as provided by section 9007 of OBRA 1987. This new exception would follow the existing five exceptions and be designated as paragraph (b)(6).

*Section 404.408a(d) Amount and priority of reduction.* This paragraph describes the amount of the GPO reduction and the order in which the GPO reduction will be made in relation to reductions for age and simultaneous entitlement to other Social Security benefits. We propose to add an explanation that if a person's pension is based on both government employment and private sector employment, the GPO will apply to the part of the pension based on noncovered governmental work. It will not apply to the part of the pension that is attributable to earnings from a nongovernmental entity. Because the GPO was designed to offset the Social Security spouse's benefit by the amount of the pension that was based on noncovered government employment, the offset should apply only to the governmental part of the pension. Some individuals work for school systems that have a public pension plan that also credits work for

private schools. Thus, a teacher may work for 25 years in a public school and 5 years in a private school and both jobs participate in the same pension plan. However, because the GPO applies only to public employment, the portion of the pension attributable to work in the private sector is not subject to the GPO. In addition, the "last day" GPO exception, as well as the new 60-month exception, applies only to public employment. Therefore, a teacher whose last day of employment, or last 60 months, is with a private school is not exempt from GPO for that part of his or her pension that is based on noncovered government service.

### Clarity of These Rules

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

### Regulatory Procedures

#### *Executive Order 12866, as Amended*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended. Thus, they were subject to OMB review.

Administrative costs attributable to the publication of this regulation are estimated to be negligible (i.e., less than 25 work years and \$2 million). At the time of enactment of the SSPA, we estimated that this change would result in a reduction in the Old-Age, Survivors and Disability Insurance (OASDI) benefits of \$5 million over the first 5 years, and \$39 million over the first 10 years. We estimate that the effect of this change will be small initially, but will grow during the projection period such that in the 10th year there will be about 1,500 beneficiaries with GPO offset because of this change, with a decrease

in benefits during that year of about \$10 million. The year-by-year estimates of these benefit payment reductions are presented in the table below.

Fiscal year	Reduction in OASDI benefits (in millions)
2004 .....	(1/)
2005 .....	(1/)
2006 .....	\$1
2007 .....	1
2008 .....	2
2009 .....	4
2010 .....	5
2011 .....	7
2012 .....	8
2013 .....	10
Totals:	
2004–08 .....	5
2004–13 .....	39

1/ Reduction in benefit payments of less than \$500,000.

### Regulatory Flexibility Act

We certify that these proposed rules, when published in final, would 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.

### Paperwork Reduction Act

These proposed regulations would impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance.)

### List of Subjects in 20 CFR Part 404

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

Dated: May 30, 2007.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend subpart E of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

#### Subpart E—[Amended]

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

**Authority:** Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 424a, 425, 902(a)(5), and 1320a–8a and 48 U.S.C. 1801.

2. Amend § 404.408a by revising paragraph (a), adding paragraph (b)(6) and revising paragraph (d)(1) to read as follows:

#### **§ 404.408a Reduction where spouse is receiving a Government pension.**

(a) *When reduction is required.* For the purposes of this section, we use the term “Government pension” to mean a monthly pension from a Federal, State, or local government agency for which you were employed in work not covered by Social Security.

(1) Unless you meet one of the exceptions in paragraph (b) of this section, your monthly Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse will be reduced each month that a periodic benefit is payable to you from the Federal government for work you performed that was not covered by Social Security.

(2) If you filed an application for Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse before April 1, 2004, or your work with a State or local government ended before July 1, 2004, your benefits will be reduced each month a periodic benefit from a State or local government pension plan is payable to you, if the pension is based on work that was not covered by Social Security on the last day of employment unless you meet one of the exceptions in paragraph (b) of this section.

(3)(i) If you file an application for Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse on or after April 1, 2004, and your work with a State or local government ended July 1, 2004 or later, your benefits will be reduced each month that a periodic benefit is payable to you from a State or local government pension plan for which you were employed in work not covered by Social Security during any portion of your last 60 months of such service that ends with your last day of employment, unless you meet one of the exceptions in paragraph (b) of this section.

(ii) If the last day of your State or local government service occurs after June 30, 2004 and before March 2, 2009, we may reduce the requirement that you must work your last 60 months in covered employment. You still must work 60

months altogether in covered employment. We will reduce the last 60-month requirement (but not to less than 1 month) by the total number of months you performed in Social Security covered employment, under the same State or local retirement system, on or before March 2, 2004. The months do not have to be consecutive. You must work the remaining number of months needed to total 60 months of covered government employment after March 2, 2004. Therefore, even if you have 60 or more months of covered government employment on or before March 2, 2004, you must work your last month of covered government employment after March 2, 2004. We consider employment of at least 1 day in a given month to be a month of employment.

(4) If you receive a Government pension based on noncovered employment and later return to work for a government agency, your monthly Social Security benefit as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse will always be reduced because of your Government pension, unless the later work is covered by Social Security and you work at least 60 months in covered employment for the same employer or in the same pension plan. For purposes of this section, Federal Government employees performing work that is covered by Medicare, but not otherwise covered by Social Security, are not considered to be performing work covered by Social Security.

(5)(i) If the Government pension is not paid monthly or is paid in a lump-sum, we will allocate it on a basis equivalent to a monthly benefit and then reduce the monthly Social Security benefit accordingly.

(ii) We will generally obtain information about the number of years covered by a lump-sum payment from the pension plan.

(iii) If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly or other periodic payment can be determined, we will base the reduction on that amount.

(iv) Where the period or the equivalent monthly pension benefit is not clear, it may be necessary for us to determine the reduction period on an individual basis.

(b) \* \* \*

(6) If you receive a pension for Federal Government employment and that employment was covered under Social Security for 60 months or more in the aggregate during the period beginning January 1, 1988 and ending with the first month of entitlement to

Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse.

\* \* \* \* \*

(d) \* \* \*

(1)(i) If you became eligible for a Government pension based on noncovered service after June 1983, we will reduce (to zero, if necessary) your monthly Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse by two-thirds the amount of your monthly pension.

(ii) If your Government pension is based in part on earnings from a nongovernmental entity, we will base the amount of the reduction on only the portion of the pension that is based on noncovered government service. We will not consider that portion of the pension that is attributable to the nongovernmental earnings in determining the amount of the reduction.

(iii) If the reduction is not a multiple of 10 cents, we will round it to the next higher multiple of 10 cents.

\* \* \* \* \*

[FR Doc. E7-15057 Filed 8-2-07; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 549

[BOP Docket No. 1145]

RIN 1120-AB45

#### Civil Commitment of a Sexually Dangerous Person

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this proposed rule, the Bureau of Prisons (Bureau) provides definitions and standards relating to the certification of persons as sexually dangerous for the purpose of civil commitment, as authorized by The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248) (Walsh Act), enacted July 27, 2006, which amended title 18 of the United States Code, Chapter 313.

**DATES:** Comments are due by October 2, 2007.

**ADDRESSES:** Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at <http://www.regulations.gov>. You may

also comment via the Internet to the Bureau at [BOPRULES@BOP.GOV](mailto:BOPRULES@BOP.GOV) or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

#### FOR FURTHER INFORMATION CONTACT:

Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

#### SUPPLEMENTARY INFORMATION:

##### Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

This proposed rule provides definitions and standards for review by the Bureau of persons in its custody for certification to federal district courts as "sexually dangerous persons," as authorized by title 18 U.S.C. Chapter

313. The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248) (Walsh Act), enacted July 27, 2006, amended title 18 of the United States Code, Chapter 313, to add a new section 4248. Section 4248 authorizes the Bureau to certify to federal district courts that certain persons are "sexually dangerous persons" for whom civil commitment is required. Certification stays the release of the person and initiates district court proceedings pursuant to 18 U.S.C. 4248(a), (b), (c), and (d).

The filing of the certificate by the Bureau stays the release of the person; however, the final determination that a person is "a sexually dangerous person" subject to civil commitment is made by the court after proceedings held pursuant to 18 U.S.C. 4248(b) and (c), which make applicable the procedures set forth in 18 U.S.C. 4247(b), (c), and (d). As provided in § 4248(b), the court may order that a psychiatric or psychological examination of the person be conducted, and that a psychiatric or psychological report be filed with the court. Pursuant to § 4248(c), a hearing shall be conducted in which the person shall be represented by counsel, and be afforded an opportunity to testify, present evidence, subpoena witnesses on his or her behalf, and confront and cross-examine witnesses who appear at the hearing. If the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit him/her to the custody of the Attorney General as detailed in § 4248(d).

The Walsh Act also amended 18 U.S.C. 4247 to include a definition of "sexually dangerous person." The amended statute defines "sexually dangerous person" as "a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others." The amended statute defines "sexually dangerous to others" to mean that a person "suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released."

The statute does not define the terms "sexually violent conduct" or "child molestation" and the Bureau proposes these regulations to interpret them. Although the Bureau has, in part, looked to federal criminal statutes for language to assist in defining these terms, we do not rely upon the provisions themselves, case law interpretations of them, or other related statutory history. Rather, the Bureau's