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Issued in Burlington, Massachusetts, on December 2, 2008.

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Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA 2008-0034]

RIN 0960-AG66

Technical Revisions to the Supplemental Security Income (SSI) Regulations on Income and Resources

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend our Supplemental Security Income (SSI) regulations by making technical revisions to our rules on income and resources. Many of these revisions reflect legislative changes found in the Consolidated Appropriations Act of 2001, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), an amendment to the National Flood Insurance Act of 1968, the Energy Employees Occupational Illness Compensation Program Act of 2000, and the Social Security Protection Act of 2004 (SSPA). We further propose to amend the SSI home exclusion rules to extend the home exclusion to individuals who, because of domestic abuse, leave a home that would otherwise be an excludable resource. Finally, we propose to update our "conditional-payment" rule to eliminate the liquid resource requirement as a prerequisite to receiving conditional payments.

DATES: To be sure that we consider your comments, we must receive them no later than February 9, 2009.

ADDRESSES: You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA 2008-0034 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at <http://www.regulations.gov>. (This is the

most expedient method for submitting your comments, and we strongly urge you to use it.) In the "Search Documents" section of the Web page, type "SSA 2008-0034", select "Go," and then click "Send a Comment or Submission." The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966-2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

Caution: All comments we receive from members of the public are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov>. Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

FOR FURTHER INFORMATION CONTACT:

Donna Gonzalez, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-7961, for information about this notice. 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

The primary goal of the SSI program is to ensure a minimum level of income to people who are age 65 or older, blind, or disabled, and who have limited income and resources. The law provides that SSI payments can be made only to

people who have income and resources below specified amounts. Therefore, an individual's income and resources are major factors in deciding whether the individual is eligible to receive SSI payments and in computing the amount of those payments.

Consolidated Appropriations Act of 2001, Public Law 106-554

This law amended section 1612(a)(1) of the Social Security Act (the Act) (42 U.S.C. 1382a(a)(1)) to change how we treat statutory employees under the SSI program. See Public Law 106-554, app. A, § 519 (Dec. 21, 2000). Statutory employees are certain independent contractors, including agent-drivers or commission-drivers, certain full-time life insurance salespersons, home workers, and traveling or city salespersons. Act at § 210(j)(3) (42 U.S.C. 410(j)(3)). We consider such individuals, by statute, to be employees, rather than self-employed independent contractors, for wage and income purposes. Previously, we treated statutory employees the same as employees for SSI eligibility and payment-amount purposes. For such employees, we considered their wages as their earned income. After this change to the Act, we now count as earned income the net earnings of self-employed individuals, including statutory employees, thereby allowing them to deduct business expenses before calculating their income. This provision became effective for tax years beginning on or after January 1, 2001.

Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16 (EGTRRA)

The EGTRRA excludes the payment of a refundable child tax credit (CTC) from income for purposes of eligibility for public benefits funded in whole or part with Federal funds. Public Law 107-16, § 203, 115 Stat. 49 (June 7, 2001) (referring to Internal Revenue Code § 24, 26 U.S.C. 24). Such a payment is also excluded from resources for these purposes during the month the payment is received and the following month. This change became effective for SSI purposes for taxable years beginning on or after January 1, 2001.

Social Security Protection Act of 2004 (SSPA), Public Law 108-203

The SSPA amended the Act to create a uniform 9-month resource exclusion period for certain tax refunds and for any unspent portion of past-due Social Security and SSI payments. Act at § 1613(a)(7) (42 U.S.C. 1382b(a)(7)), as amended by Public Law 108-203, § 431 (Mar. 2, 2004). This amendment

expands the exclusion established by the EGTRRA discussed above. In accordance with this provision, we published final rules in the **Federal Register** at 70 FR 41,135 (July 18, 2005), amending our resource exclusion rules at title 20, chapter III, part 416, subpart L of the Code of Federal Regulations. When we amended the regulations, we included this exclusion under § 416.1236(a), titled "Exclusions from resources; provided by other statutes" and added a new paragraph (24). As this exclusion is now required by the Act itself, we propose to amend our rules so that they correctly reflect the source of this exclusion.

Amendment to the National Flood Insurance Act of 1968, Public Law 109-64

The National Flood Insurance Act provides that payments made for flood mitigation activities are not counted as income or resources when determining eligibility and benefit amounts for any Federal means-tested program. National Flood Insurance Act, § 1324, as amended by Public Law 109-64, § 1 (Jan. 7, 2005). Effective October 1, 2005, this provision applies to SSI eligibility and payment-amount determinations.

Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398

In October 2000, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was established. Public Law 106-398, § 1, app., title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408). Section 3646 of the Appendix provided that medical benefits and compensation payments made under the EEOICPA are not counted as income or resources for purposes of determining eligibility to receive, or for determining the amount of, certain Federal benefits, including SSI. This provision became effective on July 31, 2001.

Domestic Violence Resource Exclusion

Section 1613(a)(1) of the Act excludes from resources an individual's home and associated land. Regulations provide that the home is excluded so long as it serves as the individual's principal place of residence or the individual maintains an active intent to return to the residence. The home also is not counted as a resource, regardless of the individual's intent to return, if the individual resides in an institution and a spouse or dependent relative continues to maintain residence in the home during the period of institutionalization.

Advocacy groups have expressed concern regarding the counting of a home as a resource in instances where a victim of domestic abuse leaves the home and resides elsewhere. We agree with these concerns because, currently, an individual fleeing from domestic abuse may return to a potentially dangerous home environment simply to avoid losing SSI because of an ownership interest in the home. Therefore, we intend to amend our rules to address these concerns and provide that, when an individual has fled his or her home and provides evidence of domestic abuse, the home would remain an excludable resource despite the fleeing individual's physical absence from, and continuing ownership interest in, the home. This exclusion would continue until such time as the individual establishes a new principal place of residence or otherwise takes action rendering the home no longer excludable. This change would eliminate the need for SSA to develop a domestic abuse victim's intent to return and eliminate a potential financial disincentive to those attempting to leave an abusive situation.

Conditional Payments

Section 1613(b) of the Act, titled "Disposition of Resources," gives the Agency broad authority to establish conditional-payment rules by regulation. Under this authority, we have created an exception to our ordinary resource rules. Part 416, subpart L, § 416.1240—§ 416.1245. This exception allows us to pay monthly SSI payments in certain circumstances when an individual possesses excess *non-liquid* resources. Individuals who meet all but the resource requirements for SSI may have little or nothing on which to live if most of their resources are non-liquid and difficult to convert to cash. The conditional-payment provision is used to provide individuals a period of time in which to sell such non-liquid resources and convert them to cash. We condition these payments on the individual's written agreement to sell excess non-liquid resources during that period and repay the conditional payments with the proceeds.

A prerequisite for receiving conditional payments is that the individual may not have countable *liquid* resources in excess of one-fourth the annual Federal benefit rate (FBR), which we commonly refer to as "3 times the monthly FBR." The original purpose of the liquid-resource limit was to ensure that the individual truly needed the conditional-payment period. Because the disposal period for non-liquid resources other than real property

is 3 months, we assumed that if the individual did not have liquid resources equal to 3 months worth of SSI payments, he had inadequate resources for day-to-day expenses and needed to dispose of some non-liquid resources for support. Conversely, if the individual had liquid resources worth more than three times the FBR, then he had adequate resources and did not need conditional payments.

Originally, 3 months worth of SSI payments was equal to only about 32% of the resource limit. However, since we established this rule over 30 years ago, the FBR has increased annually and the resource limit has grown slowly or not at all. The difference between the statutory resource limit and 3 times the FBR is now negligible—3 times the FBR now equals \$1,911 or 96% of the resource limit. In 2009 the limit on liquid resources for conditional payments will exceed the statutory limit on total resources and therefore become meaningless. Accordingly, we are proposing to eliminate the liquid-resource test as a prerequisite for receiving conditional payments. Eliminating this requirement will simplify our conditional-payments provision.

Explanation of Proposed Changes

We propose the following changes to our rules on determining income and resources under the SSI program.

Revisions to Subpart K—Income

We propose revising § 416.1110(b) to update the definition of net earnings from self-employment to include the earnings of statutory employees, as provided under section 519 of the Consolidated Appropriations Act of 2001.

Revisions to Appendix Subpart K—Income Excluded by Federal Laws Other Than the Act

At the end of part 416, subpart K, we maintain an appendix, which lists types of income excluded under the SSI program as provided by Federal laws other than the Act. We update this list periodically; however, we apply the law in effect due to changes in Federal statutes, whether or not the list in the appendix has been amended to reflect the statutory changes. We propose revising the appendix to subpart K by adding three new paragraphs under the heading "V. *Other*," which set forth SSI income exclusions as follows:

- New paragraph (a) would reflect the exclusion of a payment of a refundable CTC made to an individual under section 24 of the Internal Revenue Code of 1986, as provided in section 203

of the EGTRRA, Public Law 107–16, 26 U.S.C. 24 note;

- New paragraph (n) would reflect the exclusion of payments made for flood mitigation activities pursuant to section 1324 of the National Flood Insurance Act of 1968 (42 U.S.C. 4031), as added by Public Law 109–64;

- New paragraph (o) would reflect the exclusion of payments made to individuals under the EEOICPA of 2000 (42 U.S.C. 7385e).

Revisions to Subpart L—Resources and Exclusions

We propose amending § 416.1235, which currently refers to an exclusion of the earned income tax credit, by revising this section to read “Exclusion of certain payments related to tax credits.” This section would contain exclusions for payments related to the earned income credit and a new paragraph describing the exclusion for the payment of a refundable CTC, which is currently in our rules at § 416.1236(a)(24).

Section 416.1210 provides a list of general resources that we do not count when determining SSI eligibility. We propose adding a new paragraph (v) to describe the exclusion for the payment of a refundable CTC, with a reference to § 416.1235.

Section 416.1236(a) lists resource exclusions in the SSI program provided by other statutes. We propose removing current paragraph (24) from this section, which excludes from resources the payment of a refundable CTC, and we propose adding this exclusion to § 416.1235. We propose adding a new paragraph (24) and adding paragraph (25) to respectively reflect the exclusions of payments for flood mitigation activities made pursuant to section 1324 of the National Flood Insurance Act of 1968 (42 U.S.C. 4031) and payments made to individuals under the EEOICPA of 2000 (42 U.S.C. 7385e).

We also propose adding a new paragraph to § 416.1212 to extend the home exclusion to victims of domestic abuse who flee an abusive situation, but maintain an ownership interest in an otherwise excluded home. This exclusion would continue until the individual establishes a new principal place of residence or takes other action rendering the home no longer excludable.

Finally, our current rule at § 416.1240(a)(1) provides that, as a prerequisite to qualifying for conditional payments, an individual’s total countable liquid resources may not exceed one-fourth the annual FBR. We propose amending § 416.1240(a) to

eliminate the limitation on liquid resources within our SSI conditional-payment rule.

Clarity of These Proposed Rules

Executive Order (E.O.) 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these final 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 is not 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?

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

Regulatory Procedures

Executive Order 12866

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

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

(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: September 17, 2008.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend subparts K and L of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

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

Subpart K—[Amended]

1. 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, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Revise § 416.1110 paragraph (b) to read as follows:

§ 416.1110 What is earned income.

* * * * *

(b) *Net earnings from self-employment.* Net earnings from self-employment are your gross income from any trade or business that you operate, less allowable deductions for that trade or business. Net earnings also include your share of profit or loss in any partnership to which you belong. For taxable years beginning before January 1, 2001, net earnings from self-employment under the SSI program are the same net earnings that we would count under the social security retirement insurance program and that you would report on your Federal income tax return. (See § 404.1080 of this chapter.) For taxable years beginning on or after January 1, 2001, net earnings from self-employment under the SSI program will also include the earnings of statutory employees. In addition, for SSI purposes only, we consider statutory employees to be self-employed individuals. Statutory employees are agent- or commission-drivers, certain full-time life insurance salespersons, home workers, and traveling or city salespersons. (See § 404.1008 of this chapter for a more

detailed description of these types of employees.)

* * * * *

Appendix to Subpart K of Part 416— [Amended]

3. Amend the appendix to subpart K of part 416 by adding new paragraphs (m), (n), and (o) under Part V 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

* * * * *

V. Other

* * * * *

(m) Payments of the refundable child tax credit made under section 24 of the Internal Revenue Code of 1986, pursuant to section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16 (115 Stat. 49, 26 U.S.C. 24 note).

(n) Assistance provided for flood mitigation activities as provided under section 1324 of the National Flood Insurance Act of 1968, pursuant to section 1 of Public Law 109-64 (119 Stat. 1997, 42 U.S.C. 4031).

(o) Payments made to individuals under the Energy Employees Occupational Illness Compensation Program Act of 2000, pursuant to section 1 [Div. C, Title XXXVI, section 3646] of Public Law 106-398 (114 Stat. 1654A-510, 42 U.S.C. 7385e).

Subpart L—[Amended]

4. 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, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

5. Amend § 416.1210 by adding a comma in the introductory sentence after “(and spouse, if any)”, removing “and” from the end of paragraph (t), replacing the period at the end of paragraph (u) with a semicolon followed by “and”, and adding a new paragraph (v) as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(v) Payment of a refundable child tax credit, as provided in § 416.1235.

6. Amend § 416.1212 by:

A. Redesignating current paragraphs (d) through (g) as (e) through (h);

B. Adding a new paragraph (d) to read as set forth below;

C. Amending newly designated paragraph (e)(2)(ii), by removing the reference “paragraph (e)” and adding the reference “paragraph (f)” in its place;

D. Amending newly designated paragraph (e)(2)(iii), by removing the reference “paragraph (f)” and adding the reference “paragraph (g)” in its place; and

E. Amending newly designated paragraph (f), by removing the reference “paragraph (d)(2)(ii) of this section” and adding the reference, “paragraph (e)(2)(iii) of this section” in its place, and by removing the reference “paragraph (f)” and adding the reference “paragraph (g)” in its place.

§ 416.1212 Exclusion of the home.

* * * * *

(d) *If an individual leaves the principal place of residence due to domestic abuse.* If an individual moves out of his or her home without the intent to return, but is fleeing the home as a victim of domestic abuse, we will not count the home as a resource in determining the individual’s eligibility to receive, or continue to receive, SSI payments. In that situation, we will consider the home to be the individual’s principal place of residence until such time as the individual establishes a new principal place of residence or otherwise takes action rendering the home no longer excludable.

* * * * *

7. Revise § 416.1235 to read as follows:

§ 416.1235 Exclusion of certain payments related to tax credits.

(a) In determining the resources of an individual (and spouse, if any), we exclude for the 9 months following the month of receipt the following funds received on or after March 2, 2004, the unspent portion of:

(1) Any payment of a refundable credit pursuant to section 32 of the Internal Revenue Code (relating to the earned income tax credit);

(2) Any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of the earned income tax credit); or

(3) Any payment of a refundable credit pursuant to section 24 of the Internal Revenue Code (relating to the child tax credit).

(b) Any unspent funds described in paragraph (a) that are retained until the first moment of the tenth month following their receipt are subject to resource counting at that time.

(c) *Exception:* For any payments described in paragraph (a) received before March 2, 2004, we will exclude for the month following the month of receipt the unspent portion of any such payment.

8. Amend § 416.1236 by revising paragraph (a) (24) and adding new paragraph (a) (25) to read as follows:

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) * * *

(24) Assistance provided for flood mitigation activities under section 1324 of the National Flood Insurance Act of 1968, pursuant to section 1 of Public Law 109-64 (119 Stat. 1997, 42 U.S.C. 4031).

(25) Payments made to individuals under the Energy Employees Occupational Illness Compensation Program Act of 2000, pursuant to section 1 [Div. C, Title XXXVI, section 3646] of Public Law 106-398 (114 Stat. 1654A-510, 42 U.S.C. 7385e).

* * * * *

9. Amend § 416.1240 by revising paragraph (a) to read as follows:

§ 416.1240 Disposition of resources.

(a) Where the resources of an individual (and spouse, if any) are determined to exceed the limitations prescribed in § 416.1205, such individual (and spouse, if any) shall not be eligible for payment except under the conditions provided in this section. Payment will be made to an individual (and spouse, if any) if the individual agrees in writing to:

(1) Dispose of, at current market value, the nonliquid resources (as defined in § 416.1201(c)) in excess of the limitations prescribed in § 416.1205 within the time period specified in § 416.1242; and

(2) Repay any overpayments (as defined in § 416.1244) with the proceeds of such disposition.

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[FR Doc. E8-28618 Filed 12-8-08; 8:45 am] BILLING CODE 4191-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA-B-1022]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the