

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

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#### AAL AK E5 Big Lake, AK [Revised]

Big Lake Airport, AK  
(Lat. 61°32'10" N., long. 149°48'50" W.)

Big Lake VORTAC  
(Lat. 61°34'10" N., long. 149°58'02" W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Big Lake Airport, and within 4 miles north and 8 miles south of the 295° radial of the Big Lake VORTAC extending to 16 miles west of the VORTAC.

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Issued in Anchorage, AK, on February 24, 2006.

Michael A. Tarr,

Manager, Operations Support.

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 418

RIN 0960-AG11

#### Medicare Part B Income-Related Monthly Adjustment Amount

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to add to our regulations a new subpart, Medicare Part B Income-Related Monthly Adjustment Amount, to contain the rules we would follow for Medicare Part B income-related monthly adjustment amount determinations. The monthly adjustment amount represents the amount of decrease in the Medicare Part B premium subsidy, *i.e.* the amount of the Federal Government's contribution to the Federal Supplementary Medical Insurance Trust Fund. This new subpart would implement section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the Medicare Modernization Act or MMA) and would contain the rules for determining when, based on income, a monthly adjustment amount will be added to a Supplementary Medical Insurance (Medicare Part B) beneficiary's standard monthly premium. These proposed rules describe: what the new subpart is about; what information we would use to determine whether you would pay an income-related monthly adjustment amount and the amount of the adjustment when applicable; when we will consider a major life-changing

event that results in a significant reduction in your modified adjusted gross income; and how you can appeal our determination about your income-related monthly adjustment amount.

**DATES:** To be sure your comments are considered, we must receive them by May 2, 2006.

**ADDRESSES:** You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment> or 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, 100 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 our Internet site 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:** Craig Streett, Team Leader, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-9793 or TTY 1-800-966-5609, 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>.

##### Statutory Provisions

Section 811 of the MMA (Public Law 108-173), which was enacted into law on December 8, 2003, added subsection (i) to section 1839 of the Social Security Act (the Act), and established a Medicare Part B premium subsidy reduction (referred to in these proposed rules as "the income-related monthly adjustment amount") effective January 1, 2007, which will be added to the standard monthly Medicare Part B premium amount for certain beneficiaries. Section 1839(i) of the Act was subsequently amended by section 5111 of the Deficit Reduction Act of

2005, Public Law 109-171. The Centers for Medicare & Medicaid Services (CMS), in the Department of Health and Human Services (HHS), has overall responsibility for determining the annual Medicare Part B standard monthly premium amounts and premium increases for late enrollment or reenrollment. CMS regulations at 42 CFR part 408 describe the rules that CMS uses to determine those amounts. As explained in these proposed rules, we are responsible only for making initial determinations and reconsiderations about income-related monthly adjustment amounts. Any subsequent levels of appeal will be provided by HHS under its regulations at 42 CFR part 405, subpart I.

Section 702(a)(5) of the Act allows us to make the rules and regulations necessary or appropriate to carry out the functions of SSA. Other provisions in section 811 of the MMA provide us with additional specific authorization to make rules and regulations to determine the income-related monthly adjustment amount. For example, sections 1839(i)(4)(B) and (i)(4)(C)(ii)(II) of the Act authorize us to promulgate regulations, in consultation with the Secretary of the Treasury, necessary for our determinations about income-related monthly adjustment amounts. Section 1839 of the Act requires the Secretary of HHS to annually determine the Medicare Part B standard monthly premium amount. Section 1839 of the Act also authorizes the Secretary of HHS to establish a premium increase for late enrollment and for reenrollment under certain circumstances and provide for a limitation on increases in the Medicare Part B standard monthly premium for some beneficiaries.

The new section 1839(i) requires us to determine the income-related monthly adjustment amount for Medicare beneficiaries with modified adjusted gross income above an established threshold. The income-related monthly adjustment amount is added to the Medicare Part B standard monthly premium and any applicable premium increase for late enrollment or reenrollment. The MMA provides that in 2007 the modified adjusted gross income threshold is \$80,000 for individuals who file their Federal income taxes with a filing status of single and \$160,000 for married individuals who file a joint tax return. Section 811(c)(1) of the MMA enacted a new section 6103(1)(20) of the Internal Revenue Code authorizing the Internal Revenue Service (IRS) to provide certain income information to us to use in determining the income-related monthly adjustment amount. The MMA requires

that the threshold amount be adjusted yearly based on the Consumer Price Index.

Section 811(b)(1)(C) of the MMA also amended section 1839(f) of the Act, so that the limitation on increases in the Medicare Part B standard monthly premium for some beneficiaries will not apply to beneficiaries who are responsible for an income-related monthly adjustment amount.

### Background

Medicare Part B is a voluntary program which provides medical insurance coverage for medical and health services such as physician services, diagnostic services, and medical supplies. Medicare Part B beneficiaries are responsible for deductibles, co-insurance and monthly premiums towards the cost of covered services. CMS promulgates rules and regulations concerning the Medicare program.

The Medicare Part B standard monthly premium is set by CMS so that it covers approximately 25 percent of the Medicare Part B program costs. Certain beneficiaries may also pay an increased premium for late enrollment in Medicare Part B or for reenrollment after a period without coverage. Approximately 75 percent of the full cost of Medicare Part B is subsidized by the Federal Government by contributions to the Federal Supplementary Medical Insurance Trust Fund. In addition, for certain beneficiaries whose premiums are deducted from other payable Social Security (or railroad retirement) benefit amounts that they receive, the yearly adjustment to the premium amount cannot be raised more than the amount of the cost-of-living adjustment for those other benefits.

Starting in January 2007, the Medicare Part B premium subsidy will be reduced for an estimated 4 to 5 percent of the approximately 40 million Medicare Part B beneficiaries. Beneficiaries who had modified adjusted gross income above the threshold level set in the MMA in the tax year 2 years prior to the year for which we make a determination about whether they must pay an income-related monthly adjustment amount (the effective year) will receive a reduced Federal subsidy of their Medicare Part B premium. The reduction of the Federal premium subsidy will result in beneficiaries with modified adjusted gross income above the threshold paying more of the cost of their Medicare Part B benefits through an income-related monthly adjustment amount that is added to the Medicare Part B standard monthly premium plus

any applicable premium increase for late enrollment or reenrollment.

### How This Affects You

Your modified adjusted gross income is your adjusted gross income, as defined at 26 U.S.C. 62 and in related regulations, plus certain other forms of income that may be excluded from adjusted gross income for the purpose of determining the amount of Federal income tax that you must pay. The MMA as amended by the Deficit Reduction Act provides that the payment of the full amount of the income-related monthly adjustment amount will be phased in starting in 2007 and will be completed in 2009. If you must pay an income-related monthly adjustment amount, you will not be eligible for the limitation on Medicare Part B standard monthly premium increase beyond the amount of your Social Security (or tier 1 railroad retirement) cost-of-living adjustments, as described in 42 CFR 408.20.

If you are a Medicare beneficiary prior to January 1, 2007 and you will be required to pay an income-related monthly adjustment amount in 2007, you will be notified at the end of 2006 about the additional amount of your premium and any related changes in the amount of your Social Security monthly benefits or other payments from which your premiums will be withheld (railroad retirement or Civil Service annuity payments). If you enroll in Medicare Part B after January 1, 2007 and we determine that you must pay an income-related monthly adjustment amount for your Medicare Part B coverage, you will be notified shortly after you enroll in Medicare Part B. If you are a Medicare beneficiary during 2007 or after, we will notify you prior to the start of each year if you must pay an income-related monthly adjustment amount in that year.

### How We Determine Your Income-Related Monthly Adjustment Amount

The amount of your modified adjusted gross income will determine if you are to pay an income-related monthly adjustment. Section 1839(i)(2) of the Act establishes the threshold for modified adjusted gross income used to determine if you are to pay an income-related monthly adjustment amount. In 2007, the modified adjusted gross income threshold amount is \$80,000 for individuals who file their Federal income tax return with a filing status of single, married filing separately, head of household, or qualifying widow(er) with dependent child, and \$160,000 for individuals who file a joint income tax return with their spouse.

Section 1839(i)(4) of the Act requires us to request information about your modified adjusted gross income from IRS in the Department of the Treasury and to use this information to determine if you must pay an income-related monthly adjustment amount. We will specify the tax year involved in our information request. We will request that IRS send us Federal income tax return information about your modified adjusted gross income for the tax year which is 2 years before the effective year. If modified adjusted gross income information is not available from IRS for the tax year 2 years before the effective year of our determination, IRS will send us your modified adjusted gross income information for the tax year 3 years before that year if it exceeds the threshold. We will use information for 3 years prior to determine whether you must pay an income-related monthly adjustment amount only until information for 2 years prior becomes available.

If we use information from IRS for the tax year 3 years before the effective year of our determination, you may request that we use information that you provide for the tax year 2 years before that year. We will use that information, when you provide it to us, if that information will result in a lower income-related monthly adjustment amount. In order for us to make an initial determination based on such a request, you must provide your retained copy of your Federal income tax return for that year, a copy that you request from IRS, or an IRS transcript of your return. If you provide your retained copy, we will also verify this information with IRS.

In some cases, IRS will not have data to provide us regarding an individual's modified adjusted gross income because the amount of the individual's income is below the level for which an income tax return must be filed. We will not be making income-related monthly adjustment amount determinations in such situations because this individual's income would also be below the modified adjusted gross income threshold. However, if we receive information which indicates that an individual who has not filed a tax return has income which exceeds the established threshold for an income-related monthly adjustment amount, we will make such a determination. The statute requires that we, in consultation with the Secretary of the Treasury issue regulations that "provide for the treatment of the premium adjustment with respect to such individual[s]." We are consulting with the IRS to determine if we can obtain information from IRS

(or otherwise) on such non-filing individuals. Since typically the IRS does not collect and maintain the same information for filers and non-filers, SSA is requesting public comment on this issue.

### **The Sliding Scale Formula and How It Applies to You**

Section 1839(i)(3) prescribes a sliding scale formula that CMS will use to establish annually four income-related monthly adjustment amounts beginning in 2007. The calculation of the income-related monthly adjustment amount reduces a beneficiary's Medicare Part B premium subsidy using specified percentages. The amount of this premium subsidy reduction is the income-related monthly adjustment amount. To determine each income-related monthly adjustment amount, CMS will use the unsubsidized Medicare Part B premium (approximately four times the Medicare Part B standard monthly premium) and multiply it by a specified percentage. The percentage used in the calculation increases as the amount of modified adjusted gross income increases.

We use your modified adjusted gross income and your Federal income tax filing status (*e.g.*, single, married filing jointly, married filing separately) to determine whether you must pay an income-related monthly adjustment amount and the amount of your income-related monthly adjustment amount. Section 1839(i)(3)(C) provides the modified adjusted gross income ranges. The range amounts for individuals who are married filing jointly are double the range amounts for single income tax filers. IRS recognizes three additional filing statuses: Head of household, qualifying widow(er) (26 U.S.C. 2) and married filing separately. If you file as a head of household or as a qualifying widow(er), we will apply the modified adjusted gross income range applicable to individuals who file their Federal income tax with a filing status of single. Section 1839(i)(3)(C)(iii) provides for the modified adjusted gross income ranges for individuals who file their Federal income tax return with a filing status of married filing separately and who also have lived with their spouse at any time during the year to be reduced by the threshold amount established for that calendar year which may result in a higher income-related monthly adjustment amount for these individuals. However, section 1839(i)(1) provides a threshold amount (which is \$80,000 in 2007 but will change in subsequent years due to indexing) that is applicable to all income-related monthly adjustment amount

determinations. Thus, the lowest range amount cannot be lower than the threshold. For 2007, this results in the following two ranges for married filing separately: (1) \$80,000 to less than or equal to \$120,000 and (2) More than \$120,000.

Starting in 2007 for calendar year 2008, and annually thereafter for each following calendar year, CMS will publish the annual modified adjusted gross income ranges and income-related monthly adjustment amounts that are associated with each range. We will use this published information to determine which amount applies to you based on your tax filing status in the tax year we are using to determine your income-related monthly adjustment amount.

If you filed an amended tax return for the tax year we used to make a determination of your income-related monthly adjustment amount, you may request that we use your amended tax return for that year. You must provide us with proof that you filed an amended tax return with IRS, including your retained copy of the amended tax return, and a letter from IRS verifying receipt of the return or an IRS transcript of your amended tax return. If you believe that IRS provided incorrect modified adjusted gross income information and we used that information to determine your income-related monthly adjustment amount, you may request that we make a new income-related monthly adjustment amount determination. You must provide proof of the error in the IRS data and evidence of your actual modified adjusted gross income, such as a copy of the return that you obtain from IRS. When we use information from your amended or corrected Federal income tax return to make a determination, we will make retroactive adjustments that will apply to all months that you paid an incorrect income-related monthly adjustment amount.

### **Phase-In and Inflation Adjustment of the Income-Related Monthly Adjustment Amount**

Section 1839(i)(3)(B) requires the amount of the full income-related monthly adjustment to be phased in over a 3-year period beginning in 2007. The effect is that from 2007 through 2009 the amount of the income-related monthly adjustment amount will increase, because the subsidy will decrease. The percentage will change each year so that the income-related monthly adjustment amount will gradually increase, until the full amount is phased in starting in 2009.

Beginning in 2008, section 1839(i)(5) of the Act requires an annual inflation adjustment for the threshold amount and the amounts used in the modified adjusted gross income ranges. The adjustment will be based on the percentage increase in the Consumer Price Index for all urban consumers rounded to the nearest \$1,000. CMS will publish these amounts annually.

### **Changes in Your Modified Adjusted Gross Income**

Section 1839(i)(4)(C) of the Act requires us to establish procedures in consultation with the Secretary of the Treasury for determining your modified adjusted gross income for a tax year more recent than the information ordinarily provided by IRS. The statute states that we will grant your request to use a more recent tax year to determine your income-related monthly adjustment amount only when:

- You experience a major life-changing event;
- That major life-changing event results in a significant reduction in your modified adjusted gross income;
- You request that we use a more recent tax year's modified adjusted gross income; and
- You provide evidence of the event and the reduction in your modified adjusted gross income.

These proposed rules describe the standards that you must meet in order for us to use a more recent tax year's modified adjusted gross income to determine whether you must pay an income-related monthly adjustment amount and what the amount of your income-related monthly adjustment amount will be. In these proposed rules we define qualifying major life-changing events and what is a significant reduction in your modified adjusted gross income. We also specify the evidence we will require of major life-changing events and the resulting reduction in your modified adjusted gross income.

Section 1839(i)(4)(C)(ii)(II) specifies that major life-changing events include marriage, divorce, and death of a spouse. Under that section, we have discretion to include in regulations additional major life-changing events that would allow us to grant your request that we use information from a more recent tax year to determine your income-related monthly adjustment amount. In these rules we propose to establish the following categories of qualifying major life-changing events:

- Death of a spouse;
- Marriage;
- Divorce;
- Partial or full work stoppage;

- Loss of income from income-producing property when the loss is not at your direction, for example, loss of income from real property due to a natural disaster in a Presidentially or Gubernatorially-declared disaster area, or due to arson, or destruction of livestock or crops; and

- Reduction or loss of certain forms of pension income due to termination or reorganization of the pension plan, or a scheduled cessation of your pension benefits.

We have included these additional categories of major life-changing events because we recognize that these events may cause a significant reduction in your modified adjusted gross income. We will include losses in pension income that occur due to events outside of your control, such as underfunding that results in a termination of the plan, but not due to your choices about funding an employee-directed pension plan. The statute does not authorize us to define as major life-changing events circumstances that affect your expenses, but not your income.

We propose to define a significant reduction in your modified adjusted gross income as any change that results in a reduction or elimination of your income-related monthly adjustment amount. Section 1839(i)(4)(C)(ii) provides that we may grant your request to use a more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount only if you provide us with a copy of a filed Federal income tax return or equivalent document. These proposed rules define the evidence that we will consider to be equivalent to a copy of a filed Federal income tax return.

When we make an income-related monthly adjustment amount determination based on your request due to a qualifying major life-changing event, the determination will generally be effective on January 1 of the calendar year for which we make the determination. If you enrolled in Medicare Part B after January 1 of the year for which we make an income-related monthly adjustment amount determination based on your request due to a major life-changing event, the determination will be effective the month of your Medicare Part B enrollment.

When we make an income-related monthly adjustment amount determination following a major life-changing event using your more recent tax year's modified adjusted gross income, we will continue trying to get IRS data for that tax year. When we receive modified adjusted gross income

information from IRS for that tax year, we will use the information from IRS to determine the correct income-related monthly adjustment amount for the year or years for which we used information that you provided, and we will make retroactive adjustments, if necessary. Retroactive adjustments will apply to all months for which you paid an incorrect income-related monthly adjustment amount.

#### **If You Disagree With Our Determination of Your Income-Related Monthly Adjustment Amount**

We will decide whether you must pay an income-related monthly adjustment, and the amount of any adjustment, based on information we receive from IRS or you. We will send you a notice of our initial determination of your income-related monthly adjustment amount and the basis for our determination. The notice will explain that, if you disagree with our determination, you may request that we reconsider it within 60 days after the date you receive notice of our initial determination. The notice will also explain that you may request a new initial determination, rather than a reconsideration, if you believe the information we used in our initial determination was correct, but you want us to use different information about your modified adjusted gross income.

For purposes of this subpart, in making initial determinations and reconsiderations, we will use the rules for the administrative review process that we use for determinations of your rights regarding nonmedical issues under title II of the Act. These are the same rules that we use when making initial determinations and reconsiderations regarding applications for and entitlement to Medicare benefits under 42 CFR 405.904(a)(1). If you are dissatisfied with our reconsideration, you may request further review, including a hearing before an administrative law judge from the Office of Medicare Hearings and Appeals (OMHA) at HHS, review by the Medicare Appeals Council (MAC), and judicial review, consistent with the CMS regulations at 42 CFR part 405, subpart I. As part of your request for an administrative law judge hearing or MAC review, you will be required to provide your consent to HHS for us to release your relevant tax return information to OMHA or the MAC for the purposes of adjudicating any appeal of the amount of an income-related adjustment to the Part B premium subsidy and for any judicial review of that appeal.

We propose to establish a new procedure, a request for a new initial determination, that you may use when you do not dispute the accuracy of the IRS modified adjusted gross income information we used, or the determination we made based on that information, but you want us to use different information. You may provide evidence of your modified adjusted gross income for a more recent tax year than the information provided by IRS when you have had a major life-changing event that significantly reduces your income or when IRS has provided modified adjusted gross income information from 3 years prior to the premium effective year and you supply your retained copy of your Federal income tax return for the tax year 2 years prior. You may also request that we make a new initial determination when you have amended your Federal income tax return or when you can furnish proof that IRS has provided incorrect information about your modified adjusted gross income for the year that we used to determine your income-related monthly adjustment amount.

We propose to establish this alternative procedure in view of the nature of the information that we are required by the MMA to use in making determinations regarding the income-related monthly adjustment amount. We anticipate that the use of this new procedure will allow us to make timely adjustments when you have updated information about your modified adjusted gross income, or when you can prove the IRS information we used is incorrect. This process does not affect your right to appeal any initial determination that we make about your income-related monthly adjustment amount, but allows you to choose an alternative of requesting that we use other information to make a new initial determination.

#### **Explanation of Proposed Subpart B**

We propose to add a new subpart B, Medicare Part B Income-Related Monthly Adjustment Amount, to part 418 of chapter III of title 20 of the Code of Federal Regulations. Proposed subpart B would contain the rules that we will use to determine when you will be required to pay an income-related monthly adjustment amount in addition to your Medicare Part B standard monthly premium plus any applicable premium increase for late enrollment or reenrollment. Following is a description of each section for proposed subpart B.

### *Introduction, General Provisions, and Definitions*

- Section 418.1001 describes what subpart B is about, lists the groups of sections in the subpart, and the subject of each group.

- Section 418.1005 explains that the purpose of the income-related monthly adjustment amount is to reduce the premium subsidy of the Medicare Part B program, i.e., the amount of the Federal Government's contribution to the Federal Supplementary Medical Insurance Trust Fund, for certain beneficiaries.

- Section 418.1010 contains definitions of terms used throughout this subpart.

### *Determination of the Income-Related Monthly Adjustment Amount*

- Section 418.1101 explains what the income-related monthly adjustment amount is and when it is applied.

- Section 418.1105 defines the modified adjusted gross income threshold and what the modified adjusted gross income threshold amounts will be in the year 2007. It also describes how threshold amounts will change in later years.

- Section 418.1110 defines modified adjusted gross income ranges and explains how we will use them and your tax filing status to determine the amount of your income-related monthly adjustment amount when applicable, and what effect Federal income tax filing status has on the ranges.

- Section 418.1115 explains how we will determine your income-related monthly adjustment amount.

- Section 418.1120 describes the effective date of our initial determination about the income-related monthly adjustment amount.

- Section 418.1125 explains how the income-related monthly adjustment amount will affect your total Medicare Part B premium.

- Section 418.1130 explains how we will phase in the full applicable income-related monthly adjustment amounts.

- Section 418.1135 describes what modified adjusted gross income information we will use to determine your income-related monthly adjustment amount.

- Section 418.1140 describes what will happen if the modified adjusted gross income that we later receive from IRS is different from the information that we previously used to make a determination of your income-related monthly adjustment amount.

- Section 418.1145 describes how we will determine the income-related monthly adjustment amount if IRS does

not provide your modified adjusted gross income information.

- Section 418.1150 describes when we will use a copy of your amended Federal income tax return filed with IRS to determine the income-related monthly adjustment amount and what proof is necessary to show that you filed a tax return with IRS.

### *Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income*

- Section 418.1201 explains when we will use modified adjusted gross income information for a more recent tax year to determine your income-related monthly adjustment amount.

- Section 418.1205 describes what is considered a major life-changing event that would justify using information from a more recent tax year.

- Section 418.1210 explains what is not considered a major life-changing event that would justify using information from a more recent tax year.

- Section 418.1215 explains which more recent tax years we may use to determine whether you must pay an income-related monthly adjustment amount and the amount of that adjustment.

- Section 418.1220 outlines what evidence we will consider when you request that we use information that you provide about your modified adjusted gross income for a more recent tax year to determine your income-related monthly adjustment amount.

- Section 418.1225 describes what evidence of a major life-changing event you will need to provide to support your request to use a more recent tax year.

- Section 418.1230 describes what evidence of a significant reduction in your modified adjusted gross income you will need to provide to support your request to use a more recent tax year.

- Section 418.1235 explains the effective date of our income-related monthly adjustment amount determination based on your request to use a more recent tax year.

- Section 418.1240 explains when we will stop using your modified adjusted gross income from a more recent tax year for income-related monthly adjustment amount determinations.

- Section 418.1245 explains what you should do if your modified adjusted gross income for the more recent tax year changes.

- Section 418.1250 explains what will happen if you notify us of a change in your modified adjusted gross income for the more recent tax year.

### *Determinations and the Administrative Review Process*

- Section 418.1301 explains what is an initial determination regarding your income-related monthly adjustment, and provides examples of determinations that are initial determinations for purposes of these rules.

- Section 418.1303 explains that administrative actions that are not initial determinations are not subject to the administrative review process.

- Section 418.1305 explains how we will notify you when we make an initial determination, and what information the notice will contain.

- Section 418.1310 explains the effect of the initial determination.

- Section 418.1315 explains when you may request a reconsideration.

- Section 418.1320 explains when you may request that we make a new initial determination.

- Section 418.1325 tells you the rules for the administrative review process.

- Section 418.1330 tells you the rules we will use to decide if reopening a prior determination or decision is appropriate.

- Section 418.1335 explains what will happen if you request a reconsideration because you believe that IRS information we used to make an initial determination about your income-related monthly adjustment amount is incorrect.

- Section 418.1340 explains what to do if you believe our initial determination is based on incorrect modified adjusted gross income information.

### *Clarity of These Proposed Rules*

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to comments you may have on these proposed rules, we also invite your comments on how to make the rules 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?

**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 an “economically significant” regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus they were reviewed by OMB.

These proposed rules provide the implementing rules for the income-related premium calculation enacted as part of MMA. The legislative provision is expected to result in an overall savings to the Medicare Supplementary Medical Insurance Trust Fund of roughly \$7.7 billion over the period of

fiscal years 2007–2011. The following chart shows the total savings in millions for each program year.

Fiscal year	Total savings
2007 .....	490
2008 .....	1,180
2009 .....	1,860
2010 .....	2,060
2011 .....	2,150
<b>Total: 2007–2011 .....</b>	<b>7,740</b>

In addition, the process of determining the additional premiums will result in an increase in administrative expenses incurred by SSA in the amount of \$200 million over that same 5-year period.

*Accounting Statement*

As required by OMB Circular A–4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in the following table (Table 1) we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed rules. This table provides our best estimate of the increase in premium payments as a result of the changes to the Part B program presented in these proposed rules. All expenditures are classified as transfers to the SMI Trust Fund.

**TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS**  
[In millions]

Category	Transfers
Annualized Monetized Transfers .....	\$1,370.
From Whom to Whom? .....	Certain High-Income Medicare Part B Beneficiaries to the Medicare SMI Trust Fund.

*Regulatory Flexibility Act*

We certify that these proposed 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 for these proposed rules.

*Paperwork Reduction Act*

These proposed rules contain reporting requirements as shown in the following table. Where the public

reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules.

Section	Annual number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
§ 418.1135(c)–(e), § 418.1140(b)–(d), § 418.1320(a)(1)–(2) .....	104,725	1	30	52,363
§ 418.1150, § 418.1320(a)(2) .....	300	1	30	150
§ 418.1005(c), § 418.1201, § 418.1215, § 418.1220, § 418.1225, § 418.1230, § 418.1320(a)(4) .....	.....	.....	.....	1
§ 418.1240(c)–d, § 418.1245, § 418.1250 .....	42,260	1	30	21,130
§ 418.1310, § 418.1315 .....	6,698	1	30	3,349
§ 418.1340 .....	200	1	30	100
<b>Total .....</b>	<b>154,183</b>	<b>.....</b>	<b>.....</b>	<b>77,093</b>

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to OMB and SSA at the following addresses/numbers:

Office of Management and Budget,  
Attn: Desk Officer for SSA, Fax

Number: 202–395–6974.  
Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. Fax Number: 410–965–6400.

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(Catalog of Federal Domestic Assistance Program Nos. 93.773, Medicare—Hospital

Insurance and 93.774, Medicare—Supplementary Medical Insurance Program)

**List of Subjects in 20 CFR Part 418**

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

Dated: February 27, 2006.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to add a new

subpart B to part 418 of chapter III of title 20 of the Code of Federal Regulations as follows:

## **PART 418—MEDICARE SUBSIDIES**

### **Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount**

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### **Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount**

**Authority:** Secs. 702(a)(5) and 1839(i) of the Social Security Act (42 U.S.C. 902(a)(5) and 1395r(i)).

#### **Introduction, General Provisions, and Definitions**

##### **§ 418.1001 What is this subpart about?**

This subpart relates to section 1839(i) of the Social Security Act (the Act), as added by section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). Section 1839(i) establishes an income-related monthly adjustment to the Medicare Part B premium. Beneficiaries enrolled in Medicare Part B who have modified adjusted gross income over a threshold amount established in the statute will pay an income-related monthly adjustment amount in addition to the Medicare Part B standard monthly premium and any applicable premium increases as described in 42 CFR 408.20. The regulations in this subpart explain how we decide whether you are required to pay an income-related monthly

adjustment amount and the amount of your adjustment. The rules are divided into the following groups of sections:

(a) Sections 418.1001 through 418.1010 contain the introduction, a statement of the general purpose of the income-related monthly adjustment amount, general provisions that apply to the income-related monthly adjustment amount, and definitions of terms that we use in this subpart.

(b) Sections 418.1101 through 418.1150 describe what information about your modified adjusted gross income we will use to determine if you are required to pay an income-related monthly adjustment amount. In these sections, we also describe how the income-related monthly adjustment amount will affect your total Medicare Part B premium. These sections also explain how the income-related monthly adjustment amount will be phased in from calendar year 2007 through calendar year 2009.

(c) Sections 418.1201 through 418.1250 contain an explanation of the standards that you must meet for us to grant your request to use modified adjusted gross income information that you provide for a more recent tax year rather than the information described in paragraph (b) of this section. These sections explain when we may consider such a request, and the evidence that you will be required to provide. These sections also explain when income-related monthly adjustment amount determinations based on information you provide will be effective, and how long they will remain in effect. Additionally, these sections describe how retroactive adjustments of the income-related monthly adjustment amount will be made based on information you provide, updated information you provide and information we later receive from the Internal Revenue Service (IRS).

(d) Sections 418.1301 through 418.1340 contain the rules that we will apply when you disagree with our determination regarding your income-related monthly adjustment amount. These sections explain your appeal rights and the circumstances under which you may request that we make a new initial determination of your income-related monthly adjustment amount.

##### **§ 418.1005 Purpose and administration.**

(a) The purpose of the income-related monthly adjustment amount is to reduce the Federal subsidy of the Medicare Part B program for beneficiaries with modified adjusted gross income above an established threshold. These beneficiaries will pay a greater share of

actual program costs. Medicare Part B premiums paid by beneficiaries cover approximately 25 percent of total Medicare Part B program costs and the remaining 75 percent of program costs are subsidized by the Federal Government's contributions to the Federal Supplementary Medical Insurance Trust Fund. The reduction in the Medicare Part B premium subsidy results in an increase in the total amount that affected beneficiaries pay for Medicare Part B coverage. A beneficiary with modified adjusted gross income above the threshold amount will pay:

(1) The Medicare Part B standard monthly premium; plus

(2) Any applicable increase in the standard monthly premium for late enrollment or reenrollment; plus

(3) An income-related monthly adjustment amount.

(b) The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services (HHS) publishes the Medicare Part B standard monthly premium each year. CMS also establishes rules for entitlement to a nonstandard premium, as well as premium penalties for late enrollment or reenrollment (42 CFR 408.20 through 408.27).

(c) We use information that we get from IRS to determine if beneficiaries who are enrolled in Medicare Part B are required to pay an income-related monthly adjustment amount. We also change income-related monthly adjustment amount determinations using information provided by a beneficiary under certain circumstances. In addition, we notify beneficiaries when the social security benefit amounts they receive will change based on our income-related monthly adjustment amount determination.

#### § 418.1010 Definitions.

(a) *Terms relating to the Act and regulations.* For the purposes of this subpart:

(1) *Administrator* means the Administrator of the Centers for Medicare & Medicaid Services (CMS).

(2) *CMS* means the Centers for Medicare & Medicaid Services in the Department of Health and Human Services.

(3) *Commissioner* means the Commissioner of Social Security.

(4) *IRS* means the Internal Revenue Service in the Department of the Treasury.

(5) *Section* means a section of the regulations in this part unless the context indicates otherwise.

(6) *The Act* means the Social Security Act, as amended.

(7) *Title* means a title of the Act.

(8) *We, our, or us* means the Social Security Administration (SSA).

(b) *Miscellaneous.* For the purposes of this subpart:

(1) *Amended tax return* means a Federal income tax return for which an amended tax return using the required IRS form(s) has been filed by an individual or couple and accepted by IRS.

(2) *Effective year* means the calendar year for which we make an income-related monthly adjustment amount determination.

(3) *Federal premium subsidy* is the portion of the full cost of providing Medicare Part B coverage that is paid by the Federal Government through transfers into the Federal Supplementary Medical Insurance Trust Fund.

(4) *Income-related monthly adjustment amount* is an additional amount of premium that you will pay for Medicare Part B coverage if you have income above the threshold. The amount of your income-related monthly adjustment amount is based on your modified adjusted gross income.

(5) *Medicare Part B standard monthly premium* means the monthly Medicare Part B premium amount which is set annually by CMS, according to regulations in 42 CFR 408.20 through 408.27.

(6) *Modified adjusted gross income* is your adjusted gross income as defined by the Internal Revenue Code, plus the following forms of tax-exempt income:

(i) Tax-exempt interest income;

(ii) Income from United States savings bonds used to pay higher education tuition and fees;

(iii) Foreign earned income;

(iv) Income derived from sources within Guam, American Samoa, or the Northern Mariana Islands; and

(v) Income from sources within Puerto Rico.

(7) *Modified adjusted gross income ranges* are the four bands of modified adjusted gross income above the threshold. The dollar amounts of the modified adjusted gross income ranges are specified in § 418.1110.

(8) *Non-standard premium* means a Medicare Part B premium that some beneficiaries pay for Medicare Part B, rather than the standard premium. The rules for applying a non-standard premium are in 42 CFR 408.20(e). The non-standard premium does not apply to beneficiaries who must pay an income-related monthly adjustment amount.

(9) *Premium* is a payment that an enrolled beneficiary pays for Medicare Part B coverage. The rules that CMS

uses to annually establish the premium amount are found in 42 CFR 408.20 through 408.27.

(10) *Representative* means an individual as defined in § 404.1703 of this chapter.

(11) *Tax filing status* means the filing status shown on your individual income tax return. It may be single, married filing jointly, married filing separately, head of household, or qualifying widow(er) with dependent child.

(12) *Threshold* means a modified adjusted gross income amount above which the beneficiary will have to pay an income-related monthly adjustment amount described in paragraph (b)(3) of this section. The dollar amount of the threshold is specified in § 418.1105.

(13) *You or your* means the person or representative of the person who is subject to the income-related monthly adjustment amount.

#### Determination of the Income-Related Monthly Adjustment Amount

##### § 418.1101 What is the income-related monthly adjustment amount?

(a) The income-related monthly adjustment amount is an amount that you will pay in addition to the Medicare Part B standard monthly premium plus any applicable increase in that premium as described in 42 CFR 408.22 for your Medicare Part B coverage when your modified adjusted gross income is above the threshold described in § 418.1105.

(b) Your income-related monthly adjustment amount is based on your applicable modified adjusted gross income as described in § 418.1110 and your tax filing status.

(c) We will determine your income-related monthly adjustment amount using the method described in § 418.1115 and § 418.1130.

##### § 418.1105 What is the threshold?

(a) The threshold is a level of modified adjusted gross income above which the beneficiary will have to pay the income-related monthly adjustment amount.

(b) In 2007, the modified adjusted gross income threshold is \$80,000 for individuals with a Federal income tax filing status of single, married filing separately, head of household, and qualifying widow(er) with dependent child. The threshold is \$160,000 for individuals with a Federal income tax filing status of married filing jointly.

(c) Starting at the end of calendar year 2007 and each year thereafter, the threshold amounts for the following year will be set by CMS by increasing the preceding year's threshold amount by the percentage increase in the Consumer Price Index rounded to the

nearest \$1,000. CMS will publish the threshold amounts annually in September in the **Federal Register**. Published threshold amounts will be effective January 1 of the next calendar year, for the full calendar year.

**§ 418.1110 What are the modified adjusted gross income ranges?**

(a) The 2007 modified adjusted gross income ranges for each Federal tax filing category are listed in paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment.

(b) In 2007, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year we use to make our income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$80,000 and less than or equal to \$100,000;
- (2) Greater than \$100,000 and less than or equal to \$150,000;
- (3) Greater than \$150,000 and less than or equal to \$200,000; and
- (4) Greater than \$200,000.

(c) In 2007, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$160,000 and less than or equal to \$200,000;

(2) Greater than \$200,000 and less than or equal to \$300,000;

(3) Greater than \$300,000 and less than or equal to \$400,000; and

(4) Greater than \$400,000.

(d) In 2007, the modified adjusted gross income ranges for married individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than \$80,000 and less than or equal to \$120,000; and

(2) Greater than \$120,000.

(e) CMS will annually revise the modified adjusted gross income ranges and publish them in the **Federal Register** starting in September of 2007 for 2008. Each year thereafter, all modified adjusted gross income range amounts will be set by CMS by increasing the preceding year's modified adjusted gross income range amounts by any percentage increase in the Consumer Price Index rounded to the nearest \$1,000, and CMS will publish the amounts for the following year in September of each year.

**§ 418.1115 How do we determine your income-related monthly adjustment amount?**

(a) We will determine your income-related monthly adjustment amount using your tax filing status and modified adjusted gross income.

(b) *Tables of applicable percentage.* The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for 2007 in the column on the left in each table. The middle column in each table shows the percentage of the

unsubsidized Medicare Part B premium that will be paid by individuals with modified adjusted gross income that falls within each of the ranges. The column on the right in each table shows the percentage of the unsubsidized Medicare Part B premium that will be subsidized by the Federal Supplementary Medical Insurance Trust Fund. Based on your tax filing status for the tax year we use to make a determination about your income-related monthly adjustment amount, we will determine which table is applicable to you. We will use your modified adjusted gross income to determine which income-related monthly adjustment amount to apply to you. The dollar amount of income-related monthly adjustment for each range will be set annually as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually as described in § 418.1110(e).

(1) *General table of applicable percentages.* If your filing status for your Federal income taxes for the tax year we use is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table, then the Federal Supplementary Medical Insurance Trust Fund premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$80,000 but less than or equal to \$100,000 .....	35	65
More than \$100,000 but less than or equal to \$150,000 .....	50	50
More than \$150,000 but less than or equal to \$200,000 .....	65	35
More than \$200,000 .....	80	20

(2) *Table of applicable percentages for joint returns.* If your Federal tax filing status is married filing jointly for the tax year we use and your modified adjusted gross income for that tax year is in the

range listed in the left column in the following table, then the Federal Supplementary Medical Insurance Trust Fund premium subsidy of 75 percent is reduced to the percentage listed in the

right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$160,000 but less than or equal to \$200,000 .....	35	65
More than \$200,000 but less than or equal to \$300,000 .....	50	50
More than \$300,000 but less than or equal to \$400,000 .....	65	35

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$400,000 .....	80	20

(3) *Table of applicable percentages for married individuals filing separate returns.* If your Federal tax filing status for the tax year we use is married filing separately and you lived with your

spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following table, then the Federal Supplementary Medical

Insurance Trust Fund premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$80,000 but less than or equal to \$120,000 .....	65	35
More than \$120,000 .....	80	20

(c) CMS will annually publish in the **Federal Register** the dollar amounts for the income-related monthly adjustment amount described in paragraph (b) of this section.

**§ 418.1120 What is the effective date of our initial determination about your income-related monthly adjustment amount?**

(a) Generally, an income-related monthly adjustment amount will be effective for all months that you are enrolled in Medicare Part B during the year for which we determine you must pay an income-related monthly adjustment amount. We will follow the rules in 42 CFR part 408, subpart C, regarding premium collections to withhold your income-related monthly adjustment amount from a benefit payment or to determine if you will be billed directly.

(b) When we have used modified adjusted gross income information from IRS for the tax year 3 years prior to the effective year to determine your income-related monthly adjustment amount and modified adjusted gross income information for the tax year 2 years prior later becomes available from IRS, we will review the new information to determine if we should revise our initial determination. If we revise our initial determination, the effective date of the new initial determination will be January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(c) When we use your amended tax return, as described in § 418.1150, the effective date will be January 1 of the year(s) that is affected, or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

*Example:* You are enrolled in Medicare Part B throughout 2011. We use your 2009 modified adjusted gross income as reported to us by IRS to determine your 2011 income-related monthly adjustment amount. In 2012 you submit to us a copy of your 2009 amended tax return that you filed with IRS. The modified adjusted gross income reported on your 2009 amended tax return is significantly less than originally reported to IRS. We use the modified adjusted gross income that was reported on your 2009 amended tax return to determine your income-related monthly adjustment amount. That income-related monthly adjustment amount is effective January 1, 2011. We will retroactively adjust for any differences between the amount paid in 2011 and the amount that should have been paid based on the amended tax return.

(d) When we use evidence that you provide which proves that the IRS modified adjusted gross income information we used is incorrect, as described in § 418.1340, the effective date will be January of the year(s) that is affected or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

(e) When we use information from a more recent tax year that you provide due to a major life-changing event, as described in § 418.1201, the effective date is described in § 418.1235.

**§ 418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?**

(a) If you must pay an income-related monthly adjustment amount, your total Medicare Part B premium will be the sum of:

- (1) The Medicare Part B standard monthly premium, determined using the rules in 42 CFR 408.20; plus
- (2) Any applicable increase in the Medicare Part B standard monthly premium as described in 42 CFR 408.22; plus

(3) Your income-related monthly adjustment amount.

(b) In 2007 and 2008, your income-related monthly adjustment amount you must pay will be adjusted as described in § 418.1130.

(c) The nonstandard Medicare Part B premium amount described in 42 CFR 408.20 does not apply to individuals who must pay an income-related monthly adjustment amount. Such individuals must pay the full Medicare Part B standard monthly premium plus any applicable penalties for late enrollment or reenrollment plus the income-related adjustment.

**§ 418.1130 How will we phase in the income-related monthly adjustment amount?**

(a) In 2007 and 2008, we will phase in the full amount of the income-related monthly adjustment amount. For the year in the left column you will pay the percentage of the income-related monthly adjustment amount specified in the right column.

Year	Percentage of the income-related monthly adjustment amount that you will pay
2007 .....	33
2008 .....	67

(b) Phase-in of the subsidy reduction will be complete in 2009.

**§ 418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?**

(a) In general, we will use your modified adjusted gross income provided by IRS for the tax year beginning 2 years prior to the effective year of the income-related monthly adjustment amount determination.

Modified adjusted gross income is based on information you provide to IRS when you file your Federal income tax return.

(b) We will use your modified adjusted gross income for the tax year beginning 3 years prior to the effective year of the income-related monthly adjustment amount determination when IRS does not provide the information specified in paragraph (a) of this section. If IRS can provide modified adjusted gross income for the tax year 3 years prior to the income-related monthly adjustment amount effective year, we will temporarily use that information to determine your income-related monthly adjustment amount and make adjustments as described in § 418.1120(b) to all affected income-related monthly adjustment amounts when information for the year specified in paragraph (a) of this section is provided by IRS.

(c) When we have used the information in paragraph (b) of this section, you may provide us with evidence of your modified adjusted gross income for the year in paragraph (a) of this section. You must provide a retained copy of your signed Federal income tax return for that year, if available. If you filed a return for that year, but did not retain a copy, you must request a transcript or a copy of your return from IRS and provide it to us. When we use this evidence, we will later confirm this information with IRS records.

(d) When you meet the conditions specified in § 418.1150 because you have amended your Federal income tax return, or when you believe we have used information provided by IRS which is incorrect, as described in § 418.1340, we will use information that you provide directly to us regarding your modified adjusted gross income.

(e) We may use information that you give us about your modified adjusted gross income for a more recent tax year than those discussed in paragraphs (a) or (b) of this section as described in §§ 418.1201 through 418.1250.

**§ 418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?**

In general, we will use modified adjusted gross income information from IRS to determine your income-related monthly adjustment. We will make retroactive adjustments to your income-related monthly adjustment amount as described in paragraphs (a) through (d) of this section.

(a) When we have used modified adjusted gross income from the tax year 3 years prior to the effective year as described in § 418.1135(b), and IRS provides modified adjusted gross income information from the tax year 2 years prior to the effective year, we will use the new information to make an initial determination for the effective year. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(b) When we have used the modified adjusted gross income information that you provided for the tax year 2 years prior to the effective year and the modified adjusted gross income information we receive from IRS for that same year is different from the information you provided, we will use the modified adjusted gross income information provided to us by IRS to make a new initial determination. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(c) When we have used information from your amended Federal tax return that you provide, as explained in § 418.1150, or you provide proof that the information IRS provided to us is incorrect as described in § 418.1340, we will not make any adjustments to your income-related monthly adjustment amount for the effective year or years based on IRS information that we later receive.

(d) When we use modified adjusted gross income information that you provided due to a qualifying life-changing event and we receive different information from IRS, we will use the IRS information to make retroactive corrections to all months affected in the effective year(s) during which you were enrolled in Medicare Part B, except when paragraph (c) of this section applies.

**§ 418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?**

In general, if we do not receive any information for you from IRS showing that you had modified adjusted gross income above the threshold in the tax year we request, we will not make an income-related monthly adjustment amount determination.

**§ 418.1150 When will we use your amended tax return filed with IRS?**

You may provide your amended tax return for a tax year we used within 3

calendar years following the close of the tax year for which you filed the amended tax return. You must provide us with your retained copy of your amended U.S. Individual Income Tax Return on the required IRS form and a copy of the IRS letter confirming the amended tax return was filed or a transcript from IRS if they did not send a letter. If you cannot provide your retained copy of the amended tax return, you must obtain a copy of the return from IRS. We will then make any necessary retroactive corrections as defined in § 418.1120 to your income-related monthly adjustment amount.

**Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income**

**§ 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?**

We will use a more recent tax year than the years described in § 418.1135(a) or (b) to reduce or eliminate your income-related monthly adjustment amount when all of the following occur:

(a) You experience a major life-changing event as defined in § 418.1205; and

(b) That major life-changing event results in a significant reduction in your modified adjusted gross income for the year which you request we use and the next year, if applicable. For purposes of this section, a significant reduction in your modified adjusted gross income is one that results in the decrease or elimination of your income-related monthly adjustment amount; and

(c) You request that we use a more recent tax year's modified adjusted gross income; and

(d) You provide evidence as described in §§ 418.1220 through 418.1230.

**§ 418.1205 What is a major life-changing event?**

For the purposes of this subpart, we will consider the following to be major life-changing events:

(a) Your spouse dies;

(b) You marry;

(c) You divorce;

(d) You or your spouse stop working or reduce the hours you work;

(e) You or your spouse experience a reduction in your income due to a loss of income-producing property, provided that the loss is not at your direction (e.g., due to the sale or transfer of the property). Examples of the type of property loss include, but are not limited to, loss of income from real property within a Presidential or

Gubernatorially-declared disaster area, destruction of livestock or crops by natural disaster or disease, or loss of income from real property due to arson.

(f) You or your spouse experience a reduction in or loss of certain forms of pension income due to termination or reorganization of the pension plan or a scheduled cessation of pension benefits.

**§ 418.1210 What is not a major life-changing event?**

We will not consider events other than those described in § 418.1205 to be major life-changing events. Certain types of events are not considered major life-changing events for the purposes of this subpart, such as:

(a) Events that affect your expenses, but not your income; or

(b) Events that result in the loss of dividend income.

**§ 418.1215 What more recent tax year will we use?**

We will consider evidence of your modified adjusted gross income that you provide for a tax year that is more recent than the year described in § 418.1135 (a) or (b) when you meet all of the requirements described in § 418.1201. We will always ask you for your retained copy of your filed Federal income tax return for the more recent year you request that we use and will use that information to make an initial determination. If you have not filed your Federal income tax return for the more recent year you request that we use, you must provide us with evidence that is equivalent to a copy of a filed Federal income tax return. Evidence that is equivalent to a copy of a filed Federal income tax return is defined in § 418.1230(c).

**§ 418.1220 What evidence will you need to support your request for us to use a more recent tax year?**

When you request that we use a more recent tax year to determine your income-related monthly adjustment amount, we will ask for evidence of the major life-changing event and how the event significantly reduced your modified adjusted gross income as described in §§ 418.1225 and 418.1230. Unless we have information in our records that raises a doubt about the evidence, additional evidence documenting these same facts will not be needed.

**§ 418.1225 What kind of major life-changing event evidence will you need to support your request?**

(a) If your spouse died and we do not have evidence of the death in our records, we will require proof of death

as described in § 404.720(b) or (c) or § 404.721 of this chapter.

(b) If you marry and we do not have evidence of the marriage in our records, we will require proof of marriage as described in §§ 404.725 through 404.727 of this chapter.

(c) If your marriage ends and we do not have evidence that the marriage has ended in our records, we will require proof that the marriage has ended as described in § 404.728(b) or (c) of this chapter.

(d) If you or your spouse stop working or reduce your work hours, we will require evidence documenting the change in work activity. Examples of acceptable documentation include, but are not limited to, a signed statement from your employer, proof of the transfer of your business, or your signed statement under penalty of perjury, describing your work separation or a reduction in hours.

(e) If you or your spouse experience a loss of income from income-producing property, we will require evidence documenting the loss. Examples of the type of evidence include, but are not limited to, insurance claims or an insurance adjuster's statement.

(f) If you or your spouse experience a reduction in or loss of pension income, we will require evidence documenting the reduction or loss. Examples include, but are not limited to, a statement from the Pension Benefit Guaranty Corporation or your pension fund administrator that explains the reduction or termination of your benefits.

**§ 418.1230 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?**

(a) You must provide evidence that one or more of the major life-changing events described in § 418.1205 resulted in a significant reduction in your modified adjusted gross income for the tax year you request we use.

(b) The preferred evidence is a retained copy of your filed Federal income tax return or amended tax return with an IRS letter of receipt of the amended tax return, or a copy of your return or amended tax return that you obtain from IRS for the more recent tax year you request we use.

(c) When a copy of your filed Federal income tax return is not available for the more recent tax year in which your modified adjusted gross income was significantly reduced, we will accept equivalent evidence. Equivalent evidence is the appropriate proof(s) in paragraphs (c)(1), (2) and (3) of this section, plus your signed statement

under penalty of perjury that the information you provide is true and correct. When the major life-changing event changes your tax filing status, or the income-related monthly adjustment amount determination could be affected by your tax filing status, you will also be required to sign a statement regarding your intended income tax filing status for the tax year you request we use.

(1) If you experience one or more of the events described in § 418.1205(a), (b), or (c), you must provide evidence as to how the event(s) significantly reduced your modified adjusted gross income. Examples of the type of evidence include, but are not limited to, evidence of your spouse's modified adjusted gross income and/or your modified adjusted gross income for the tax year we use.

(2) If you experienced one or more of the events described in § 418.1205(d), (e) or (f), you must provide evidence of how the event(s) significantly reduced your modified adjusted gross income, such as a statement explaining any modified adjusted gross income changes for the tax year we use, and a copy of your filed Federal income tax return (if you have filed one).

(3) If your spouse experiences one or more of the events described in § 418.1205(d), (e), or (f), you must provide evidence of the resulting significant reduction in your modified adjusted gross income. The evidence requirements are described in paragraph (c)(2) of this section.

(d) When we use information described in paragraph (c) of this section, we will request that you provide your retained copy of your Federal income tax return for the year we used when you file your taxes, so that we can make timely adjustments. We will later verify the information you provide when we receive information about that tax year from IRS, as described in § 418.1140(d).

**§ 418.1235 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?**

(a) When you make your request prior to January 1, 2007, our initial determination is effective on January 1, 2007.

(b) Subject to paragraph (c) of this section, when you make your request during or after 2007 and your modified adjusted gross income for the more recent tax year is significantly reduced as a result of a major life-changing event, our initial determination is generally effective on January 1 of the year in which you make your request. If your first month of enrollment or

reenrollment in Medicare Part B is after January of the year for which you make your request, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(c) We will make a determination about your income-related monthly adjustment amount for the year preceding the year that you make your request in the limited circumstances explained in § 418.1320(a)(4). When we make a determination for the preceding year, our initial determination is generally effective on January 1 of that year. If your first month of enrollment or reenrollment in Medicare Part B is after January of that year, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(d) When you make your request during or after 2007 and your modified adjusted gross income is significantly reduced beginning in the year following the year in which you make your request as a result of one or more of the events described in § 418.1205(a) through (f), our initial determination is effective on January 1 of the next year.

**§ 418.1240 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?**

We will use your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount effective with the month and year described in § 418.1235 and for each year thereafter until one of the following occurs:

(a) We receive your modified adjusted gross income from IRS for the more recent tax year we used or a later tax year;

(b) Your more recent tax year modified adjusted gross income that we used is for a tax year more than 3 years prior to the income-related monthly adjustment amount effective year;

(c) You request we use a more recent tax year based on another major life-changing event as described in § 418.1201; or

(d) You notify us of a change in your modified adjusted gross income for the more recent tax year we used as described in § 418.1245.

**§ 418.1245 Should you notify us if your modified adjusted gross income for the more recent tax year changes?**

If you know that the information you provided to us about the more recent tax year that we used has changed, you should tell us so that we can determine if your income-related monthly adjustment amount should be eliminated or adjusted. We will accept

new modified adjusted gross income information at any time after your request until the end of the calendar year following the more recent tax year(s) that we used. For us to make a new initial determination using your new modified adjusted gross income information, you must provide evidence as described in § 418.1230 to support the reduction or increase in your modified adjusted gross income. If you amend your Federal income tax return for the more recent tax year we used, we will use the rules in § 418.1150.

**§ 418.1250 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?**

(a) If you notify us that your modified adjusted gross income for the more recent tax year has changed from what is in our records, we may make a new initial determination for each effective year involved. To make a new initial determination(s) we will take into account:

(1) The new modified adjusted gross income information for the more recent tax year you provide; and

(2) Any modified adjusted gross income information from IRS, as described in § 418.1135, that we have available for each effective year; and

(3) Any modified adjusted gross income information from you, as described in § 418.1135, that we have available for each effective year.

(b) For each new initial determination that results in a change in your income-related monthly adjustment amount, we will make retroactive adjustments that will apply to all enrolled months of the effective year.

(c) We will continue to use a new initial determination described in paragraph (a) of this section to determine additional yearly income-related monthly adjustment amount(s) until an event described in § 418.1240 occurs.

(d) We will make an initial determination about your income-related monthly adjustment amount when we receive modified adjusted gross income for the effective year from IRS, as described in § 418.1140(d).

**Determinations and the Administrative Review Process**

**§ 418.1301 What is an initial determination regarding your income-related monthly adjustment amount?**

An initial determination is the determination we make about your income-related monthly adjustment amount that is subject to administrative review. For the purposes of administering the income-related

monthly adjustment amount, initial determinations include but are not limited to determinations about:

(a) The amount of your income-related monthly adjustment amount based on information provided by IRS; and

(b) Any change in your income-related monthly adjustment amount based on one of the circumstances listed in § 418.1320(a)(1) through (a)(4).

**§ 418.1303 What is not an initial determination regarding your income-related monthly adjustment amount?**

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process as provided by §§ 418.1310 through 418.1330 and they are not subject to judicial review. These actions include, but are not limited to, our dismissal of a request for reconsideration as described in § 418.1335 and our dismissal of a request for a new initial determination as described in § 418.1320(c).

**§ 418.1305 How will we notify you and what information will we provide about our initial determination?**

(a) We will mail a written notice of all initial determinations to you. The notice of the initial determination will state the important facts and give the reasons for our conclusions. Generally, we will not send a notice if your income-related monthly adjustment amount stops because of your death.

(b) The written notice that we send will tell you:

(1) What our initial determination is;

(2) The reason for our determination;

(3) The effect of the initial determination; and

(4) Your right to a reconsideration or a new initial determination.

**§ 418.1310 What is the effect of an initial determination?**

An initial determination is binding unless you request a reconsideration within the time period described in §§ 404.909 and 404.911 of this chapter or we revise the initial determination or issue a new initial determination.

**§ 418.1315 When may you request a reconsideration?**

If you are dissatisfied with our initial determination about your income-related monthly adjustment amount, you may request that we reconsider it. In addition, a person who shows in writing that his or her rights may be adversely affected by the initial determination may request a reconsideration. When you request a reconsideration, we will use the rules in

§§ 404.907 through 404.922 of this chapter. If you request a reconsideration solely because you believe that the information that IRS gave us is incorrect, we will dismiss your request for reconsideration and notify you that you may contact IRS as explained in § 418.1335.

**§ 418.1320 When may you request that we make a new initial determination?**

(a) You may request that we make a new initial determination in the following circumstances:

(1) You provide a copy of your filed Federal income tax return for the tax year 2 years prior to the effective year when IRS has provided information for the tax year 3 years prior to the effective year. You may request a new initial determination from the date you receive a notice from us regarding your income-related monthly adjustment amount until the end of the effective year, with one exception. If you receive the notice during the last three months of a calendar year, you may request a new initial determination from the date you receive the notice until March 31 of the following year. We will follow the rules and procedures in § 418.1120(b) and § 418.1140(b) to make a new initial determination and any necessary retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled in Medicare Part B if later than January.

(2) You provide a copy of an amended tax return filed with IRS, as defined in § 418.1010(b)(1). We will use your amended tax return for the same tax year as the year used to determine your income-related monthly adjustment amount. You must request the new initial determination within the timeframe described in § 418.1150.

(3) You provide proof from IRS of a correction of your modified adjusted gross income information or Federal income tax filing status for the year we used. We will use your proof of the correction for the same tax year as the year used for your modified adjusted gross income provided by IRS, as explained in § 418.1340. Within 60 days following the date you receive a notice from us regarding your income-related monthly adjustment amount, you may request a new initial determination. We will use the rules and procedures in § 418.1340.

(4) You have a major life-changing event. You may request a new initial determination based on a major life-changing event when you meet all the requirements described in § 418.1201. You may make such a request at any time during the calendar year in which you experience a significant reduction

in your modified adjusted gross income caused by a major life-changing event. When you have a major life-changing event that occurs in the last 3 months of a calendar year and your modified adjusted gross income for that year is significantly reduced as a result of the event, you may request that we make a new initial determination based on your major life-changing event from the date of the event until March 31 of the next year. We will follow the rules in § 418.1235 when we make a new initial determination based on your major life-changing event.

(b) We will notify you of the new initial determination as described in § 418.1305.

(c) We will dismiss your request to make a new initial determination if it does not meet the conditions specified above. Our dismissal of your request for a new initial determination is not an initial determination subject to further administrative or judicial review.

**§ 418.1325 What are the rules for the administrative review process?**

For the purpose of this subpart, in making initial determinations and reconsiderations, we will use the same rules for the administrative review process that we use for determinations and decisions about your rights regarding non-medical issues under title II of the Act, as described in subpart J of part 404 of this chapter. If you are dissatisfied with our reconsideration, you may request further review, including a hearing before an administrative law judge of the Office of Medicare Hearings and Appeals at HHS, review by the Medicare Appeals Council, and judicial review, consistent with HHS' regulations at 42 CFR part 405, subpart I. A request for a new initial determination is not the same as a request for reconsideration or further administrative review.

**§ 418.1330 Is reopening of a determination or decision ever appropriate?**

The rules in §§ 404.987 through 404.991a of this chapter will apply to reopenings of determinations made by us. The rules in 42 CFR 405.980 through 405.986 will apply to reopenings of decisions by an administrative law judge of the Office of Medicare Hearings and Appeals at HHS and by the Medicare Appeals Council.

**§ 418.1335 Can you request a reconsideration when you believe that the IRS information we used is incorrect?**

If you request a reconsideration solely because you believe that the information that IRS gave us is incorrect, we will dismiss your request for a reconsideration and notify you to obtain

proof of a correction from IRS and request a new initial determination (§ 418.1340). Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

**§ 418.1340 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?**

If you believe that IRS or you provided incorrect modified adjusted gross income information to us that we used to determine your income-related monthly adjustment amount, you can request information from us on how to contact IRS regarding the information we used.

(a) If IRS determines that the information it provided is not correct, IRS will provide you with documentation of the error, such as a copy of your Federal income tax return. If you would like us to use the revised or corrected information to determine your income-related monthly adjustment amount, you will need to request that we use that information and provide us with the IRS documentation confirming the error. We will make any necessary retroactive corrections as defined in § 418.1120 to your income-related monthly adjustment amount.

(b) If you provided information to us about your modified adjusted gross income that we used to determine your income-related monthly adjustment amount, and that information is not correct, you may provide revised or corrected information. We will use the revised or corrected information if it reduces or eliminates your income-related monthly adjustment amount. We will make any necessary retroactive corrections as described in § 418.1120 to your income-related monthly adjustment amount. If you are providing corrected information about a more recent tax year's modified adjusted gross income that we used due to your major life-changing event, as described in § 418.1245, we will use the rules in § 418.1250 to determine how it will affect your income-related monthly adjustment amount.

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