

and", and adding new paragraph (a)(24) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) \* \* \*

(24) Starting or discontinuing a continuing disability review; and  
\* \* \* \* \*

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA-2006-0099]

RIN 0960-AG10

#### **Rules for the Issuance of Work Report Receipts, Payment of Benefits for Trial Work Period Service Months After a Fraud Conviction, Changes to the Student Earned Income Exclusion, and Expansion of the Reentitlement Period for Childhood Disability Benefits**

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are revising our rules to reflect and implement sections 202, 208, 420A, and 432 of the Social Security Protection Act of 2004 (the SSPA). Section 202 of the SSPA requires us to issue a receipt each time you or your representative report a change in your work activity or give us documentation of a change in your earnings if you receive benefits based on disability under title II or title XVI of the Social Security Act (the Act). Section 208 changes the way we pay benefits during the trial work period if you are convicted by a Federal court of fraudulently concealing your work activity. Section 420A changed the law to allow you to become reentitled to childhood disability benefits under title II at any time if your previous entitlement to childhood disability benefits was terminated because of the performance of substantial gainful activity. Section 432 changes the way we decide if you are eligible for the student earned income exclusion. We will also apply the student earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent. We are also changing the SSI student policy to include home schooling as a form of regular school attendance.

**DATES:** These final rules are effective December 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Cindy Duzan, Policy Analyst, Social Security Administration, 6401 Security

Boulevard, Baltimore, Maryland 21235-6401, (410) 965-4203, or TTY (410) 966-5609 for information about these final rules. For information on eligibility or filing for benefits, call our national toll-free number 1 (800) 772-1213 or TTY 1 (800) 325-0778. You may also contact 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>.

We are amending our rules to reflect and implement sections 202, 208, 420A, and 432 of the SSPA. These changes apply to you if you engage in work activity while entitled to or eligible for benefits based on disability under title II or title XVI of the Act.

We are also changing the SSI student policy to include home schooling as a form of regular school attendance. This may allow more individuals to benefit from the student earned income exclusion. This change, which is separate from the changes being made to reflect and implement the SSPA, will make the title II and title XVI programs uniform with respect to home schooling. The title II program recognizes home schooling as a form of school attendance. We will also apply the student earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent.

#### **When Will We Start To Use These Rules?**

The effective date of the provisions of the SSPA that are the subject of these final rules are set forth below and take effect on the dates mandated by statute. The changes regarding home schooling and the extension of the student earned income exclusion to ineligible individuals will take effect 30 days after publication of these rules in the **Federal Register**.

#### **What Is the Purpose of Section 202?**

Section 202 of the SSPA requires us to issue a receipt to you or your representative each time you or your representative report a change in your work activity or give us evidence of a change in your earnings, such as your pay stubs, if you receive benefits based on disability under title II or title XVI of the Act. The law provides that we are to issue a receipt each time you or your representative report to us until we establish a centralized computer file that will electronically record the information about the change in your work activity and the date that you make your report. After the centralized

computer file is implemented, we will continue to issue receipts to you or your representative automatically for a trial period of at least 6 months during which we will assess the effectiveness of our centralized computer file.

Once we determine that the automatic issuance of work receipts is no longer necessary, we will continue to issue receipts to you or your representative upon request. Adequate notice will be provided when this procedural change is put in place.

In the past, the reports you gave to us about your work activity may not have been processed timely, resulting in processing delays. This might have caused us to pay benefits to you incorrectly, without considering the effect your work and earnings may have had on your benefits, causing you to become overpaid. We are implementing a new centralized computer system which will create an electronic record of the work information that you report to us. This will help us ensure that we fulfill our responsibility to process your earnings reports and pay benefits to you correctly. We currently expect this centralized computer system to be operational in the summer of 2006. Issuing a receipt to you when you report your work or earnings will provide you with proof that you properly fulfilled your responsibility to report your earnings to us.

#### **Why Must You Report Your Work Activity?**

If you receive benefits based on disability under title II of the Act or are eligible for benefits under title XVI, you are required to report changes in your work activity and earnings to us. (See §§ 404.1588 and 416.708.)

Your earnings can affect your eligibility for benefits or the amount of your benefits.

You can report your work to us:

- By phone to our toll free number;
- In person or by phone to your local office; or
- By mailing your pay stubs to your local office.

We are also making efforts to expand the ways you can report information to us.

#### **What Is the Effective Date of Section 202?**

The statutory change that requires us to issue receipts every time you or your representative report a change in your work activity or give us documentation of a change in your earnings is effective as soon as possible, but no later than March 2, 2005. We are currently issuing receipts to you or your representative and will continue to do so at least until

we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

#### **What Is the Purpose of Section 208?**

Section 208 of the SSPA provides that if you are convicted by a Federal court of fraudulently concealing your work activity during the trial work period, no benefits are payable for any trial work period service month (generally a month of work activity, see § 404.1592) that occurred in or after March 2004 and before the date of your conviction. Section 208 of the SSPA will help to deter fraud within the Social Security program by prohibiting payment for trial work period service months to disabled individuals who are convicted of fraudulently concealing work activity.

#### **What Is the Trial Work Period?**

The trial work period allows a title II beneficiary to test his or her ability to work for at least 9 months and still be considered disabled. During your trial work period, you continue to be entitled to receive your Social Security disability insurance benefits regardless of how high your earnings might be so long as you continue to have a disabling impairment. The trial work period continues until you accumulate 9 months (not necessarily consecutive) in which you performed "services" (i.e., work activity) within a rolling 60-consecutive-month period. We use this "services" rule to count trial work period months. Under section 222(c)(2) of the Act and § 404.1592(b) of the regulations, services means any activity (whether legal or illegal), which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally use earnings guidelines to evaluate whether the work activity you are performing as an employee or self-employed person is services for the trial work period. We consider your work in a particular month to be services if you earn more than \$620 in that month for the year 2006, or work more than 80 self-employed hours in that month. The dollar amount is adjusted each year based on the national average wage.

#### **What Is the Effective Date of Section 208?**

The statutory change provides that an individual is not entitled to receive title II disability benefits for trial work period service months that occur in or after March 2004 and before the date of conviction by a Federal court of

fraudulently concealing work activity during that trial work period.

#### **What Is the Purpose of Section 420A?**

Section 420A of the SSPA applies to you if you are a disabled adult, your disability began before the age of 22, and you became eligible for "childhood disability benefits" (i.e., benefits for disabled adult children) under title II of the Act once you reached your 18th birthday. Section 420A of the SSPA provides that if your previous entitlement to childhood disability benefits under title II of the Act ended due to the performance of substantial gainful activity, you may become reentitled to childhood disability benefits at any time if you become disabled again and you meet other requirements for reentitlement as described in § 404.351. Prior to the effective date of section 420A, if childhood disability benefits were terminated because disability ceased, you could become reentitled to benefits only if you became disabled again within 7 years of the most recent termination.

Section 420A removed a significant disincentive to work for childhood disability beneficiaries by removing the 7-year restriction on reentitlement for individuals whose entitlement to childhood disability benefits was terminated due to the performance of substantial gainful activity. The 7-year restriction continues to apply to beneficiaries whose previous entitlement to childhood disability benefits terminated because of medical improvement.

#### **What Is the Effective Date of Section 420A?**

The statutory change that removed the 7-year restriction on reentitlement to childhood disability benefits under title II of the Act, if the previous entitlement terminated due to the performance of substantial gainful activity, became effective with respect to benefits payable for months beginning October 2004.

#### **What Is the Purpose of Section 432?**

Section 432 of the SSPA changes who is eligible for the student earned income exclusion under title XVI of the Act. The law increases the number of persons eligible for the exclusion by eliminating the requirement that you must meet the definition of a child under our SSI rules to be eligible for this exclusion. Specifically, section 432 of the SSPA removes the restriction that you must be unmarried and not head of your own household to qualify. You no longer need to be considered a "child"

to get the student earned income exclusion, you only must be under the age of 22, and, as before, regularly attending a school, college, or university, or a course of vocational or technical training to prepare for gainful employment.

#### **What Is the Student Earned Income Exclusion?**

The student earned income exclusion is a provision that allows us to exclude a greater amount of your earned income if you are a student than we do under our usual income counting rules. If you meet the definition of child for SSI and you are regularly attending school, we exclude a greater amount of your earned income when determining your eligibility for, and the amount of, benefits. For the year 2006, we do not count up to \$1,460 of earned income per month, up to a maximum yearly exclusion of \$5,910. These dollar amounts are adjusted each year by the cost-of-living adjustment (COLA) that is used to adjust the SSI Federal Benefit Rate. Section 432 eliminated the requirement that you meet the definition of a child to be eligible for the student earned income exclusion.

#### **Who Can Use the Student Earned Income Exclusion for the Period Before April 1, 2005?**

Before April 1, 2005, (that is, before the changes made by section 432 of the SSPA), you could qualify for the student earned income exclusion if you were:

- Under age 22;
- Unmarried;
- Not the head of your own

household; and

- Regularly attending school, college or university, or a course of vocational or technical training designed to prepare you for gainful employment.

Section 416.1861 provides that you are a student if you are regularly attending school or college, or training that is designed to prepare you for a paying job, if you are enrolled for one or more courses of study and attend class (1) in a college or university for at least 8 hours a week under a semester or quarter system, (2) in grades 7–12 for at least 12 hours a week, or (3) in a course of training to prepare for a paying job, and attending that training for at least 15 hours a week if the training involves shop practice or 12 hours a week if it does not involve shop practice. Prior to this final rulemaking, § 416.1861 did not specifically address home schooling as a form of regular school attendance. However, § 404.367 recognizes, as full-time school attendance students, those who are instructed at home in accordance with

a home school law of the State or other jurisdiction in which they reside.

### **How Do Section 432 and the Revision Regarding Home Schooling Change the Student Earned Income Exclusion?**

Section 432 of the SSPA eliminates the requirement that you must be a child to qualify for the student earned income exclusion. Specifically, it removes the requirement that you must be unmarried and not the head of your own household.

These final rules regarding home schooling allow you to be considered a student regularly attending school if you are instructed at home in grades 7–12 in accordance with a home school law of the State or other jurisdiction in which you live and for at least 12 hours a week. Allowing home schooling as a form of regular school attendance will make the title II and title XVI programs uniform with respect to home schooling. We hope that our rule change to consider home schooling, and the statute's removal of the child requirement, will increase the number of persons who can benefit from the student earned income exclusion.

### **Will the Student Earned Income Exclusion Apply to Deemors?**

Yes. Section 1614(f) of the Act requires that when we determine an individual's eligibility for SSI benefits, we must consider the income and resources of an ineligible spouse living in the same household, or, in the case of a child under the age of 18, the income and resources of an ineligible parent living in the same household. We use the term "deeming" to describe this process of considering part of an ineligible spouse's or parent's income and resources to be the individual's own income and resources. Deeming an ineligible parent's income and resources to a child eligible for SSI benefits is only done if the child is under age 18 and is subject to parental control. Section 1614(f) also grants the Commissioner the discretion to not deem the income and resources of an ineligible spouse or parent to an eligible individual when the Commissioner determines that deeming would be inequitable under the circumstances.

In addition to adding to our regulations the change in how we determine an eligible individual's income required by section 432 of the SSPA, we will apply this earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent who is a student, that is, someone who is under age 22 and who regularly attends school or college or training designed to

prepare them for a paying job. When more than one individual in a household qualifies for the student earned income exclusion—for example, in instances where a deemor and a deemor's disabled child are both eligible for the student earned income exclusion—our operating procedures contain instructions to apply the entire student earned income exclusion amount to the single household.

Extending this student earned income exclusion to the deeming process, as authorized by section 1614(f) of the Act, is consistent with the SSI program's longstanding treatment of income and resources of spouses and parents comparably to the way that income and resources of an eligible individual would be treated. It also provides incentives to encourage work and education to ineligible individuals living with beneficiaries.

### **What Is the Effective Date of Section 432 and the Revision Regarding Home Schooling?**

The statutory changes that allow those who are married and the head of a household to also qualify for the student earned income exclusion are effective with benefits payable April 1, 2005. The changes to allow home schooling as a form of regular school attendance and the extension of the student earned income exclusion to ineligible individuals will be effective 30 days after publication of these final rules.

### **Explanation of Changes**

We are revising several of our rules in subparts D, E, J, and P of part 404 and subparts G, K, N, and R of part 416 to:

- Reflect the statutory change that requires us to issue receipts to you or your representative when you or your representative report changes in your work activity or earnings or give us documentation of those changes until we establish a centralized computer file to record the information you report to us and the date you report it;
- Explain that disability benefits are not payable for trial work period service months if you are convicted by a Federal court of fraudulently concealing your work activity during that trial work period;
- Reflect the statutory change that expands the number of persons who can use the student earned income exclusion by removing the requirement that you must be a child, unmarried, and not the head of your own household;
- Expand the number of persons who can use the student earned income exclusion by allowing home schooling as a form of regular school attendance;

- Extend application of the student earned income exclusion to the income of an ineligible spouse and ineligible parent for deeming purposes; and
- Reflect the statutory change that eliminates the 7-year time limit on reentitlement to childhood disability benefits when the prior entitlement terminated due to the performance of substantial gainful activity.

The following is an explanation of the specific changes we are making and the reasons for these changes.

#### ***Section 404.351 Who May Be Reentitled to Child's Benefits***

We are adding a new paragraph (d) to explain that, effective with respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at any time if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity. The regulatory language in this final rule has been changed from the language that appeared in the notice of proposed rulemaking. This was done in response to a public comment that the regulatory language in the proposed rules was difficult to decipher and should be rewritten for clarity.

#### ***Section 404.401a When We Do Not Pay Benefits Because of a Disability Beneficiary's Work Activity***

We are revising the last sentence in § 404.401a to clarify that earnings from work activity during a trial work period will not stop benefits except as provided in § 404.471.

#### ***Section 404.471 Nonpayment of Disability Benefits for Trial Work Period Service Months Upon a Conviction of Fraudulently Concealing Work Activity***

We are adding a new § 404.471 to explain that disability benefits will not be payable for trial work period service months if you are convicted by a Federal court of fraudulently concealing your work activity during the trial work period. As explained in § 404.1592, the trial work period is a period during which you may test your ability to work and still continue to receive disability benefits if you still have a disabling impairment, no matter how much you are earning. Under this change, which reflects section 208 of the SSPA of 2004, if you are convicted in Federal court of fraudulently concealing your work activity during your trial work period, disability benefits are not payable for any trial work period service months beginning March 2004 that occur prior to that conviction. Benefits already received that are determined not

payable because of the Federal court decision are considered an overpayment on the record. Consistent with section 208, we explain in § 404.471(b) what is meant by fraudulently concealing work activity. You can be found to be fraudulently concealing work activity if you provide false information concerning the amount of your earnings, engage in work activity under another identity while receiving disability benefits, or take actions to conceal your work activity with the intent of obtaining benefits in excess of amounts due.

#### *Section 404.903 Administrative Actions That Are Not Initial Determinations*

We are adding a new paragraph (x) to § 404.903 to explain that the receipt we give you or your representative as a result of a report of a change in your work activity or earnings is not an initial determination. As explained in existing § 404.903, administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of part 404, and they are not subject to judicial review. The receipt will summarize the information that you give us, and we will ask you to review the information contained in the receipt for accuracy and to tell us if the information is wrong. If our information is wrong, we will correct our records based on the new information that you give us.

In addition, we will give you advance notice if we determine that you are not now disabled based on what you told us about your work activity, as explained in § 404.1595.

#### *Section 404.1588 Your Responsibility to Tell Us of Events That May Change Your Disability Status*

We are designating the undesignated current paragraph as paragraph (a) and adding a title: *Your responsibility to report changes to us*, and redesignating paragraphs (a), (b), (c), and (d) as (1), (2), (3), and (4). We are also adding a new paragraph (b), *Our responsibility when you report your work to us*, that clarifies how we will respond when you or your representative report a change in your work activity to us. Section 404.1588(a) explains that if you receive benefits based on disability, you must report to us when there is a change in your work activity; for example, you return to work, or there is an increase in your earnings or the amount of work you are doing. New paragraph (b) explains that we will issue a receipt to you or your representative when you or your

representative report a change in your work activity or earnings, at least until a centralized computer file that records the information that you give us and the date that you make your report is in place. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

#### *Section 404.1592 The Trial Work Period*

In § 404.1592 we are adding a new paragraph (f), *Nonpayment of benefits for trial work period service months*, to clarify that benefits will not be payable for trial work period service months if you have been convicted by a Federal court of fraudulently concealing your work activity. We are also adding a cross-reference to the new § 404.471.

#### *Section 416.708 What You Must Report*

We are amending the last paragraph of paragraph (c) by adding two new sentences to explain how we will respond when you report a change in your earned income. Section 416.708(c) explains that if you receive SSI benefits, you must report to us when there is a change in your income. The new sentences added to paragraph (c) explain that if you receive SSI benefits based on disability, we will issue a receipt to you or your representative when you or your representative report a change in your work activity or your earned income until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

#### *Section 416.1112 Earned Income We Do Not Count*

We are amending paragraph (c)(3) to reflect the statutory change eliminating the requirement that you must be a child to qualify for the student earned income exclusion.

#### *Section 416.1161 Income of an Ineligible Spouse, Ineligible Parent, and Essential Person for Deeming Purposes*

We are amending § 416.1161 by adding a new paragraph (a)(27) to exclude certain earned income of a student as provided by section 432 from the income of an ineligible spouse and ineligible parent for deeming purposes.

#### *Section 416.1403 Administrative Actions That Are Not Initial Determinations*

We are adding a new paragraph (a)(22) to § 416.1403 to explain that the receipt we give you or your representative as a result of your report of work activity or earnings is not an initial determination. As explained in § 416.1403(a), administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart N, and they are not subject to judicial review. The receipt will summarize the information that you or your representative give us and we will ask you to review the information contained in the receipt for accuracy and tell us if the information is wrong. If our information is wrong, we will correct our records based on the new information that you give us.

In addition, we will give you advance notice if we suspend or reduce your benefit amount based on what you told us about your earnings as explained in § 416.1336.

#### *Section 416.1861 Deciding Whether You Are a Child: Are You a Student?*

We are adding a new paragraph (b) to § 416.1861 to add home schooling conducted in accordance with a home school law of the State or other jurisdiction in which you live as a form of regular school attendance for purposes of title XVI. We are redesignating paragraphs (b), (c), (d), (e), and (f) as paragraphs (c), (d), (e), (f), and (g). We are also amending current paragraph (e) to remove references to earnings because we discuss student earnings in a new section.

We are adding a new undesignated centered heading after § 416.1866 to read, *Who is Considered a Student for Purposes of the Student Earned Income Exclusion*.

#### *Section 416.1870 Effect of Being Considered a Student*

We are adding a new § 416.1870 to explain that if we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount.

#### *Section 416.1872 Who Is Considered a Student*

We are adding a new § 416.1872 to explain that we consider you to be a student if you are under 22 years old and you are regularly attending school or college or training that is designed to prepare you for a paying job.

*Section 416.1874 When We Need Evidence That You Are a Student*

We are adding a new § 416.1874 to explain what evidence we need if you are a student and you expect to earn over \$65 in any month.

**Public Comments**

On October 18, 2005, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** at 70 FR 60463 and provided a 60-day comment period. We received comments from two organizations and one individual. We carefully considered the comments received on the proposed rules in publishing these final rules. The comments we received and our responses to the comments are set forth below. Although we condensed, summarized, or paraphrased the comments, we believe we have expressed the views accurately and have responded to all the relevant issues raised.

*Comment:* One commenter suggested that the requirement to issue receipts should stay intact even after the establishment of a centralized computer file which records the date of submission of the work information. The receipt provides proof to the beneficiary that he or she has met their reporting requirements.

*Response:* We considered this comment but decided not to include this requirement in the final rules. The regulatory language as written accurately reflects the requirements of the legislation. The statute provides that we must issue a receipt to you until we implement a centralized computer file which records the date you (or your representative) reported to us regarding a change in your work activity, and we are in the process of implementing such a centralized computer file. The final regulations provide that we will give you a paper receipt if you ask us to, but the statute does not require us to issue such receipts after the centralized computer file is in place.

*Comment:* One commenter suggested that the language in section 404.1588(b) is unclear about whether beneficiaries must request a receipt each time a report of a change in work activity is made, or if one blanket request will be logged into the centralized computer file to generate a receipt each time a report is made. The commenter recommends SSA should adopt the latter policy.

*Response:* We considered this comment but decided not to include language within the rules detailing how a request for a receipt is to be made after the centralized computer file is implemented. Instructions for how to

request receipts will be provided prior to the implementation of a centralized computer file and will be made readily available to those beneficiaries and their representatives who are interested in receiving receipts when they report work activity changes.

*Comment:* One commenter urged SSA to include language from the preamble in the text of the regulations regarding the content of the receipt. The preamble states that the receipt will include details about the work activity or earnings information reported by the beneficiary, that we will ask the beneficiary to review the information and tell us if we are wrong, and correct our records based on the new information. The commenter further recommended that we specifically state in the regulations that SSA will tell beneficiaries that they may request a receipt, as the inclusion of this information will help beneficiaries know exactly what to expect and what is expected of them.

*Response:* We considered this comment but decided not to include language within the rules which prescribes in detail what will be contained within the receipt. Such information will be available to beneficiaries and their representatives elsewhere. The receipts currently contain a summary of the work activity or earnings information reported as well as contact information for the local Social Security office. Also, we do not believe it is necessary to include language within the regulation requiring SSA to tell beneficiaries of the option to request a receipt. We are currently issuing a receipt each time work activity is reported whether or not one is requested. After the centralized computer file is in place, we will inform beneficiaries and their representatives through our disability publications that they may, upon request, receive a receipt whenever they report work activity to us.

*Comment:* One commenter stated that overpayments resulting from SSA's failure to take timely action on work reports remain a major barrier to beneficiaries' ability to utilize work incentive programs. The commenter urged SSA to establish a reliable, efficient method of collecting and recording, in a timely manner, information about earnings, and take timely action to adjust benefits when necessary. The commenter also recommended that Congress require SSA to forgive overpayments if the beneficiary is not notified of the overpayment within a reasonable period of time.

*Response:* We completed the implementation of an electronic system which issues receipts in response to work reports if you receive benefits based on disability under title II or title XVI. In addition, this system records work report information and automates the control of title II work issue continuing disability reviews. A similar system for automation of title XVI earned income inputs is currently in development. We expect that these systems will help us to better control work reports and help us to ensure that we take timely action on those work reports. The recommendation that SSA forgive overpayments is beyond the scope of these rules.

*Comment:* One commenter suggested that the provisions of section 208 of the SSPA are flawed because beneficiaries do not know they are in a trial work period. Reporting requirements are not clear and more needs to be done to train SSA personnel on ensuring beneficiaries know about their responsibility to report work activity.

*Response:* We considered this comment but decided that changes to the language of section 404.471 are not necessary or appropriate. The nonpayment for trial work period service months is applicable only if a beneficiary is convicted by a Federal court of fraudulently concealing work activity. Section 404.471 further specifies that a beneficiary may be found to be fraudulently concealing work activity if he or she provides false information to SSA, works under another identity, or takes action to conceal work activity with the intent of fraudulently receiving benefits. The provisions for nonpayment of trial work period service months do not apply simply because a beneficiary fails to understand his or her reporting responsibilities. The language in section 404.471 makes that sufficiently clear without further addition.

*Comment:* One commenter suggested that the language of section 404.351(d) is unclear and should be rewritten for clarity to include the explanatory language of the preamble. The commenter further suggested that it would be helpful if all of section 404.351 was rewritten in clear language, as section 404.351(c) is also difficult to decipher. Such a rewrite would give beneficiaries concrete information as to what will happen to their childhood disability benefits under different circumstances.

*Response:* We agree that the language of Section 404.351(d) is unclear and we have rewritten the paragraph to include the explanatory language contained in the preamble. However, we have not

rewritten the entire section. We believe that the new paragraph (d) provides a clear explanation of the effect of the Social Security Protection Act legislation.

### Regulatory Procedures

#### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB.

#### Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals.

Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### Paperwork Reduction Act

This final rule contains information collection requirements that require Office of Management and Budget clearance under the Paperwork Reduction Act of 1995 (PRA). As required by the PRA, SSA has submitted a clearance request to OMB for approval. SSA will publish the OMB number and expiration date upon approval.

SSA published a notice of proposed rulemaking on October 18 at 70 FR 60463 and solicited comments under the PRA 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. We did not receive comments on the issues described above.

**Note:** Please note that a new section containing public reporting requirements, § 416.1874, has been added since the publication of the Notice of Proposed Rulemaking (burden information for this section follows). Therefore, we are soliciting public comments about this section only on 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.

Burden information for section 1874:

Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
15,000 .....	1	10	2,500

*Comments:* on this section should be submitted/and or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20530, Fax Number: 202-395-6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex building, 6401 Security Blvd., Baltimore, MD 21235-6401, Fax Number: 410-965-6400.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410-965-0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

### List of Subjects

#### 20 CFR Part 404

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

#### 20 CFR Part 416

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

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

■ For the reasons set out in the preamble, we are amending subparts D, E, J, and P of part 404 and subparts G, K, N, and R of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

#### Subpart D—[Amended]

■ 1. The authority citation for subpart D continues to read as follows:

**Authority:** Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

■ 2. Section 404.351 is amended by removing “; or” at the end of paragraph (b) and replacing it with a period; removing the period at the end of paragraph (c) and replacing it with “; or”, and adding a new paragraph (d) to read as follows:

#### § 404.351 Who may be reentitled to child's benefits.

\* \* \* \* \*

(d) With respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at anytime if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity and you meet the other requirements for reentitlement. The 84-month time limit in paragraph (c) in this section continues to apply if your previous entitlement to childhood disability benefits terminated because of medical improvement.

#### Subpart E—[Amended]

■ 3. The authority citation for subpart E is revised to read as follows:

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

■ 4. Section 404.401a is amended by revising the last sentence to read as follows:

#### § 404.401a When we do not pay benefits because of a disability beneficiary's work activity.

\* \* \* \* \* Except as provided in § 404.471, earnings from work activity during a trial work period will not stop your benefits.

■ 5. Add a new § 404.471 to read as follows:

**§ 404.471 Nonpayment of disability benefits for trial work period service months upon a conviction of fraudulently concealing work activity.**

(a) *Nonpayment of benefits during the trial work period.* Beginning with work activity performed in March 2004 and thereafter, if you are convicted by a Federal court of fraudulently concealing your work activity and the concealment of the work activity occurred while you were in a trial work period, monthly disability benefits under title II of the Social Security Act are not payable for months in which you performed services during that trial work period prior to the conviction (see § 404.1592 for a definition of a trial work period and services). Benefits already received for months of work activity in the trial work period prior to the conviction and in the same period of disability during which the fraudulently concealed work activity occurred, will be considered an overpayment on the record.

(b) *Concealment of work activity.* You can be found to be fraudulently concealing work activity if—

(1) You provide false information to us concerning the amount of earnings you received or are receiving for a particular period;

(2) You received or are receiving disability benefits while engaging in work activity under another identity (this would include working under another social security number or a forged social security number); or

(3) You take other actions to conceal work activity with the intent of fraudulently obtaining benefits in excess of amounts that are due.

**Subpart J—[Amended]**

■ 6. The authority citation for subpart J is revised to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 7. Section 404.903 is amended by adding a new paragraph (aa) to read as follows:

**§ 404.903 Administrative actions that are not initial determinations.**

\* \* \* \* \*

(aa) Issuing a receipt in response to your report of a change in your work activity.

**Subpart P—[Amended]**

■ 8. The authority citation for subpart P is revised to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 9. Section 404.1588 is revised to read as follows:

**§ 404.1588 Your responsibility to tell us of events that may change your disability status.**

(a) *Your responsibility to report changes to us.* If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if—

(1) Your condition improves;

(2) You return to work;

(3) You increase the amount of your work; or

(4) Your earnings increase.

(b) *Our responsibility when you report your work to us.* When you or your representative report changes in your work activity to us under paragraphs (a)(2), (a)(3), and (a)(4) of this section, we will issue a receipt to you or your representative at least until a centralized computer file that records the information that you give us and the date that you make your report is in place. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

■ 10. Section 404.1592 is amended by adding a new paragraph (f) to read as follows:

**§ 404.1592 The trial work period.**

\* \* \* \* \*

(f) *Nonpayment of benefits for trial work period service months.* See § 404.471 for an explanation of when benefits for trial work period service months are not payable if you are convicted by a Federal court of fraudulently concealing your work activity.

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

**Subpart G—[Amended]**

■ 11. The authority citation for subpart G is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note); sec. 202, Pub.

L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 12. Section 416.708 is amended by revising the undesignated paragraph following paragraph (c)(4) to read as follows:

**§ 416.708 What you must report.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

However, you need not report an increase in your Social Security benefits if the increase is only a cost-of-living adjustment. (For a complete discussion of what we consider income, see subpart K. See subpart M, § 416.1323 regarding suspension because of excess income.) If you receive benefits based on disability, when you or your representative report changes in your earned income, we will issue a receipt to you or your representative until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

\* \* \* \* \*

**Subpart K—[Amended]**

■ 13. The authority citation for subpart K continues to read as follows:

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

■ 14. Section 416.1112 is amended by revising paragraph (c)(3) introductory text to read as follows:

**§ 416.1112 Earned income we do not count.**

\* \* \* \* \*

(c) \* \* \*

(3) If you are under age 22 and a student who is regularly attending school as described in § 416.1861:

\* \* \* \* \*

■ 15. Section 416.1161 is amended by adding a new paragraph (a)(27) to read as follows:

**§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.**

\* \* \* \* \*

(a) \* \* \*

(27) Earned income of a student as described in § 416.1112(c)(3).

\* \* \* \* \*



**Subpart N—[Amended]**

- 16. The authority citation for subpart N is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

- 17. Section 416.1403 is amended by adding new paragraph (a)(25) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) \* \* \*

(25) Issuing a receipt in response to your report of a change in your earned income.

**Subpart R—[Amended]**

- 18. The authority citation for subpart R is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d) and 1383(d)(1) and (e)).

- 19. Section 416.1861 is amended by redesignating paragraphs (b), (c), (d), (e) and (f) as (c), (d), (e), (f) and (g), adding new paragraph (b), and revising newly redesignated paragraph (f) to read as follows:

**§ 416.1861 Deciding whether you are a child: Are you a student?**

\* \* \* \* \*

(b) *If you are instructed at home.* You may be a student regularly attending school if you are instructed at home in grades 7–12 in accordance with a home school law of the State or other jurisdiction in which you reside and for at least 12 hours a week.

\* \* \* \* \*

(f) *When we need evidence that you are a student.* We need evidence that you are a student if you are 18 years old or older but under age 22, because we will not consider you to be a child unless we consider you to be a student.

\* \* \* \* \*

- 20–21. Add a new § 416.1870 and undesignated center heading to read as follows:

**Who Is Considered a Student for Purposes of the Student Earned Income Exclusion**

**§ 416.1870 Effect of being considered a student.**

If we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount. If you are an ineligible spouse or ineligible parent for deeming purposes and we consider you

to be a student, we will not count all of your income when we determine how much of your income to deem. Section 416.1110 explains what we mean by earned income. Section 416.1112(c)(3) explains how much of your earned income we will not count. Section 416.1161(a)(27) explains how the student earned income exclusion applies to deemors.

- 22. Add a new § 416.1872 to read as follows:

**§ 416.1872 Who is considered a student.**

We consider you to be a student if you are under 22 years old and you regularly attend school or college or training that is designed to prepare you for a paying job as described in § 416.1861(a) through (e).

- 23. Add a new § 416.1874 to read as follows:

**§ 416.1874 When we need evidence that you are a student.**

We need evidence that you are a student if you are under age 22 and you expect to earn over \$65 in any month. Section 416.1861(g) explains what evidence we need.

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**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 4007**

**RIN 1212–AA95**

**Payment of Premiums; Assessment of and Relief From Penalties**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts policy guidance on premium penalty waivers, including guidance on the meaning of “reasonable cause” for premium penalty waivers. For the convenience of the public, this guidance is being codified as an appendix to PBGC’s premium payment regulation.

**DATES:** *Effective date:* December 18, 2006. The amendments made by this rule apply to PBGC actions taken on or after December 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** John H. Hanley, Director, Legislative & Regulatory Department, or Deborah C. Murphy, Attorney, Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–

877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:**

**Background**

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). When a single-employer plan terminates without sufficient assets to provide all benefits, PBGC steps in to ensure that participants and beneficiaries receive their plan benefits, subject to certain legal limits. PBGC also provides financial assistance to multiemployer plans that become unable to pay benefits.

ERISA and PBGC’s regulations require that premiums be paid to PBGC. To promote the effective operation of the insurance program under Title IV, ERISA section 4007 authorizes PBGC to assess penalties for not paying premiums in full and on time (“premium penalties”). See PBGC’s regulation on Payment of Premiums (29 CFR Part 4007).

A premium penalty is owed by any person that was liable for the premium—generally the plan administrator and, in the case of a single-employer plan, the contributing sponsor(s) and any controlled group members. (Under ERISA section 4006(a)(7)(D)(i)(II), as added by section 8101 of the Deficit Reduction Act of 2005, Pub. L. 109–171, February 8, 2006, the plan administrator is not liable for the \$1,250 per-participant premium that applies to certain distress and involuntary plan terminations under that section.) Thus, a premium penalty (other than a penalty for failure to timely pay the \$1,250 per-participant premium under ERISA section 4006(a)(7)), may generally be paid out of plan assets; see PBGC Opinion Letter 94–6 and the legislative history cited in that letter.

PBGC’s premium payment regulation includes provisions for determining the amount of premium penalties and provides for the waiver of those penalties upon demonstration of reasonable cause and in other specified circumstances. Reconsideration of premium penalty assessments is covered by PBGC’s regulation on Rules for Administrative Review of Agency Decisions (29 CFR Part 4003). However, neither the premium payment regulation nor the administrative review regulation currently provides a thorough and detailed treatment of reasonable cause and other bases for premium penalty waivers.