

SOCIAL SECURITY ADMINISTRATION**20 CFR Part 416**

RIN 0960-AD82

Supplemental Security Income for the Aged, Blind, and Disabled; Valuation of In-Kind Support and Maintenance With Cost-of-Living Adjustment

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These regulations implement section 13735 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). This statutory provision amends the Social Security Act (the Act) and requires that the new supplemental security income (SSI) benefit rate, as increased by a cost-of-living adjustment (COLA), be used in determining the value of the statutory one-third reduction and the regulatory presumed maximum value for the computation of Federal SSI benefit payments for the first 2 months for which the COLA is in effect. These rules provide that we value the statutory one-third reduction and the regulatory presumed maximum value using the benefit rate as increased by a COLA to determine the amount of in-kind support and maintenance received by an individual which is to be counted for those months. This precludes a decrease in the benefit amount the third month after a COLA, a situation which occurred under the prior law. The legislation is effective for benefits paid for months after calendar year 1994.

EFFECTIVE DATE: These final rules are effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Office of Process and Innovation Management, L2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-0001, (410) 965-3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: Under retrospective monthly accounting (RMA), an individual's current SSI benefit amount is usually determined based upon the individual's income in the second preceding month ("budget month") before the current month. For example, January's SSI benefit amount is based on the individual's November income. In some instances, an individual receives income in the form of in-kind support and maintenance and it is counted using the value of the one-

third reduction (VTR) or the presumed maximum value (PMV) rule. Under the law prior to the effective date of section 13735 of Public Law 103-66, the VTR and the PMV were based on the applicable benefit rates in effect in the "budget month." Because of RMA principles, when an annual COLA to the SSI benefit rate became effective in January, we used the VTR/PMV amount from November of the previous year to determine the individual's benefit for January if an individual had in-kind support and maintenance in the "budget month." For example, in figuring an individual's January 1994 benefit, we used November 1993 as the "budget month." Thus, in a computation using the VTR, we would subtract the 1993 VTR amount of \$144.66 from the 1994 benefit rate of \$446.00, giving the individual an SSI benefit of \$301.34. February's benefit amount would also be computed using the new benefit rate and the 1993 VTR amount. However, in computing March's benefit amount, we used the benefit rate of \$446.00 less the January 1994 VTR amount of \$148.66, resulting in an SSI benefit amount of \$297.34. Thus, the individual's January and February payments exceeded the March payment because of the increased amount of the new VTR used when January was the "budget month." Notices were then released to these individuals notifying them of the decrease in their March payment. This was confusing to SSI recipients because their payment amounts increased and then decreased even if there was no change in their living arrangements.

We are changing the method of valuation of the VTR/PMV to reflect section 13735 of Public Law 103-66 for benefits paid after calendar year 1994, by using the new benefit rate as increased by a COLA in determining the VTR or PMV for the computation of SSI benefits for the first 2 months for which the COLA is in effect. Thus, beginning with the COLA effective January 1, 1995, both the new increased benefit rate and new increased VTR or PMV amounts are being used in computing a January and February benefit amount. Unlike the example used previously, the individual's January, February, and March payments calculated by using the VTR amount will be the same assuming all other income remains constant—i.e., there will be no decrease in the SSI benefit amount the third month after a COLA. This eliminates confusion for recipients and also eliminates the need for issuance of notices informing affected recipients of the decrease in their March payment.

We state in the final regulations at § 416.420(a) that we will use the benefit

rate, as increased by a COLA, in determining the value of certain in-kind support and maintenance used to compute an individual's SSI benefit amount for the first 2 months in which the COLA is in effect. We have added a third example to § 416.420(a) to further clarify the regulatory intent.

We state in the final regulations at § 416.1130 how we value in-kind support and maintenance when a COLA applies, and we have altered the example to reflect the situation when a COLA becomes effective.

On August 9, 1995, we published these rules as a notice of proposed rulemaking in the **Federal Register** at 60 FR 40542 with a 60-day comment period. We received comments from only one source, and the commenter fully supported the proposed rule because it eliminates a significant anomaly in the SSI program. Therefore, we are publishing the final rules essentially unchanged from the proposed rules.

Regulatory Procedures*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act of 1980

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

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

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

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

Dated: June 9, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts D and K of part 416 of chapter III of title 20 of the Code of

Federal Regulations are amended as follows:

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

Subpart D—[Amended]

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

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

2. Section 416.420 is amended by revising paragraph (a) to read as follows:

§ 416.420 Determination of benefits; general.

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(a) *General rule.* We generally use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. We will use the benefit rate (see §§ 416.410 through 416.414), as increased by a cost-of-living adjustment, in determining the value of the one-third reduction or the presumed maximum value, to compute your SSI benefit amount for the first 2 months in which the cost-of-living adjustment is in effect. If you have been receiving an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your Social Security benefit in January exceeds the amount of your Social Security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your Social Security benefit in February exceeds the amount of your Social Security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Z's SSI benefit amount is being determined for January (the current month). There has been a cost-of-living increase in SSI benefits effective January. Mr. Z's countable income in November is used to determine the benefit amount for January. In November, Mr. Z had in-kind support and maintenance valued at the presumed maximum value as described in § 416.1140(a). We will use the January benefit rate, as increased by the COLA, to determine the value of the in-kind support and maintenance Mr. Z received in November

when we determine Mr. Z's SSI benefit amount for January.

Example 3. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of \$100 in November, \$100 in December, and \$105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November (\$5) and add that to his income in November to determine the SSI benefit amount for January.

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Subpart K—[Amended]

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

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

4. Section 416.1130 is amended by revising paragraph (a) to read as follows:

§ 416.1130 Introduction

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally, we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives because he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We base his SSI payment for that month on the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in

November, we use the Federal benefit rate for January.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket 96-9; FHWA-97-2281]

RIN 2125-AD89

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Pedestrian, Bicycle, and School Warning Signs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendment to the Manual on Uniform Traffic Control Devices (MUTCD).

SUMMARY: This document contains an amendment to the MUTCD which has been adopted by the FHWA for inclusion therein. The amendment revises sections of the MUTCD to permit the optional use of fluorescent yellow green (FYG) warning signs related to pedestrian, bicycle, and school applications. The MUTCD is incorporated by reference in FHWA's regulations on traffic control devices on Federal-aid and other streets and highways, and recognized as the national standard for traffic control devices on all public roads. This amendment is intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

DATES: The final rule is effective on June 19, 1998. Incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Highway Safety (202) 366-9064; or Mr. Ray Cuprill, Office of Chief Counsel, (202) 366-1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://>