

**§ 404.460**

**20 CFR Ch. III (4-1-10 Edition)**

are intermittent. If more than one penalty has been imposed, but they have not yet run, the penalties will not run concurrently.

(1) If you do not request reconsideration of our initial determination to penalize you, the penalty period will begin no earlier than the first day of the second month following the month in which the time limit for requesting reconsideration ends. The penalty period will end on the last day of the final month of the penalty period. For example, if the time period for requesting reconsideration ends on January 10, a 6-month period of nonpayment begins on March 1 if you would otherwise be eligible to receive benefits for that month, and ends on August 31.

(2) If you request reconsideration of our initial determination to penalize you and the reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period will end on the last day of the final month of the penalty period. For example, if we notify you of our reconsidered determination on August 31, 2001, and you are not otherwise eligible for payment of benefits at that time, but would again be eligible to receive payment of benefits on October 1, 2003, a 6-month period of nonpayment would begin on October 1, 2003 and end on March 31, 2004.

[65 FR 42285, July 10, 2000, as amended at 71 FR 61407, Oct. 18, 2006]

**§ 404.460 Nonpayment of monthly benefits to aliens outside the United States.**

(a) *Nonpayment of monthly benefits to aliens outside the United States more than 6 months.* Except as described in paragraph (b) and subject to the limitations in paragraph (c) of this section after December 1956 no monthly benefit may be paid to any individual who is not a citizen or national of the United States, for any month after the sixth consecutive calendar month during all of which he is outside the United States, and before the first calendar month for all of which he is in the United States after such absence. (See

§ 404.380 regarding special payments at age 72.)

(1) For nonpayment of benefits under this section, it is necessary that the beneficiary be an alien, and while an alien, be outside the United States for more than six full consecutive calendar months. In determining whether, at the time of a beneficiary's initial entitlement to benefits, he or she has been outside the United States for a period exceeding six full consecutive calendar months, not more than the six calendar months immediately preceding the month of initial entitlement may be considered. For the purposes of this section, *outside the United States* means outside the territorial boundaries of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) Effective with 6-month periods beginning after January 2, 1968, after an alien has been outside the United States for any period of 30 consecutive days, he is deemed to be outside the United States continuously until he has returned to the United States and remained in the United States for a period of 30 consecutive days.

(3) Payments which have been discontinued pursuant to the provisions of this section will not be resumed until the alien beneficiary has been in the United States for a full calendar month. A full calendar month includes 24 hours of each day of the calendar month.

(4) Nonpayment of benefits to an individual under this section does not cause nonpayment of benefits to other persons receiving benefits based on the individual's earnings record.

*Example:* R, an alien, leaves the United States on August 15, 1967, and returns on February 1, 1968. He leaves again on February 15, 1968, and does not return until May 15, 1968, when he spends 1 day in the United States. He has been receiving monthly benefits since July 1967.

R's first 6-month period of absence begins September 1, 1967. Since this period begins before January 2, 1968, his visit (Feb. 1, 1968, to Feb. 15, 1968) to the United States for less than 30 consecutive days is sufficient to break this 6-month period.

R's second 6-month period of absence begins March 1, 1968. Since this period begins

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after January 2, 1968, and he was outside the United States for 30 consecutive days, he must return and spend 30 consecutive days in the United States prior to September 1, 1968, to prevent nonpayment of benefits beginning September 1968. If R fails to return to the United States for 30 consecutive days prior to September 1, 1968, payments will be discontinued and will not be resumed until R spends at least 1 full calendar month in the United States.

(b) *When nonpayment provisions do not apply.* The provisions described in paragraph (a) of this section do not apply, subject to the limitations in paragraph (c) of this section, to a benefit for any month if:

(1) The individual was, or upon application would have been, entitled to a monthly benefit for December 1956, based upon the same earnings record; or

(2)(i) The individual upon whose earnings the benefit is based, before that month, has resided in the United States for a period or periods aggregating 10 years or more or has earned not less than 40 quarters of coverage;

(ii) Except that, effective with July 1968, § 404.460(b)(2)(i) does not apply if:

(A) The beneficiary is a citizen of a country with a social insurance or pension system meeting the conditions described in paragraphs (b)(7)(i), (ii), and (iii) of this section but does not meet the condition described in paragraph (b)(7)(iv) of this section; or

(B) The beneficiary is a citizen of a country with no social insurance or pension system of general application and at any time within 5 years before January 1968 (or the first month after December 1967 in which benefits are subject to suspension pursuant to paragraph (a) of this section) such beneficiary was residing in a country to which payments were withheld by the Treasury Department pursuant to Vol. II, 31 U.S.C. 3329. *See* § 404.460(c).

(iii) For purposes of this subparagraph a period of residence begins with the day the insured individual arrives in the United States with the intention of establishing at least a temporary home here; it continues so long as he maintains an attachment to an abode in the United States, accompanied by actual physical presence in the United States for a significant part of the period; and ends with the day of depart-

ture from the United States with the intention to reside elsewhere; or

(3) The individual is outside the United States while in the active military or naval service of the United States; or

(4) The individual on whose earnings the benefit is based died before that month and:

(i) Death occurred while the individual was on active duty or inactive duty training as a member of a uniformed service, or

(ii) Death occurred after the individual was discharged or released from a period of active duty or inactive duty training as a member of a uniformed service, and the Administrator of Veterans' Affairs determines, and certifies to the Commissioner, that the discharge or release was under conditions other than dishonorable and that death was as a result of a disease or injury incurred or aggravated in line of duty while on active duty or inactive duty training; or

(5) The individual on whose earnings record the benefit is based worked in service covered by the Railroad Retirement Act, and such work is treated as employment covered by the Social Security Act under the provisions described in subpart O of this part; or

(6) The nonpayment of monthly benefits under the provisions described in paragraph (a) of this section would be contrary to a treaty obligation of the United States in effect on August 1, 1956 (see § 404.463(b)); or

(7) The individual is a citizen of a foreign country that the Commissioner determines has in effect a social insurance or pension system (see § 404.463) which meets all of the following conditions:

(i) Such system pays periodic benefits or the actuarial equivalent thereof; and

(ii) The system is of general application; and

(iii) Benefits are paid in this system on account of old age, retirement, or death; and

(iv) Individuals who are citizens of the United States but not citizens of the foreign country and who qualify for such benefits are permitted to receive

benefits without restriction or qualification, at their full rate, or the actuarial equivalent thereof, while outside of the foreign country and without regard to the duration of their absence therefrom.

(c) *Nonpayment of monthly benefits to aliens residing in certain countries*—(1) *Benefits for months after June 1968.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, we cannot pay monthly benefits for any month after June 1968 to anyone not a citizen or national of the United States for any month while residing in a country to which payments are being withheld by the Treasury Department pursuant to Vol. II, 31 U.S.C. 3329.

(2) *Benefits for months before July 1968.* If a person who is not a United States citizen or national is entitled to receive benefits under title II of the Social Security Act, and was residing in a country where the Treasury Department withheld benefits on June 30, 1968 pursuant to Vol. II, 31 U.S.C. 3329, benefits cannot be paid. However, if the Treasury Department subsequently removes that restriction, a person who is not a United States citizen or national may be able to be paid benefits to which they were entitled for months prior to July 1968. Benefits cannot be paid,—

(i) To any person other than such individual, or, if such individual dies before such benefits can be paid, to any person other than an individual who was entitled for the month in which the deceased individual died (with the application of section 202(j)(1) of the Social Security Act) to a monthly benefit under title II of such Act on the basis of the same wages and self-employment income as such deceased individual; or

(ii) In excess of an amount equal to the amount of the last 12 months' benefits that would have been payable to such individual.

(3) *List of countries under Treasury Department alien payment restriction.* The Treasury Department is currently withholding payments to persons residing in the following countries pursuant to Vol. II, 31 U.S.C. 3329. We will publish future additions to or deletions from the list of countries in the FEDERAL REGISTER: Cuba, North Korea.

(d) *Nonpayment of monthly benefits to certain aliens entitled to benefits on a worker's earnings record.* An individual who after December 31, 1984 becomes eligible for benefits on the earnings record of a worker for the first time, is an alien, has been outside the United States for more than 6 consecutive months, and is qualified to receive a monthly benefit by reason of the provisions of paragraphs (b)(2), (b)(3), (b)(5), or (b)(7) of this section, must also meet a U.S. residence requirement described in this section to receive benefits:

(1) An alien entitled to benefits as a child of a living or deceased worker—

(i) Must have resided in the U.S. for 5 or more years as the child of the parent on whose earnings record entitlement is based; or

(ii) The parent on whose earnings record the child is entitled and the other parent, if any, must each have either resided in the United States for 5 or more years or died while residing in the U.S.

(2) An alien who meets the requirements for child's benefits based on paragraph (d)(1) of this section above, whose status as a child is based on an adoptive relationship with the living or deceased worker, must also—

(i) Have been adopted within the United States by the worker on whose earnings record the child's entitlement is based; and

(ii) Have lived in the United States with, and received one-half support from, the worker for a period, beginning prior to the child's attainment of age 18, of

(A) At least one year immediately before the month in which the worker became eligible for old-age benefits or disability benefits or died (whichever occurred first), or

(B) If the worker had a period of disability which continued until the worker's entitlement to old-age or disability benefits or death, at least one year immediately before the month in which that period of disability began.

(3) An alien entitled to benefits as a spouse, surviving spouse, divorced spouse, surviving divorced spouse, or surviving divorced mother or father must have resided in the United States for 5 or more years while in a spousal relationship with the person on whose

earnings record the entitlement is based. The spousal relationship over the required period can be that of wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, or a combination of two or more of these categories.

(4) An alien who is entitled to parent's benefits must have resided in the United States for 5 or more years as a parent of the person on whose earnings record the entitlement is based.

(5) Individuals eligible for benefits before January 1, 1985 (including those eligible for one category of benefits on a particular worker's earnings record after December 31, 1984, but also eligible for a different category of benefits on the same worker's earnings record before January 1, 1985), will not have to meet the residency requirement.

(6) Definitions applicable to paragraph (d) of this section are as follows:

*Eligible for benefits* means that an individual satisfies the criteria described in subpart D of this part for benefits at a particular time except that the person need not have applied for those benefits at that time.

*Other parent* for purposes of paragraph (d)(1)(ii) of this section means any other living parent who is of the opposite sex of the worker and who is the adoptive parent by whom the child was adopted before the child attained age 16 and who is or was the spouse of the person on whose earnings record the child is entitled; or the natural mother or natural father of the child; or the step-parent of the child by a marriage, contracted before the child attained age 16, to the natural or adopting parent on whose earnings record the child is entitled. (Note: Based on this definition, a child may have more than one living *other parent*. However, the child's benefit will be payable for a month if in that month he or she has one *other parent* who had resided in the U.S. for at least 5 years.)

*Resided in the United States* for satisfying the residency requirement means presence in the United States with the intention of establishing at least a temporary home. A period of residence begins upon arrival in the United States with that intention and con-

tinues so long as an attachment to an abode in the United States is maintained, accompanied by actual physical presence in the United States for a significant part of the period, and ending the day of departure from the United States with the intention to reside elsewhere. The period need not have been continuous and the requirement is satisfied if the periods of U.S. residence added together give a total of 5 full years.

(7) The provisions described in paragraph (d) of this section shall not apply if the beneficiary is a citizen or resident of a country with which the United States has a totalization agreement in force, except to the extent provided by that agreement.

[32 FR 19159, Dec. 20, 1967, as amended at 34 FR 13366, Aug. 19, 1969; 52 FR 8249, Mar. 17, 1987; 52 FR 26145, July 13, 1987; 60 FR 17445, Apr. 6, 1995; 62 FR 38450, July 18, 1997; 69 FR 51555, Aug. 20, 2004; 74 FR 48856, Sept. 25, 2009]

**§ 404.461 Nonpayment of lump sum after death of alien outside United States for more than 6 months.**

Where an individual dies outside the United States after January 1957 and no monthly benefit was or could have been paid to him for the month preceding the month in which he died because of the provisions described in § 404.460, no lump-sum death payment may be made upon the basis of the individual's earnings record.

**§ 404.462 Nonpayment of hospital and medical insurance benefits of alien outside United States for more than 6 months.**

No payments may be made under part A (hospital insurance benefits) of title XVIII for items or services furnished to an individual in any month for which the prohibition described in § 404.460 against payment of benefits to an individual outside the United States for more than six full consecutive calendar months is applicable (or would be if he were entitled to any such benefits). Also, no payments may be made under part B (supplementary medical insurance benefits) of title XVIII for expenses incurred by an individual during any month the individual is not paid a monthly benefit by reason of the provisions described in § 404.460 or for which no monthly benefit would be