

expected to live together in the near future.

6. Section 404.390 is amended by revising the second sentence to read as follows:

§ 404.390 General.

* * * If the insured is not survived by a widow(er) who meets this requirement, all or part of the \$255 payment may be made to someone else as described in § 404.392.

7. Section 404.392 is amended by revising the section heading and the introductory text of paragraph (a) to read as follows:

§ 404.392 Who is entitled to the lump-sum death payment when there is no widow(er) who was living in the same household.

(a) *General.* If the insured individual is not survived by a widow(er) who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

* * * * *

§ 404.393 [Removed]

8. Section 404.393 is removed.

§ 404.394 [Removed]

9. Section 404.394 is removed.

§ 404.395 [Removed]

10. Section 404.395 is removed.

Subpart G—[Amended]

11. The authority citation for subpart G of part 404 is revised to read as follows:

Authority: Secs. 202 (i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402 (i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

§ 404.612 [Amended]

12. Section 404.612 is amended by removing paragraph (e) and redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g), respectively.

§ 404.615 [Amended]

13. Section 404.615 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Subpart H—[Amended]

14. The authority citation for subpart H of part 404 is revised to read as follows:

Authority: Secs. 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and 902(a)(5)).

§ 404.765 [Removed]

15. Section 404.765 is removed.

[FR Doc. 95-29533 Filed 12-5-95; 8:45 am]
BILLING CODE 4190-29-P

20 CFR Part 416

[Regulation No. 16]

RIN 0960-AE22

Income Exclusions in the Supplemental Security Income Program

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: These proposed supplemental security income (SSI) regulations update existing regulations to reflect the statutory amendment of the exclusion from income of Alaska Longevity Bonus (ALB) payments. They also update existing regulations to reflect the statutory exclusion from income of hostile fire pay received by an SSI claimant or recipient and reflect the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. In addition, they update existing regulations to reflect the current operating procedure of excluding impairment-related work expenses, interest on excluded burial funds, appreciation in the value of excluded burial arrangements, and interest on the value of excluded burial space purchase agreements, when determining the countable income of an ineligible spouse or ineligible parent.

DATES: To be sure that your comments are considered, we must receive them no later than February 5, 1996.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by E-mail to "regulations@ssa.gov" or delivered to 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION: For purposes of the SSI program, income is defined in our regulations to mean anything that is received in cash or in kind which can be used to meet an individual's needs for food, clothing, or shelter. These proposed regulations

include certain provisions which address items that are excluded from income.

Alaska Longevity Bonus Payments

Under section 1612(b)(2)(B) of the Social Security Act (the Act), Alaska Longevity Bonus (ALB) payments are excluded from income under certain circumstances.

Originally, the ALB program made monthly payments to residents of Alaska who had attained age 65 and had lived in the State continuously for at least 25 years. The SSI income exclusion applied to such payments if made under a program established before July 1, 1973. However, following a decision by the Alaska State Supreme Court that the 25-year residency requirement was unconstitutional, in 1984 the State legislature changed the residency requirement to 1 year.

Concerns were raised that since the revised (1984) ALB program was established after July 1, 1973, the controlling date of the original section 1612(b)(2)(B) provision, payments made under the revised ALB program could no longer be excluded for SSI purposes. Section 2616 of Public Law 98-369 was enacted on July 18, 1984 to address those concerns. Section 2616 amended section 1612(b)(2)(B) of the Act in such a way as to:

- Continue the ALB exclusion for persons who, prior to October 1985, became eligible for SSI and satisfied the 25-year residence requirement of the program as in effect prior to January 1, 1983; and
- Preclude extending the ALB exclusion to ALB payments based on the 1-year residency requirement.

Current regulations at §§ 416.1124(c)(7) and 416.1161(a)(12) follow the wording of the original statutory exclusion in section 1612(b)(2)(B) of the Act. Regulations at § 416.1124(c)(7) presently provide for excluding from the income of a claimant or recipient "[p]eriodic payments made by a State under a program established before July 1, 1973, and based solely on your length of residence and attainment of age 65 * * *." Regulations at § 416.1161(a)(12) presently provide for excluding from the income of an ineligible spouse or ineligible parent "[p]eriodic payments made by a State under a program established before July 1, 1973, and based solely on duration of residence and attainment of age 65 * * *."

The proposed regulations will change the wording of the above referenced regulations so that they conform to the 1984 legislation. The proposed regulatory language will not change

current operating procedures since those procedures already conform to the 1984 legislation.

Hostile Fire Pay

Although it is unlikely that an active member of the uniformed services would apply or be eligible for SSI benefits, some military service members have spouses and children who apply for and receive SSI benefits.

Under section 209(d) of the Act, basic pay is the only form of compensation to members of the uniformed services that is treated as wages for title II purposes. Under section 1612(a)(1) of the Act, earned income in the form of wages for SSI purposes is the same as wages for the title II annual earnings test. Therefore, basic pay is the only form of military compensation that is treated as wages, and hence, as earned income, for SSI purposes.

All other forms of compensation to members of the uniformed services are considered unearned income. These other forms of compensation include allowances paid in cash for food, clothing, and shelter; free food, clothing, and shelter; and special and incentive pay.

One form of special pay is hostile fire pay, which is authorized under 37 U.S.C. 310. Hostile fire pay is a type of special pay to a service member who, for any month he/she is entitled to basic pay, is:

- Subject to hostile fire or explosion of hostile mines; or
- On duty in an area in which he/she is in imminent danger of being exposed to hostile fire or explosion of hostile mines, and

While on duty in that area, other service members in the same area are subject to hostile fire or explosion of hostile mines; or

- Killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

Section 13733(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. 103-66, amended section 1612(b) of the Act to exclude from income any hostile fire pay received in or after October 1993.

Current regulations do not reflect the exclusion from income of hostile fire pay for eligible individuals, but hostile fire pay has been excluded under SSI operating procedure since October 1, 1993. Moreover, under these instructions, such pay has been excluded in determining the income of ineligible spouses and parents whose income is deemed to eligible individuals.

In addition to adding to the regulations the statutorily required

exclusion of hostile fire pay from an eligible individual's income, we propose to include the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. The proposed inclusion reflects the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out hostile fire pay for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. The statutory exclusion of hostile fire pay would have little meaning if not applied to ineligible spouses and parents since, as noted above, it is unlikely that an active member of the uniformed services would be eligible for SSI.

Impairment-Related Work Expenses

Impairment-related work expenses (IRWE) are expenses for items or services which are directly related to enabling a person with a disability to work and which are necessarily incurred by that individual because of a physical or mental impairment as explained at regulations §§ 404.1576 and 416.976.

Prior to December 1, 1990, in determining countable income, an individual's IRWE were deducted from his/her earned income once eligibility was established without using this exclusion. Effective December 1, 1990, section 5033 of Public Law 101-508 amended section 1612(b)(4)(B)(ii) of the Act and liberalized the IRWE exclusion. The legislation allows an individual to use the IRWE exclusion to establish eligibility.

Regulations at § 416.1112(c)(6) recently have been revised to implement changes enacted by section 5033 of Public Law 101-508. These regulatory revisions were published in the Federal Register on August 12, 1994, at 59 FR 41400, 41405.

Regulations at § 416.1161(a) list the types of income that are excluded from the income of an ineligible spouse and ineligible parent for deeming purposes. IRWE are not included in this list, but IRWE have been excluded from the income of ineligible spouses and

ineligible parents under SSI operating procedures since 1990.

We propose to add to the regulations the current operating procedure which is to exclude IRWE when determining the countable income of an ineligible spouse or ineligible parent for deeming purposes. By specifically singling out IRWE for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. The proposed regulations would reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances.

Interest and Appreciation in Value of Excluded Burial Funds and Burial Space Purchase Agreements

Effective November 1, 1982, section 185 of Public Law 97-248 amended the Act to provide that any interest earned on excluded burial funds and any appreciation in the value of excluded burial arrangements left to accumulate, may be excluded from income by regulation. Effective April 1, 1990, section 8013 of Pub. L. 101-239 amended the Act to provide that interest earned on the value of agreements representing the purchase of excluded burial spaces is excluded from income if left to accumulate.

Regulations at § 416.1124(c)(9) implement the exclusion of interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements, effective November 1, 1982. Regulations at § 416.1124(c)(15) implement the exclusion of any interest earned on the value of agreements representing the purchase of excluded burial spaces, effective April 1, 1990.

Regulations at § 416.1161(a) (relating to the treatment of income of an ineligible spouse or ineligible parent) do not apply these exclusions for purposes of deeming income, but both types of interest and appreciation have been excluded from the income of ineligible spouses and ineligible parents under SSI operating procedure.

We propose to add to the regulations the current operating procedure which is to exclude interest on burial funds, appreciation in the value of burial arrangements, and interest on the value of burial space purchase agreements,

that are excluded from resources, when determining the countable income of an ineligible spouse or ineligible parent. The proposed regulations would reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out these monies for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual.

We are making a technical change to conform the language of § 416.1124(c)(9) to a prior policy change. Effective July 11, 1990, changes related to the SSI burial fund exclusion were published in the Federal Register at 55 FR 28373-77. As a result of these changes, regulations at § 416.1231(b)(1) were amended to require that excluded burial funds be kept separate from all other resources not intended for the burial of the individual or spouse. Furthermore, section 416.1231(b)(7) was revised to provide that interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded from resources if left to accumulate and become part of the separate burial fund.

Current regulations at § 416.1124(c)(9) provide that we will not count as income interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separately identifiable burial fund. We are conforming this regulation to the prior regulatory change requiring the burial fund to be separate from other nonburial-related assets and not merely separately identifiable.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect format and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

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

List of Subjects in 20 CFR Part 416

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

Approved: November 27, 1995.
Shirley Chater,
Commissioner of Social Security.

For the reasons set out in the preamble, part 416, subpart K, of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

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

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 is revised 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 of Pub. L. 93-66 (87 Stat 154).

2. Section 416.1124 is amended by revising paragraphs (c)(7) and (c)(9), by removing the "and" at the end of paragraph (c)(15) and the period at the end of paragraph (c)(16) and by adding "; and" at the end of paragraph (c)(16) and new paragraph (c)(19) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(7) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25 year residency requirement for receipt of such payments in effect prior to January 1, 1983; and, was eligible for SSI;

* * * * *

(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become a part of the separate burial fund. (See § 416.1231 for an explanation of the exclusion of burial assets.) This exclusion from income applies to interest earned on burial funds or appreciation in the value of excluded burial arrangements which occur beginning November 1, 1982, or the date you first become eligible for SSI benefits, if later;

* * * * *

(19) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310.

3. Section 416.1161 is amended by revising paragraph (a)(12), by removing the period at the end of paragraph (a)(20) and adding a semi-colon in its place and by adding new paragraphs (a)(23), (a)(24) and (a)(25) to read as follows:

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

* * * * *

(a) * * *

(12) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25 year residency requirement for receipt of such payments in effect prior to January 1, 1983; and, was eligible for SSI;

* * * * *

(23) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

(24) Impairment-related work expenses, as described in § 404.1576 of part 404, incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under title II of the Act; and

(25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to accumulate as part of the value of

excluded agreements representing the purchase of excluded burial spaces (see § 416.1124(c) (9) and (15)).

* * * * *

[FR Doc. 95-29535 Filed 12-5-95; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 667

[FHWA Docket No. 95-28]

RIN 2125-AD69

Elimination of Regulations Concerning the Public Lands Highways Discretionary Funds Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM) to remove a regulation.

SUMMARY: The FHWA is proposing to eliminate its regulations outlining the procedures to be followed in administering the Public Lands Highways (PLH) discretionary funds program. These provisions have become outdated and unnecessary as a result of amendments made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914) to the statutory provisions in title 23 of the United States Code (U.S.C.) which authorize distribution of some of the funds appropriated for Public Lands Highways among the States on the basis of need. These amendments to title 23, U.S.C., significantly modify and clarify the eligibility criteria and selection process of the PLH discretionary program; as a result, the FHWA regulations concerning the PLH discretionary program have become obsolete. Consequently, in the interests of streamlining FHWA regulations and providing more flexibility in the administration of this program, the FHWA is proposing to eliminate these regulations.

DATES: Comments must be received on or before February 5, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95-28, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notice of

receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Mohan P. Pillay, Office of Engineering, HNG-12, (202) 366-4655 or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC-32, (202) 366-1397, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Through the PLH Discretionary Program, the FHWA administers the allocation of Federal funds in the manner authorized by § 202(b) of title 23 of the U.S.C. "among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations." Approximately \$56 million was made available to the States for the PLH Discretionary Program in FY 1995. The statute directs that 34 percent of the sums appropriated for public lands highways in a given fiscal year is to be allocated on the basis of need among qualifying States that apply for such funds through their State highway departments. (23 U.S.C. 202(b).) The statute also provides that these PLH funds are available for any kind of transportation project eligible for assistance under title 23, U.S.C., that is within or adjacent to or provides access to public lands areas. (23 U.S.C. 204(b).)

Although Congress did not direct that regulations be promulgated to implement the funding scheme established by this statute, the FHWA did promulgate regulations which outline the procedures for administering the PLH discretionary program. These regulations, for the most part, merely reiterate the application process and selection criteria outlined in the statute. For instance, the statute establishes that PLH discretionary funds are to be distributed on the basis of need among the States that apply through their State highway departments and that preference is to be given to those projects which are significantly impacted by Federal land and resource management activities. Part 667 restates these provisions, but it also supplements the statutory provisions with overly detailed descriptions of factors to be considered in the selection process and of the steps taken in the application and selection procedure. In addition, part 667 restates some of the factors established in the statute as defining the eligibility of certain projects for these funds.

The eligibility criteria and selection process of the PLH discretionary

program were modified and greatly clarified by amendments to title 23, U.S.C., that were enacted as part of the ISTEA (Pub. L. 102-240, 105 Stat. 1914). One change resulting from these amendments is that title 23, U.S.C., now provides a more detailed explanation of the kinds of projects which are eligible for PLH discretionary funds. The regulation delineating eligibility criteria in part 667 states that funds may be used for "engineering and construction of the mainline roadway including adjacent vehicular parking areas and construction elements related to scenic easements." (§ 667.7.) After the ISTEA amendments, title 23, U.S.C., now includes a provision entitled "Eligible Projects" which lists adjacent vehicular parking areas and acquisition of necessary scenic easements as two of seven types of projects qualifying for PLH funds.

These PLH regulations have also now become inconsistent with title 23, U.S.C., as a result of the ISTEA amendments. Section 667.7 of the regulations states that "funds may not be used for right-of-way costs, maintenance or other ancillaries such as sanitary, water and fire control facilities"; however, the list of eligible projects added to title 23, U.S.C. by the ISTEA includes, "construction and reconstruction of roadside rest areas including sanitary and water facilities." Thus, in general, the provisions regarding eligibility for PLH discretionary funds currently included in the FHWA regulations have become both outdated and unnecessary.

Amendments to title 23, U.S.C., added by the ISTEA also modify the selection process and the factors that will be taken into account in allocating PLH discretionary funds among the States. As a result of the ISTEA amendments, title 23, U.S.C., now states that preference will still be given to projects which are significantly impacted by Federal land and resource management activities, but now such preference will be given only if these projects are proposed by a State which contains at least 3 percent of the total public lands in the Nation. In light of this statutory change, the regulations in part 667 have become outdated because they provide that all projects which significantly benefit or improve Federal land and resource management will be given preference.

Consequently, as this examination of part 667 reveals, these regulations concerning the PLH discretionary program are unnecessary and in many instances either straightforwardly redundant or outdated because they have become inconsistent with the