

**SOCIAL SECURITY ADMINISTRATION****20 CFR Part 418**

RIN 0960-AG03

**Medicare Part D Subsidies****AGENCY:** Social Security Administration (SSA).**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to add to our regulations a new part 418 to contain rules that we will apply when we evaluate applications for premium and cost-sharing subsidies under the Medicare program. We propose to include a new subpart D, Medicare Part D Subsidies, to this part. This new subpart would contain the rules that we use to determine eligibility for premium and cost-sharing subsidies under the Medicare Part D program, which was added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act). These proposed rules would describe: what the new subpart is about; how we determine whether you are eligible for premium and cost-sharing subsidies; how we redetermine your eligibility for a subsidy; how you apply for a subsidy; how we evaluate your income and resources; when your eligibility for premium and cost-sharing subsidies terminates; how you may report changes in your circumstances; and how you can appeal a determination we make under the Part D subsidy program.

**DATES:** To be sure your comments are considered, we must receive them by May 3, 2005.

**ADDRESSES:** You may give us your comments: by using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal: <http://www.regulations.gov>; by e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); by telefax to (410) 966-2830; or by letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Disability and Income Security Programs, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

**FOR FURTHER INFORMATION CONTACT:**

Craig Streett, Team Leader, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-9793 or TTY 1-800-966-5906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:****Statutory Provisions**

Section 101 of the Medicare Modernization Act (Public Law 108-173), which was enacted into law December 8, 2003, adds sections 1860D-1 through 1860D-24 to the Social Security Act (the Act), and establishes a new Part D program for voluntary prescription drug coverage effective January 1, 2006. The Centers for Medicare & Medicaid Services (CMS) has overall responsibility for implementing the voluntary Medicare Part D prescription drug benefit and published final rules on January 28, 2005 at 70 FR 4193. As described in these proposed rules, we are responsible only for the premium and cost-sharing subsidy (the subsidy) portion of the Medicare Part D prescription drug benefit program. We are authorized to make eligibility determinations, provide appeal procedures, and perform eligibility redeterminations for the Part D subsidy in the 50 States and the District of Columbia. We will not undertake this task for Medicare beneficiaries who live in the territories or who live outside of the 50 States or the District of Columbia.

Section 702(a)(5) of the Act allows us to make the rules and regulations necessary or appropriate to carry out the functions of SSA. Section 1860D-14 of the Act provides for premium and cost-sharing subsidies of prescription drug coverage for certain individuals with low income and resources. An individual must be entitled to benefits under Medicare Part A or enrolled in Medicare Part B in order to receive a subsidy. Section 1860D-14(a)(3)(B)

directs us to make subsidy determinations. It also requires us to provide appeal procedures for subsidy eligibility determinations and to perform redeterminations. (State Medicaid agencies have similar responsibilities that are covered in CMS' final rules.) The agency that processes the subsidy application will handle redeterminations and appeals arising from that application.

**Background**

The purpose of the subsidy program is to assist some Medicare beneficiaries, who have limited financial means, to pay for voluntary Medicare prescription drug coverage under the Medicare Part D program. If you have low income and limited resources, you may be eligible for a subsidy to help you pay your monthly premium, your copayments, and the annual deductible under your Medicare Part D prescription drug plan. If you are a Medicare beneficiary or are applying for Medicare benefits and you want to receive a subsidy, you must follow a two-step process to obtain prescription drug benefits:

- File a subsidy application either with SSA or with your State Medicaid Agency to see if you qualify for a subsidy; and
- Enroll with an authorized prescription drug provider for the Medicare Part D prescription drug benefit; *i.e.*, the prescription drug plan, while your subsidy application is still in effect. (We do not enroll beneficiaries for Medicare Part D. If you are a Medicare beneficiary, you must take the necessary steps to enroll yourself with a participating approved prescription drug plan or Medicare Advantage plan that offers prescription drug coverage. You may obtain information about enrolling by calling CMS at 1-800-Medicare.) You may take these 2 steps in any order. However, if you receive Medicaid coverage, are enrolled in a Medicare Savings Program within your State, or receive Supplemental Security Income (SSI) and have Medicare, you will be deemed eligible for this help and need not file a subsidy application.

**How to Become Eligible for a Subsidy**

Section 1860D-14 of the Act requires us to take applications for subsidies from individuals applying for Medicare Part D prescription drug coverage. These proposed rules describe the requirements you must meet to become eligible for a subsidy and what conditions will prevent you from receiving a subsidy. Criteria for eligibility include:

- You must be entitled to benefits under Medicare Part A (Hospital

Insurance) and/or enrolled in Medicare Part B (Supplementary Medical Insurance) under title XVIII of the Act;

- You must be enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage (*i.e.*, Medicare Part D) by the end of your enrollment period;

- You must reside in the United States as defined in § 418.3010;

- You (and your spouse, if applicable) must meet the income and resource requirements of the subsidy program; and

- You must apply for the subsidy. Conditions that could prevent you from receiving a subsidy include:

- You lose entitlement to or are not enrolled in Medicare Part A and you also lose eligibility for or are not enrolled in Medicare Part B, or

- You do not enroll with a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage or you are no longer enrolled in a Medicare Part D plan.

These proposed rules also tell you that if we made the original determination of subsidy eligibility, we will periodically review your subsidy eligibility to make sure that you are still eligible for a subsidy and to determine whether you should receive a full or partial subsidy. The amount of subsidies for Part D premiums, deductibles, and co-payments will be based on the amount of your income and resources (and those of your spouse, if applicable) and your family size.

Section 1860D-14(a)(3)(B)(ii) specifies that initial subsidy determinations will remain in effect for a period to be determined by the Secretary of Health and Human Services but not to exceed 1 year. Section 1860D-14(a)(3)(B)(iv) provides that we shall conduct redeterminations periodically. We interpret these provisions together as envisioning prospective determinations that remain unchanged until we conduct the next redetermination of eligibility. To comply with the 1 year limitation in section 1860D-14(a)(3)(B)(ii), we will conduct the first redetermination within 12 months of our final determination of your eligibility.

However, we recognize that certain life events could have a significant impact on your income, resources or family size which in turn could impact your eligibility for a subsidy or the amount of your subsidy. Therefore, these rules propose an exception to the general assumption that a determination remains in effect until we conduct the next redetermination.

Under that exception, if you are a subsidy-eligible individual and your

income, resources or family size changes because of marriage, divorce, annulment, separation (legal or physical), or the death of your spouse, you may ask us to redetermine your subsidy based on your new circumstances. When you report such a change, we will send you a redetermination form. If you want us to redetermine your subsidy, complete the form and return it to us. The redetermined subsidy, if any, will be effective with the month after the month you request to redetermine your subsidy. We may process other changes, such as the loss of a job, which you would report, in conjunction with your next redetermination.

### Applying for a Subsidy

Applying for the subsidy under Medicare Part D is a two-step process. You must:

- Apply for the subsidy with us or your State Medicaid agency, and
- Enroll in Medicare Part D by enrolling in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage.

You may take either step first, but the subsidy will not begin until you are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage. If you file your application for the subsidy before the month you are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, the earliest month you can be eligible for the subsidy is the month you are enrolled in such a plan.

These proposed rules apply when you file for a Medicare Part D subsidy with SSA. As a condition of eligibility for the subsidy, section 1860D-14(a)(3) of the Act requires that you, or your personal representative (as defined in 42 CFR 423.772), file an application with SSA or a State office that accepts Medicaid applications. The SSA application may be printed in paper form, completed by SSA employees on computer screens, or available on SSA's Internet Web site. When you file an application, we will give you a determination of your eligibility, with appeal rights, on your eligibility for the subsidy and if eligible for the subsidy, on whether you should receive a full or partial subsidy. Timely filing also assures that you can receive the subsidy for any months you are eligible. If you inquire orally or in writing about the subsidy and tell us you want to file a subsidy application or if you partially complete the subsidy application on SSA's Internet Web site, we will use, where the requirements set forth in § 418.3230 are met, the date of your inquiry or the date we receive from

our Web site a partially completed Internet subsidy application as your filing date for the subsidy.

Your application for the subsidy remains in effect until we make a final determination on it. A determination does not become final until a decision has been made on any appeal you have filed under this subpart. If you are not enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage when you file your subsidy application, we will write and tell you about your eligibility for the subsidy and that you must be enrolled in such a plan in order to receive a subsidy. If you are not enrolled in a plan when we redetermine your eligibility, we will terminate your subsidy and you will have to file a new subsidy application.

### How We Evaluate Your Income

Section 1860D-14(a)(1)-(3) of the Act establishes income limits for eligibility for the Medicare Part D subsidy.

Therefore, we are proposing to require you to provide information about the income you receive. If you are married and living with your spouse, we will also require you to provide information about your spouse's income. These proposed rules explain what we consider income, what we exclude from income counting, and how we will compute the amount of an individual's countable income.

We will count both earned income and unearned income. Earned income consists of wages and net earnings from self-employment. Unearned income is any income that is not wages or net earnings from self-employment. Unearned income includes Social Security benefits, Veterans benefits, public and private pensions, annuities, and any support and maintenance provided to you.

We will not count all of the money you receive when we determine your eligibility for the subsidy. We will apply certain exclusions to income you receive when we determine countable income. As directed by the new legislation, these exclusions are modeled after the exclusions used in the SSI program. For example, we will exclude up to \$20 per month (\$240 per year) of your unearned income. We will exclude from unearned income up to \$60 per calendar quarter of income that is irregular or infrequent; *e.g.*, cash received as a birthday gift and up to \$30 per calendar quarter of earned income that is irregular or infrequent. We will also exclude interest earned on resources that we count.

We will exclude up to \$65 per month (\$780 per year) and one-half of the

remainder of your earned income (or your and your spouse's combined earned income). We also will exclude a portion of earned income if you are disabled and have expenses related to your impairment that you must pay in order for you to work. We call these expenses impairment-related work expenses. Similarly, we will exclude a portion of your earned income if you are blind and have expenses that must be paid in order for you to work. We will apply these exclusions based on these percentages in lieu of determining the actual work related expense in each case. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for impairment-related work expenses will be 16.3 percent of the gross earnings; the exclusion for blind work expenses will be 25 percent of the gross earnings. However, if you have expenses that exceed the average, we will give you the opportunity to present evidence of your actual expenses and adjust the amount of earned income excluded accordingly. We may adjust the percentages if the average percentage of gross earnings excluded for SSI recipients changes. If we make such a change we will publish a notice in the **Federal Register**.

#### How We Evaluate Your Resources

Section 1860D–14(a)(3)(D) of the Act establishes resource limits for eligibility for the Medicare Part D subsidy. Therefore, we are proposing to require you to provide information about your resources. If you are married and living with your spouse, we also will require you to provide information about your spouse's resources. These proposed rules explain what resources we will count and what resources we will not count; *i.e.*, exclude from counting. As directed by the new legislation, the resource exclusions are modeled after the resource exclusions in the SSI program.

We will count liquid resources, which are cash and other property that normally can be converted to cash within 20 workdays. Liquid resources can include stocks, bonds, mutual fund shares, insurance policies, and financial institution accounts, including checking and savings accounts or retirement accounts, such as individual retirement accounts and 401(k) accounts. We also will count the equity value of real property that you own except for the home that is your principal place of residence.

#### Verification

We will compare the information you provide on your application to information in our records and information we obtain from other Federal agencies. If necessary, we will contact you to reconcile any discrepancies between the information on your application and the information from the Federal agencies. We may ask you to submit documents, such as bank statements, to resolve discrepancies.

#### Changes in Your Subsidy

Section 1860D–14(a)(3)(B)(iv) of the Act requires us to periodically redetermine your continuing subsidy eligibility. During those redeterminations, we will reevaluate your income and resources to see if you continue to be eligible for a subsidy. If you are still eligible there may be an increase or decrease in the amount of your subsidy. These rules explain how we propose to make adjustments to or to terminate subsidies as a result of periodic redeterminations or redeterminations based on reports of death, marriage, divorce, annulment, and separation. Any determinations made as a result of changes in your circumstances will be a new initial determination, and we will notify you of the determination in writing and explain your right to appeal that determination.

#### If You Disagree With Our Determination of Your Subsidy

Section 1860D–14(a)(3)(B)(iv)(II) of the Act requires us to establish appeal procedures for subsidy eligibility determinations similar to the current appeal process for the SSI program. The procedures in these proposed rules will apply only if we, not a State Medicaid agency, make the initial determination. We are proposing a process for you to appeal our eligibility determination on your subsidy application, and our determinations of whether you can receive a full or partial subsidy, of an adjustment of a subsidy, or of a termination of your subsidy eligibility. We also explain the rights of your spouse whose eligibility could be adversely affected by your appeal. In these proposed rules, the term “the appeal process,” means the same as “the administrative review process,” and we use these terms interchangeably throughout.

The administrative review process we are proposing will provide you one level of administrative review. Under these proposed rules, if you decide you want to appeal, you may choose between either a hearing via telephone or a case

review. Both the telephone hearing and the case review are at the same level of the appeals process. You will have an opportunity to review the information we use in making a decision and to give us more information that you may want us to consider. You can also have witnesses at your hearing, if you choose.

In addition, you can have a personal representative help you with your appeal or represent you. CMS regulations (42 CFR 423.772), which we will apply here, define a personal representative as:

- An individual who is authorized to act on behalf of the applicant;
- If the applicant is incapacitated or incompetent, someone acting responsibly on his or her behalf, or
- An individual of the applicant's choice who is requested by the applicant to act as his or her representative in the application process.

We will work with your representative just as we would work with you.

You must contact us within 60 days of the date you receive notice of the initial determination to ask for an appeal of your subsidy determination. If you miss the deadline for requesting appeal, you can request more time if you can show us you have good cause for missing the deadline. Once we make a decision on your appeal or dismiss your request for an appeal for the reason(s) cited in these proposed rules, we will send you a written notice explaining our decision. If you are dissatisfied with our initial decision, you may file an action in Federal district court.

The issues that we will review are the issues with which you disagree. We may consider other issues, but we will provide you with advance notice of these other issues as explained in § 418.3625.

#### Explanation of Proposed Part 418

Proposed part 418 would consist of four subparts. We propose to reserve subparts A–C for future use. We also propose to add a new subpart D, Medicare Part D Subsidies, which would contain the rules that we use to make determinations and decisions about eligibility for the subsidy. In the following sections of the regulatory text of these proposed rules, we cite cross-references to sections in CMS' final rules published on January 28, 2005 at 70 FR 4193: §§ 418.3001, 418.3010, 418.3101, 418.3105, 418.3120, 418.3215, 418.3220, 418.3225 and 418.3230.

Following is a description of each section for proposed subpart D.

## Introduction, General Provisions, and Definitions

- Section 418.3001 describes what subpart D is about, lists the groups of sections, and the subject of each group.
- Section 418.3005 explains that the purpose of the subsidy program is to offer help with prescription drug costs to individuals with limited financial means who meet specific requirements.
- Section 418.3010 contains definitions of terms used throughout this subpart.

## Eligibility for a Medicare Prescription Drug Subsidy

- Section 418.3101 lists the requirements that you must meet to establish eligibility for a subsidy.
- Section 418.3105 provides a cross-reference to CMS' regulations concerning who does not need to file an application for a subsidy.
- Section 418.3110 explains what happens when you apply for a subsidy.
- Section 418.3115 describes what will prevent you from becoming eligible for a subsidy, even if you meet the requirements in § 418.3101.
- Section 418.3120 describes the changes in your circumstances that may affect your eligibility for a subsidy or whether you can receive a full or partial subsidy, explains when we may make a redetermination of your eligibility when your circumstances change, and explains that we will notify you of our determination.
- Section 418.3123 explains when a change in your subsidy is effective.
- Section 418.3125 defines the term "redetermination" and explains when we conduct redeterminations.

## Filing of Applications

- Section 418.3201 explains that an application is usually necessary for a subsidy and why.
- Section 418.3205 explains when an application for a subsidy becomes a claim for a subsidy.
- Section 418.3210 describes an application for a subsidy.
- Section 418.3215 explains who may file an application for a subsidy.
- Section 418.3220 explains when we consider an application for a subsidy filed and lists places it can be filed.
- Section 418.3225 explains how long an application for a subsidy will remain in effect.
- Section 418.3230 explains when we will use the date you make an oral or written inquiry indicating your intent to file for the subsidy as your subsidy application filing date.

## Income

- Section 418.3301 provides the general definition of income that will be used for subsidy determinations.
- Section 418.3305 provides a general description of what is not considered income for purposes of determining eligibility for a subsidy and if eligible, whether you should receive a full or partial subsidy.
- Section 418.3310 explains whose income will be counted when we determine eligibility for a subsidy and if eligible, whether you should receive a full or partial subsidy.
- Section 418.3315 describes earned income.
- Section 418.3320 explains how we count earned income, including when it is considered received, how we count net earnings from self-employment, how we count royalties and honoraria, and how we determine the time periods for which the earned income is counted.
- Section 418.3325 explains that not all earned income will be counted and lists the earned income exclusions that may apply.
- Section 418.3330 provides the general definition of unearned income.
- Section 418.3335 describes the types of unearned income that will be counted.
- Section 418.3340 describes how we count unearned income, including when it is considered received, how we determine how much of your income is countable, and how we determine the time periods for which the unearned income is counted.
- Section 418.3345 explains how we will determine the value of unearned income, if any, received in the form of in-kind support and maintenance.
- Section 418.3350 explains that not all unearned income is countable and lists the exclusions that may apply.

## Resources

- Section 418.3401 provides the general definition of resources that will be used for purposes of subsidy eligibility determinations.
- Section 418.3405 describes the types of resources that are considered for purposes of subsidy eligibility determinations and lists the type of resources that are considered liquid.
- Section 418.3410 explains whose resources will be counted.
- Section 418.3415 explains that we determine the value of countable resources as of the first day of the month for which a determination will be made.
- Section 418.3420 explains how we count funds held in financial institution accounts.

- Section 418.3425 provides a list of assets that will not be counted as resources.

## Adjustments and Terminations

- Section 418.3501 explains the types of events that could cause us to increase or reduce your subsidy or to terminate your eligibility for a subsidy.
- Section 418.3505 describes the effects of increases, reductions, and terminations of subsidies.
- Section 418.3510 explains that before we increase, reduce, or terminate your subsidy, we must send you a written notice with appeal rights.
- Section 418.3515 explains that after we terminate a subsidy, you must generally file a new application to be eligible for a subsidy again.

## Determinations and the Administrative Review Process

- Section 418.3601 explains your rights and your spouse's rights under the administrative review process.
- Section 418.3605 explains that initial determinations are determinations we make that are subject to administrative and judicial review and provides examples of determinations that are initial determinations.
- Section 418.3610 lists administrative actions that are not initial determinations. Although we may review these actions, they are not subject to administrative or judicial review.
- Section 418.3615 explains that we will mail you a notice whenever we make an initial determination in your case. The notice will tell you what our determination is, our reasons for making the determination, and your right to request an appeal of the determination.
- Section 418.3620 explains that an initial determination is binding unless you request an appeal within the stated time period.
- Section 418.3625 describes the administrative review process. This section also explains that if you are dissatisfied with our final decision, you may request judicial review.
- Section 418.3630 explains how to file a request for a hearing and that you may ask for more time to request your appeal if you had good cause for missing the 60-day deadline.
- Section 418.3635 explains who can request administrative review on your behalf.
- Section 418.3640 explains the standards we follow in determining whether you had good cause for missing the 60-day deadline to request a review.
- Section 418.3645 explains under what circumstances the decision-maker may be disqualified.

- Section 418.3650 explains that we make a decision based on the information we have and any other information you provide.
- Section 418.3655 explains that we will send you a notice of our decision on the appeal that gives you the right to judicial review.
- Section 418.3665 explains under what circumstances your request for administrative review may be dismissed.
- Section 418.3670 explains how we will notify you if your request for administrative review is dismissed.
- Section 418.3675 explains that our final decision on appeal is binding unless you request judicial review within the stated time.
- Section 418.3680 explains what happens if a Federal court remands your case to the Commissioner.

**Clarity of These Proposed Rules**

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

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings,

- paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
  - Could we improve clarity by adding tables, lists, or diagrams?
  - What else could we do to make the rules easier to understand?

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB. Any effect on the economy is attributable to the legislation, not to these proposed rules. For an analysis of the economic impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4193.

*Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required for these proposed rules. However, for an analysis of the economic impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4193.

*Federalism Impact and Unfunded Mandates Impact*

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. These proposed rules do not affect the roles of the State, local, or tribal governments but rather, offer an option as intended by the legislation, *i.e.*, whether to apply for a subsidy to SSA or to the States. For an analysis of the Federalism and Unfunded Mandates impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4193.

*Paperwork Reduction Act*

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

Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
§ 418.3120 .....	.....	.....	.....	1
§§ 418.3201, 418.3210, 418.3215, 418.3220 & 418.3225 .....	.....	.....	.....	1
§ 418.3515 .....	.....	.....	.....	1
§ 418.3625(b) .....	.....	.....	.....	1
§ 418.3625(c) .....	5,625	1	5	469
§ 418.3635 .....	.....	.....	.....	1
§ 418.3645 .....	37	1	20	12
§ 418.3665(a) .....	375	1	5	31
§ 418.3670 .....	19	1	10	3
Total .....	.....	.....	.....	520

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

faxed to OMB and SSA at the following addresses/numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974.

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

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

(Catalog of Federal Domestic Assistance Program Nos. 93.773, Medicare—Hospital Insurance and 93.774, Medicare—Supplementary Medical Insurance Program)

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

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

Dated: November 23, 2004.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to add a new part 418 to chapter III of title 20 of the Code of Federal Regulations as follows:

**PART 418—MEDICARE SUBSIDIES****Subparts A–C—[Reserved]****Subpart D—Medicare Part D Subsidies****Introduction, General Provisions and Definitions**

Sec.

- 418.3001 What is this subpart about?  
418.3005 Purpose and administration of the program.  
418.3010 Definitions.

**Eligibility for a Medicare Prescription Drug Subsidy**

- 418.3101 How do you become eligible for a subsidy?  
418.3105 Who does not need to file an application for a subsidy?  
418.3110 What happens when you apply for a subsidy?  
418.3115 What events will prevent you from becoming eligible for a subsidy?  
418.3120 What happens if your circumstances change after we determine you are eligible for a subsidy?  
418.3123 When is a change in your subsidy effective?  
418.3125 What are redeterminations?

**Filing of Application**

- 418.3201 Must you file an application to become eligible for a subsidy?  
418.3205 What makes an application a claim for a subsidy?  
418.3210 What is a prescribed application for a subsidy?  
418.3215 Who may file your application for a subsidy?  
418.3220 When is your application considered filed?  
418.3225 How long will your application remain in effect?  
418.3230 When will we use your subsidy inquiry as your filing date?

**Income**

- 418.3301 What is income?  
418.3305 What is not income?  
418.3310 Whose income do we count?  
418.3315 What is earned income?  
418.3320 How do we count your earned income?  
418.3325 What earned income do we not count?  
418.3330 What is unearned income?  
418.3335 What types of unearned income do we count?

- 418.3340 How do we count your unearned income?  
418.3345 How do we determine the value of in-kind support and maintenance?  
418.3350 What types of unearned income do we not count?

**Resources**

- 418.3401 What are resources?  
418.3405 What types of resources do we count?  
418.3410 Whose resources do we count?  
418.3415 How do we determine countable resources?  
418.3420 How are funds held in financial institution accounts counted?  
418.3425 What resources do we exclude from counting?

**Adjustments and Terminations**

- 418.3501 What could cause us to increase or reduce your subsidy or terminate your subsidy eligibility?  
418.3505 How would an increase, reduction or termination affect you?  
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**Subparts A–C—[Reserved]****Subpart D—Medicare Part D Subsidies**

**Authority:** Secs. 702(a)(5) and 1860D–1, 1860D–14 and –15 of the Social Security Act (42 U.S.C. 902(a)(5), 1395w–101, 1395w–114, and –115).

**Introduction, General Provisions, and Definitions****§ 418.3001 What is this subpart about?**

This subpart D (Regulations No. 18 of the Social Security Administration (SSA)) relates to sections 1860D–1 through 1860D–24 of title XVIII of the Social Security Act (the Act) as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173). Sections 1860D–1 through 1860D–24 established Part D of title XVIII of the Social Security Act to create a Medicare program known as the Voluntary Prescription Drug Benefit Program. Section 1860D–14, codified into the Act by section 101, includes a provision for subsidies of prescription drug premiums and of Part D cost-sharing requirements for Medicare beneficiaries whose income and resources do not exceed certain levels. The regulations in this subpart explain how we decide whether you are eligible for a Part D premium subsidy as defined in 42 CFR 423.780 and cost-sharing subsidy as defined in 42 CFR 423.782. The rules are divided into the following groups of sections according to subject content.

(a) Sections 418.3001 through 418.3010 contain the introduction, a statement of the general purpose underlying the subsidy program for the Voluntary Prescription Drug Benefit Program under Medicare Part D, general provisions that apply to the subsidy program, a description of how we administer the program, and definitions of terms that we use in this subpart.

(b) Sections 418.3101 through 418.3125 contain the general requirements that you must meet in order to be eligible for a subsidy. These sections set forth the subsidy eligibility requirements of being entitled to Medicare, of having income and resources below certain levels, and of filing an application. These sections also explain when we will redetermine your eligibility for a subsidy and the period covered by a redetermination.

(c) Sections 418.3201 through 418.3230 contain the rules that relate to the filing of subsidy applications.

(d) Sections 418.3301 through 418.3350 contain the rules that explain how we consider your income (and your spouse's income, if applicable) and define what income we count when we decide whether you are eligible for a subsidy.

(e) Sections 418.3401 through 418.3425 contain the rules that explain how we consider your resources (and your spouse's resources, if applicable) and define what resources we count

when we decide whether you are eligible for a subsidy.

(f) Sections 418.3501 through 418.3515 contain the rules that explain when we will adjust or when we will terminate your eligibility for a subsidy.

(g) Sections 418.3601 through 418.3670 contain the rules that we apply when you appeal our determination regarding your subsidy eligibility or our determination of whether you should receive a full or partial subsidy.

#### **§ 418.3005 Purpose and administration of the program.**

The purpose of the subsidy program is to offer help with the costs of prescription drug coverage for individuals who meet certain income and resources requirements under the law as explained in this subpart. The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services has responsibility for administration of the Medicare program, including the new Medicare Part D Voluntary Prescription Drug Benefit Program. We provide information through notices to beneficiaries about the Voluntary Prescription Drug Benefit Program under Medicare Part D, notify Medicare beneficiaries who appear to have limited income, based on our records, about the availability of the subsidy if they are not already eligible for this help, and take applications for and determine the eligibility of individuals for a subsidy.

#### **§ 418.3010 Definitions.**

(a) *Terms relating to the Act and regulations.* (1) *We, our or us* means the Social Security Administration (SSA).

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

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

(4) *Section* means a section of the regulations in part 418 of this chapter unless the context indicates otherwise.

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

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

(b) *Miscellaneous.* (1) *Claimant* means the person on whose behalf an application is filed.

(2) *Date you receive a notice* means five calendar days after the date on the notice, unless you show us you did not receive it within the five-day period.

(3) *Determination* means the initial determination that we make as defined in § 418.3605.

(4) *Decision* means the decision we make after a hearing.

(5) *Family size*, for purposes of this subpart, means family size as defined in 42 CFR 423.772.

(6) *Federal poverty line*, for purposes of this subpart, has the same meaning as Federal poverty line in 42 CFR 423.772.

(7) *Full-benefit dual eligible individual*, for purposes of this subpart, has the same meaning as full benefit dual eligible individual in 42 CFR 423.772.

(8) *Medicare beneficiary* means an individual who is entitled to or enrolled in Medicare Part A benefits (Hospital Insurance) or enrolled in Part B (Supplementary Medical Insurance) or both.

(9) *Periods of limitations ending on Federal nonworkdays.* Title XVIII of the Act and regulations in this subpart require you to take certain actions within specified time periods or you may lose your right to a portion of or your entire subsidy. If any such period ends on a Saturday, Sunday, Federal legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, you will have until the next Federal workday to take the prescribed action.

(10) *Representative or personal representative* means personal representative as defined in 42 CFR 423.772

(11) *Subsidy* means an amount CMS will pay on behalf of Medicare beneficiaries who are eligible for a subsidy of their Medicare Part AD costs. The amount of a subsidy for a Medicare beneficiary depends on the beneficiary's income, resources, and late enrollment penalties (if any) as explained in 42 CFR 423.780 and 42 CFR 423.782. We do not determine the amount of the subsidy, only whether or not the individual is eligible for a full or partial subsidy.

(12) *Subsidy eligible individual*, for purposes of this subpart, has the same meaning as subsidy eligible individual as defined in 42 CFR 423.773.

(13) *State*, unless otherwise indicated, means:

- (i) A State of the United States; or
- (ii) The District of Columbia.

(14) *United States* when used in a geographical sense means:

- (i) The 50 States; and
- (ii) The District of Columbia.

(15) *You or your* means the person for whom an application is filed.

#### **Eligibility for a Medicare Prescription Drug Subsidy**

##### **§ 418.3101 How do you become eligible for a subsidy?**

Unless you are deemed eligible as explained in § 418.3105 and 42 CFR

423.773(c), you are eligible for a Medicare Part D prescription drug subsidy if you meet all of the following requirements:

(a) You are entitled to benefits under Medicare Part A (Hospital Insurance) and/or enrolled in Medicare Part B (Supplementary Medical Insurance) under title XVIII of the Act.

(b) You are enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage. We can also determine your eligibility for a subsidy before you enroll in one of the above programs. However, as explained in § 418.3225(b), if we determine that you would be eligible for a subsidy before you have enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage, you must enroll in one of these plans to actually receive a subsidy.

(c) You reside in the United States as defined in § 418.3010.

(d) You (and your spouse, if applicable) meet the income requirements as explained in §§ 418.3301 through 418.3350 and 42 CFR 423.773.

(e) You (and your spouse, if applicable) meet the resources requirements as explained in §§ 418.3401 through 418.3425 and 42 CFR 423.773.

(f) You or your personal representative file an application for a subsidy as explained in §§ 418.3201 through 418.3230.

##### **§ 418.3105 Who does not need to file an application for a subsidy?**

Regulations in 42 CFR 423.773(c) explain who is deemed eligible and does not need to file an application for a subsidy to be eligible for this assistance.

##### **§ 418.3110 What happens when you apply for a subsidy?**

(a) When you or your personal representative apply for a subsidy, we will ask for information that we need to determine if you meet all the requirements for a subsidy. You must give us complete information. If, based on the information you present to us, you do not meet all the requirements for eligibility listed in § 418.3101, or if one of the events listed in § 418.3115 exists, or you fail to submit information we request, we will deny your claim.

(b) If you meet all the requirements for eligibility listed in § 418.3101, or you meet all the requirements except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, we will send you a notice telling you the following:

(1) You are eligible for a full or partial subsidy for a period not to exceed 1 year;

(2) What information we used to make this determination including how we calculated your income and resources;

(3) How to ask us to redetermine your subsidy eligibility;

(4) What you may do if your circumstances change; and

(5) Your appeal rights.

(c) If you are not already enrolled with a Medicare prescription drug plan or a Medicare Advantage plan with prescription drug coverage, you must enroll in order to receive your subsidy. If you are not enrolled in a plan when we redetermine your eligibility per § 418.3125, we will terminate your subsidy and you will need to file a new application as stated in § 418.3225.

(d) If you do not meet all the requirements for eligibility listed in § 418.3101 or if § 418.3115 applies to you except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage as described in § 418.3225, we will send you a notice telling you the following:

(1) You are not eligible for a subsidy;

(2) The information we used to make this determination including how we calculated your income or resources;

(3) You may reapply if your situation changes; and

(4) Your appeal rights.

**§ 418.3115 What events will prevent you from becoming eligible for a subsidy?**

Generally, even if you meet the other requirements in §§ 418.3101 through 418.3125, we will deny your claim or you will lose your eligibility for a subsidy if any of the following apply to you:

(a) You lose entitlement to or are not enrolled in Medicare Part A or are not enrolled in Medicare Part B.

(b) You do not enroll or lose your enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage.

(c) You do not give us information we need to determine your eligibility and if eligible, whether you should receive a full or partial subsidy; or you do not give us information we need to determine whether you continue to be eligible for a subsidy and if eligible, whether you should receive a full or partial subsidy.

(d) You knowingly give us false or misleading information.

**§ 418.3120 What happens if your circumstances change after we determine you are eligible for a subsidy?**

(a) After we determine that you are eligible for a subsidy, your subsidy eligibility could change if:

(1) You marry.

(2) You and your spouse, who lived with you, divorce.

(3) Your spouse, who lives with you, dies.

(4) You and your spouse separate (*i.e.*, you or your spouse move out of the household and you are no longer living with your spouse) unless the separation is a temporary absence as described in § 404.347 of this chapter.

(5) You and your spouse, who lives with you, have your marriage annulled.

(6) You (or your spouse, who lives with you, if applicable) expect your estimated annual income (excluding cost-of-living adjustments in income from SSA, from the Railroad Retirement Board, the Department of Veterans Affairs, and/or from the Office of Personnel Management) to increase or decrease in the next calendar year.

(7) You (or your spouse, who lives with you, if applicable) expect your resources to increase or decrease in the next calendar year.

(8) Your family size as defined in 42 CFR 423.772 has changed or will change (other than a change resulting from one of the events in paragraphs (a)(1) through (5) of this section).

(9) You become eligible for one of the programs listed in 42 CFR 423.773(c).

(b)(1) When you report one of the events listed in paragraphs (a)(1) through (a)(5) of this section, or we receive such a report from another source (*e.g.*, a data exchange of reports of death), we will send you a redetermination form upon receipt of the report. You must return the completed form within 90 days of the date of the form.

(2) When you report one of the events listed in paragraphs (a)(6) through (a)(8) of this section or we receive such a report from another source (*e.g.*, a data exchange involving income records), we will send you a redetermination form between August and December to evaluate the change. You must return the completed form to us within 30 days of the date of the form.

(3) If we increase, decrease, or terminate your subsidy as a result of the redetermination, we will send you a notice telling you:

(i) Whether you can receive a full or partial subsidy as described in 42 CFR 423.780 and 423.782.

(ii) How we calculated your income and resources;

(iii) When the change in your subsidy is effective;

(iv) Your appeal rights;

(v) What to do if your situation changes.

(c) If you become eligible for one of the programs listed in 42 CFR

423.773(c), CMS will notify you of any change in your subsidy.

**§ 418.3123 When is a change in your subsidy effective?**

(a) If we redetermine your subsidy as described in § 418.3120(b)(1), any change in your subsidy will be effective the month following the month of your report.

(b) If we redetermine your subsidy as described in § 418.3120(b)(2), any change in your subsidy will be effective in January of the next year.

(c) If you do not return the redetermination form described in § 418.3120(b)(1), we will terminate your subsidy effective with the month following the expiration of the 90-day period described in § 418.3120(b)(1).

(d) If you do not return the redetermination forms described in § 418.3120(b)(2), we will terminate your subsidy effective in January of the next year.

**§ 418.3125 What are redeterminations?**

(a) *Redeterminations defined.* A redetermination is a periodic review of your eligibility to make sure that you are still eligible for a subsidy and if so, to determine whether you should continue to receive a full or partial subsidy. This review deals with evaluating your income and resources (and those of your spouse, who lives with you) and will not affect past months of eligibility. It will be used to determine your future subsidy eligibility and whether you should receive a full or partial subsidy for future months. We will redetermine your eligibility if we made the initial determination of your eligibility or if you are deemed eligible because you receive SSI benefits. Rules regarding redeterminations of initial eligibility determinations made by a State are described in 42 CFR 423.774.

(b) *When we make redeterminations.*

(1) We will redetermine your subsidy eligibility within one year of our final determination of your eligibility for the subsidy.

(2) After the first redetermination, we will redetermine your subsidy eligibility at intervals determined by the Commissioner. The length of time between redeterminations varies depending on the likelihood that your situation may change in a way that affects your eligibility and whether you should receive a full or partial subsidy.

(3) We may also redetermine your eligibility and whether you should receive a full or partial subsidy when you tell us of a change in your circumstances described in § 418.3120.

(4) We may redetermine your eligibility when we receive information

from you or from data exchanges with Federal and State agencies that may affect whether you should receive a full or partial subsidy or your eligibility for the subsidy.

(5) We will also redetermine eligibility on a random sample of cases for quality assurance purposes. For each collection of sample cases, all factors affecting eligibility and/or whether you should receive a full or partial subsidy may be verified by contact with primary repositories of information relevant to each individual factor (*e.g.*, we may contact employers to verify wage information). Consequently, we may contact a variety of other sources, in addition to recontacting you, to verify the completeness and accuracy of our information.

### Filing of Application

#### § 418.3201 Must you file an application to become eligible for a subsidy?

Unless you are a person covered by § 418.3105, in addition to meeting other requirements, you or your personal representative must file an application to become eligible for a subsidy. If you believe you may be eligible for a subsidy, you should file an application. Filing a subsidy application does not commit you to participate in the Part D program.

Filing an application will:

(a) Permit us to make a formal determination on your eligibility for the subsidy and whether you should receive a full or partial subsidy;

(b) Assure that you can receive the subsidy for any months that you are eligible and are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage; and

(c) Give you the right to appeal if you disagree with our determination.

#### § 418.3205 What makes an application a claim for a subsidy?

We will consider your application a claim for the subsidy if:

(a) You, or someone acting on your behalf as described in § 418.3215, complete an application on a form prescribed by us;

(b) You, or someone acting on your behalf as described in § 418.3215, file the application with us pursuant to § 418.3220; and

(c) You are alive at the time it is filed.

#### § 418.3210 What is a prescribed application for a subsidy?

If you choose to apply with SSA, you must file for the subsidy on an application prescribed by us. A prescribed application may include a printed form, an application our employees complete on computer

screens, or an application available online at [www.socialsecurity.gov](http://www.socialsecurity.gov) on the SSA Internet Web site. See § 418.3220 for places where an application for the subsidy may be filed and when it is considered filed.

#### § 418.3215 Who may file your application for a subsidy?

You or your personal representative (as defined in 42 CFR 423.772) may complete, and file your subsidy application.

#### § 418.3220 When is your application considered filed?

(a) *General rule.* We consider an application for a subsidy as described in § 418.3210 to be filed with us on the day it is received by either an SSA employee at one of our offices or an SSA employee who is authorized to receive it at a place other than one of our offices or it is considered filed on the day it is submitted electronically through SSA's Internet Web site. If a State Medicaid agency forwards to us a subsidy application that you gave to it, we will consider the date you submitted that application to the State Medicaid agency as the filing date. (See 42 CFR 423.774 for applications filed with a State Medicaid agency.)

(b) *Exceptions.* (1) When we receive an application that is mailed, we will assume that we received it 5 days earlier and use the earlier date as the application filing date if it would result in another month of subsidy eligibility.

(2) We may consider an application to be filed on the date a written or oral inquiry about your subsidy eligibility is made, or the date we receive a partially completed Internet subsidy application from SSA's Web site where the requirements set forth in § 418.3230 are met.

#### § 418.3225 How long will your application remain in effect?

(a) Your application will remain in effect until we make a final determination on it. A determination does not become final until a decision on any appeal you have filed under this subpart is issued.

(b) If, at the time your application is filed or before we make a final determination, you meet all the requirements for a subsidy as described in 42 CFR 423.773 except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, we will send you a notice advising you of your eligibility for the subsidy and the requirement to enroll in such a plan. If you are not enrolled when we redetermine your eligibility as described in § 418.3125, we will

terminate your subsidy and you will need to file a new subsidy application.

(c) If you are not entitled to Medicare Part A and/or enrolled in Medicare Part B at the time your subsidy application is filed and it appears that you may be eligible for the subsidy, we will send you a notice advising you that you are eligible for the subsidy provided that you become entitled to Medicare Part A and/or enrolled in Medicare Part B and enroll in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage. If you are not entitled to Medicare Part A and/or enrolled in Medicare Part B and enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage when we redetermine your eligibility as described in § 418.3125, we will terminate your subsidy and you will need to file a new subsidy application and become entitled to Medicare Part A and/or enroll in Medicare Part B during a subsequent enrollment period.

#### § 418.3230 When will we use your subsidy inquiry as your filing date?

If you or your personal representative (as defined in 42 CFR 423.772) make an oral or written inquiry about the subsidy, or partially complete an Internet subsidy application on SSA's Web site, we will use the date of the inquiry or the date the partial Internet application was started as your filing date if the following requirements are met:

(a) The written or oral inquiry indicates your intent to file for the subsidy, or you submit a partially completed Internet application to us;

(b) The inquiry, whether in person, by telephone, or in writing, is directed to an office or an official described in § 418.3220, or a partially completed Internet subsidy application is received by us;

(c) An application as defined in § 418.3210 is filed by you or by your personal representative (as defined in 42 CFR 423.772) within 60 days after the date of the advance notice we will send. The notice will say that we will make an initial determination of your qualifications, if an application is filed within 60 days after the date of the notice. We will send the notice to you. Where you are a minor or adjudged legally incompetent and your personal representative made the inquiry, we will send the notice to your personal representative; and

(d) The claimant is alive when the application is filed.

**Income****§ 418.3301 What is income?**

Income is anything you and your spouse, who lives with you, receive in cash or in-kind that you can use to meet your needs for food and shelter. Income can be earned income or unearned income.

**§ 418.3305 What is not income?**

Some things you receive are not considered income because you cannot use them to meet your needs for food or shelter. The things that are not income for purposes of determining eligibility and whether you should receive a full or partial subsidy are described in § 416.1103 of this chapter.

**§ 418.3310 Whose income do we count?**

(a) We count your income. If you are married and live with your spouse in the month you file for a subsidy, or when we redetermine your eligibility for a subsidy as described in § 418.3125, we count your income and your spouse's income regardless of whether one or both of you apply or are eligible for the subsidy.

(b) We will determine your eligibility based on your income alone if you are not married or if you are married but you are separated from your spouse (*i.e.*, you or your spouse move out of the household and you are no longer living with your spouse) at the time you apply for a subsidy or when we redetermine your eligibility for a subsidy as described in § 418.3125.

(c) If your subsidy is based on your income and your spouse's income and we redetermine your subsidy as described in § 418.3120(b)(1), we will stop counting the income of your spouse in the month following the month that we receive a report that your marriage ended due to death, divorce, or annulment; or a report that you and your spouse stopped living together.

(d) If your subsidy is based on your income and your spouse's income, we will continue counting the income of both you and your spouse if one of you is temporarily away from home as described in § 404.347 of this chapter.

**§ 418.3315 What is earned income?**

Earned income is defined in § 416.1110 of this chapter and may be in cash or in kind. We may count more of your earned income than you actually receive. We count gross income, which is more than you actually receive, if amounts are withheld from earned income because of a garnishment, or to pay a debt or other legal obligation such as taxes, or to make any other similar payments.

**§ 418.3320 How do we count your earned income?**

(a) *Wages.* We count your wages at the earliest of the following points: when you receive them, when they are credited to you, or when they are set aside for your use.

(b) *Net earnings from self-employment.* We count net earnings from self-employment on a taxable year basis. If you have net losses from self-employment, we deduct them from your other earned income. We do not deduct the net losses from your unearned income.

(c) *Payments for services performed in a sheltered workshop or work activities center.* We count payments you receive for services performed in a sheltered workshop or work activities center when you receive them or when they are set aside for your use.

(d) *In-kind earned income.* We count the current market value of in-kind earned income. For purposes of this part, we use the definition of current market value in § 416.1101 of this chapter. If you receive an item that is not fully paid for and you are responsible for the unpaid balance, only the paid up value is income to you (see example in § 416.1123(c) of this chapter).

(e) *Certain honoraria and royalties.* We count honoraria for services rendered and royalty payments that you receive in connection with any publication of your work. We will consider these payments as available to you when you receive them, when they are credited to your account, or when they are set aside for your use, whichever is earliest.

(f) *Period for which earned income is counted.* For purposes of determining subsidy eligibility and, if eligible, whether you should receive a full or partial subsidy, we consider all of the countable earned income you receive (or expect to receive) during the year for which you are applying for this subsidy. However, in the first year that you or your spouse apply for the subsidy, we consider all of the countable earned income you and your living-with spouse receive starting from the month that you or your living-with spouse have filed an application for the subsidy through the end of the calendar year. If we count your income for only a portion of the year, the income limit for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy eligibility will be half of the income limit applicable for the full year.

**§ 418.3325 What earned income do we not count?**

(a) While we must know the source and amount of all of your earned income, we do not count all of it to determine your subsidy eligibility and whether you should receive a full or partial subsidy. We apply these income exclusions in the order listed in paragraph (b) of this section to your income. We never reduce your earned income below zero or apply any unused earned income exclusion to unearned income.

(b) For the year or partial year that we are determining your eligibility for the subsidy, we do not count as earned income—

(1) Any refund of Federal income taxes you or your living-with spouse receive under section 32 of the Internal Revenue Code (relating to the earned income tax credit) and payment you receive from an employer under section 3507 of the Internal Revenue Code (relating to advance payments of earned income tax credit);

(2) Earned income which is received infrequently or irregularly if the total of such income does not exceed \$30 per calendar quarter.

(3) Any portion of the \$20 per month exclusion described in § 416.1124(c)(12) of this chapter which has not been excluded from your combined unearned income (or the combined unearned income of you and your living-with spouse);

(4) \$65 per month of your earned income a year (or the combined earned income of you and your living-with spouse receive in that same year);

(5) Earned income you use to pay impairment-related work expenses described in § 416.976 of this chapter, if you are receiving a social security disability insurance benefit, your disabling condition(s) does not include blindness and you are under age 65. We consider that you attain age 65 on the day before your 65th birthday. In lieu of determining the actual amount of these expenses, we will assume that the value of these work expenses is equal to a standard percentage of your total earned income per month if you tell us that you have impairment-related work expenses. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for impairment-related work expenses will be 16.3 percent of the gross earnings. We may adjust the percentages if the average percentage of gross earnings excluded for supplemental security income (SSI) recipients changes. If we make such a change we will publish a notice in the **Federal**

**Register.** If excluding impairment-related work expenses greater than the standard percentage of your earned income would affect your eligibility or subsidy amount, you may establish that your actual expenses are greater than the standard percentage of your total earned income. You may do so by contacting us and providing evidence of your actual expenses. The exclusion of impairment-related work expenses also applies to the earnings of your living-with spouse if he or she is receiving a social security disability insurance benefit, the disabling condition(s) does not include blindness and he or she is under age 65;

(6) One-half of your remaining earned income (or combined earned income of you and your living-with spouse); and

(7) Earned income you use to meet any expenses reasonably attributable to the earning of the income if you receive a social security disability insurance benefit based on blindness and you are under age 65. We consider that you attain age 65 on the day before your 65th birthday. In lieu of determining the actual amount of these expenses, we will assume that the value of these expenses is equal to a standard percentage of your total earned income per month. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for blind work expenses will be 25 percent of the gross earnings. We may adjust the percentages if the average percentage of gross earnings excluded for SSI recipients changes. If we make such a change we will publish a notice in the **Federal Register**. If excluding impairment-related expenses greater than the standard percentage of your earned income would affect your eligibility or subsidy amount, you may establish that your actual expenses are greater than the standard percentage of your earned income. You may do so by contacting us and providing evidence of your actual expenses. The exclusion of work expenses also applies to the earnings of your living-with spouse if he or she receives a social security disability insurance benefit based on blindness and is under age 65.

#### **§ 418.3330 What is unearned income?**

Unearned income is all income that is not earned income. We describe some of the types of unearned income we count in § 418.3335.

#### **§ 418.3335 What types of unearned income do we count?**

(a) Some of the types of unearned income we count are described in § 416.1121(a)–(g) of this chapter.

(b) We also count in-kind support and maintenance as unearned income. In-kind support and maintenance is any food and shelter that is given to you or that you receive because someone else pays for it (*see* § 418.3345).

#### **§ 418.3340 How do we count your unearned income?**

(a) *When income is received.* We count unearned income as available to you at the earliest of the following points: when you receive it, when it is credited to your account, or when it is set aside for your use.

(b) *When income is counted.* For purposes of determining eligibility and whether you should receive a full or partial subsidy, we count all of the unearned income you and your living-with spouse receive (or expect to receive) during the year for which you are applying for this benefit unless the income is excluded under § 418.3350. However, in the first year you or your spouse apply for the subsidy, we count the unearned income both you and your living-with spouse receive (or expect to receive) starting from the month that you or your living-with spouse have filed an application for the subsidy. If we count your income for only a portion of the year, the income limits for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy eligibility will be half of the income limit applicable for the full year.

(c) *Amount considered as income.* We may include more or less of your income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a Social Security benefit) has been reduced to recover an overpayment. In such a situation, you are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of this withholding is part of your unearned income.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare Part B or C premium.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for

damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program, we subtract legal fees connected with the claim. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(d) *Retroactive benefits.* We count retroactive monthly benefits such as social security benefits as unearned income in the year you receive the retroactive benefits.

(e) *Certain veterans benefits.* If you receive a veterans benefit that includes an amount paid to you because of a dependent, we do not count as your unearned income the amount paid to you because of the dependent. If you are a dependent of an individual who receives a veterans benefit and a portion of the benefit is attributable to you as a dependent, we count the amount attributable to you as your unearned income if you reside with the veteran or you receive your own separate payment from the Department of Veterans Affairs.

#### **§ 418.3345 How do we determine the value of in-kind support and maintenance?**

(a) You can receive in-kind support and maintenance, such as food and shelter, if you live alone, with others, or in a facility, or in an institution. The amount of income you derive from in-kind support and maintenance is the current market value of the food and shelter provided to you and your living-with spouse by someone other than you or your living-with spouse. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.

(b) The maximum amount of income we count from in-kind support and maintenance during a month is limited to one-third of the monthly SSI Federal benefit rate for an eligible individual (as described in § 416.410 of this chapter) that is in effect for the period for which you are applying or are eligible for a subsidy. If you are married and living with your spouse, the maximum amount of income you and your spouse receive from in-kind support and maintenance during a month is limited to one-third of the monthly SSI Federal benefit rate for an eligible couple (as described in § 416.412 of this chapter). If the current market value of the in-kind support and maintenance you receive is greater than one-third of the applicable monthly SSI Federal benefit rate, we count only one-

third of the applicable monthly SSI Federal benefit rate as income.

**§ 418.3350 What types of unearned income do we not count?**

(a) While we must know the source and amount of all of your unearned income, we do not count all of it to determine your eligibility for the subsidy. We apply to your unearned income the exclusions in § 418.3350(b) in the order listed. However, we never reduce your unearned income below zero and we never apply any unused unearned income exclusion to earned income except for the \$20 per month exclusion described in § 416.1124(c)(12) of this chapter. For purposes of determining eligibility for a subsidy, and whether you should receive a full or partial subsidy, we treat the \$20 per month exclusion as a \$240 per year exclusion.

(b) We do not count as income the unearned income described in § 416.1124(c)(1) through (c)(5), (c)(7) through (c)(12), and (c)(14) through (c)(20) of this chapter.

(c) We exclude unearned income which is received either infrequently or irregularly provided the total of such income does not exceed \$60 per calendar quarter.

(d) We do not count as income any dividends or interest earned on resources we count.

**Resources**

**§ 418.3401 What are resources?**

For purposes of this subpart, resources are cash or other assets that an individual owns and could convert to cash to be used for his or her support and maintenance.

**§ 418.3405 What types of resources do we count?**

(a) We count liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d) of this chapter. Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit), retirement accounts (such as individual retirement accounts (IRA), 401(k) accounts), and similar items.

(b) We count the equity value of real property as a resource. However, we do not count the home that is your principal place of residence and the land on which it is situated as a resource as defined in § 418.3425(a).

**§ 418.3410 Whose resources do we count?**

(a) We count your resources. If you are married and live with your spouse in the month you file for a subsidy, or when we redetermine your eligibility for a subsidy as described in § 418.3125, we count the resources of you and your spouse regardless of whether one or both of you apply or are eligible for the subsidy.

(b) We will determine your eligibility based on your resources alone if you are not married or if you are married but you are separated from your spouse at the time you apply for a subsidy or at the time we redetermine your eligibility for a subsidy as described in § 418.3125.

(c) If your subsidy is based on the resources of you and your spouse and we redetermine your subsidy as described in § 418.3120(b)(1), we will stop counting the resources of your spouse in the month following the month that we receive a report that your marriage ended due to death, divorce, or annulment; or a report that you and your spouse stopped living together.

(d) If your subsidy is based on the resources of you and your spouse, we will continue counting the resources of both you and your spouse if one of you is temporarily away from home as described in § 404.347 of this chapter.

**§ 418.3415 How do we determine countable resources?**

(a) *General rule.* Your countable resources are determined as of the first moment of the month for which we determine your eligibility based on your application for a subsidy or for which we redetermine your eligibility for a subsidy. A resource determination is based on what assets you (and your living-with spouse, if any) have, what their values are, and whether they are excluded as of the first moment of the month. We will use this amount as your countable resources at the point when we determine your eligibility for the subsidy unless you report to us that the value of your resources has changed.

(b) *Equity value.* Resources, other than cash, are evaluated according to your (and your spouse's, if any) equity in the resources. For purposes of this subpart, the equity value of an item is defined as the price for which that item, minus any encumbrances, can reasonably be expected to sell on the open market in the particular geographic area involved.

(c) *Relationship of income to resources.* Cash you receive during a month is evaluated under the rules for counting income during the month of receipt. If you retain the cash until the first moment of the following month, the cash is countable as a resource unless it is otherwise excludable.

**§ 418.3420 How are funds held in financial institution accounts counted?**

(a) *Owner of the account.* Funds held in a financial institution account (including savings, checking, and time deposits also known as certificates of deposit) are considered your resources if you own the account and can use the funds for your support and maintenance. We determine whether you own the account and can use the funds by looking at how the account is held.

(b) *Individually-held account.* If you are designated as the sole owner by the account title and you can withdraw and use funds from that account for your support and maintenance, all of that account's funds are your resource regardless of the source. For as long as these conditions are met, we presume that you own 100 percent of the funds in the account. This presumption is not rebuttable.

(c) *Jointly-held account.* (1) If you are the only subsidy claimant or subsidy recipient who is an account holder on a jointly held account, we presume that all of the funds in the account belong to you. If more than one subsidy claimant or subsidy recipient are account holders, we presume that the funds in the account belong to those individuals in equal shares.

(2) If you disagree with the ownership presumption as described in paragraph (c)(1) of this section, you may rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her.

**§ 418.3425 What resources do we exclude from counting?**

In determining your resources (and the resources of your spouse, if any) the following items shall be excluded:

(a) Your home. For purposes of this exclusion, a home is any property in which you (and your spouse, if any) have an ownership interest and which serves as your principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located, and outbuildings;

(b) Non-liquid resources, other than real property. Non-liquid resources are resources that are not liquid resources as defined in § 418.3405;

(c) Property of a trade or business which is essential to the means of self-support as provided in § 416.1222 of this chapter;

(d) Nonbusiness property which is essential to the means of self-support as provided in § 416.1224 of this chapter;

(e) Stock in regional or village corporations held by natives of Alaska during the twenty-year period in which the stock is inalienable pursuant to the Alaska Native Claims Settlement Act (see § 416.1228 of this chapter);

(f) Life insurance owned by an individual (and spouse, if any) to the extent provided in § 416.1230 of this chapter;

(g) Restricted allotted Indian lands as provided in § 416.1234 of this chapter;

(h) Payments or benefits provided under a Federal statute other than title XVIII of the Act where exclusion is required by such statute;

(i) Disaster relief assistance as provided in § 416.1237 of this chapter;

(j) Funds up to \$1,500 for the individual and \$1,500 for the spouse who lives with the individual if these funds are set aside for burial expenses of the individual and spouse;

(k) Burial spaces, as provided in § 416.1231(a) of this chapter;

(l) Title XVI or title II retroactive payments as provided in § 416.1233 of this chapter;

(m) Housing assistance as provided in § 416.1238 of this chapter;

(n) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1235 of this chapter;

(o) Payments received as compensation incurred or losses suffered as a result of a crime, as provided in § 416.1229 of this chapter;

(p) Relocation assistance from a State or local government, as provided in § 416.1239 of this chapter;

(q) Dedicated financial institution accounts as provided in § 416.1247 of this chapter;

(r) A gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. The resource exclusion applies to any in-kind gift that is not converted to cash, or to a cash gift that does not exceed \$2,000; and

(s) Funds received and conserved to pay for medical and/or social services as provided in § 416.1103 of this chapter.

#### Adjustments and Terminations

##### § 418.3501 What could cause us to increase or reduce your subsidy or terminate your subsidy eligibility?

(a) Certain changes in your circumstances could cause us to increase or reduce your subsidy or terminate your subsidy eligibility. These

changes include (but are not limited to) changes to:

(1) Your income;

(2) Your spouse's income if you are married and living with your spouse;

(3) Your resources;

(4) Your spouse's resources if you are married and living with your spouse; and

(5) Your family size.

(b) We will periodically review your circumstances (as described in § 418.3125) to make sure you are still eligible for a subsidy and, if eligible, whether you should receive a full or partial subsidy.

(c) If you report that your circumstances have changed or we receive other notice of such a change after we determine that you are eligible, we will review your circumstances as described in § 418.3120 to determine if you are still eligible.

##### § 418.3505 How would an increase, reduction or termination affect you?

(a) An *increase* in your subsidy means that you would be able to pay a lower premium to participate in the Medicare Part D prescription drug program. An increased subsidy may also result in a reduction in any deductible or copayments for which you are responsible.

(b) A *reduction* in your subsidy means that you would have to begin to pay a premium or a higher premium to participate in the Medicare Part D prescription drug program. You may also have to begin to pay a deductible and higher copayments or increase the amounts of these payments.

(c) A *termination* means that you would no longer be eligible for a subsidy under the Medicare Part D prescription drug program.

##### § 418.3510 When would an increase, reduction or termination start?

We are required to give you a written notice of our proposed action before increasing, reducing, or terminating your subsidy. We will not give this advance notice where we have factual information confirming your death, such as through a report by your surviving spouse, a legal guardian, a close relative, or a landlord. The notice will tell you the first month that we plan to make the change. The notice will also give you appeal rights which are explained in detail in §§ 418.3601–418.3670. Your appeal rights for a reduction or termination will include the right to continue to receive your subsidy at the previously established level until there is a decision on your appeal request. You will not be required to pay back any subsidy you received while your appeal was pending.

##### § 418.3515 How could you qualify for a subsidy again?

Unless you subsequently qualify as a deemed eligible person (per 42 CFR 423.773(c)), you must file a new application for a subsidy and meet all the requirements in § 418.3101.

#### Determinations and the Administrative Review Process

##### § 418.3601 When do you have the right to administrative review?

You have the right to an administrative review of the initial determination we make about your eligibility and about your continuing eligibility for a subsidy and any other matter that gives you the right to further review as discussed in § 418.3605. If you are married and living with your spouse and your spouse's eligibility for a subsidy may be adversely affected by our decision upon review, we will notify your spouse before our review and give him or her the opportunity to present additional information for us to consider.

##### § 418.3605 What is an initial determination?

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the relevant facts and will give the reasons for our conclusions. Examples of initial determinations that are subject to administrative and judicial review include but are not limited to:

(a) The calculation of your income and/or resources;

(b) The determination about whether or not you are eligible for a subsidy and if so, whether you receive a full or partial subsidy;

(c) The determination to reduce your subsidy; and

(d) The determination to terminate your subsidy.

##### § 418.3610 Is there administrative or judicial review for administrative actions that are not initial determinations?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative or judicial review process as provided by these sections. For example, changes in your prescription drug program or voluntary disenrollment in the Part D program are not initial determinations that are subject to the administrative review process.

##### § 418.3615 Will we mail you a notice of the initial determination?

(a) We will mail a written notice of the initial determination to you at your

last known address. Generally, we will not send a notice if your premium subsidy stops because of your death or if the initial determination is a redetermination that your eligibility for a subsidy and the amount of your subsidy has not changed.

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

(1) What our initial determination is;

(2) The reasons for our determination;

and

(3) The effect of our determination on your right to further review.

(c) We will mail you a written notice before increasing, reducing, or terminating your subsidy. The notice will tell you the first month that we plan to make the change and give you appeal rights. Your appeal rights for a reduction or termination will include the right to continue to receive your subsidy at the previously established level until there is a decision on your appeal request.

**§ 418.3620 What is the effect of an initial determination?**

An initial determination is binding unless you request an appeal within the time period stated in § 418.3630(a).

**§ 418.3625 What is the process for administrative review?**

The process for administrative review of initial determinations is either a hearing conducted by telephone or a case review. We will provide you with a hearing by telephone when you appeal the initial determination made on your claim, unless you choose not to participate in a telephone hearing. If you choose not to participate in a telephone hearing, the review will consist of a case review. The hearing will be conducted by an individual who was not involved in making the initial determination. The individual who conducts the hearing will make the final decision after the hearing. If you are dissatisfied after we have made a final decision, you may file an action in Federal district court.

(a) *Notice scheduling the telephone hearing.* Once you request a telephone hearing, we will schedule the hearing and send you a notice of the date and time of the hearing at least 20 days before the hearing. The notice will contain a statement of the specific issues to be decided and tell you that you may designate a personal representative (as defined in 42 CFR 423.772) to represent you during the proceedings. The notice will explain the opportunity and procedure for reviewing your file and for submitting additional evidence prior to the hearing. It also will provide a brief explanation

of the proceedings, of the right and process to subpoena witnesses and documents, of the procedures for requesting a change in the time or date of your hearing, and of the procedure for requesting interpreter services.

(b) *Opportunity to review your file.* Prior to the telephone hearing, you will be able to review the information that was used to make an initial determination in your case. You can provide us with additional information you wish to have considered at the hearing.

(c) *Hearing Waived, Rescheduled, or Missed.* If you decide you do not want a hearing by telephone or if you are not available at the time of the scheduled hearing, the decision in your case will be made by a case review. This means that the decision will be based on the information in your file and any additional information you provide. You may ask for a change in the time and date of the telephone hearing; this should be done at the earliest possible opportunity prior to the hearing. Your request must state your reason(s) for needing the change in time or date and state the new time and date you want the hearing to be held. We will change the time and date, but not necessarily to your preferred time or date, of the telephone hearing if you have good cause. If you miss the scheduled hearing and the decision in your case is decided by a case review, we will provide a hearing, at your written request, if we decide you had good cause for missing the scheduled hearing. Examples of good cause include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for your hearing;

(4) A witness who will testify to facts material to your case would be unavailable to participate in the scheduled hearing and the evidence cannot be obtained any other way;

(5) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that you may have; or

(6) You did not receive notice of the hearing appointment.

(d) *Witnesses at hearing.* When we determine that it is reasonably necessary for the full presentation of a case, we may issue a subpoena to compel the

production of certain evidence or testimony.

**§ 418.3630 How do you request administrative review?**

(a) *Time period for requesting review.* You must request administrative review within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (c) of this section). You can request administrative review in person, by phone, fax, or mail. If you miss the time frame for requesting administrative review, you may ask us for more time to request a review. The process for requesting an extension is explained further in paragraph (c) of this section.

(b) *Where to file your request.* You can request administrative review by mailing or faxing a request or calling or visiting any Social Security office.

(c) *When we will extend the time period to request administrative review.* If you want a review of the initial determination but do not request one within 60 days after the date you receive notice of the initial determination, you may ask us for more time to request a review. Your request for an extension must explain why it was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 418.3640.

**§ 418.3635 Can anyone request administrative review on your behalf?**

Your personal representative (as defined in 42 CFR 423.772) may request administrative review on your behalf. That person can send additional information to us on your behalf and participate in the hearing.

**§ 418.3640 How do we determine if you had good cause for missing the deadline to request administrative review?**

(a) In determining whether you have shown that you have good cause for missing a deadline to request review we consider:

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions; and

(4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

(b) Examples of circumstances where good cause may exist include, but are not limited to, the following situations:

(1) You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person.

(2) There was a death or serious illness in your immediate family.

(3) Important records were destroyed or damaged by fire or other accidental cause.

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time periods.

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested a review.

(6) We gave you incorrect or incomplete information about when and how to request administrative review.

(7) You did not receive notice of the initial determination.

(8) You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired.

(9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known the need to file timely, or which prevented you from filing timely.

**§ 418.3645 Can you request that the decision-maker be disqualified?**

The person designated to conduct your hearing will not conduct the hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. If you object to the person who will be conducting your hearing, you must notify us at your earliest opportunity. The Commissioner or the Commissioner's designee will decide whether to appoint another person to conduct your hearing.

**§ 418.3650 How do we make our decision upon review?**

After you request review of our initial determination, we will review the information that we considered in making the initial determination and any other information we receive. We will make our decision based on this information. The issues that we will review are the issues with which you disagree. We may consider other issues, but we will provide you with advance notice of these other issues as explained in § 418.3625. If you are dissatisfied with our final decision, you may file an action in Federal district court.

**§ 418.3655 How will we notify you of our decision after our review?**

We will mail a written notice of our decision on the issue(s) you appealed to you at your last known address. Generally, we will not send a notice if your subsidy stops because of your death. The written notice that we send will tell you:

- (a) What our decision is;
- (b) The reasons for our decision;
- (c) The effect of our decision; and
- (d) Your right to judicial review of the decision.

**§ 418.3665 Can your request for a hearing or case review be dismissed?**

We will dismiss your request for a hearing or case review under any of the following conditions:

- (a) At any time before notice of the decision is mailed, you ask that your request for administrative review be withdrawn; or
- (b) You failed to request administrative review timely and did not have good cause for missing the deadline for requesting review.

**§ 418.3670 How will you be notified of the dismissal?**

We will mail a written notice of the dismissal of your request for administrative review to you at your last known address. The dismissal is not subject to judicial review and is binding on you unless we vacate it. The decision-maker may vacate any dismissal of your request for administrative review if, within 60 days after the date you receive the dismissal notice, you request that the dismissal be vacated and show good cause why the request should not be dismissed. The decision-maker shall advise you in writing of any action he or she takes.

**§ 418.3675 How does our decision affect you?**

Our decision is binding unless you file an action in Federal district court seeking review of our final decision. You may file an action in Federal district court within 60 days after the date you receive notice of the decision. You may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the decision-maker who issued the final decision in your case. If you show that you had good cause for missing the deadline, we will extend the deadline. We will use the standards in § 418.3640 to decide if you had good cause to miss the deadline.

**§ 418.3680 What happens if your case is remanded by a Federal court?**

When a Federal court remands a case to the Commissioner for further consideration, the decision-maker (as described in § 418.3670) acting on behalf of the Commissioner, may make a decision. That component will follow the procedures in § 418.3625, unless we decide that we can make a decision that is wholly favorable to you without another hearing. Any issues relating to your subsidy may be considered by the decision-maker whether or not they were raised in the administrative proceedings leading to the final decision in your case.

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[REG-148701-03]

RIN 1545-BC72

**Collection After Assessment**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the collection of tax liabilities after assessment. The proposed regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998. These regulations would affect persons determining how long the Internal Revenue Service has to collect taxes that have been properly assessed.

**DATES:** Written or electronically generated comments and requests for a public hearing must be received by June 2, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-148701-03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-148701-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-148701-03).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Debra A.