

included in the escrow payment disclosure such as property taxes and homeowner's insurance generally are not finance charges under § 226.4 and, therefore, do not affect other disclosures, including the finance charge and annual percentage rate.

\* \* \* \* \*

18(s)(7) Definitions.

1. *Negative amortization loans.* Under § 226.18(s)(7)(v), a negative amortization loan is one that requires only a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. For such a loan, § 226.18(s)(4)(iii) requires creditors to disclose the fully amortizing periodic payment for each interest rate disclosed under § 226.18(s)(2)(ii), in addition to the minimum periodic payment, regardless of whether the legal obligation explicitly recites that the consumer may make the fully amortizing payment. Some loan types that result in negative amortization do not meet the definition of negative amortization loan for purposes of § 226.18(s). These include, for example, loans requiring level, amortizing payments but having a payment schedule containing gaps during which interest accrues and is added to the principal balance before regular, amortizing payments begin (or resume). For example, "seasonal income" loans may provide for amortizing payments during nine months of the year and no payments for the other three months; the required minimum payments (when made) are amortizing payments, thus such loans are not negative amortization loans under § 226.18(s)(7)(v). An adjustable-rate loan that has fixed periodic payments that do not adjust when the interest rate adjusts also would not be disclosed as a negative amortization loan under § 226.18(s). For example, assume the initial rate is 4%, for which the fully amortizing payment is \$1500. Under the terms of the legal obligation, the consumer will make \$1500 monthly payments even if the interest rate increases, and the additional interest is capitalized. The possibility (but not certainty) of negative amortization occurring after consummation does not make this transaction a negative amortization loan for purposes of § 226.18(s). Loans that do not meet the definition of negative amortization loan, even if they may have negative amortization, are amortizing loans and are disclosed under §§ 226.18(s)(2)(i) and 226.18(s)(3).

\* \* \* \* \*

**Appendix D—Multiple Advance Construction Loans**

\* \* \* \* \*

6. *Relation to § 226.18(s).* A creditor must disclose an interest rate and payment summary table for transactions secured by real property or a dwelling, pursuant to § 226.18(s), instead of the general payment schedule required by § 226.18(g). Accordingly, home construction loans that are secured by real property or a dwelling are subject to § 226.18(s) and not § 226.18(g). Under § 226.176(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent

phase may be treated as either one transaction or more than one transaction.

i. If a creditor uses Appendix D and elects pursuant to § 226.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in § 226.18(s). Under § 226.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary table. The provision in Appendix D, Part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 226.18(g)" does not apply because the transaction is governed by § 226.18(s) rather than § 226.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to § 226.18(s)(5).

ii. On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, the construction phase must be disclosed pursuant to Appendix D, Part II.C, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. Appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The rate and payment summary table disclosed under § 226.18(s) must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of § 226.18(s) to the permanent phase only. For example, under § 226.18(s)(2)(i)(A) or § 226.18(s)(2)(i)(B)(1), as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase.

\* \* \* \* \*

**Appendices G and H—Open-End and Closed-End Model Forms and Clauses**

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in H-18, H-19, H-20, H-21, H-22, H-23, G-2(A), G-3(A), G-4(A), G-10(A)-(E), G-17(A)-(D), G-18(A) (except as permitted pursuant to § 226.7(b)(2)), G-18(B)-(C), G-19, G-20, and G-21, or to the model clauses in H-4(E), H-4(F), H-4(G), and H-4(H). Creditors may modify the heading of the second column shown in Model Clause H-4(H) to read "first adjustment" or "first increase," as applicable, pursuant to § 226.18(s)(2)(i)(C). The rearrangement of the

model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

- i. Using the first person, instead of the second person, in referring to the borrower.
- ii. Using "borrower" and "creditor" instead of pronouns.
- iii. Rearranging the sequences of the disclosures.
- iv. Not using bold type for headings.
- v. Incorporating certain state "plain English" requirements.
- vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)
- vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, December 21, 2010. Certain amendments to the Official Staff Commentary were approved by the Director of the Division of Consumer and Community Affairs, acting under authority delegated by the Board.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

[FR Doc. 2010-32534 Filed 12-28-10; 8:45 am]

**BILLING CODE 6210-01-P**

**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Part 418**

[Docket No. SSA-2010-0033]

RIN 0960-AH24

**Amendments to Regulations Regarding Eligibility for a Medicare Prescription Drug Subsidy**

**AGENCY:** Social Security Administration.  
**ACTION:** Interim final rule with request for comments.

**SUMMARY:** We are revising our regulations to incorporate changes to the Medicare prescription drug coverage low-income subsidy (Extra Help) program made by the Affordable Care Act which was enacted on March 23, 2010. Under our interpretation of section 3304 of the Affordable Care Act and this interim final rule, if the death of a beneficiary's spouse would decrease or eliminate the subsidy provided by the Extra Help program, we will, based on a determination, or redetermination, extend the effective period of eligibility for the most recent determination or redetermination until 1 year after the

month following the month we are notified of the death of the spouse. These regulatory changes will allow us to implement this provision of the Affordable Care Act when it goes into effect on January 1, 2011. We are also revising our regulations to incorporate changes made by the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), which affect the way we account for income and resources when determining eligibility for the Extra Help program. The statute provides that we no longer count as a resource the value of any life insurance policy for Extra Help applications filed, or redeterminations that are effective, on or after January 1, 2010. In addition, we will no longer count as income the help a beneficiary receives when someone else provides food and shelter, or pays household bills for food, mortgage, rent, electricity, water, property taxes, or heating fuel or gas. These revisions will update our rules to reflect these statutory changes.

**DATES:** *Effective Date:* This interim final rule will be effective January 1, 2011.

*Comment Date:* To ensure that your comments are considered, we must receive them no later than February 28, 2011.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2010-0033 so that we may associate your comments with the correct regulation.

*Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function to find docket number SSA-2010-0033. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966-2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building,

6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Craig Streett, Office of Income Security Programs, Social Security Administration, 2-R-24 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-9793. 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:

##### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

##### Background

Medicare prescription drug coverage is a voluntary program that covers various prescription drugs. The regulations and requirements for the program are codified in 42 CFR Part 423. The Centers for Medicare & Medicaid Services (CMS) promulgates rules and regulations concerning the Medicare program. Anyone who meets the requirements in 42 CFR 423.30(a) can enroll in Medicare prescription drug coverage. Medicare prescription drug coverage beneficiaries are responsible for deductibles, cost-sharing, and monthly premiums towards the cost of covered prescriptions. Costs vary by plan.

Beneficiaries with Medicare prescription drug coverage who have limited income and resources may qualify for Extra Help with their monthly premiums, deductibles, and cost-sharing for Medicare prescription drug coverage. To qualify for Extra Help a Medicare beneficiary must reside in one of the 50 states or the District of Columbia and must have resources and income within specific limits.

Congress passed MIPPA in July of 2008.<sup>1</sup> Section 116 of MIPPA exempts certain items from income and resources determinations of Extra Help eligibility for applications filed on or after January 1, 2010. We also apply these exemptions to redeterminations that become effective on or after January 1, 2010. The items exempted under section 116 are

the cash surrender value of life insurance and in-kind support and maintenance. To implement these requirements of MIPPA, we issued guidance in August 2009 and discontinued counting these exempted items for applications and redeterminations in accordance with the requirements of the statute.

Accordingly, we no longer count as income the help a beneficiary receives when someone else provides food and shelter, or pays for food, mortgage, rent, heating fuel or gas, electricity, water, or property taxes. To reflect these statutory exemptions, we have revised sections 418.3335(b) and 418.3350 and deleted section 418.3345 of our regulations.

In March 2010, Congress passed the Affordable Care Act, which extends the effective date of a determination or redetermination of an Extra Help subsidy due to the death of a spouse.<sup>2</sup> Currently, any adjustment in the amount of Extra Help the beneficiary receives is effective the month after the month in which we are notified of the death of a spouse. In some cases, the death of a spouse could result in a decrease in the amount or loss of Extra Help eligibility for the beneficiary.

Effective January 1, 2011, if the death of the spouse would decrease or eliminate the subsidy provided by the Extra Help program, we will extend the effective period for a determination or redetermination until 1 year after the date on which it would otherwise cease to be effective—that is, the month after the month we are notified of the death of the spouse. In order to reflect the changes made by the Affordable Care Act, we have revised sections 418.3120 and 418.3123 of our regulations.

Our current Extra Help rules at 418.3350(b) state that we do not count as income the unearned income described in sections 416.1124(b), (c)(1) through (c)(12), and (c)(14) through (c)(21). Our current rule omits a reference to paragraph 416.1124(c)(22), which we added after we published section 418.3350 in December 2005. We are updating the reference in section 418.3350 to correct this omission. This is a technical change only and does not affect the substance of our rules.

##### Clarity of These Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on this interim final rule, we invite your comments on how to make rules easier to understand.

For example:

<sup>1</sup>Public Law 110-275.

<sup>2</sup>Public Law 111-148 § 3304.

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.* grouping and order of sections, use of headings, paragraphing?

#### When will we start to use these rules?

We will start to use this rule on the effective date shown under DATES earlier in this preamble.

We are also inviting public comment on the changes made by this rule. We will consider any relevant comments we receive. We will publish a final rule to respond to those comments and to make any appropriate changes.

#### Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.<sup>3</sup>

We find good cause exists for proceeding without prior public notice and comment with respect to the new rules that exempt in-kind support and maintenance and the cash surrender value of life insurance policies from being counted as income or resources for determining Extra Help eligibility because the policies implemented under these rules are nondiscretionary under MIPPA. We implemented the policies on their effective date of January 1, 2010. Accordingly, we find that prior public comment with respect to these changes is unnecessary.

Beginning January 1, 2011, section 3304 of the Affordable Care Act requires us to implement the provision that extends the effective date of a decrease or elimination of an Extra Help subsidy due to the death of a spouse. In light of the March 23, 2010, enactment date of

the Affordable Care Act and our need to have authority in place to implement section 3304 beginning January 1, 2011, we do not have sufficient time to provide a notice and comment period before promulgating final rules in order to begin administering the provision in a timely manner. Therefore, we find that the use of the APA's notice and comment rulemaking procedures would be impracticable in this situation. However, we are inviting public comment on the rule and will consider any relevant comments we receive within 60 days of the publication of the rule.

In addition, for the reasons cited above, we also find good cause for dispensing with the 30-day delay in the effective date of this rule.<sup>4</sup> For the reasons stated above, we find it is impracticable and unnecessary to delay the effective date of the changes we are making in this interim final rule. Accordingly, we are making this interim final rule effective January 1, 2011.

#### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this interim final rule meets the criteria for a significant regulatory action under Executive Order 12866. It was subject to OMB formal review.

#### Regulatory Flexibility Act

We certify that this interim final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

#### Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act. (Catalog of Federal Domestic Assistance Program Nos. 93.770, Medicare Prescription Drug Coverage; 96.002 Social Security—Retirement Insurance.)

#### 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: December 23, 2010.

**Michael J. Astrue,**  
*Commissioner of Social Security.*

■ For the reasons set forth in the preamble, we amend 20 CFR chapter III, part 418, subpart D as set forth below:

#### PART 418—MEDICARE SUBSIDIES

##### Subpart D—Medicare Part D Subsidies

■ 1. The authority citation for subpart D of part 418 continues to read as follows:

**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).

■ 2. Amend § 418.3120 to revise paragraph (a)(3) and add paragraph (b)(4) to read as follows:

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

(a) \* \* \*

(3) Subject to the provisions of paragraph (b)(4) of this section, your spouse, who lives with you, dies.

\* \* \* \* \*

(b) \* \* \*

(4) If your spouse who lives with you dies, your spouse's death may result in changes in your income or resources that could decrease or eliminate your subsidy. If we are informed of the death of your spouse and the death would cause a decrease in or elimination of your subsidy, we will notify you that we will not immediately change your subsidy because of your spouse's death. We will defer your redetermination for 1 year from the month following the month we are notified of the death of your spouse, unless we receive a report of another event specified in 418.3120(a) that would affect your eligibility for a subsidy.

■ 3. Amend § 418.3123 to add paragraph (e) to read as follows:

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

\* \* \* \* \*

(e) *Special rule for widows and widowers.*—If your spouse who lives with you dies and the changes in your income or resources resulting from your spouse's death would decrease or eliminate your subsidy, we will defer your next redetermination for 1 year from the month following the month we are notified of the death of your spouse, unless we receive a report of another event specified in 418.3120(a) that would affect your eligibility for a subsidy.

■ 4. Amend § 412.3335 to revise paragraph (b) to read as follows:

<sup>3</sup> 5 U.S.C. 553(b)(B).

<sup>4</sup> See 5 U.S.C. 553(d)(3).

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

\* \* \* \* \*

(b) For claims filed before January 1, 2010, and redeterminations that are effective before January 1, 2010, we also count in-kind support and maintenance as unearned income. In-kind support and maintenance is any food and shelter given to you or that you receive because someone else pays for it.

**§ 418.3345 [Removed]**

■ 5. Remove § 418.3345.

■ 6. Revise § 418.3350 to read as follows:

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

(a) For claims filed on or after January 1, 2010 and redeterminations that are effective on or after January 1, 2010, we do not count as income in-kind support and maintenance.

(b) 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(c) in the order listed. However, we do not reduce your unearned income below zero, and we do not 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.

(c) We do not count as income the unearned income described in § 416.1124(b) and (c) of this chapter, except for paragraph (c)(13).

(d) We do not count as income any dividends or interest earned on resources you or your spouse owns.

■ 7. Amend § 418.3405 to revise paragraph (a) to read as follows:

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

(a) We count liquid resources. Liquid resources are cash, financial accounts, and other financial instruments that can be converted to cash within 20 workdays, excluding certain non-workdays as explained in § 416.120(d) of this chapter. Examples of resources that are ordinarily liquid include: stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies (for claims filed before January 1, 2010, and redeterminations that are effective before January 1, 2010), financial institution accounts (including savings,

checking, and time deposits, also known as certificates of deposit), retirement accounts (such as individual retirement accounts or 401(k) accounts), revocable trusts, funds in an irrevocable trust if the trust beneficiary can direct the use of the funds, and similar items. We will presume that these types of resources can be converted to cash within 20 workdays and are countable as resources for subsidy determinations. However, if you establish that a particular resource cannot be converted to cash within 20 workdays, we will not count it as a resource.

\* \* \* \* \*

■ 8. Amend § 418.3425 to revise paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) For claims filed on or after January 1, 2010, and redeterminations that are effective on or after January 1, 2010, life insurance owned by an individual (and spouse, if any).

\* \* \* \* \*

[FR Doc. 2010-32848 Filed 12-28-10; 8:45 am]

**BILLING CODE 4191-02-P**

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Part 9**

[Docket No. TTB-2010-0001; T.D. TTB-88; Re: Notice No. 103]

**RIN 1513-AB31**

**Expansion of the Santa Maria Valley Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** This Treasury decision expands the Santa Maria Valley viticultural area in Santa Barbara and San Luis Obispo Counties, California, by 18,790 acres. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** *Effective Date:* January 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202-453-2002.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;