completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI AGÊNCIA NACIONAL DE AVIAÇÃO CIVIL—BRAZIL (ANAC), AD No.: 2010–09–02, dated October 17, 2010; and Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin No. SB 500–24–0002, dated March 8, 2010, for related information.

Material Incorporated by Reference

(i) You must use Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin No. SB 500–24–0002, dated March 8, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—PO Box: 38/2, BRASIL, telephone: ++55 12 3927–5383; fax: ++55 12 3927–2610; E-mail: *reliability.executive@embraer.com.br;* Internet: *http://www.embraer.com.br.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on December 21, 2010.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–32809 Filed 1–4–11; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2008–0050]

RIN 0960–AE59

Supplemental Security Income (SSI) for the Aged, Blind, and Disabled; Dedicated Accounts and Installment Payments for Certain Past-Due SSI Benefits

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final rules adopt, with some minor changes, the interim final rules with request for comment we published in the **Federal Register** on December 20, 1996. 61 FR 67203. The interim final rules concerned dedicated accounts and installment payments for certain past-due SSI benefits and reflected amendments to the Social Security Act (Act) made by sections 213 and 221 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). These final rules reflect these provisions, as well as subsequent changes to these provisions made by the Balanced Budget Act of 1997 (BBA), the Social Security Protection Act of 2004 (SSPA), and the Deficit Reduction Act of 2005 (DRA). The changes we are making in these final rules will ensure that our rules accurately reflect the statutory provisions on which they are based.

DATES: These final rules are effective February 4, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Rudick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7102. 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

The interim final rules reflected the dedicated account requirements that were added by section 213 of the PRWORA. Public Law 104–193. Congress enacted the PRWORA on August 22, 1996. Section 213 of the PRWORA added a new section 1631(a)(2)(F) of the Act for payments made after August 22, 1996. Under section 1631(a)(2)(F) of the Act, the representative payee of an eligible person under age 18 must establish in certain situations "an account in a financial institution," which we refer to as a "dedicated account." Specifically, the representative payee must establish a dedicated account if the person is eligible for past-due monthly SSI benefits, including any federally administered State supplementary payments, that exceed 6 times the maximum "monthly benefit payable" under title XVI, which we call the Federal benefit rate (FBR), after any withholding for interim assistance reimbursement (IAR) to a State(s) and after payment of attorney fees. Under section 1631(a)(2)(F) of the Act, the past-due benefits in a dedicated account may only be used for certain allowable expenses.

Sections 213(b) and (c) of the PRWORA also amended sections 1613(a) and 1612(b) of the Act, respectively, to provide that funds in a dedicated account, established and maintained in accordance with section 1631(a)(2)(F) of the Act, including accrued interest or other earnings, are excluded from resources and from income.

Since we published the interim final rules, Congress has enacted three other laws that made additional changes to the dedicated account requirements. We are including these statutory changes in the final rules without requesting public comment because the changes are required by statute and we are making no discretionary policy changes.

The BBA made one clarification and one revision to section 1631(a)(2)(F) of the Act. Public Law 105–33. Section 5522(b)(2) of the BBA amended section 1631(a)(2)(F)(iii) of the Act by clarifying which subsequent past-due benefits a representative payee may deposit in an established dedicated account. Congress made this technical change to the statute because the PRWORA used the two different terms "underpayment" and "past-due benefits" to describe funds that could be deposited in these accounts. This terminology caused confusion. Section 5522(b)(2) of the BBA corrected this technical issue, and we are including this change in these final rules. As amended by section 5522(b)(2) of the BBA, section 1631(a)(2)(F)(iii) of the Act states that the representative payee may deposit into an established dedicated account any other funds representing past-due benefits under title XVI of the Act which equal or exceed the maximum monthly FBR, including any federally

administered State supplementary payments. While not required, the representative payee may deposit these past-due benefits into the dedicated account.

Section 5522(b)(1) of the BBA revised section 1631(a)(2)(F)(ii)(III)(bb) of the Act and required us to reduce "future benefits payable" to a recipient (or to a recipient and his or her spouse), who is his or her own payee and who knowingly misapplies benefits from a dedicated account. We must reduce the "future benefits payable" by an amount equal to the amount of benefits that were misapplied.

The interim final rules also reflected the installment payment requirements that were added to section 1631(a) of the Act by section 221 of the PRWORA. Under section 1631(a)(10) of the Act, past-due benefits paid on or after December 1, 1996, had to be paid in installments if the amount due equaled or exceeded 12 times the maximum FBR, after any withholding for IAR to a State(s). Section 1631(a)(10) of the Act provides limitations on the size of the installment payments, as well as exceptions to those limitations and exceptions to the installment payment requirement.

In 2004, Congress enacted the SSPA. Public Law 108–203. Section 302(b)(1) of the SSPA amended section 1631(a)(2)(F)(i)(II) of the Act to specify that the past-due monthly benefits for dedicated account purposes are those that remain after any withholding for payment of attorney fees.

Section 302(b)(2) of the SSPA amended section 1631(a)(10)(A) of the Act to specify that the past-due monthly benefits for installment payment purposes are those remaining after any withholding for payment of attorney fees. Also, section 7502 of the DRA amended section 1631(a)(10)(A)(i) of the Act to change the threshold amount for determining whether past-due payments will be made in installments. Public Law 109–171. Under section 1631(a)(10) of the Act, as amended by section 7502 of the DRA, effective May 8, 2006, past-due benefits must be paid in installments if the amount due equals or exceeds 3 times the maximum FBR after any withholding for IAR to a State(s) and payment of attorney fees.

These final rules reflect the statutory requirement that past-due benefits, including any federally administered State supplementary payments, generally be made in installments if the amount due, after any reimbursement for IAR and any withholding of attorney fees, equals or exceeds 3 times the maximum FBR. We pay these past-due benefits in not more than 3 installments, with the first and second installments not to exceed 3 times the FBR plus any federally administered State supplementation. We make the installment payments at 6-month intervals.

These final rules also reflect the statutory exceptions to the installment payment requirements and the exception to the limit on the amount of the first and second installment payments, when the recipient has certain outstanding debts or current or anticipated expenses.

In these final rules, we have clarified our rules on dedicated accounts and installment payments as a result of the public comments we received. We also have clarified the rules governing receipt of installment payments when a recipient subsequently becomes eligible for additional benefit amounts while the recipient is already receiving installment payments.

Public Comments

On December 20, 1996, we published an interim final rule with request for comments in the **Federal Register** and provided a 60-day comment period. 61 FR 67203. We received 29 letters, most of which were from attorneys and advocacy groups. We carefully considered all of the comments in publishing these final rules, and we have adopted several recommendations made by the commenters.

We have summarized the commenters' views and have responded to the significant issues raised by the commenters that are within the scope of the interim final rules. For ease of reference, we have organized the comments and responses as follows: First, we address general comments, i.e., comments that are either about the interim final rules as a whole or apply to more than one section of the rules; then, we address the remaining comments about specific sections of the rules.

General Comments

Comment: Most commenters objected to section 213 of the PRWORA, section 221 of the PRWORA, or both. These commenters stated that they did not believe these statutory provisions would improve the administration of the SSI program and that this legislation should not have been enacted. Attorneys commented that these statutory changes were a disservice to their SSI clients and that these changes would deny SSI recipients access to competent legal representation because they did not allow for increased installment payments to cover attorney fees or for attorney fees to be recognized as allowable dedicated account expenses. The commenters also were concerned that paying SSI in installments could distress SSI recipients. These commenters requested that we not implement the enacted requirements.

Response: We have not adopted these comments because we must implement statutes that affect the programs we administer. Further, as we explained above, when we decide whether the representative payee must establish a dedicated account, we consider the amount of the past-due benefits after payment of attorney fees. Public Law 104–193 affects many aspects of the SSI program, and we are not authorized to ignore any of the legislative provisions or to reconsider implementing these changes. While sections 213 and 221 of the PRWORA restrict the use and payment of certain SSI payments, Congress has also provided some flexibility in determining appropriate uses and for increasing the installment payment amounts when the SSI recipient's circumstances involve certain debts and expenses, which we enumerate in § 416.545. Also, we do not count an installment payment as a resource for nine months after the month in which the payment is made. This exclusion from resources allows an eligible person to spend down the installment payment before it affects his or her eligibility for SSI. The funds in a dedicated account are excluded entirely from income and resources for determining SSI eligibility and payment amounts.

Comment: Two commenters questioned whether due process would be afforded in misapplication situations.

Response: Misapplication of benefits occurs when a representative payee knowingly uses dedicated account funds for expenditures that are not permitted. A determination that a representative payee misapplied funds and therefore is liable to us for such misapplication is an initial determination with appeal rights under § 416.1402.

Comment: One commenter stated that a regulatory flexibility analysis is needed. The commenter expressed concern that banks would profit from the establishment of dedicated accounts while landlords, grocers, and public utilities would not. The commenter's concern is that there could be significant economic impact because persons would not have access to their entire lump sum amount.

Response: We do not agree with the commenter. A regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601–612, is only required if a proposed or final

regulation would have a significant economic impact on a substantial number of small entities. It is not required if the head of the agency certifies that the proposed or final rule would not have a significant economic impact on a substantial number of small entities. In such a case, the agency will publish the certification in the **Federal Register** at the time it publishes a proposed or final rule and provide a statement providing the factual basis for the certification. 5 U.S.C. 605.

Commissioner Chater certified that the interim final rule did not require a regulatory flexibility analysis, and we provided an appropriate factual basis for the certification in the preamble to the interim final rule. 61 FR 67203, 67205 (1996). We have also certified that these final rules do not require a regulatory flexibility analysis, and we have included that certification, along with the appropriate factual basis for the certification, in the preamble below. The commenter's concern about the possible effect of the rule on landlords, grocers, and public utilities does not require us to do a Regulatory Flexibility Act analysis. Neither the interim final nor the final rules would directly regulate any small entities, including any landlords, grocers or public utilities. An agency is not required to perform a regulatory flexibility analysis in order to assess the indirect effects of a regulation on small entities that are not subject to the regulation.

Comments About Specific Regulatory Sections

Section 416.538(d) Amount of Underpayment or Overpayment—Limited Delay in Payment of Underpaid Amount to Eligible Persons Under Age 18 Who Has a Representative Payee

Comment: One commenter stated that we should not require a representative payee to establish a dedicated account prior to our paying past-due benefits. The commenter suggested that we issue the past-due payments to the payee and the payee will, at a later date, tell us that he or she established the account.

Response: Section 1631(a)(2)(F)(i)(I) of the Act explicitly requires that a representative payee must "establish * * * an account in a financial institution into which such benefits shall be paid * * *." The intent of the legislation is to ensure that the funds are placed in a separate dedicated account to be used only for certain specified expenses primarily related to the child's impairment. Accordingly, we must deposit these past-due benefits directly into the dedicated account as directed by Congress. We have made no changes to § 416.538(d) as previously published.

Comment: One commenter believed that directly depositing title XVI past-due benefits into the dedicated account would make these funds subject to attachment, garnishment, or levy by creditors, which usually they are not. They no longer would be "benefit checks" but simply funds in an account. This would leave the door open to creditors to attach the funds because the funds no longer would be protected by section 207 of the Act.

Response: Section 207 of the Act, 42 U.S.C. 407, generally prevents benefit payments from being subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law. The protections afforded by section 207 apply to SSI payments pursuant to section 1613(d)(1) of the Act, 42 U.S.C. 1382(d). We have operated a successful direct deposit program for more than two decades. Courts have generally ruled that title II and title XVI benefits do not lose their identity as benefits protected under section 207 of the Act when they are directly deposited into a bank account. Further, the funds clearly retain such protection in the dedicated account because they are not commingled with other funds.

In addition, we are currently pursuing another rulemaking that we expect will address the commenter's concerns. On April 19, 2010, we published a joint notice of proposed rulemaking, along with the Department of the Treasury, the Department of Veterans Affairs, the Office of Personnel Management, and the Railroad Retirement Board. 75 FR 20299 (2010). The joint proposed rule would implement statutory restrictions on the garnishment of Federal benefit payments. The agencies took this action in response to recent developments in technology and debt collection practices that have led to an increase in the freezing of accounts containing Federal benefit payments.

The proposed rule would establish procedures that financial institutions must follow when a garnishment order is received for an account into which Federal benefit payments have been directly deposited. The proposed rule would require financial institutions that receive a garnishment order to determine whether any Federal benefit payments were deposited to the account within 60 calendar days prior to receiving the order. If so, the financial institutions must ensure that the account holder has access to an amount equal to the sum of such payments in the account or to the current balance of the account, whichever is lower.

Section 416.542 Underpayments—To Whom Underpaid Amount Is Payable

Comment: One commenter objected to our following § 416.542(b) if the eligible person dies before all installment payments have been paid.

Response: The installment payment requirement in section 1631(a)(10) of the Act did not amend the law regarding the payment of past-due benefits after a person's death. We believe that provision applies to installment payments of past-due benefits the same way it applies to regular payments of past-due benefits. Thus, we did not modify § 416.542.

Section 416.545 Paying Large Past-Due Benefits in Installments

Comment: One commenter suggested that we clarify the reference to the 6-month resource exclusion rule, which applies to benefits received before March 2, 2004.

Response: We did add § 416.1247, which explains the exclusion from resources of dedicated accounts and interest or other earnings on the account. Section 431 of the SSPA changed the 6-month resource exclusion for title XVI underpayments in effect at the time we published the interim final rules to a 9-month resource exclusion. Our rules at § 416.1233 specifically state that we exclude from countable resources the unspent portion of any title II or title XVI retroactive payment for 9 months "following the month of receipt" (6 months for retroactive payments received before March 2, 2004). Also, the notice that we send with the installment payment explains how the resource exclusion period is applied.

Comment: One commenter asked whether the unpaid past-due benefits would accrue interest until the installment payments are paid in full to the SSI recipient.

Response: We have no statutory authority to pay interest on unpaid benefits, including those being held for future installments.

Comment: One commenter stated that a recipient who is awarded SSI benefits 11 months after filing should not be subject to the installment payment provisions, since the provision only was applicable because it had taken us an additional 6 weeks to complete the award and payment process.

Response: Since section 1631(a)(10) of the Act requires us to compute the amount of past-due SSI benefits before determining if installment payments are required, we determine whether the

installment payment provisions apply at the time the claim is paid. The number of months from the date of filing an application until a determination or decision is made and the reason for the amount of past-due benefits are not factors in the computation.

Section 416.545(b) Paying Large Past-Due Benefits in Installments—Installment Formula

Comment: One commenter stated that we should change the formula for determining when benefits must be paid in installments to eliminate the reference for including any State supplementary payments a recipient may receive since a recipient who receives a State supplementary payment would automatically have that amount factored into the formula used in determining whether installments apply.

Response: We did not adopt this comment. Section 1631(a)(10)(D) of the Act specifies that the benefits subject to installment payments "includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a)" of the Act, and "under section 212(b) of Public Law 93–66." Accordingly, any federally administered State supplementary payments payable to the recipient must be included in the amount of past-due benefits when we determine if the amount is large enough to require installment payments. We believe the interim final rules accurately reflected the statutory formula and avoided potential confusion about whether State supplementation payments are included in applying the formula. Further, not all States provide a supplementary payment to the SSI benefit, so it is important to include references to the State supplement when providing the formula for dedicated account requirements, as well as the formula for the installment payment requirement.

Comment: Another commenter asked that we make the formula clearer by adding language to indicate that the amount of past-due benefits used in determining whether installment payments are required is based upon the amount of past-due benefits remaining after any reimbursement has been made to a State for interim assistance.

Response: We adopted this comment and are adding the parenthetical phrase "reimbursement to States for interim assistance" to § 416.545(b). We are also adding this phrase in § 416.546(a), which sets forth a similar formula used to determine whether a dedicated account is required.

Comment: One commenter suggested that we clarify the formula to indicate the amount of past-due benefits subject to installments that is determined after interim assistance is paid to States.

Response: We added the phrase "reimbursement to States for interim assistance" to both §§ 416.545(b) and 416.546(a) after the phrase "§ 416.525," which is the section that explains reimbursement to States for interim assistance.

Section 416.545(c) Paying Large Past-Due Benefits in Installments—Exception—When Installment Payments Are Not Required

Comment: Another commenter asked that we clarify when the exceptions to the installment payment process apply. The commenter stated that the interim final rules did not make clear when the 12-month period starts for determining whether death is likely to result from a medically determinable impairment within 12 months or when a recipient is likely to remain ineligible for 12 months.

Response: We did not adopt this comment. Section 1631(a)(10)(C) of the Act states and § 416.545(c) reflects that the installment requirement does not apply to a recipient who, at the time we determine that past-due benefits are payable, meets either of these two exceptions. We believe the language is clear that we consider the 12-month period beginning after we determine the recipient's eligibility for payment of past-due SSI benefits.

Section 416.545(d) Paying Large Past-Due Benefits in Installments—Exception—Increased First and Second Installment Payments

Comment: We received several comments objecting to the interim final rules because they did not include attorney fees as an expense for which we may increase the first or second installment payment.

Response: Section 1631(a)(10)(B)(iii) of the Act lists six kinds of debt or expenses for which we may increase an installment payment. Congress itemized certain outstanding debts relating to food, clothing, shelter, and medical treatment, or current or anticipated expenses relating to medical treatment, and the purchase of a home. The statute provides that we may increase the first and second installment payments by the amount of such debt or expenses beyond the normal statutory limit. Congress did not include attorney fees as one of the items that we could consider to increase the installment payments.

In addition, to the extent that the comment related to attorney fees payable under section 206 of the Act, after we published the interim final rules, Congress changed the law to provide that past-due benefits for purposes of dedicated accounts and installment payments include only those benefits remaining after the withholding of attorney fees. We have revised final § 415.545(b) to reflect that change in the Act. Our longstanding policy also has considered attorney fees incurred in the pursuit of a child's disability claim as an example of an expense that could properly be considered payable from a dedicated account. We are revising § 416.640(e)(2)(iii) to add that provision to our rules. Together, these two provisions greatly reduce, if not eliminate, the need to increase installment payments based on attorney fees payable.

Comment: A commenter believed that we should broaden the exceptions for increasing the installment payments and include various expenses, such as transportation, child support, or education.

Response: The statute is very explicit as to what expenses we may consider to find an exception to the limit on the first and second installment payments. The statute affords us no discretion to add to these exceptions to the basic rule.

Comment: Another commenter asked what criteria we use to determine whether we will make an increased installment payment due to certain debts or expenses.

Response: Since the statute refers to "outstanding debt" and "current or anticipated expenses," we require evidence from an SSI recipient that shows that payment is due for a particular item or that an obligation is being or will be incurred. The evidence could include, but is not limited to, outstanding bills from electric or utility companies, overdue rent bills, or letters of intent for purchasing a home. Under certain circumstances, we may not approve an increase to the installment payment based on documented debts that we consider excessive. The recipient may appeal that determination.

Section 416.546 Payment Into Dedicated Accounts of Past-Due Benefits for Eligible Persons Under Age 18 Who Have a Representative Payee

Comment: One commenter suggested eliminating the reference to including any federally administered State supplementation in the formula for determining whether a dedicated account must be established.

Response: We are not adopting this comment because section 1631(a)(2)(F)(i)(II) of the Act defines

benefits for purposes of that provision to "include State supplementary payments" that we make.

Comment: Another commenter questioned our interpretation of the dedicated account formula. The commenter felt the statute required only the deposit of the amount of past-due benefits, which exceeded the formula, not the entire amount.

Response: We did not adopt this comment because we believe the statutory language requires deposit of the entire amount of past-due benefits if the entire amount exceeds 6 times the FBR. Section 1631(a)(2)(F) of the Act requires the representative payee to establish a dedicated account "into which such benefits shall be paid" if the amount of the past-due benefits exceeds 6 times the maximum FBR. The language does not say that the representative payee must establish a dedicated account into which the amount that exceeds 6 times the maximum FBR shall be paid.

Comment: Three commenters expressed concern that if an institution required a minimum deposit to open an account, many recipients (or representative payees) would not have funds available to open a dedicated account in a financial institution as a prerequisite to payment of past-due benefits, as required by the interim final rules.

Response: Our experience with the dedicated account provision is that recipients and representative payees have not generally had difficulty opening dedicated accounts due to the lack of funds. If we receive reports that SSI recipients are unable to establish the required accounts, we will enter into a dialogue with national banking organizations concerning the requirements of the law. We will encourage their member banks to accept our notice of past-due benefits to recipients as a guarantee of the deposit of a Federal payment in excess of $3,000 into their institution and to waive any minimum deposit amounts or fees to establish an account for such recipients.

Section 416.570 Adjustment—General Rule

Comment: One commenter suggested that the rule state that an underpayment cannot be used to recover an overpayment that occurred prior to the computation of the underpayment.

Response: We did not adopt the comment. Section 1631(b)(1) of the Act and § 416.543 of our rules allow the use of an underpayment to recover an overpayment that occurred in a different period. Congress did not change this authority when it enacted the dedicated account provision. Accordingly, the rule applies to situations where past-due amounts must be deposited into a dedicated account.

We may recover an overpayment before we determine whether the past-due benefits must be deposited into the dedicated account. If recovery of the overpayment reduces past-due benefits below the formula, a dedicated account is not required. However, once these funds are deposited into the dedicated account, they may not be used to repay an overpayment to us.

Section 416.640(e) Dedicated Accounts for Eligible Persons Under Age 18

Comment: One commenter stated we must clarify "misapplication" in the dedicated account rules and how it relates to the misuse rules.

Response: We did not adopt this comment because we believe the regulatory definition of misapplication is sufficiently clear. Section 416.640(e)(4) of our rules defines misapplication of benefits as the use of funds from a dedicated account in any manner not authorized by our rules. It provides that when a representative payee knowingly uses dedicated account funds for the recipient for expenditures that are not permitted, that representative payee will be liable in an amount equal to the total amount of the misapplied funds.

Section 1631(a)(2)(A)(iv) of the Act defines misuse as occurring when a representative payee receives payment under title XVI for the use and benefit of another person and converts the payment, or any part of it, to a use other than for the use and benefit of the recipient. As reflected in these definitions, misapplication of benefits is different than misuse of benefits because misapplied benefits might benefit the recipient, but were not used for allowable expenses.

Comment: One commenter questioned the absence of any provision in § 416.640(e) dealing with the penalty for misapplication of funds from a dedicated account by a recipient who is his or her own payee, as provided in section 1631(a)(2)(F)(ii)(III)(bb) of the Act, as added by section 213 of the PRWORA.

Response: The version of the PRWORA passed by the House of Representatives contained a provision to reinstate the penalty for the transfer of resources for less than fair market value at section 1613(c) of the Act. The dedicated account provision cross-referenced section 1631(c) as the penalty applicable when a recipient who is his or her own payee misapplies funds from a dedicated account (*i.e.,* misapplied funds were to be considered transfers of resources resulting in a period of ineligibility, the length of which is related to the amount of funds misapplied). When the provision to reinstate the penalty for transfer of resources was dropped from the Conference Committee version, the cross-reference in section 1631(a)(2)(F)(ii)(III)(bb) to section 1613(c) was not deleted, nor was an alternative penalty provision substituted. As a result of this drafting error, there was no penalty for a recipient who is his or her own payee and misapplies funds from a dedicated account because there was no penalty for transfers of resources for less than fair market value in the SSI program.

Subsequently, in 1997, Congress passed the BBA, which provided that if a recipient becomes his or her own payee and misapplies funds from a dedicated account, future benefits will be withheld in the amount of the misapplied funds. Although Congress passed this amendment after the publication of the interim final rules, we are not requesting public comment on that provision in these final rules because we are merely conforming the regulations to the statutory change and not making any discretionary policy changes.

Comment: One commenter questioned why this provision applies primarily to children, and why children's cases should be treated differently.

Response: In section 213 of the PRWORA, Congress specifically addressed eligible persons under the age of 18 with representative payees. This was a legislative choice. Public Law 104–193.

Comment: One commenter expressed the opinion that "requiring the beneficiaries to have a bank account seems like an impermissible tying arrangement since it has nothing to do with disability."

Response: The commenter's specific objection is not clear. However, as we stated above, the statutory provisions regarding dedicated accounts are not discretionary. We must implement this mandatory provision in the statute.

Comment: One commenter expressed the opinion that because we require a representative payee to maintain two separate accounts, we should pay the bank service charges at least on the dedicated account.

Response: This provision is required by statute. The statute does not authorize us to pay bank service charges.

Comment: Two commenters requested that we revise § 416.640(e)(1) to allow a

dedicated account to be in the form of a trust.

Response: We did not adopt this comment. These accounts are intended to ensure ready access to the funds and to facilitate the monitoring of representative payee accountability. Furthermore, § 1613(e), except in limited circumstances defines trust assets as resources; whereas, funds in dedicated accounts are excluded from resources for the nine-month period.

By law, trusts are administered by trustees according to the terms of the trust. In many cases, a trustee would not be the representative payee. Thus, if a dedicated account were established in the form of a trust, the representative payee might have no authority over the use of benefits in the trust. In that situation, we would be unable to fulfill the requirement that we monitor and hold the representative payee liable for the misapplication of funds.

Comment: One commenter requested that we revise this section of the interim final rules to provide an exception for situations in which dedicated account funds will not be able to be used in a manner authorized by this provision, *e.g.,* when a child is healthy but mentally challenged, with virtually no medical expenses and no plans for education or job training.

Response: This section implements section 1631(a)(2)(F)(i) of the Act, which neither provides nor gives us authority to make exceptions of this type. We can only approve impairment-related expenses.

Comment: Several commenters requested that we revise or clarify this section to allow the use of dedicated account funds for basic living expenses such as food, rent, utilities, and replacing lost family income if a parent cannot work full time because of a child's impairments.

Generally, these commenters suggested that disabled children's impairments are exacerbated by living in impoverished conditions and, therefore, we should consider using these funds to provide for basic needs as an authorized impairment-related expenditure. One commenter opined that the requested revision would make § 416.640(e)(2) consistent with existing § 416.640(a).

Response: We did not adopt the comment to revise § 416.640(e)(2) in the manner requested. Section 1631(a)(2)(F)(ii)(II) of the Act allows expenditures from dedicated accounts for specific items or services and for other items or services that we consider to be appropriate, provided that they benefit the eligible recipient and are related to his or her impairment(s). However, based on these public comments, we revised § 416.640(e)(2)(iii) specifically to include the use of funds to prevent malnourishment or homelessness and to pay attorney fees incurred in pursuit of the child's disability claim as types of items and services that could be considered appropriate expenditures.

We did not make a complete list of "other items and services" because we believe each situation must be considered on a case-by-case basis. The procedural instructions we issued to our field offices contain examples of a broad range of items and services that could be allowable as impairment-related. Some examples are special foods for children with special dietary needs, increased electrical bills resulting from needed mechanical devices that must run constantly, attorney fees in pursuit of the child's disability claim, and emergency situations in which the unavailability of dedicated account funds for basic living expenses may result in the child's becoming homeless or malnourished.

We do not believe that it is consistent with the statutory restrictions placed on the use of dedicated account funds for basic living expenses to be considered impairment-related except in limited circumstances and situations. In most situations, ongoing monthly payments can and should be used to pay for the recipient's basic needs, as provided in § 416.640(a).

Comment: One commenter requested that we revise § 416.640(e)(2) to make it consistent with § 416.545(d), which allows for accelerated installment payments if the recipient has outstanding debts for food, clothing, or shelter, or current or anticipated expenses for the purchase of a home.

Response: We did not make the suggested change. Section 416.545(d) of our rules implements a statutory exception to the defined amount of installment payments. We may increase the amount of the first and second installments when a recipient has outstanding debts or anticipated expenses. Section 1631(a)(10)(B)(iii) of the Act. Among the specified items are outstanding debts for food, clothing, or shelter, and current or anticipated expenses for the purchase of a home. However, there is no similar statutory exception in section 1631(a)(2)(F) or authority for us to consider the payment of outstanding debts for food, clothing, or shelter, or the purchase of a home in the recipient's name as allowable expenditures, unless those items are related to the recipient's impairment. The general installment payment rule of section 1631(a)(10) applies to all SSI recipients. The specific dedicated account rule of section 1631(a)(2)(F) applies only to payments to representative payees of recipients under the age of 18. That Congress enacted these two provisions in the same legislation and did not make them uniform gives rise to the logical inference that the more restrictive dedicated account language takes precedence with respect to recipients under the age of 18 with representative payees even when the past-due benefits are being paid into the dedicated account in installments. In cases where a recipient under age 18 has a representative payee and is eligible for past-due benefits in an amount prescribed in section 1631(a)(10)(A) of the Act, both the installment payment and the dedicated account provisions will apply, and past-due benefits will be paid in installments into a dedicated account established by the representative payee. Public Law 104–193.

Comment: Two commenters requested that we revise § 416.640(e)(2)(iii) to include a comprehensive list of expenses that we determine to be allowable. The commenters believed that the list should include the basic necessities of life such as food, clothing, and shelter, as well as child care, respite care, items related to education, and participating in community and family activities such as summer camp. Generally, the commenters were concerned that our field office employees had too much discretion and might make arbitrary or conflicting decisions.

Response: We disagree with the premise of these comments. We decided not to exclusively itemize specific items or services that we could consider allowable expenditures because, except for education, job skills training, and medical treatment, section 1631(a)(2)(F)(ii)(II) of the Act requires that the item or service benefit the disabled SSI recipient and be related to that recipient's impairment. Since disabled recipients do not have universally applicable impairment-related needs or might not benefit universally from certain items or services, we conclude that we should review these expenditures on a case-by-case basis. Further, Congress specified in section 1631(a)(10) of the Act that we could increase installment expenses in view of debts for basic living expenses while it chose not to include similar language in section 1631(a)(2)(F) of the Act. We interpret this as indicating Congress' intent not to allow basic living expenses generally to be paid from dedicated account funds.

Thus, rather than include an extensive list of specific examples in the interim final rules, we provided general procedural instructions for the field personnel. We issued instructions to our field offices to make case-by-case determinations based on the payee's explanation about how an item or service would benefit the recipient and how it is related to the recipient's impairment(s). We included a broad non-inclusive list of examples of how some items or services could be related to certain impairments.

Some of the items that the commenters wanted included in § 416.640(e)(2)(iii), such as child care, respite care, items related to education, and participating in community and family activities could readily be considered beneficial to the recipient as explained in our procedural guidelines. However, as stated in previous responses, they are not presumptively impairment-related. Therefore, general expenses for food, clothing, and shelter cannot necessarily be paid from dedicated account funds. Ongoing monthly payments can and should be used to pay for the recipient's basic needs, as provided in § 416.640(a). Nevertheless, we expanded the list of allowable expenses in § 416.640(e)(2)(iii) to include attorney fees incurred in the pursuit of the child's disability claim, and basic living expenses where emergency situations may result in the child becoming homeless or malnourished without these funds being made available.

Comment: Two commenters wanted written instructions for representative payees, as well as our employees, about the proper use of dedicated account funds.

Response: We did not adopt the comment. We do not believe such written instructions would be appropriate in our regulations, but we have developed notices and information in "A Guide for Representative Payees" (*http://www.socialsecurity.gov/pubs/10076.pdf*) regarding the proper use of dedicated account funds.

Comment: Two commenters requested that we establish a time frame for pre-approval of expenses from dedicated account funds.

Response: We did not adopt this comment. Payees are not required to obtain prior approval for dedicated account expenditures. However, if a payee is uncertain whether an expenditure is allowed, the payee should seek our approval before making the expenditure. We explain this issue further in our publication "A Guide for Representative Payees." For instance, the Guide notes that payees "should first get approval from us for these kind of expenses" (*i.e.,* expenses related to the child's disability that we determine are appropriate).

Comment: One commenter stated that the potential for second-guessing the expenditures of thousands of parents, aside from the undue administrative burdens this could place on us, is quite real and suggested we make a presumptive rule that any expenditure of less than $1,000 should be presumed valid and not subject to review.

Response: The statutory language does not authorize us to establish such a presumption that would exempt expenditures from the misapplication rules. Accordingly, we did not adopt this comment.

Comment: Many commenters were concerned that attorney fees were not listed as a permitted expenditure from dedicated account funds. They urged that many SSI recipients are found disabled only through the efforts of an attorney.

Response: As noted above, attorney fees incurred in pursuit of the child's disability claim may be considered "impairment-related" and a permitted expenditure of dedicated account funds. We have long included this provision in our operating instructions. However, based on the public comments, we included attorney fees related to the pursuit of the child's disability claim in § 416.640(e)(2)(iii) as an expenditure that could be considered as appropriate. As noted previously, section 1631(a)(2)(F)(i)(II) of the Act provides for paying attorney fees from past-due benefits and for determining whether a dedicated account is required, only after deducting such fees.

Section 416.1247 Exclusion of a Dedicated Account in a Financial Institution

Comment: Two commenters opined that the resource exclusion for dedicated accounts in § 416.1247 should continue to apply after a recipient's eligibility has terminated. Not allowing continuation of the exclusion could become a bar to re-eligibility.

Response: Section 1613(a)(12) of the Act provides an exclusion from resources of "any account, including accrued interest or other earnings thereon, established and maintained in accordance with section 1631(a)(2)(F)." The maintenance requirements in section 1631(a)(2)(F) deal with restrictions on the use of funds in the dedicated account and requirements of the payee to report on and account for activity respecting funds in the dedicated account. These restrictions and accounting requirements continue during periods of suspension from SSI eligibility and, accordingly, the resource exclusion continues during periods of suspension due to ineligibility, as long as the recipient's eligibility has not been terminated.

When a recipient's eligibility terminates, the restrictions on the use of funds in a dedicated account and the payee's responsibility to account for and report on activity in such an account also terminate, and the resource exclusion ends. Once eligibility terminates, any special status given to funds in a dedicated account and the dedicated account designation itself end.

Comment: One commenter was concerned that, although dedicated accounts are excluded from resources for SSI purposes, they could be a resource for Medicaid purposes, causing ineligibility.

Response: Dedicated accounts will be excluded for most States for which we make Medicaid eligibility determinations or that use SSI rules to make their own Medicaid eligibility determinations. For the 11 States that make their own Medicaid eligibility determinations using their own rules, dedicated accounts may be excluded from resources at the option of each State.

Explanation of Revisions

These final rules reflect the following minor changes to the interim final rules:

- We added a new second sentence to § 416.545(a) to clarify current policy. The interim final rule was silent on our policy and procedures for issuing additional past-due benefits that become payable while a recipient is receiving installment payments so we are including language in § 416.545(a) to explain this process more fully.
- We amended the first sentence of §§ 416.545(b) and 416.546(a) to include additional language as a result of the public comments.
- We amended § 416.640(e)(2)(iii) by adding an additional sentence to the end of the section to include attorney fees and expenditures to prevent malnourishment and homelessness as dedicated account expenditures that could be considered appropriate.

These final rules make the following changes based on statutes enacted subsequent to the interim final rules:

- We amended §§ 416.545(b) and 416.546(a) to reflect the SSPA provision to specify that past-due benefits for dedicated account purposes and installment payment purposes are those benefits remaining after any withholding for payment of attorney fees.

• We amended § 416.545(b) to reflect changes based on the nondiscretionary provision of section 7502 of the DRA to specify the formula for past-due benefits for payment of installments will be an amount which equals or exceeds 3 times the maximum monthly benefit payable plus any federally administered State supplementation.

• We amended § 416.546(b) to reflect the technical amendments in section 5522(b) of the BBA to clarify what subsequent past-due benefits may be deposited into a dedicated account by the representative payee.

• We amended § 416.546(e)(4) to reflect the technical amendments in section 5522(b) of the BBA to clarify how we treat misapplication of benefits in a dedicated account by a recipient who is his or her own payee.

Except for the changes discussed above and set out below, the interim final rules remain unchanged and are adopted as final.

Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5) and 1631(d)(1) of the Social Security Act, 42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of this rule, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for the three changes we are making based on legislation enacted after we published the interim final rule because these changes all are required by the statutes. The statutes do not give us any discretion in implementing the provisions. Therefore, opportunity for prior comment is unnecessary, and we are including these changes in this final rule.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities, because they affect persons or States only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These final rules do not create any new, or affect any existing, collections, and therefore, do not require OMB approval under the Paperwork Reduction Act.

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

List of Subjects in 20 CFR Part 416

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

Dated: September 28, 2010.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending subparts E and F of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

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

Subpart E—[Amended]

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

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

■ 2. Amend § 416.545 by adding a new second sentence following the first sentence in paragraph (a) and by revising the first sentence of paragraph (b) to read as follows:

§ 416.545 Paying large past-due benefits in installments.

(a) * * * If an individual becomes eligible for past-due benefits for a different period while installments are being made, we will notify the individual of the amount due and issue these benefits in the last installment payment. * * *

* * * * *

(b) * * * Installment payments must be made if the amount of the past-due benefits, including any federally administered State supplementation, after applying § 416.525 (reimbursement to States for interim assistance) and applying § 416.1520 (payment of attorney fees), equals or exceeds 3 times the Federal Benefit Rate plus any federally administered State supplementation payable in a month to an eligible individual (or eligible individual and eligible spouse). * * *

* * * * *

■ 3. Amend § 416.546 by revising paragraphs (a) and (b) to read as follows:

§ 416.546 Payment into dedicated accounts of past-due benefits for eligible individuals under age 18 who have a representative payee.

* * * * *

(a) For an eligible individual under age 18 who has a representative payee and who is determined to be eligible for past-due benefits (including any federally administered State supplementation) in an amount which, after applying § 416.525 (reimbursement to States for interim assistance) and § 416.1520 (payment of attorney fee), exceeds six times the Federal Benefit Rate plus any federally administered State supplementation payable in a month, this unpaid amount must be paid into the dedicated account established and maintained as described in § 416.640(e).

(b) After the account is established, the representative payee may (but is not required to) deposit into the account any subsequent funds representing past-due benefits under this title to the individual which are equal to or exceed the maximum Federal Benefit Rate (including any federally administered State supplementation).

* * * * *

Subpart F—[Amended]

■ 4. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 5. Amend § 416.640 by adding an additional sentence to the end of paragraph (e)(2)(iii) and an additional sentence to the end of paragraph (e)(4) to read as follows:

§ 416.640 Use of benefit payments.

* * * * *

(e) * * *

(2) * * *

(iii) * * * Attorney fees related to the pursuit of the child's disability claim and use of funds to prevent malnourishment or homelessness could be considered appropriate expenditures.

* * * * *

(4) * * * In addition, if a recipient who is his or her own payee knowingly

misapplies benefits in a dedicated account, we will reduce future benefits payable to that recipient (or to that recipient and his or her spouse) by an amount equal to the total amount of the misapplied funds.

* * * * *

[FR Doc. 2010–33272 Filed 1–4–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, and 171

[Docket No. PHMSA–2009–0410 (HM–233B)]

RIN 2137–AE57

Hazardous Materials Transportation: Revisions of Special Permits Procedures

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is revising its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA is providing an on-line application option.

DATES: *Effective date:* The effective date of these amendments is March 7, 2011. *Voluntary compliance date:* Voluntary compliance with the provisions of this final rule is authorized January 5, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Andrews or Mr. T. Glenn Foster, Standards and Rulemaking Division, PHMSA, at (202) 366–8553 or Mr. Ryan Paquet, Approvals and Permits Division, PHMSA, at (202) 366–4511.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.*, directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous material in commerce. (49 U.S.C. 5103) Section 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 of the Federal hazardous materials transportation law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the administration within the Department of Transportation (DOT) primarily responsible for implementing the Federal hazmat law and issuing special permits.

The HMR generally are performance-oriented regulations that provide the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into the production and transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. Implementation of new technologies and operational techniques can enhance safety because the authorized operations or activities often provide a greater level of safety than required under the regulations. In addition, each applicant granted a special permit undergoes a safety fitness evaluation, further assuring the safety of transportation under the special permit. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

The procedures governing the application, issuance, modification, and termination of special permits are found at Subpart B of 49 CFR Part 107 (*see* §§ 107.101–107.127). As currently specified in § 107.105(c), an application must include the following information that is relevant to the special permit proposal: (1) A citation of the specific regulation from which the applicant seeks relief; (2) specification of the proposed mode or modes of transportation; (3) a detailed description of the proposed special permit (*e.g.*, alternative packaging, test, procedure or activity) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents; (4) a specification of the proposed duration or schedule of events for which the special permit is sought; (5) a statement outlining the applicant's basis for seeking relief from compliance with the specified regulations and, if the special permit is requested for a fixed period, a description of how compliance will be achieved at the end of that period; (6) if the applicant seeks emergency processing specified in § 107.117, a statement of supporting facts and reasons; (7) identification and description of the hazardous materials planned for transportation under the special permit; (8) description of each packaging, including specification or special permit number, as applicable, to be used in conjunction with the requested special permit; (9) for alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations; and (10) when a Class 1 material is forbidden for transportation by aircraft except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), certification by an applicant for a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

In addition, the applicant must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation or, if the required safety level does not exist, that the special permit is consistent with the public interest. To this end, at a minimum, the application must include: (1) Information on shipping and incident history and experience relating to the application; (2) identification of increased risks to safety or property that may result if the special permit is granted and a description of measures that will be taken to mitigate that risk; and (3) analyses, data, or test results demonstrating that the level of safety expected under the special permit is equal to the level of safety achieved by the regulation from which the applicant seeks relief.

PHMSA independently reviews and evaluates the information provided in the special permit application to determine whether the special permit will achieve an equal level of safety as provided by the HMR or, if a required level of safety does not exist, that the special permit is consistent with the public interest. This review includes a technical analysis of the alternative proposed in the application, an