

Ten-ish Medicaid Regulations You'll Want to Know

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Medicaid is the primary source of funding for long-term care in the United States, yet its rules are often complex, counterintuitive, and ever-changing. For attorneys, advisors, and professionals working with older adults and individuals with disabilities, a solid grasp of key Medicaid regulations is essential to effective planning and advocacy. Importantly, these rules do not exist in isolation, many intersect with other benefits and supports, including Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). This presentation highlights approximately ten regulations governing long-term care supports and services, rules that shape eligibility, asset protection, and benefits. By understanding these regulations, practitioners can better guide their clients through the maze of requirements and help them secure the care and financial protection they need.¹

20 CFR § 404.350: Who is entitled to child's benefits?

20 CFR § 404.350 outlines the criteria under which an individual may be entitled to child's benefits under Title II of the Social Security Act. In a special needs practice, the most common benefit is the Disabled Adult Child or DAC benefit. These benefits are payable to the child of an insured person who is either entitled to old-age or disability benefits or has died. The regulation specifies several conditions that must be met for entitlement.

¹ This presentation does not cover any regulations related to federal Medicaid waivers as this is provided for in another segment.

To qualify for child's benefits, the applicant must (1) be the insured person's child which includes biological children, adopted children, and in some cases, stepchildren, as defined in §§ 404.355 through 404.359; (2) meet the dependency requirements outlined in §§ 404.360 through 404.365; (3) apply for benefits; (4) be unmarried; and (5) be under age 18, or between ages 18 and 19 and a full-time student, or age 18 or older with a disability that began before age 22.

20 CFR § 416.202: Who may get SSI benefits?

20 CFR § 416.202 outlines the fundamental eligibility criteria for receiving SSI benefits. To qualify, an individual must meet all specified requirements, encompassing age, disability status, residency, citizenship, income, and resource limits. The applicant must be aged 65 or older, blind, or disabled. The individual must also be a resident of the United States and either a U.S. citizen or national, an alien lawfully admitted for permanent residence, an alien permanently residing under color of law, or, in certain cases, the child of U.S. armed forces personnel living overseas. In addition, the applicant's income and resources cannot exceed the established limits.

20 CFR § 416.1202: Deeming of resources

20 CFR § 416.1202 outlines the rules for deeming resources in the SSI program. Deeming refers to the process by which the Social Security Administration (SSA) considers the resources of certain individuals, including spouses and parents, as available to the SSI applicant, potentially affecting their eligibility and benefit amount.

If an SSI applicant is married to someone who is not eligible for SSI benefits and they live in the same household, the SSA counts the value of the ineligible spouse's resources as part of the applicant's resources. This includes money and property, minus certain exclusions.

For children with disabilities under the age of 18 who live with their parents, the SSA generally counts the parents' resources as available to the child. This means that the financial resources of the parents can affect the child's eligibility for SSI benefits. However, there are some limited exceptions to this rule. If the child previously received a reduced SSI benefit while residing in a medical treatment facility, is eligible for medical assistance under a Medicaid State home care plan, and would otherwise be ineligible due to parental deeming, the SSA may not apply the deeming provisions.

20 CFR §§ 416.1802 through 416.18035 (Who is considered your spouse):

These regulations explain how the SSA decides whether someone is considered married for SSI purposes. If SSA determines that a person is married, it affects whether they are treated as part of a couple or as an individual for SSI eligibility and payment amounts. The rules look at both legal marriages and certain living arrangements that SSA treats like a marriage, even if the couple is not legally wed.

The SSA accepts marriages recognized under state law, including common-law marriages where applicable. SSA also has “deemed marriage” rules: if two people present themselves as spouses and live together in the same household, they may be considered married for SSI purposes, even if the marriage isn’t valid under state law.

These regulations also explain how the SSA determines whether someone is the spouse of another person when state law is unclear. For example, if a marriage would have been valid except for a legal technicality, the SSA may still treat the individuals as married. The SSA may also look at other evidence—such as joint tax returns, shared property, or statements from the couple or others—to decide if a marital relationship exists.

If the SSA decides two people are married, they may be required to apply as a couple, and their income and resources are combined for determining eligibility and benefit amounts. This can reduce the SSI payment compared to what each might receive if counted individually, because SSI provides a lower combined rate for couples than for two individuals. The rules also note that marriage can affect whether someone is considered a child for SSI purposes; once someone is married, they are no longer treated as a child when SSA decides eligibility.

20 CFR §§ 416.1130 through 416.1141 (In-Kind Support and Maintenance):

The regulations provided for in 20 CFR §§ 416.1130 through 416.1141 govern how the SSA evaluates in-kind support and maintenance (ISM) for SSI recipients. ISM refers to shelter² received for free or at less than fair market value, which the SSA counts as unearned income and may reduce the SSI benefit. These regulations provide detailed guidance on determining the value of ISM.

Section 416.1130 introduces the concept of ISM and explains that both earned and unearned income can include items received in kind. The SSA generally values in-kind items at their current market value. For example, if an SSI recipient's relative paid for their utility bill, the SSA may treat this payment as unearned income.

Section 416.1131 outlines the one-third reduction rule, which applies when an individual lives in another person's household and receives shelter. Instead of valuing each room individually, the SSA counts one-third of the Federal Benefit Rate (FBR) as additional income. For example, if the FBR is \$967 per month, \$322.33 would be counted as income for ISM

² The regulations still provide for food in the definition of ISM. However, effective September 30, 2024, the SSA updated their SSI regulations to remove food from the calculations of ISM. In your materials are the proposed changes to the regulations.

purposes (minus a \$20 disregard). This rule simplifies the calculation and provides a standardized method for counting the value of shelter.

Section 416.1132 defines what constitutes living in another person's household. A household is generally the personal residence of one or more individuals who provide support. Living in a commercial establishment, such as a hotel or boarding house, does not automatically constitute living in someone else's household. However, if an individual resides in a boarding house where shelter is provided without direct payment, that arrangement could be considered a household for ISM purposes.

Section 416.1133 explains how to determine a pro rata share of household operating expenses. If an SSI recipient pays a fair portion of household expenses—such as rent, utilities, or groceries—they are considered to be living in their own household, and the one-third reduction rule does not apply. For example, if two individuals share an apartment and one pays half of the rent and utilities, that person is not receiving ISM from the other resident.

Section 416.1140 introduces the presumed value rule, which applies when the one-third reduction rule is not applicable. Under this rule, the SSA assigns a maximum value to shelter received in kind rather than attempting to determine the exact market value. The presumed value is set at one-third of the FBR plus \$20, which aligns with the general income exclusion. For example, if the FBR is \$967, the maximum presumed value of ISM would be \$342.33 (\$322.33 + \$20) per month, even if the actual cost of the meals or shelter is difficult to calculate.

Section 416.1141 specifies when the presumed value rule applies for determining in-kind support and maintenance (ISM) for SSI recipients. This rule is used when the one-third reduction rule does not apply, and it establishes a maximum presumed value for ISM, which is one-third of the Federal Benefit Rate (FBR) plus \$20.

The presumed value rule applies when an individual receives ISM and is living in their own household or in a household where not all members receive public assistance. In such cases, the SSA presumes a maximum value for the ISM received. However, if the individual can demonstrate that the actual value of the ISM is less than the presumed value, the SSA will use the actual value to determine the unearned income.

In contrast, if the individual lives in a public assistance household, where all members receive public assistance, the presumed value rule does not apply. In this situation, the SSA considers that the individual is not receiving ISM from members of the household, and thus, the presumed value rule is not used. This distinction ensures that individuals in public assistance households are not unfairly penalized by ISM calculations.

20 CFR § 416.1212 (Exclusion of the Home):

20 CFR § 416.1212 establishes the rules governing the treatment of a home under the SSI program. It defines what property qualifies as a “home” and provides criteria for when the home is excluded from SSI resource calculations, as well as circumstances under which it may become a countable resource. Under the regulation, a home is any property in which the individual (and spouse, if any) has an ownership interest and which serves as the individual’s principal place of residence. This includes the dwelling itself, the land on which it is situated, and related outbuildings. The regulation recognizes the home as the individual’s primary living space, distinguishing it from other property or assets.

The home is excluded from SSI resource calculations regardless of its value³, provided it is the individual's principal place of residence. However, if there are income-producing structures or property on the same land that do not qualify under the home exclusion, those portions may be considered countable resources.

If the individual no longer resides in the home or moves without intent to return. In such circumstances, the home ceases to be the individual's principal place of residence and becomes a countable resource. If the individual sells the home and reinvests the proceeds into a new home within three months, the new home may be excluded from resources, provided it qualifies as the principal place of residence and meets the regulatory requirements. This three-month reinvestment period allows for a transition while maintaining the home exclusion, preventing temporary disqualification from SSI due to the sale and replacement of the primary residence.

20 CFR § 416.1231 (Burial Spaces and Certain Funds Set Aside for Burial Expenses):

20 CFR § 416.1231 specifies how certain burial-related resources are treated under the SSI program. It establishes exclusions for burial spaces and funds specifically designated for burial expenses, provided certain conditions are met.

Under this regulation, one burial space per individual is excluded from SSI resource calculations. This exclusion applies to burial plots, crypts, mausoleums, urns, and related items necessary for the burial of the individual or their immediate family members. Immediate family includes the individual's spouse, children, and parents. The exclusion is not limited by the value of the burial space and is not subject to the \$2,000 individual or \$3,000 couple resource limit.

³ Under The One Big Beautiful Bill Act (P.L. 119-21), signed into law on July 4, 2025 it establishes a \$1 Million ceiling, regardless of inflation for home equity values for enrollees who qualify for Medicaid to receive long-term supports and services.

SSI also excludes up to \$1,500 per person in funds set aside for burial expenses. These funds must be clearly designated for burial purposes and kept separate from other resources. Acceptable forms of burial funds include revocable burial contracts, burial trusts, and other financial instruments with a definite cash value. If these funds are commingled with non-burial resources, the exclusion does not apply to any portion of the funds.

Funds placed in irrevocable burial arrangements are excluded from resources without a dollar limit provided they are in an irrevocable trust or arrangement. An irrevocable arrangement means that the funds cannot be refunded or used for any purpose other than burial expenses.

If excluded burial funds are used for purposes other than the burial arrangements of the individual or their spouse, future SSI benefits may be reduced. The reduction is equal to the amount of excluded burial funds used for other purposes. This penalty applies only if, at the time of use, the individual would have had resources exceeding the SSI resource limit without the burial fund exclusion.

20 CFR § 1.529A-0 through 20 CFR § 1.529A-8 (Qualified ABLE Programs):

These regulations establish the rules for Qualified ABLE Programs, which allow individuals with disabilities to create tax-advantaged savings accounts, known as ABLE accounts. These accounts are designed to help eligible individuals save for expenses related to their disability while protecting their eligibility for means-tested federal programs such as Medicaid and SSI. The regulations provide detailed guidance on eligibility, contributions, distributions, and program administration, ensuring both the integrity of the program and the protection of beneficiaries.

To open an ABLE account, the designated beneficiary must meet specific eligibility criteria. The individual must have a significant disability that occurred before the age of 26⁴ and is expected to last at least 12 months or result in death. The ABLE program must verify eligibility at the time the account is established and may require periodic recertification.

The regulations define several terms. The “designated beneficiary” is the individual for whom the account is established. “Qualified disability expenses” (QDEs) are costs incurred to maintain health, independence, and quality of life, including education, housing, transportation, employment training, assistive technology, health care, financial management, legal fees, and funeral or burial expenses. For instance, a beneficiary could use ABLE funds to pay for specialized computer software to facilitate remote work or for occupational therapy sessions.

Contributions to ABLE accounts may be made by the designated beneficiary, family members, friends, or other third parties. Contributions are subject to both annual limits (currently \$19,000) and aggregate limits tied to the state’s 529 college savings plan maximum. Contributions are treated as gifts for federal tax purposes and may be subject to gift tax rules.

The regulations also clarify how ABLE accounts interact with other federal programs. Balances in an ABLE account are generally disregarded for SSI and Medicaid eligibility. However, if an account balance exceeds \$100,000, SSI benefits may be suspended until the balance drops below the limit.

Distributions from ABLE accounts are tax-free if used for QDEs. If funds are used for non-QDEs, the earnings portion of the distribution is subject to federal income tax and may incur

⁴ On January 1, 2026 individuals whose disability was diagnosed before age 46 will be eligible for ABLE accounts allowing millions of more people to qualify. See <https://www.congress.gov/bill/117th-congress/senate-bill/331>

an additional penalty tax. For instance, if a beneficiary used ABLE funds to purchase a vacation unrelated to their disability, the earnings portion of that distribution would be taxable, and a 10% penalty could apply. The regulations provide rules to calculate the earnings portion and tax consequences for non-qualified distributions.

Upon the death of the designated beneficiary, remaining ABLE funds may be used to reimburse the state for Medicaid benefits provided to the individual, after payment of funeral and burial costs and any remaining QDEs. Any remaining funds may then be distributed to the beneficiary's estate or a successor beneficiary, provided the beneficiary is a sibling or stepsibling.

42 CFR § 433.36 (Liens and Recoveries):

42 CFR § 433.36 provides states the authority to place liens on a Medicaid recipient's property or to recover funds from their estate in order to recoup the cost of the Medicaid services provided. The rationale is to ensure that Medicaid dollars are used appropriately and that the state can be reimbursed when assets are available.

Liens may be imposed in two main situations. First, if Medicaid payments were made in error or obtained improperly, the state can place a lien to recover those funds. Second, when payments were correctly made, a lien may be placed on the real property of an institutionalized person who is not reasonably expected to return home. Before doing so, however, the state must provide notice and hearing rights to protect the recipient's due process.

The regulation places limitations on when a lien may be placed against a Medicaid recipient's home. In order to protect certain family members, the liens are not permitted if certain

relatives are still residing in the home. These include a spouse, a child under the age of 21, or a child who is blind or disabled, regardless of age. In addition, a lien cannot be placed if the recipient's sibling has an equity interest in the home and is living in the home for a period of at least one year immediately before the Medicaid recipient was institutionalized.

The regulation further requires that liens be removed if circumstances change and the Medicaid recipient is able to return home.

Estate recovery is also addressed in this regulation. States may recover costs for Medicaid services from the estate of a deceased recipient, but recovery is generally delayed until the death of a surviving spouse, or unless there are no surviving minor, blind, or disabled children. States may also enforce liens by recovering from the sale of property after the recipient's death, again subject to these protections.

A lien is also barred if the recipient's son or daughter has resided in the home for at least two years prior to institutionalization, has lived there continuously since that date, and can demonstrate to the state agency that he or she provided care that enabled the individual to remain at home rather than entering an institution.

Finally, recovery cannot be made by reducing or withholding payments from other benefit programs, such as Social Security, SSI, or SSDI. In other words, Medicaid recovery efforts must be limited to property interests and estates, not to ongoing federal benefit payments.

This content is from the eCFR and is authoritative but unofficial.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 404 —Federal Old-Age, Survivors and Disability Insurance (1950-)

Subpart D —Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, and 902(a)(5)).

Source: 44 FR 34481, June 15, 1979, unless otherwise noted.

Child's Benefits

- § 404.350 Who is entitled to child's benefits?
- § 404.351 Who may be reentitled to child's benefits?
- § 404.352 When does my entitlement to child's benefits begin and end?
- § 404.353 Child's benefit amounts.
- § 404.354 Your relationship to the insured.
- § 404.355 Who is the insured's natural child?
- § 404.356 Who is the insured's legally adopted child?
- § 404.357 Who is the insured's stepchild?
- § 404.358 Who is the insured's grandchild or stepgrandchild?
- § 404.359 Who is the insured's equitably adopted child?
- § 404.360 When a child is dependent upon the insured person.
- § 404.361 When a natural child is dependent.
- § 404.362 When a legally adopted child is dependent.
- § 404.363 When is a stepchild dependent?
- § 404.364 When is a grandchild or stepgrandchild dependent?
- § 404.365 When an equitably adopted child is dependent.
- § 404.366 "Contributions for support," "one-half support," and "living with" the insured defined—determining first month of entitlement.
- § 404.367 When you are a "full-time elementary or secondary school student".
- § 404.368 When you are considered a full-time student during a period of nonattendance.

CHILD'S BENEFITS

§ 404.350 Who is entitled to child's benefits?

- (a) **General.** You are entitled to child's benefits on the earnings record of an insured person who is entitled to old-age or disability benefits or who has died if—

- (1) You are the insured person's child, based upon a relationship described in §§ 404.355 through 404.359;
 - (2) You are dependent on the insured, as defined in §§ 404.360 through 404.365;
 - (3) You apply;
 - (4) You are unmarried; and
 - (5) You are under age 18; you are 18 years old or older and have a disability that began before you became 22 years old; or you are 18 years or older and qualify for benefits as a full-time student as described in § 404.367.
- (b) **Entitlement preclusion for certain disabled children.** If you are a disabled child as referred to in paragraph (a)(5) of this section, and your disability was based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535) and your benefits ended after your receipt of 36 months of benefits, you will not be entitled to benefits based on disability for any month following such 36 months regardless of the number of entitlement periods you have had if, in such following months, drug addiction or alcoholism is a contributing factor material to the later determination of disability (as described in § 404.1535).

[44 FR 34481, June 15, 1979, as amended at 48 FR 21927, May 16, 1983; 60 FR 8146, Feb. 10, 1995; 61 FR 38363, July 24, 1996]

§ 404.351 Who may be reentitled to child's benefits?

If your entitlement to child's benefits has ended, you may be reentitled on the same earnings record if you have not married and if you apply for reentitlement. Your reentitlement may begin with—

- (a) The first month in which you qualify as a full-time student. (See § 404.367.)
- (b) The first month in which you are disabled, if your disability began before you became 22 years old.
- (c) The first month you are under a disability that began before the end of the 84th month following the month in which your benefits had ended because an earlier disability had ended; or
- (d) With respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at anytime if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity and you meet the other requirements for reentitlement. The 84-month time limit in paragraph (c) in this section continues to apply if your previous entitlement to childhood disability benefits terminated because of medical improvement.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21927, May 16, 1983; 61 FR 38363, July 24, 1996; 71 FR 66865, Nov. 17, 2006]

§ 404.352 When does my entitlement to child's benefits begin and end?

- (a) We will find your entitlement to child's benefits begins at the following times:
 - (1) If the insured is deceased, with the first month covered by your application in which you meet all other requirements for entitlement.
 - (2) If the insured is living and your first month of entitlement is September 1981 or later, with the first month covered by your application throughout which you meet all other requirements for entitlement.

- (3) If the insured is living and your first month of entitlement is before September 1981, with the first month covered by your application in which you meet all other requirements for entitlement.
- (b) We will find your entitlement to child's benefits ends at the earliest of the following times:
 - (1) With the month before the month in which you become 18 years old, if you are not disabled or a full-time student.
 - (2) With the second month following the month in which your disability ends, if you become 18 years old and you are disabled. If your disability ends on or after December 1, 1980, your entitlement to child's benefits continues, subject to the provisions of paragraphs (c) and (d) of this section, until the month before your termination month (§ 404.325).
 - (3) With the last month you are a full-time student or, if earlier, with the month before the month you become age 19, if you become 18 years old and you qualify as a full-time student who is not disabled. If you become age 19 in a month in which you have not completed the requirements for, or received, a diploma or equivalent certificate from an elementary or secondary school and you are required to enroll for each quarter or semester, we will find your entitlement ended with the month in which the quarter or semester in which you are enrolled ends. If the school you are attending does not have a quarter or semester system which requires reenrollment, we will find your entitlement to benefits ended with the month you complete the course or, if earlier, the first day of the third month following the month in which you become 19 years old.
 - (4) With the month before the month you marry. We will not find your benefits ended, however, if you are age 18 or older, disabled, and you marry a person entitled to child's benefits based on disability or person entitled to old-age, divorced wife's, divorced husband's, widow's, widower's, mother's, father's, parent's, or disability benefits.
 - (5) With the month before the month the insured's entitlement to old-age or disability benefits ends for a reason other than death or the attainment of full retirement age (as defined in § 404.409). Exception: We will continue your benefits if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in § 404.1535), the insured person's benefits ended after 36 months of payment (see § 404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see § 404.316(f)), and the insured person remains disabled.
 - (6) With the month before the month you die.
 - (7) With the month in which the divorce between your parent (including an adoptive parent) and the insured stepparent becomes final if you are entitled to benefits as a stepchild and the marriage between your parent (including an adoptive parent) and the insured stepparent ends in divorce.
- (c) If you are entitled to benefits as a disabled child age 18 or over and your disability is based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), we will find your entitlement to benefits ended under the following conditions:
 - (1) If your benefits have been suspended for a period of 12 consecutive months for failure to comply with treatment, with the month following the 12 months unless you are otherwise disabled without regard to drug addiction or alcoholism (see § 404.470(c)).
 - (2) If you have received 36 months of benefits on that basis when treatment is available, regardless of the number of entitlement periods you may have had, with the month following such 36-month payment period unless you are otherwise disabled without regard to drug addiction or alcoholism.

(d)

(1) Your benefits may be continued after your impairment is no longer disabling if—

- (i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);
- (ii) You began participating in the program before the date your disability ended; and
- (iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months—

- (i) The month in which you complete the program; or
- (ii) The month in which you stop participating in the program for any reason (see § 404.327(b) for what we mean by “participating” in the program); or
- (iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

Exception to paragraph (d) : In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

(e) If, after November 1980, you have a disabling impairment (§ 404.1511), we will pay you benefits for all months in which you do not do substantial gainful activity during the reentitlement period (§ 404.1592a) following the end of your trial work period (§ 404.1592). If you are unable to do substantial gainful activity in the first month following the reentitlement period, we will pay you benefits until you are able to do substantial gainful activity. (Earnings during your trial work period do not affect the payment of your benefits during that period.) We will also pay you benefits for the first month after the trial work period in which you do substantial gainful activity and the two succeeding months, whether or not you do substantial gainful activity during those succeeding months. After those three months, we cannot pay you benefits for any months in which you do substantial gainful activity.

[68 FR 4707, Jan. 30, 2003, as amended at 70 FR 36506, June 24, 2005; 75 FR 52621, Aug. 27, 2010]

§ 404.353 Child's benefit amounts.

- (a) **General.** Your child's monthly benefit is equal to one-half of the insured person's primary insurance amount if he or she is alive and three-fourths of the primary insurance amount if he or she has died. The amount of your monthly benefit may change as explained in § 404.304.
- (b) **Entitlement to more than one benefit.** If you are entitled to a child's benefit on more than one person's earnings record, you will ordinarily receive only the benefit payable on the record with the highest primary insurance amount. If your benefit before any reduction would be larger on an earnings record with a lower primary insurance amount and no other person entitled to benefits on any earnings record would receive a smaller benefit as a result of your receiving benefits on the record with the lower primary insurance

amount, you will receive benefits on that record. See § 404.407(d) for a further explanation. If you are entitled to a child's benefit and to other dependent's or survivor's benefits, you can receive only the highest of the benefits.

[44 FR 34481, June 15, 1979; 44 FR 56691, Oct. 2, 1979, as amended at 48 FR 21928, May 16, 1983; 51 FR 12606, Apr. 14, 1986; 61 FR 38363, July 24, 1996]

§ 404.354 Your relationship to the insured.

You may be related to the insured person in one of several ways and be entitled to benefits as his or her child, *i.e.*, as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. For details on how we determine your relationship to the insured person, see §§ 404.355 through 404.359.

[63 FR 57593, Oct. 28, 1998]

§ 404.355 Who is the insured's natural child?

- (a) **Eligibility as a natural child.** You may be eligible for benefits as the insured's natural child if any of the following conditions is met:
- (1) You could inherit the insured's personal property as his or her natural child under State inheritance laws, as described in paragraph (b) of this section.
 - (2) You are the insured's natural child and the insured and your mother or father went through a ceremony which would have resulted in a valid marriage between them except for a "legal impediment" as described in § 404.346(a).
 - (3) You are the insured's natural child and your mother or father has not married the insured, but the insured has either acknowledged in writing that you are his or her child, been decreed by a court to be your father or mother, or been ordered by a court to contribute to your support because you are his or her child. If the insured is deceased, the acknowledgment, court decree, or court order must have been made or issued before his or her death. To determine whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a), the written acknowledgment, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.
 - (4) Your mother or father has not married the insured but you have evidence other than the evidence described in paragraph (a)(3) of this section to show that the insured is your natural father or mother. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he or she died. See § 404.366 for an explanation of the terms "living with" and "contributions for support."
- (b) **Use of State Laws —**
- (1) **General.** To decide whether you have inheritance rights as the natural child of the insured, we use the law on inheritance rights that the State courts would use to decide whether you could inherit a child's share of the insured's personal property if the insured were to die without leaving a will. If the insured is living, we look to the laws of the State where the insured has his or her permanent home when you apply for benefits. If the insured is deceased, we look to the laws of the State where the insured had

his or her permanent home when he or she died. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands, we will look to the laws of the District of Columbia. For a definition of permanent home, see § 404.303. For a further discussion of the State laws we use to determine whether you qualify as the insured's natural child, see paragraphs (b)(3) and (b)(4) of this section. If these laws would permit you to inherit the insured's personal property as his or her child, we will consider you the child of the insured.

- (2) **Standards.** We will not apply any State inheritance law requirement that an action to establish paternity must be taken within a specified period of time measured from the worker's death or the child's birth, or that an action to establish paternity must have been started or completed before the worker's death. If applicable State inheritance law requires a court determination of paternity, we will not require that you obtain such a determination but will decide your paternity by using the standard of proof that the State court would use as the basis for a determination of paternity.
- (3) **Insured is living.** If the insured is living, we apply the law of the State where the insured has his or her permanent home when you file your application for benefits. We apply the version of State law in effect when we make our final decision on your application for benefits. If you do not qualify as a child of the insured under that version of State law, we look at all versions of State law that were in effect from the first month for which you could be entitled to benefits up until the time of our final decision and apply the version of State law that is most beneficial to you.
- (4) **Insured is deceased.** If the insured is deceased, we apply the law of the State where the insured had his or her permanent home when he or she died. We apply the version of State law in effect when we make our final decision on your application for benefits. If you do not qualify as a child of the insured under that version of State law, we will apply the version of State law that was in effect at the time the insured died, or any version of State law in effect from the first month for which you could be entitled to benefits up until our final decision on your application. We will apply whichever version is most beneficial to you. We use the following rules to determine the law in effect as of the date of death:
 - (i) If a State inheritance law enacted after the insured's death indicates that the law would be retroactive to the time of death, we will apply that law; or
 - (ii) If the inheritance law in effect at the time of the insured's death was later declared unconstitutional, we will apply the State law which superseded the unconstitutional law.

[63 FR 57593, Oct. 28, 1998]

§ 404.356 Who is the insured's legally adopted child?

You may be eligible for benefits as the insured's child if you were legally adopted by the insured. If you were legally adopted after the insured's death by his or her surviving spouse you may also be considered the insured's legally adopted child. We apply the adoption laws of the State or foreign country where the adoption took place, not the State inheritance laws described in § 404.355, to determine whether you are the insured's legally adopted child.

[44 FR 34481, June 15, 1979, as amended at 63 FR 57594, Oct. 28, 1998]

§ 404.357 Who is the insured's stepchild?

You may be eligible for benefits as the insured's stepchild if, after your birth, your natural or adopting parent married the insured. You also may be eligible as a stepchild if you were conceived prior to the marriage of your natural parent to the insured but were born after the marriage and the insured is not your natural parent. The marriage between the insured and your parent must be a valid marriage under State law or a marriage which would be valid except for a *legal impediment* described in § 404.346(a). If the insured is alive when you apply, you must have been his or her stepchild for at least 1 year immediately preceding the day you apply. For purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), you will be considered to meet the one year duration requirement throughout the month in which the anniversary of the marriage occurs. If the insured is not alive when you apply, you must have been his or her stepchild for at least 9 months immediately preceding the day the insured died. This 9-month requirement will not have to be met if the marriage between the insured and your parent lasted less than 9 months under one of the conditions described in § 404.335(a)(2)(i)-(iii).

[48 FR 21928, May 16, 1983, as amended at 64 FR 14608, Mar. 26, 1999; 70 FR 61365, Oct. 24, 2005]

§ 404.358 Who is the insured's grandchild or stepgrandchild?

- (a) **Grandchild and stepgrandchild defined.** You may be eligible for benefits as the insured's grandchild or stepgrandchild if you are the natural child, adopted child, or stepchild of a person who is the insured's child as defined in §§ 404.355 through 404.357, or § 404.359. Additionally, for you to be eligible as a grandchild or stepgrandchild, your natural or adoptive parents must have been either deceased or under a disability, as defined in § 404.1501(a), at the time your grandparent or stepgrandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began. If your parent is deceased, for purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), your parent will be considered to be deceased as of the first day of the month of death.
- (b) **Legally adopted grandchild or stepgrandchild.** If you are the insured's grandchild or stepgrandchild and you are legally adopted by the insured or by the insured's surviving spouse after his or her death, you are considered an adopted child and the dependency requirements of § 404.362 must be met.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21928, May 16, 1983]

§ 404.359 Who is the insured's equitably adopted child?

You may be eligible for benefits as an equitably adopted child if the insured had agreed to adopt you as his or her child but the adoption did not occur. The agreement to adopt you must be one that would be recognized under State law so that you would be able to inherit a child's share of the insured's personal property if he or she were to die without leaving a will. The agreement must be in whatever form, and you must meet whatever requirements for performance under the agreement, that State law directs. If you apply for child's benefits after the insured's death, the law of the State where the insured had his or her permanent home at the time of his or her death will be followed. If you apply for child's benefits during the insured's life, the law of the State where the insured has his or her permanent home at the time of your application will be followed.

§ 404.360 When a child is dependent upon the insured person.

One of the requirements for entitlement to child's benefits is that you be dependent upon the insured. The evidence you need to prove your dependency is determined by how you are related to the insured. To prove your dependency you may be asked to show that at a specific time you lived with the insured, that you received contributions for your support from the insured, or that the insured provided at least one-half of your support. These dependency requirements, and the time at which they must be met, are explained in §§ 404.361 through 404.365. The terms *living with*, *contributions for support*, and *one-half support* are defined in § 404.366.

§ 404.361 When a natural child is dependent.

- (a) **Dependency of natural child.** If you are the insured's natural child, as defined in § 404.355, you are considered dependent upon him or her, except as stated in paragraph (b) of this section.
- (b) **Dependency of natural child legally adopted by someone other than the insured.**
 - (1) Except as indicated in paragraph (b)(2) of this section, if you are legally adopted by someone other than the insured (your natural parent) during the insured's lifetime, you are considered dependent upon the insured only if the insured was either living with you or contributing to your support at one of the following times:
 - (i) When you applied;
 - (ii) When the insured died; or
 - (iii) If the insured had a period of disability that lasted until he or she became entitled to disability or old-age benefits or died, at the beginning of the period of disability or at the time he or she became entitled to disability or old-age benefits.
 - (2) You are considered dependent upon the insured (your natural parent) if:
 - (i) You were adopted by someone other than the insured after you applied for child's benefits; or
 - (ii) The insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits or died, and you are adopted by someone other than the insured after the beginning of that period of disability.

[64 FR 14608, Mar. 26, 1999]

§ 404.362 When a legally adopted child is dependent.

- (a) **General.** If you were legally adopted by the insured before he or she became entitled to old-age or disability benefits, you are considered dependent upon him or her. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits during the life of the insured, you must meet the dependency requirements stated in paragraph (b) of this section. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits after the death of the insured, you are considered dependent upon him or her. If you were adopted after the insured's death by his or her surviving spouse, you may be considered dependent upon the insured only under the conditions described in paragraph (c) of this section.
- (b) **Adoption by the insured after he or she became entitled to benefits —**

- (1) **General.** If you are legally adopted by the insured after he or she became entitled to benefits and you are not the insured's natural child or stepchild, you are considered dependent on the insured during his or her lifetime only if—
 - (i) You had not attained age 18 when adoption proceedings were started, and your adoption was issued by a court of competent jurisdiction within the United States; or
 - (ii) You had attained age 18 before adoption proceedings were started; your adoption was issued by a court of competent jurisdiction within the United States; and you were living with or receiving at least one-half of your support from the insured for the year immediately preceding the month in which your adoption was issued.
- (2) **Natural child and stepchild.** If you were legally adopted by the insured after he or she became entitled to benefits and you are the insured's natural child or stepchild, you are considered dependent upon the insured.

(c) **Adoption by the insured's surviving spouse —**

- (1) **General.** If you are legally adopted by the insured's surviving spouse after the insured's death, you are considered dependent upon the insured as of the date of his or her death if—
 - (i) You were either living with or receiving at least one-half of your support from the insured at the time of his or her death; and,
 - (ii) The insured had started adoption proceedings before he or she died; or if the insured had not started the adoption proceedings before he or she died, his or her surviving spouse began and completed the adoption within 2 years of the insured's death.
- (2) **Grandchild or stepgrandchild adopted by the insured's surviving spouse.** If you are the grandchild or stepgrandchild of the insured and any time after the death of the insured you are legally adopted by the insured's surviving spouse, you are considered the dependent child of the insured as of the date of his or her death if—
 - (i) Your adoption took place in the United States;
 - (ii) At the time of the insured's death, your natural, adopting or stepparent was not living in the insured's household and making regular contributions toward your support; and
 - (iii) You meet the dependency requirements stated in § 404.364.

[44 FR 34481, June 15, 1979; 44 FR 56691, Oct. 2, 1979, as amended at 56 FR 24000, May 28, 1991; 57 FR 3938, Feb. 3, 1992]

§ 404.363 When is a stepchild dependent?

If you are the insured's stepchild, as defined in § 404.357, we consider you dependent on him or her if you were receiving at least one-half of your support from him or her at one of these times—

- (a) When you applied;
- (b) When the insured died; or
- (c) If the insured had a period of disability that lasted until his or her death or entitlement to disability or old-age benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

[44 FR 34481, June 15, 1979, as amended at 75 FR 52621, Aug. 27, 2010]

§ 404.364 When is a grandchild or stepgrandchild dependent?

If you are the insured's grandchild or stepgrandchild, as defined in § 404.358(a), you are considered dependent upon the insured if—

- (a) You began living with the insured before you became 18 years old; and
- (b) You were living with the insured in the United States and receiving at least one-half of your support from him or her for the year before he or she became entitled to old-age or disability benefits or died; or if the insured had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began. If you were born during the 1-year period, the insured must have lived with you and provided at least one-half of your support for *substantially all* of the period that begins on the date of your birth. Paragraph (c) of this section explains when the *substantially all* requirement is met.
- (c) The “substantially all” requirement will be met if, at one of the times described in paragraph (b) of this section, the insured was living with you and providing at least one-half of your support, and any period during which he or she was not living with you and providing one-half of your support did not exceed the lesser of 3 months or one-half of the period beginning with the month of your birth.

[44 FR 34481, June 15, 1979, as amended at 73 FR 40967, July 17, 2008]

§ 404.365 When an equitably adopted child is dependent.

If you are the insured's equitably adopted child, as defined in § 404.359, you are considered dependent upon him or her if you were either living with or receiving contributions for your support from the insured at the time of his or her death. If your equitable adoption is found to have occurred after the insured became entitled to old-age or disability benefits, your dependency cannot be established during the insured's life. If your equitable adoption is found to have occurred before the insured became entitled to old-age or disability benefits, you are considered dependent upon him or her if you were either living with or receiving contributions for your support from the insured at one of these times—

- (a) When you applied; or
- (b) If the insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.366 “Contributions for support,” “one-half support,” and “living with” the insured defined—determining first month of entitlement.

To be eligible for child's or parent's benefits, and in certain Government pension offset cases, you must be dependent upon the insured person at a particular time or be assumed dependent upon him or her. What it means to be a dependent child is explained in §§ 404.360 through 404.365; what it means to be a dependent parent is explained in § 404.370(f); and the Government pension offset is explained in § 404.408a. Your dependency upon the insured person may be based upon whether at a specified time you were receiving *contributions for your support* or *one-half of your support* from the insured person, or whether you were *living with* him or her. These terms are defined in paragraphs (a) through (c) of this section.

- (a) **Contributions for support.** The insured makes a contribution for your support if the following conditions are met:
- (1) The insured gives some of his or her own cash or goods to help support you. Support includes food, shelter, routine medical care, and other ordinary and customary items needed for your maintenance. The value of any goods the insured contributes is the same as the cost of the goods when he or she gave them for your support. If the insured provides services for you that would otherwise have to be paid for, the cash value of his or her services may be considered a contribution for your support. An example of this would be work the insured does to repair your home. The insured person is making a contribution for your support if you receive an allotment, allowance, or benefit based upon his or her military pay, veterans' pension or compensation, or social security earnings.
 - (2) Contributions must be made regularly and must be large enough to meet an important part of your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. If the insured person only provides gifts or donations once in a while for special purposes, they will not be considered contributions for your support. Although the insured's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the insured person's control, such as illness or unemployment, will be disregarded unless during this interruption someone else takes over responsibility for supporting you on a permanent basis.
- (b) **One-half support.** The insured person provides one-half of your support if he or she makes regular contributions for your ordinary living costs; the amount of these contributions equals or exceeds one-half of your ordinary living costs; and any income (from sources other than the insured person) you have available for support purposes is one-half or less of your ordinary living costs. We will consider any income which is available to you for your support whether or not that income is actually used for your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. A contribution may be in cash, goods, or services. The insured is not providing at least one-half of your support unless he or she has done so for a reasonable period of time. Ordinarily we consider a reasonable period to be the 12-month period immediately preceding the time when the one-half support requirement must be met under the rules in §§ 404.362(c)(1) and 404.363 (for child's benefits), in § 404.370(f) (for parent's benefits) and in § 404.408a(c) (for benefits where the Government pension offset may be applied). A shorter period will be considered reasonable under the following circumstances:
- (1) At some point within the 12-month period, the insured either begins or stops providing at least one-half of your support on a permanent basis and this is a change in the way you had been supported up to then. In these circumstances, the time from the change up to the end of the 12-month period will be considered a reasonable period, unless paragraph (b)(2) of this section applies. The change in your source of support must be permanent and not temporary. Changes caused by seasonal employment or customary visits to the insured's home are considered temporary.
 - (2) The insured provided one-half or more of your support for at least 3 months of the 12-month period, but was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over the responsibility for providing at least one-half of your support on a permanent basis. Any support you received from a public assistance program is not considered as a taking over of responsibility for your support by someone else. Under these circumstances, a reasonable period is that part of the 12-month period before the insured was forced to reduce or stop providing at least one-half of your support.

- (c) ***"Living with" the insured.*** You are living with the insured if you ordinarily live in the same home with the insured and he or she is exercising, or has the right to exercise, parental control and authority over your activities. You are living with the insured during temporary separations if you and the insured expect to live together in the same place after the separation. Temporary separations may include the insured's absence because of active military service or imprisonment if he or she still exercises parental control and authority. However, you are not considered to be living with the insured if you are in active military service or in prison. If *living with* is used to establish dependency for your eligibility to child's benefits and the date your application is filed is used for establishing the point for determining dependency, you must have been living with the insured throughout the month your application is filed in order to be entitled to benefits for that month.
- (d) ***Determining first month of entitlement.*** In evaluating whether dependency is established under paragraph (a), (b), or (c) of this section, for purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), we will not use the temporary separation or temporary interruption rules.

[44 FR 34481, June 15, 1979, as amended at 45 FR 65540, Oct. 3, 1980; 48 FR 21928, May 16, 1983; 52 FR 26955, July 17, 1987; 64 FR 14608, Mar. 26, 1999]

§ 404.367 When you are a "full-time elementary or secondary school student".

You may be eligible for child's benefits if you are a full-time elementary or secondary school student. For the purposes of determining whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a)(2)(i), if you are entitled as a student on the basis of attendance at an elementary or secondary school, you will be considered to be in full-time attendance for a month during any part of which you are in full-time attendance. You are a full-time elementary or secondary school student if you meet all the following conditions:

- (a) You attend a school which provides elementary or secondary education as determined under the law of the State or other jurisdiction in which it is located. Participation in the following programs also meets the requirements of this paragraph:
- (1) You are instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which you reside; or
 - (2) You are in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which you reside which is administered by the local school or school district/jurisdiction.
- (b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and you are carrying a subject load which is considered full-time for day students under the institution's standards and practices. If you are in a home schooling program as described in paragraph (a)(1) of this section, you must be carrying a subject load which is considered full-time for day students under standards and practices set by the State or other jurisdiction in which you reside;
- (c) To be considered in full-time attendance, your scheduled attendance must be at the rate of at least 20 hours per week unless one of the exceptions in paragraphs (c) (1) and (2) of this section applies. If you are in an independent study program as described in paragraph (a)(2) of this section, your number of

hours spent in school attendance are determined by combining the number of hours of attendance at a school facility with the agreed upon number of hours spent in independent study. You may still be considered in full-time attendance if your scheduled rate of attendance is below 20 hours per week if we find that:

- (1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or
- (2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.
- (d) You are not being paid while attending the school by an employer who has requested or required that you attend the school;
- (e) You are in grade 12 or below; and
- (f) You are not subject to the provisions in § 404.468 for nonpayment of benefits to certain prisoners and certain other inmates of publicly funded institutions.

[48 FR 21928, May 16, 1983, as amended at 48 FR 55452, Dec. 13, 1983; 56 FR 35999, July 30, 1991; 61 FR 38363, July 24, 1996]

§ 404.368 When you are considered a full-time student during a period of nonattendance.

If you are a full-time student, your eligibility may continue during a period of nonattendance (including part-time attendance) if all the following conditions are met:

- (a) The period of nonattendance is 4 consecutive months or less;
- (b) You show us that you intend to resume your studies as a full-time student at the end of the period or at the end of the period you are a full-time student; and
- (c) The period of nonattendance is not due to your expulsion or suspension from the school.

[48 FR 21929, May 16, 1983]

This content is from the eCFR and is authoritative but unofficial.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 416 —Supplemental Security Income for the Aged, Blind, and Disabled

Subpart B —Eligibility

General

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93-66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94-241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99-643, 100 Stat. 3574 (42 U.S.C. 1382h note).

Source: 47 FR 3103, Jan. 22, 1982, unless otherwise noted.

Editorial Note: Nomenclature changes to part 416 appear at 68 FR 53509, Sept. 11, 2003.

§ 416.202 Who may get SSI benefits.

You are eligible for SSI benefits if you meet all of the following requirements:

- (a) You are—
 - (1) Aged 65 or older (subpart H);
 - (2) Blind (subpart I); or
 - (3) Disabled (subpart I).
- (b) You are a resident of the United States (§ 416.1603), and—
 - (1) A citizen or a national of the United States (§ 416.1610);
 - (2) An alien lawfully admitted for permanent residence in the United States (§ 416.1615);
 - (3) An alien permanently residing in the United States under color of law (§ 416.1618); or
 - (4) A child of armed forces personnel living overseas as described in § 416.216.
- (c) You do not have more income than is permitted (subparts K and D).
- (d) You do not have more resources than are permitted (subpart L).
- (e) You are disabled, drug addiction or alcoholism is a contributing factor material to the determination of disability (see § 416.935), and you have not previously received a total of 36 months of Social Security benefit payments when appropriate treatment was available or 36 months of SSI benefits on the basis of disability where drug addiction or alcoholism was a contributing factor material to the determination of disability.
- (f) You are not—
 - (1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

(g) You file an application for SSI benefits (subpart C).

[47 FR 3103, Jan. 22, 1982, as amended at 58 FR 4897, Jan. 19, 1993; 60 FR 8149, Feb. 10, 1995; 61 FR 10277, Mar. 13, 1996; 65 FR 40495, June 30, 2000]

This content is from the eCFR and is authoritative but unofficial.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 416 —Supplemental Security Income for the Aged, Blind, and Disabled

Subpart L —Resources and Exclusions

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

Source: 40 FR 48915, Oct. 20, 1975, unless otherwise noted.

Editorial Note: Nomenclature changes to part 416 appear at 68 FR 53509, Sept. 11, 2003.

§ 416.1202 Deeming of resources.

(a) **Married individual.** In the case of an individual who is living with a person not eligible under this part and who is considered to be the husband or wife of such individual under the criteria in §§ 416.1802 through 416.1835 of this part, such individual's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of such spouse whether or not such resources are available to such individual. In addition to the exclusions listed in § 416.1210, we also exclude the following items:

- (1) Pension funds that the ineligible spouse may have. *Pension funds* are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);
- (2) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 310; and
- (3) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in § 416.1160(d)).

(b) **Child —**

- (1) **General.** In the case of a child (as defined in § 416.1856) who is under age 18, we will deem to that child any resources, not otherwise excluded under this subpart, of his or her ineligible parent who is living in the same household with him or her (as described in § 416.1851). We also will deem to the child the resources of his or her ineligible stepparent. As used in this section, the term “parent” means the natural or adoptive parent of a child, and the term “stepparent” means the spouse (as defined in § 416.1806) of such natural or adoptive parent who is living in the same household with the child and parent. We will deem to a child the resources of his or her parent and stepparent whether or not those resources are available to him or her. We will deem to a child the resources of his or her parent and stepparent only to the extent that those resources exceed the resource limits described in § 416.1205. (If the child is living with only one parent, we apply the resource limit for an individual. If the child is living with both parents, or the child is living with one parent and a

stepparent, we apply the resource limit for an individual and spouse.) We will not deem to a child the resources of his or her parent or stepparent if the child is excepted from deeming under paragraph (b)(2) of this section. In addition to the exclusions listed in § 416.1210, we also exclude the following items:

- (i) Pension funds of an ineligible parent (or stepparent). *Pension funds* are defined as funds held in IRAs, as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);
- (ii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 310; and
- (iii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in § 416.1160(d)).

(2) **Disabled child under age 18.** In the case of a disabled child under age 18 who is living in the same household with his or her parents, the deeming provisions of paragraph (b)(1) of this section shall not apply if such child—

- (i) Previously received a reduced SSI benefit while a resident of a medical treatment facility, as described in § 416.414;
- (ii) Is eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and
- (iii) Would otherwise be ineligible because of the deeming of his or her parents' resources or income.

(c) **Applicability.** When used in this subpart L, the term *individual* refers to an eligible aged, blind, or disabled person, and also includes a person whose resources are deemed to be the resources of such individual (as provided in paragraphs (a) and (b) of this section).

[40 FR 48915, Oct. 20, 1975, as amended at 50 FR 38982, Sept. 26, 1985; 52 FR 8888, Mar. 20, 1987; 52 FR 29841, Aug. 12, 1987; 52 FR 32240, Aug. 26, 1987; 60 FR 361, Jan. 4, 1995; 62 FR 1056, Jan. 8, 1997; 65 FR 16815, Mar. 30, 2000; 72 FR 50875, Sept. 5, 2007; 73 FR 28036, May 15, 2008; 75 FR 7554, Feb. 22, 2010]

This content is from the eCFR and is authoritative but unofficial.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 416 —Supplemental Security Income for the Aged, Blind, and Disabled

Subpart L —Resources and Exclusions

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

Source: 40 FR 48915, Oct. 20, 1975, unless otherwise noted.

Editorial Note: Nomenclature changes to part 416 appear at 68 FR 53509, Sept. 11, 2003.

§ 416.1212 Exclusion of the home.

- (a) **Defined.** A home is any property in which an individual (and spouse, if any) has an ownership interest and which serves as the individual's principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located and related outbuildings.
- (b) **Home not counted.** We do not count a home regardless of its value. However, see §§ 416.1220 through 416.1224 when there is an income-producing property located on the home property that does not qualify under the home exclusion.
- (c) **If an individual changes principal place of residence.** If an individual (and spouse, if any) moves out of his or her home without the intent to return, the home becomes a countable resource because it is no longer the individual's principal place of residence. If an individual leaves his or her home to live in an institution, we still consider the home to be the individual's principal place of residence, irrespective of the individual's intent to return, as long as a spouse or dependent relative of the eligible individual continues to live there. The individual's equity in the former home becomes a countable resource effective with the first day of the month following the month it is no longer his or her principal place of residence.
- (d) **If an individual leaves the principal place of residence due to domestic abuse.** If an individual moves out of his or her home without the intent to return, but is fleeing the home as a victim of domestic abuse, we will not count the home as a resource in determining the individual's eligibility to receive, or continue to receive, SSI payments. In that situation, we will consider the home to be the individual's principal place of residence until such time as the individual establishes a new principal place of residence or otherwise takes action rendering the home no longer excludable.
- (e) **Proceeds from the sale of an excluded home.**
 - (1) The proceeds from the sale of a home which is excluded from the individual's resources will also be excluded from resources to the extent they are intended to be used and are, in fact, used to purchase another home, which is similarly excluded, within 3 months of the date of receipt of the proceeds.
 - (2) The value of a promissory note or similar installment sales contract constitutes a "proceed" which can be excluded from resources if—
 - (i) The note results from the sale of an individual's home as described in § 416.1212(a);
 - (ii) Within 3 months of receipt (execution) of the note, the individual purchases a replacement home as described in § 416.1212(a) (see paragraph (f) of this section for an exception); and

- (iii) All note-generated proceeds are reinvested in the replacement home within 3 months of receipt (see paragraph (g) of this section for an exception).
- (3) In addition to excluding the value of the note itself, other proceeds from the sale of the former home are excluded resources if they are used within 3 months of receipt to make payment on the replacement home. Such proceeds, which consist of the downpayment and that portion of any installment amount constituting payment against the principal, represent a conversion of a resource.
- (f) **Failure to purchase another excluded home timely.** If the individual does not purchase a replacement home within the 3-month period specified in paragraph (e)(2)(ii) of this section, the value of a promissory note or similar installment sales contract received from the sale of an excluded home is a countable resource effective with the first moment of the month following the month the note is executed. If the individual purchases a replacement home after the expiration of the 3-month period, the note becomes an excluded resource the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested as explained in paragraph (g) of this section.
- (g) **Failure to reinvest proceeds timely.**
 - (1) If the proceeds (e.g., installment amounts constituting payment against the principal) from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully and timely (within 3 months of receipt) in a replacement home, as of the first moment of the month following receipt of the payment, the individual's countable resources will include:
 - (i) The value of the note; and
 - (ii) That portion of the proceeds, retained by the individual, which was not timely reinvested
 - (2) The note remains a countable resource until the first moment of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home. Failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract. However, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

Example 1. On July 10, an SSI recipient received his quarterly payment of \$200 from the buyer of his former home under an installment sales contract. As of October 31, the recipient has used only \$150 of the July payment in connection with the purchase of a new home. The exclusion of the unused \$50 (and of the installment contract itself) is revoked back to July 10. As a result, the \$50 and the value of the contract as of August 1, are included in a revised determination of resources for August and subsequent months.

Example 2. On April 10, an SSI recipient received a payment of \$250 from the buyer of his former home under an installment sales contract. On May 3, he reinvested \$200 of the payment in the purchase of a new home. On May 10, the recipient received another \$250 payment, and reinvested the full amount on June 3. As of July 31, since the recipient has used only \$200 of the April payment in connection with the purchase of the new home, the exclusion of the unused \$50 (and of the installment contract itself) is revoked back to April 10. As a result, the \$50 and the value of the contract as of May 1 are includable resources. Since the recipient fully and timely reinvested the May payment, the installment contract and the payment are again excludable resources as of June 1. However, the \$50 left over from the previous payment remains a countable resource.

- (h) **Interest payments.** If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments do not represent conversion of a resource. The interest is income under the provisions of §§ 416.1102, 416.1120, and 416.1121(c).

[50 FR 42686, Oct. 22, 1985, as amended at 51 FR 7437, Mar. 4, 1986; 59 FR 43285, Aug. 23, 1994; 75 FR 1273, Jan. 11, 2010]

This content is from the eCFR and is authoritative but unofficial.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 416 —Supplemental Security Income for the Aged, Blind, and Disabled

Subpart L —Resources and Exclusions

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

Source: 40 FR 48915, Oct. 20, 1975, unless otherwise noted.

Editorial Note: Nomenclature changes to part 416 appear at 68 FR 53509, Sept. 11, 2003.

§ 416.1231 Burial spaces and certain funds set aside for burial expenses.

(a) *Burial spaces* —

- (1) **General.** In determining the resources of an individual, the value of burial spaces for the individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources.
- (2) **Burial spaces defined.** For purposes of this section “burial spaces” include burial plots, gravesites, crypts, mausoleums, urns, niches and other customary and traditional repositories for the deceased's bodily remains provided such spaces are owned by the individual or are held for his or her use. Additionally, the term includes necessary and reasonable improvements or additions to or upon such burial spaces including, but not limited to, vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing the gravesite for burial of the deceased.
- (3) **An agreement representing the purchase of a burial space.** The value of an agreement representing the purchase of a burial space, including any accumulated interest, will be excluded from resources. We do not consider a burial space “held for” an individual under an agreement unless the individual currently owns and is currently entitled to the use of the space under that agreement. For example, we will not consider a burial space “held for” an individual under an installment sales agreement or other similar device under which the individual does not currently own nor currently have the right to use the space, nor is the seller currently obligated to provide the space, until the purchase amount is paid in full.
- (4) **Immediate family defined.** For purposes of this section *immediate family* means an individual's minor and adult children, including adopted children and step-children; an individual's brothers, sisters, parents, adoptive parents, and the spouses of those individuals. Neither dependency nor living-in-the-same-household will be a factor in determining whether a person is an immediate family member.

(b) *Funds set aside for burial expenses* —

- (1) **Exclusion.** In determining the resources of an individual (and spouse, if any) there shall be excluded an amount not in excess of \$1,500 each of funds specifically set aside for the burial expenses of the individual or the individual's spouse. This exclusion applies only if the funds set aside for burial expenses are kept separate from all other resources not intended for burial of the individual (or

spouse) and are clearly designated as set aside for the individual's (or spouse's) burial expenses. If excluded burial funds are mixed with resources not intended for burial, the exclusion will not apply to any portion of the funds. This exclusion is in addition to the burial space exclusion.

- (2) **Exception for parental deeming situations.** If an individual is an eligible child, the burial funds (up to \$1,500) that are set aside for the burial arrangements of the eligible child's ineligible parent or parent's spouse will not be counted in determining the resources of such eligible child.
- (3) **Burial funds defined.** For purposes of this section "burial funds" are revocable burial contracts, burial trusts, other burial arrangements (including amounts paid on installment sales contracts for burial spaces), cash, accounts, or other financial instruments with a definite cash value clearly designated for the individual's (or spouse's, if any) burial expenses and kept separate from nonburial-related assets. Property other than listed in this definition will not be considered "burial funds."
- (4) **Recipients currently receiving SSI benefits.** Recipients currently eligible as of July 11, 1990, who have had burial funds excluded which do not meet all of the requirements of paragraphs (b) (1) and (3) of this section must convert or separate such funds to meet these requirements unless there is an impediment to such conversion or separation; *i.e.*, a circumstance beyond an individual's control which makes conversion/separation impossible or impracticable. For so long as such an impediment or circumstance exists, the burial funds will be excluded if the individual remains otherwise continuously eligible for the exclusion.
- (5) **Reductions.** Each person's (as described in §§ 416.1231(b)(1) and 416.1231(b)(2)) \$1,500 exclusion must be reduced by:
 - (i) The face value of insurance policies on the life of an individual owned by the individual or spouse (if any) if the cash surrender value of those policies has been excluded from resources as provided in § 416.1230; and
 - (ii) Amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial expenses.
- (6) **Irrevocable trust or other irrevocable arrangement.** Funds in an irrevocable trust or other irrevocable arrangement which are available for burial are funds which are held in an irrevocable burial contract, an irrevocable burial trust, or an amount in an irrevocable trust which is specifically identified as available for burial expenses.
- (7) **Increase in value of burial funds.** Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which occur beginning November 1, 1982, or the date of first SSI eligibility, whichever is later, are excluded from resources if left to accumulate and become part of the separate burial fund.
- (8) **Burial funds used for some other purpose.**
 - (i) Excluded burial funds must be used solely for that purpose.
 - (ii) If any excluded funds are used for a purpose other than the burial arrangements of the individual or the individual's spouse for whom the funds were set aside, future SSI benefits of the individual (or the individual and eligible spouse) will be reduced by an amount equal to the amount of excluded burial funds used for another purpose. This penalty for use of excluded burial funds for a purpose other than the burial arrangements of the individual (or spouse) will apply only if, as of the first moment of the month of use, the individual would have had resources in excess of the limit specified in § 416.1205 without application of the exclusion.

Burial spaces and certain funds set aside for burial expenses.

- (9) *Extension of burial fund exclusion during suspension.* The exclusion of burial funds and accumulated interest and appreciation will continue to apply throughout a period of suspension as described in § 416.1320, so long as the individual's eligibility has not been terminated as described in §§ 416.1331 through 416.1335.

[48 FR 57127, Dec. 28, 1983, as amended at 55 FR 28377, July 11, 1990; 57 FR 1384, Jan. 14, 1992]

This content is from the eCFR and is authoritative but unofficial.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 416 —Supplemental Security Income for the Aged, Blind, and Disabled

Subpart R —Relationship

Authority: Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d) and 1383(d)(1) and (e)).

Source: 45 FR 71795, Oct. 30, 1980, unless otherwise noted. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981.

Editorial Note: Nomenclature changes to part 416 appear at 68 FR 53509, Sept. 11, 2003.

§ 416.1801 Introduction.

- (a) **What is in this subpart.** This subpart contains the basic rules for deciding for SSI purposes whether a person is considered married and, if so, to whom; whether a person is considered a child; and whether a person is considered another person's parent. It tells what information and evidence we need to decide these facts.
- (b) **Related subparts.** Subpart D discusses how to determine the amount of a person's benefits; subpart G discusses what changes in a person's situation he or she must report to us; subpart K discusses how we count income; and subpart L discusses how we count resources (money and property). The questions of whether a person is married, to whom a person is married, whether a person is a child, and who is a person's parent must be answered in order to know which rules in subparts D, G, K, and L apply.
- (c) **Definitions.** In this subpart—
 - Eligible spouse** means a person—
 - (1) Who is eligible for SSI,
 - (2) Whom we consider the spouse of another person who is eligible for SSI, and
 - (3) Who was living in the same household with that person on—
 - (i) The first day of the month following the date the application is filed (for the initial month of eligibility for payment based on that application);
 - (ii) The date a request for reinstatement of eligibility is filed (for the month of such request); or
 - (iii) The first day of the month, for all other months. An individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

Spouse means a person's husband or wife under the rules of §§ 416.1806 through 416.1835 of this part.

We and **us** mean the Social Security Administration.

You means a person who has applied for or has been receiving SSI benefits, or a person for whom someone else has applied for or has been receiving SSI benefits.

[45 FR 71795, Oct. 30, 1980. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981, as amended at 60 FR 16376, Mar. 30, 1995; 64 FR 31975, June 15, 1999; 65 FR 16815, Mar. 30, 2000]

This content is from the eCFR and is authoritative but unofficial.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 416 —Supplemental Security Income for the Aged, Blind, and Disabled

Subpart R —Relationship

Who Is Considered Your Spouse

Authority: Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d) and 1383(d)(1) and (e)).

Source: 45 FR 71795, Oct. 30, 1980, unless otherwise noted. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981.

Editorial Note: Nomenclature changes to part 416 appear at 68 FR 53509, Sept. 11, 2003.

§ 416.1802 Effects of marriage on eligibility and amount of benefits.

(a) *If you have an ineligible spouse —*

- (1) **Counting income.** If you apply for or receive SSI benefits, and you are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we may count part of that person's income as yours. Counting part of that person's income as yours may reduce the amount of your benefits or even make you ineligible. Section 416.410 discusses the amount of benefits and § 416.1163 explains how we count income for an individual with an ineligible spouse.
- (2) **Counting resources.** If you are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we will count the value of that person's resources (money and property), minus certain exclusions, as yours when we determine your eligibility. Section 416.1202(a) gives a more detailed statement of how we count resources and § 416.1205(a) gives the limit of resources allowed for eligibility of a person with an ineligible spouse.

(b) *If you have an eligible spouse —*

- (1) **Counting income.** If you apply for or receive SSI benefits and have an eligible spouse as defined in § 416.1801(c), we will count your combined income and calculate the benefit amount for you as a couple. Section 416.412 gives a detailed statement of the amount of benefits and subpart K of this part explains how we count income for an eligible couple.
- (2) **Counting resources.** If you have an eligible spouse as defined in § 416.1801(c), we will count the value of your combined resources (money and property), minus certain exclusions, and use the couple's resource limit when we determine your eligibility. Section 416.1205(b) gives a detailed statement of the resource limit for an eligible couple.

- (c) ***If you are married, we do not consider you a child.*** The rules for counting income and resources are different for children than for adults. (Section 416.1851 discusses the effects of being considered a child on eligibility and amount of benefits.) Regardless of your age, if you are married we do not consider you to be a child.

(d)

Effects of marriage on eligibility and amount of benefits.

- (1) **General rule:** Benefits depend on whether you are married or not married at the beginning of each month. If you get married, even on the first day of a month we will treat you as single until the next month. If your marriage ends, even on the first day of a month, we will treat you as married until the next month.
- (2) **Exception: If you both meet eligibility requirements after your date of marriage or after your marriage ends.** If, in the month that you marry, each of you first meets all eligibility requirements after the date of your marriage, we will treat you as an eligible couple for that month. If, in the month that your marriage ends, each of you first meets all eligibility requirements after the date your marriage ends, we will treat you as eligible individuals. (See subparts D and E regarding how your benefits will be prorated.)

[45 FR 71795, Oct. 30, 1980. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981, and amended at 51 FR 13495, Apr. 21, 1986; 60 FR 16376, Mar. 30, 1995]

This content is from the eCFR and is authoritative but unofficial.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 416 —Supplemental Security Income for the Aged, Blind, and Disabled

Subpart K —Income

Authority: 42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b; sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

Source: 45 FR 65547, Oct. 3, 1980, unless otherwise noted.

In-Kind Support and Maintenance

§ 416.1130 Introduction.

§ 416.1131 The one-third reduction rule.

§ 416.1132 What we mean by “living in another person's household”.

§ 416.1133 What is a pro rata share of household operating expenses.

§ 416.1140 The presumed value rule.

§ 416.1141 When the presumed value rule applies.

§ 416.1142 If you live in a public assistance household.

§ 416.1143 If you live in a noninstitutional care situation.

§ 416.1144 If you live in a nonprofit retirement home or similar institution.

§ 416.1145 How the presumed value rule applies in a nonmedical for-profit institution.

Editorial Note: Nomenclature changes to part 416 appear at 68 FR 53509, Sept. 11, 2003.

IN-KIND SUPPORT AND MAINTENANCE

§ 416.1130 Introduction.

- (a) **General.** Both earned income and unearned income include items received in-kind (see § 416.1102). Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing shelter that is received as in-kind support and maintenance (a type of unearned income). This section and the ones that follow discuss these rules. In these sections (*i.e.*, §§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones resides in his son's house and receives all of his meals from his son. Mr. Jones receives a monthly SSI Federal benefit rate that is reduced by one-third. This one-third represents the value of the in-kind support and maintenance he receives because he lives, throughout a month, in the household of his son, who provides all of his food and shelter. In January, we increase his SSI

benefit because of a cost-of-living adjustment. For that month, we determine that the VTR rule applies by considering the food and shelter he received from his son two months earlier in November, and we calculate the SSI payment using the Federal benefit rate for January.

(b) *How we calculate in-kind support and maintenance.*

- (1)** We calculate in-kind support and maintenance considering any shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly required rent to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1). If the required amount of rent is less than the presumed maximum value, we will impute as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market rental value (see § 416.1101), whichever is less. In addition, cash payments to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.
- (2)** We have two rules for valuing the in-kind support and maintenance that we count. The one-third reduction rule applies if you are living in another person's household, you receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals (see §§ 416.1131 through 416.1133). The presumed value rule applies in all other situations in which you receive countable in-kind support and maintenance (see §§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These conditions are discussed in §§ 416.1141 through 416.1145.

[89 FR 21209, Mar. 27, 2024, as amended at 89 FR 25514, Apr. 11, 2024]

§ 416.1131 The one-third reduction rule.

- (a) *What the rule is.*** Instead of determining the actual dollar value of in-kind support and maintenance, we count one-third of the Federal benefit rate as additional income if you (or you and your eligible spouse)—
 - (1)** Live in another person's household (see § 416.1132) for a full calendar month except for temporary absences (see § 416.1149); and
 - (2)** Receive shelter from others living in the household. (If you do not receive shelter from others living in the household, see § 416.1140); and
 - (3)** Others within the household pay for or provide you with all of your meals. If others within the household do not pay for or provide you with all of your meals, any ISM received for shelter will be calculated under the PMV rule (see § 416.1140).
- (b) *How we apply the one-third reduction rule.*** The one-third reduction applies in full or not at all. When you are living in another person's household, and the one-third reduction rule applies, we do not apply any income exclusions to the reduction amount. However, we do apply appropriate exclusions to any other earned or unearned income you receive. If you have an eligible spouse we apply the rules described in § 416.1147.
- (c) *If you receive other support and maintenance.*** If the one-third reduction rule applies to you, we do not count any other in-kind support and maintenance you receive.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48574, Nov. 26, 1985; 89 FR 21210, Mar. 27, 2024]

§ 416.1132 What we mean by “living in another person's household”.

- (a) **Household.** For purposes of this subpart, we consider a household to be a personal place of residence. A commercial establishment such as a hotel or boarding house is not a household but a household can exist within a commercial establishment. If you live in a commercial establishment, we do not automatically consider you to be a member of the household of the proprietor. You may, however, live in the household of a roomer or boarder within the hotel or boarding house. An institution is not a household and a household cannot exist within an institution. (Institution is defined in § 416.1101.)
- (b) **Another person's household.** You live in another person's household if paragraph (c) of this section does not apply and if the person who supplies the support and maintenance lives in the same household and is not—
 - (1) Your spouse (as defined in § 416.1806);
 - (2) A minor child; or
 - (3) An ineligible person (your spouse, parent, or essential person) whose income may be deemed to you as described in §§ 416.1160 through 416.1169.
- (c) **Your own household—not another person's household.** You are not living in another person's household (you live in your own household) if—
 - (1) You (or your spouse who lives with you or any person whose income is deemed to you) have an ownership interest or a life estate interest in the home;
 - (2) You (or your spouse who lives with you or any person whose income is deemed to you) are liable to the landlord for payment of any part of the rental charges;
 - (3) You live in a noninstitutional care situation as described in § 416.1143;
 - (4) You pay at least a pro rata share of household and operating expenses (see § 416.1133); or
 - (5) All members of the household receive public income—maintenance payments (§ 416.1142).

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48574, Nov. 26, 1985]

§ 416.1133 What is a pro rata share of household operating expenses.

- (a) **General.** If you pay your pro rata share toward monthly household operating expenses, you are living in your own household and are not receiving in-kind support and maintenance from anyone else in the household. The one-third reduction, therefore, does not apply to you. (If you are receiving shelter from someone outside the household, we value it under the rule in § 416.1140.)
- (b) **How we determine a pro rata share.** Your pro rata share of household operating expenses is the average monthly household operating expenses (based on a reasonable estimate if exact figures are not available) divided by the number of people in the household, regardless of age.
- (c) Household operating expenses are the household's total monthly expenditures for rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. (The term does not include the cost of these items if someone outside the household pays for them.) Generally, we average household operating expenses over the past 12 months to determine a pro rata share.

[45 FR 65547, Oct. 3, 1980, as amended at 70 FR 6345, Feb. 7, 2005; 89 FR 21210, Mar. 27, 2024]

§ 416.1140 The presumed value rule.

(a) *How we apply the presumed value rule.*

- (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any shelter you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(12).
- (2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—
 - (i) The current market value of any shelter you receive, minus any payment you make for it, is lower than the presumed value; or
 - (ii) The actual amount someone else pays for your shelter is lower than the presumed value.

(b) *How we determine the amount of your ISM under the presumed value rule.*

- (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the shelter you receive, we use the presumed value to figure your ISM.
- (2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the shelter you receive, we use the actual amount to figure your ISM.

[89 FR 21210, Mar. 27, 2024]

§ 416.1141 When the presumed value rule applies.

The presumed value rule applies whenever we count in-kind support and maintenance as unearned income and the one-third reduction rule does not apply. This means that the presumed value rule applies if you are living—

- (a) In another person's household (as described in § 416.1132(b)); you receive shelter from others living in the household; and others within the household do not pay for or provide you with all of your meals;
- (b) In your own household (as described in § 416.1132(c)). For exceptions, see § 416.1142 if you are in a public assistance household and § 416.1143 if you are in a noninstitutional case situation; or
- (c) In a nonmedical institution including any—
 - (1) Public nonmedical institution if you are there for less than a full calendar month;
 - (2) Public or private nonprofit educational or vocational training institution;
 - (3) Private nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. For exceptions, see § 416.1144; and
 - (4) For-profit institution where someone else pays for your support and maintenance. If you or the institution pay for it, see § 416.1145.

[45 FR 65547, Oct. 3, 1980, as amended at 89 FR 21210, Mar. 27, 2024]

§ 416.1142 If you live in a public assistance household.

- (a) **Definition.** For purposes of our programs, a public assistance household is one that has both an SSI applicant or recipient, and at least one other household member who receives one or more of the listed public income maintenance payments. These are payments made under—
- (1) Title IV-A of the Social Security Act (Temporary Assistance for Needy Families);
 - (2) Title XVI of the Social Security Act (SSI, including federally administered State supplements and State administered mandatory supplements);
 - (3) The Refugee Act of 1980 (Those payments based on need);
 - (4) The Disaster Relief and Emergency Assistance Act;
 - (5) General assistance programs of the Bureau of Indian Affairs;
 - (6) State or local government assistance programs based on need (tax credits or refunds are not assistance based on need);
 - (7) U.S. Department of Veterans Affairs programs (those payments based on need); and
 - (8) The Supplemental Nutrition Assistance Program (SNAP).
- (b) **How the presumed value rule applies.** If you live in a public assistance household, we consider that you are not receiving in-kind support and maintenance from members of the household. In this situation, we use the presumed value rule only if you receive food or shelter from someone outside the household.

[45 FR 65547, Oct. 3, 1980, as amended at 57 FR 53850, Nov. 13, 1992; 70 FR 6345, Feb. 7, 2005; 70 FR 41137, July 18, 2005; 89 FR 28622, Apr. 19, 2024]

§ 416.1143 If you live in a noninstitutional care situation.

- (a) **Definitions.** For purposes of this subpart you live in a noninstitutional care situation if all the following conditions exist:
- (1) You are placed by a public or private agency under a specific program such as foster or family care;
 - (2) The placing agency is responsible for your care;
 - (3) You are in a private household (not an institution) which is licensed or approved by the placing agency to provide care; and
 - (4) You, a public agency, or someone else pays for your care.
- (b) **How the presumed value rule applies.** You are not receiving in-kind support and maintenance and the presumed value rule does not apply if you pay the rate the placing agency establishes. We consider this established rate to be the current market value for the in-kind support and maintenance you are receiving. The presumed value rule applies if you pay less than the established rate and the difference is paid by someone else other than a public or private agency providing social services described in § 416.1103(b) or assistance based on need described in § 416.1124(c)(2).

§ 416.1144 If you live in a nonprofit retirement home or similar institution.

- (a) **Definitions.** For purposes of this section the following definitions apply:

- (1) **Nonprofit retirement home or similar institution** means a nongovernmental institution as defined under § 416.1101, which is, or is controlled by, a private nonprofit organization and which does not provide you with—
 - (i) Services which are (or could be) covered under Medicaid, or
 - (ii) Education or vocational training.
- (2) **Nonprofit organization** means a private organization which is tax exempt under section 501(a) of the Internal Revenue Code of 1954 and is of the kind described in section 501 (c) or (d) of that code.
- (3) An *express obligation to provide your full support and maintenance* means there is either a legally enforceable written contract or set of membership rules providing that the home, institution, or organization—
 - (i) Will provide at least all of your food and shelter needs; and
 - (ii) Does not require any current or future payment for that food and shelter. (For purposes of this paragraph, a lump sum prepayment for lifetime care is not a current payment.)
- (b) **How the presumed value rule applies.** The presumed value rule applies if you are living in a nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. The rule does not apply to the extent that—
 - (1) The home, institution, or nonprofit organization does not have an express obligation to provide your full support and maintenance; and
 - (2) The home, institution, or nonprofit organization receives no payment for your food or shelter, or receives payment from another nonprofit organization.

[45 FR 65547, Oct. 3, 1980, as amended at 51 FR 34464, Sept. 29, 1986; 70 FR 6345, Feb. 7, 2005]

§ 416.1145 How the presumed value rule applies in a nonmedical for-profit institution.

If you live in a nonmedical for-profit institution, we consider the amount accepted by that institution as payment in full to be the current market value of whatever food or shelter the institution provides. If you are paying or are legally indebted for that amount, you are not receiving in-kind support and maintenance. We do not use the presumed value rule unless someone else pays for you.

[45 FR 65547, Oct. 3, 1980, as amended at 70 FR 6345, Feb. 7, 2005]

This content is from the eCFR and is authoritative but unofficial.

Title 26 — Internal Revenue

Chapter I — Internal Revenue Service, Department of the Treasury

Subchapter A — Income Tax

Part 1 — Income Taxes

Authority: 26 U.S.C. 7805, unless otherwise noted. Section 1.401-12 also issued under 26 U.S.C. 401(d)(1). Section 1.410(b)-2 also issued under 26 U.S.C. 410(b)(6). See *Part 1* for more

Source: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960; T.D. 9989, 89 FR 17606, Mar. 11, 2024, unless otherwise noted. T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted. T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, T.D. 9381, 73 FR 8604, Feb. 15, 2008, unless otherwise noted. See *Part 1* for more

Qualified ABLE Programs

- § 1.529A-0 Table of contents.
- § 1.529A-1 Exempt status of qualified ABLE program and definitions.
- § 1.529A-2 Qualified ABLE program.
- § 1.529A-3 Tax treatment.
- § 1.529A-4 Gift, estate, and generation-skipping transfer taxes.
- § 1.529A-5 Reporting of the establishment of and contributions to an ABLE account.
- § 1.529A-6 Reporting of distributions from and termination of an ABLE account.
- § 1.529A-7 Electronic furnishing of statements to designated beneficiaries and contributors.
- § 1.529A-8 Applicability dates and transition relief.

QUALIFIED ABLE PROGRAMS

Source: T.D. 9923, 85 FR 74034, Nov. 19, 2020, unless otherwise noted.

§ 1.529A-0 Table of contents.

This section lists the following captions contained in §§ 1.529A-1 through 1.529A-8.

§ 1.529A-1 *Exempt status of qualified ABLE program and definitions.*

(a) In general.

(b) Definitions.

(1) ABLE account.

(2) Contribution.

(3) Designated beneficiary.

- (4) Disability certification.
- (5) Distribution.
- (6) Earnings.
- (7) Earnings ratio.
- (8) Eligible individual.
- (9) Excess contribution.
- (10) Excess aggregate contribution.
- (11) Investment in the account.
- (12) Member of the family.
- (13) Program-to-program transfer.
- (14) Qualified ABLE program.
- (15) Qualified disability expenses.
- (16) Rollover.

(c) Applicability date.

§ 1.529A-2 *Qualified ABLE program.*

- (a) In general.
- (b) Established and maintained by a State or agency or instrumentality of a State.
 - (1) Established.
 - (2) Maintained.
- (i) In general.
- (ii) Multiple States, agencies, or instrumentalities.
- (3) Community Development Financial Institutions (CDFIs).
- (c) Establishment of an ABLE account and signature authority.

- (1) Establishment of the ABLÉ account.
- (2) Signature authority.
- (3) Only one ABLÉ account.
- (4) Beneficial interest.
- (d) Eligible individual.
- (1) Documentation.
- (2) Frequency of recertification.
- (3) Loss of qualification as an eligible individual.
- (e) Disability certification.
- (1) In general.
- (2) Marked and severe functional limitations.
- (3) Compassionate allowance list.
- (4) Additional guidance.
- (5) Restriction on use of certification.
- (f) Change of designated beneficiary.
- (1) In general.
- (2) Change effective upon death.
- (g) Contributions.
- (1) Permissible property.
- (2) Annual contributions limit.
- (3) Cumulative limit.
- (4) Return of excess contributions, excess compensation contributions, and excess aggregate contributions.
- (5) Restriction of contributors.

(h) Qualified disability expenses.

(1) In general.

(2) Example.

(i) Separate accounting.

(j) Program-to-program transfers.

(k) Carryover of attributes.

(1) In general.

(2) Annual contribution limit.

(3) Investment direction limit.

(l) Investment direction.

(m) No pledging of interest as security.

(n) No sale or exchange.

(o) Post-death payments.

(p) Reporting requirements.

(q) Applicability date.

§ 1.529A-3 *Tax treatment.*

(a) Taxation of distributions.

(1) In general.

(2) Additional period.

(b) Additional exclusions from gross income.

(1) Rollover.

(2) Program-to-program transfers.

(3) Change of designated beneficiary.

- (4) Payments to creditors post-death.
- (c) Computation of earnings.
- (d) Additional tax on amounts includible in gross income.
- (1) In general.
- (2) Exceptions.
- (e) Tax on excess contributions.
- (f) Filing requirements.
- (g) No inference outside section 529A.
- (h) Applicability date.

§ 1.529A-4 *Gift, estate, and generation-skipping transfer taxes.*

- (a) Contributions.
- (1) In general.
- (2) Generation-skipping transfer (GST) tax.
- (3) Designated beneficiary as contributor.
- (b) Distributions.
- (c) Transfer to another designated beneficiary.
- (d) Transfer tax on death of designated beneficiary.
- (e) Applicability date.

§ 1.529A-5 *Reporting of the establishment of and contributions to an ABLÉ account.*

- (a) In general.
- (b) Additional definitions.
- (1) Filer.
- (2) TIN.

(c) Requirement to file return.

(1) Form of return.

(2) Information included on return.

(3) Time and manner of filing return.

(d) Requirement to furnish statement.

(1) In general.

(2) Time and manner of furnishing statement.

(3) Copy of Form 5498-QA.

(e) Request for TIN of designated beneficiary.

(f) Penalties.

(1) Failure to file return.

(2) Failure to furnish TIN.

(g) Applicability date.

§ 1.529A-6 *Reporting of distributions from and termination of an ABLÉ account.*

(a) In general.

(b) Requirement to file return.

(1) Form of return.

(2) Information included on return.

(3) Information excluded.

(4) Time and manner of filing return.

(c) Requirement to furnish statement.

(1) In general.

(2) Time and manner of furnishing statement.

(3) Copy of Form 1099-QA.

(d) Request for TIN of contributor(s).

(1) In general.

(2) Exception.

(e) Penalties.

(1) Failure to file return.

(2) Failure to furnish TIN.

(f) Applicability date.

§ 1.529A-7 *Electronic furnishing of statements to designated beneficiaries and contributors.*

(a) Electronic furnishing of statements.

(1) In general.

(2) Consent.

(3) Required disclosures.

(4) Format.

(5) Notice.

(6) Access period.

(b) Applicability date.

§ 1.529A-8 *Applicability dates and transition relief.*

(a) Applicability dates.

(b) Transition relief.

(1) In general.

(2) Transition period.

(3) Compliance after transition period.

§ 1.529A-1 Exempt status of qualified ABLE program and definitions.

- (a) **In general.** A qualified ABLE program described in section 529A is exempt from Federal income tax, except for the tax imposed under section 511 on any unrelated business taxable income of that program. See § 1.511-2(e).
- (b) **Definitions.** For purposes of section 529A, this section and §§ 1.529A-2 through 1.529A-8—
- (1) **ABLE account** means an account established under a qualified ABLE program and owned by the designated beneficiary of that account.
 - (2) **Contribution** means any payment directly allocated to an ABLE account for the benefit of a designated beneficiary, including amounts transferred to an ABLE account between December 22, 2017, and January 1, 2026, from a qualified tuition program described in section 529.
 - (3) **Designated beneficiary** means the individual for whom the account was established at a time when he or she was an eligible individual or who has succeeded the former designated beneficiary in that capacity (successor designated beneficiary). The designated beneficiary is the owner of the ABLE account. If the designated beneficiary is not able to exercise signature authority over his or her ABLE account or chooses to have an ABLE account established but not to exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the person with signature authority over the account. See § 1.529A-2(c)(1) and (2).
 - (4) **Disability certification** means a certification to establish a certain level of an individual's physical or mental impairment that meets the requirements described in § 1.529A-2(e).
 - (5) **Distribution** means any payment from an ABLE account. However, a program-to-program transfer, a Medicaid reimbursement under § 1.529A-2(o), or a payment of administrative or investment fees charged by a qualified ABLE program is not a distribution.
 - (6) **Earnings** attributable to an ABLE account are the excess of the total account balance on a particular date over the investment in the account as of that date.
 - (7) **Earnings ratio** as applied to a particular distribution means the amount of earnings attributable to the ABLE account as of the date of the distribution, divided by the total account balance on that same date.
 - (8) **Eligible individual** for a taxable year means an individual who either:
 - (i) Is receiving benefits under title II or XVI of the Social Security Act based on blindness or disability or whose entitlement to such benefits under title XVI has been suspended solely due to excess income or resources, provided that such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); or
 - (ii) Is the subject of a disability certification filed with the Secretary of the Treasury or his delegate (Secretary) for that taxable year.
 - (9) **Excess contribution** means the amount by which the amount contributed during the taxable year of the designated beneficiary to an ABLE account exceeds the limit in effect under section 2503(b) for the calendar year in which the taxable year of the designated beneficiary begins.
 - (10) **Excess aggregate contribution** means—

- (i) The amount contributed during the taxable year of the designated beneficiary that causes the total of amounts contributed since the establishment of the ABLÉ account (or of an ABLÉ account for the same designated beneficiary that was rolled into the current ABLÉ account) to exceed the limit in effect under section 529(b)(6); or
- (ii) In the context of the safe harbor in § 1.529A-2(g)(3), the amount contributed that causes the account balance to exceed the limit in effect under section 529(b)(6).

(11) **Investment in the account** means—

- (i) The sum of all contributions made to the ABLÉ account, reduced by the aggregate amount of contributions included in distributions, if any, made from the account; or
- (ii) In the case of a rollover contribution into an ABLÉ account, the amount of the rollover contribution that constituted the amount described in paragraph (b)(11)(i) of this section with respect to the ABLÉ account from which the rollover contribution was made.

(12) **Member of the family** means a sibling, whether by blood or by adoption, and includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

(13) **Program-to-program transfer** means—

- (i) The direct transfer of the entire balance of an ABLÉ account into an ABLÉ account of the same designated beneficiary after which the transferor ABLÉ account is closed upon completion of the transfer; or
- (ii) The direct transfer of part or all of the balance to an ABLÉ account of another eligible individual who is a member of the family of the former designated beneficiary.

(14) **Qualified ABLÉ program** means a program established and maintained by a State, or agency or instrumentality of a State, under which an ABLÉ account may be established by and for the benefit of the account's designated beneficiary who is an eligible individual, and that meets the requirements described in § 1.529A-2.

(15) **Qualified disability expenses** means any expenses incurred at a time when the designated beneficiary is an eligible individual that relate to the blindness or disability of the designated beneficiary of an ABLÉ account, including expenses that are for the benefit of the designated beneficiary in maintaining or improving his or her health, independence, or quality of life. See § 1.529A-2(h). However, any expenses incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of § 1.529A-1(b)(8)(i) or § 1.529A-2(e)(1)(i), even if the designated beneficiary is an eligible individual for that entire taxable year, do not relate to blindness or disability and therefore are not qualified disability expenses.

(16) **Rollover** means a contribution to an ABLÉ account of a designated beneficiary (or of an eligible individual who is a member of the family of the designated beneficiary) of all or a portion of an amount distributed from the designated beneficiary's ABLÉ account, provided the contribution is made within 60 days of the date of the withdrawal and, in the case of a rollover to the designated beneficiary's ABLÉ account, no rollover has been made to an ABLÉ account of the designated beneficiary within the 12 month period immediately preceding the rollover to the ABLÉ account.

(c) **Applicability date.** This section applies to calendar years beginning on or after January 1, 2021. See § 1.529A-8 for the provision of transition relief.

§ 1.529A-2 Qualified ABLE program.

- (a) ***In general.*** A qualified ABLE program is a program established and maintained by a State, or an agency or instrumentality of a State, that satisfies all of the requirements of this section and under which—
- (1) An ABLE account may be established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account;
 - (2) A designated beneficiary is limited to only one ABLE account at a time except as otherwise provided in paragraph (c)(3) of this section;
 - (3) Any person may make contributions to such an ABLE account, subject to the limitations described in paragraph (g) of this section; and
 - (4) Distributions (other than returns of contributions as described in paragraph (g)(4) of this section) may be made only to or for the benefit of the designated beneficiary of the ABLE account.
- (b) ***Established and maintained by a State or agency or instrumentality of a State —***
- (1) ***Established.*** A program is established by a State or its agency or instrumentality if the program is initiated by State statute or regulation or by an act of a State official or agency with the authority to act on behalf of the State.
 - (2) ***Maintained —***
 - (i) ***In general.*** A program is maintained by a State or an agency or instrumentality of a State if—
 - (A) The State or its agency or instrumentality sets all of the terms and conditions of the program, including but not limited to who may contribute to the program, who may be a designated beneficiary of the program, and what benefits the program may provide; and
 - (B) The State or its agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising the implementation of decisions relating to the investment of assets contributed under the program. Factors that are relevant in determining whether a State or its agency or instrumentality is actively involved in the administration of the program include, but are not limited to: Whether the State or its agency or instrumentality provides services to designated beneficiaries that are not provided to persons who are not designated beneficiaries; whether the State or its agency or instrumentality establishes detailed operating rules for administering the program; whether officials of the State or its agency or instrumentality play a substantial role in the operation of the program, including selecting, supervising, monitoring, auditing, and terminating the relationship with any private contractors that provide services under the program; whether the State or its agency or instrumentality holds the private contractors that provide services under the program to the same standards and requirements that apply when private contractors handle funds that belong to the State or its agency or instrumentality or provide services to the State or its agency or instrumentality; whether the State or its agency or instrumentality provides funding for the program; and whether the State or its agency or instrumentality acts as trustee or holds program assets directly or for the benefit of the designated beneficiaries. For example, if the State or its agency or instrumentality exercises the same authority over the funds invested in the program as it does over the investments in or pool of funds of a State employees' defined benefit pension plan, then the State or its agency or instrumentality will be considered actively involved on an ongoing basis in the administration of the program.

(ii) **Multiple States, agencies, or instrumentalities.** A program may be maintained by two or more States or the agencies or instrumentalities of two or more States if the program meets the requirements of paragraph (b)(2)(i) of this section for each of the States represented. If a State or an agency or instrumentality of a State participates in such a consortium of States or agencies or instrumentalities of States, the consortium's program is considered to be the program of each State represented.

(3) **Community Development Financial Institutions (CDFIs).** In addition to having the ability to contract with private contractors as provided in paragraph (b)(2)(i)(B) of this section, a State or its agency or instrumentality or qualified ABLE program may contract with one or more Community Development Financial Institutions (CDFIs) (as defined in 12 U.S.C. 4702(5) and 12 CFR 1805.104) to perform some or all of the services described in paragraphs (b)(2)(i)(A) and (B) of this section.

(c) **Establishment of an ABLE account and signature authority –**

(1) **Establishment of the ABLE account –**

(i) **In general.** A qualified ABLE program must provide that an ABLE account may be established only for an eligible individual.

(A) The ABLE account may be established by the eligible individual;

(B) The ABLE account may be established by a person selected by the eligible individual; or

(C) If an eligible individual (whether a minor or adult) is unable to establish his or her own ABLE account, an ABLE account may be established on behalf of the eligible individual by the eligible individual's agent under a power of attorney or, if none, by a conservator or legal guardian, spouse, parent, sibling, grandparent of the eligible individual, or a representative payee appointed for the eligible individual by the Social Security Administration (SSA), in that order.

(ii) **Authority.** A qualified ABLE program may accept a certification, made under penalties of perjury, from the person seeking to establish an ABLE account as to the basis for the person's authority to establish the ABLE account, and that there is no other person with a higher priority, under paragraphs (c)(1)(i)(A), (B), and (C) of this section, to establish the ABLE account.

(2) **Signature authority –**

(i) **Signatory.** In general, the designated beneficiary will have signature authority over his or her ABLE account. However, if an individual other than the designated beneficiary establishes the account in accordance with paragraph (c)(1)(i)(B) or (C) of this section, such individual will have signature authority.

(A) At any time, the designated beneficiary may remove and replace any person with signature authority over the designated beneficiary's ABLE account. The replacement may be the designated beneficiary or any other person selected by the designated beneficiary.

(B) The designated beneficiary may designate a successor to the person with signature authority. In the absence of any designation of a successor by the designated beneficiary, a person with signature authority over the designated beneficiary's ABLE account may designate a successor, consistent with the ordering rules in paragraph (c)(1)(i)(C) of this section.

- (ii) **Co-signatories.** A qualified ABLE program may permit an ABLE account to have co-signatories, consistent with paragraph (c)(1)(i)(C) of this section. If co-signatories are permitted, all of the other provisions of this paragraph (c)(2) continue to apply, and references to the *signatory* refer to the co-signatories acting separately or jointly, as determined by that qualified ABLE program.
 - (iii) **Authority over sub-accounts.** The person with signature authority over the ABLE account may appoint and from time to time may remove, replace, or name a successor for any person with signature authority over a sub-account described in paragraph (c)(3)(iii) of this section.
- (3) **Only one ABLE account –**
 - (i) **In general.** Except as provided in paragraph (c)(3)(ii) of this section, a designated beneficiary is limited to one ABLE account at a time, regardless of where located. To ensure that this requirement is met, a qualified ABLE program must obtain a verification, signed under penalties of perjury by the person establishing the ABLE account, that the individual establishing the ABLE account neither knows nor has reason to know that the eligible individual already has an existing ABLE account (other than an ABLE account that will terminate with the rollover or program-to-program transfer of its assets into the new ABLE account) before that program can permit the establishment of an ABLE account for that eligible individual. In the case of a rollover, the ABLE account from which amounts were distributed must be closed as of the 60th day after the date of the distribution in order to allow the account receiving the rollover to be treated as an ABLE account.
 - (ii) **Treatment of additional accounts.** If an individual is the designated beneficiary of an ABLE account established in accordance with paragraph (c)(1) of this section, no other account subsequently established for that individual under a qualified ABLE program (additional account) will be an ABLE account. The preceding sentence does not apply to an additional account, and that additional account is an ABLE account, if—
 - (A) The additional account is established for the purpose of receiving a rollover or program-to-program transfer;
 - (B) All of the contributions to the additional account are returned in accordance with the rules that apply to the return of excess contributions and excess aggregate contributions under paragraph (g)(4) of this section; or
 - (C) All amounts in the additional account are transferred to the designated beneficiary's preexisting ABLE account and any excess contributions and excess aggregate contributions are returned in accordance with the rules that apply to the return of excess contributions and excess aggregate contributions under paragraph (g)(4) of this section.
 - (iii) **Sub-accounts.** A qualified ABLE program may establish an ABLE account (primary account) that may include multiple sub-accounts. The person with signature authority over the ABLE account, at any time and from time to time, may create one or more sub-accounts, may transfer funds in the ABLE account to one or more of the sub-accounts, and may close one or more of the sub-accounts, to facilitate the acquisition of certain goods or services for the designated beneficiary. Each sub-account may have a different person with signature authority over that sub-account, appointed in accordance with the rules of paragraph (c)(2)(iii) of this section, and that person's authority is limited to making distributions from that sub-account. The primary account and the sub-accounts collectively constitute a single ABLE account and therefore must be aggregated for all purposes, including without limitation the limit on the number of

permissible changes in investment direction under paragraph (l) of this section, the contribution limits under paragraphs (g)(2) and (3) of this section, the computation of gross income and other tax provisions, and the reporting requirements.

(iv) **Investment options.** A qualified ABLE program may offer different investment options within each ABLE account without violating the only-one-ABLE-account rule in this paragraph (c)(3). For example, an ABLE account may include a cash fund as well as one or more stock or bond funds.

(4) **Beneficial interest.** A person other than the designated beneficiary with signature authority over the ABLE account of the designated beneficiary may neither have nor acquire any beneficial interest in the ABLE account during the lifetime of the designated beneficiary and must administer the ABLE account for the benefit of the designated beneficiary of the account.

(d) **Eligible individual –**

(1) **Documentation –**

(i) **In general.** Whether an individual is an eligible individual is determined for each taxable year of that individual, and that determination applies for the entire year. A qualified ABLE program must specify the documentation that an individual must provide, both at the time an ABLE account is established and thereafter, in order to ensure that the designated beneficiary of the ABLE account is, and continues to be, determined an eligible individual. For purposes of determining whether an individual is an eligible individual, a disability certification as described in paragraph (e)(1) of this section will be deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification or a disability certification has been deemed to have been received under the rules of the qualified ABLE program, which information the qualified ABLE program will file in accordance with the filing requirements under § 1.529A-5(c)(2)(iv).

(ii) **Safe harbor.** A qualified ABLE program may establish that an individual is an eligible individual if the person establishing the ABLE account certifies under penalties of perjury—

- (A) The basis for the individual's status as an eligible individual (entitlement to benefits based on blindness or disability under title II or XVI of the Social Security Act, or a disability certification described in paragraph (e)(1) of this section);
- (B) That the individual is blind or has a medically determinable physical or mental impairment as described in paragraph (e)(1)(i) of this section;
- (C) That such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday);
- (D) If the basis of the individual's eligibility is a disability certification, that the individual has received and agrees to retain a written diagnosis as described in paragraph (e)(1)(iii) of this section, accompanied by the name and address of the diagnosing physician and the date of the written diagnosis;
- (E) The applicable diagnostic code from those listed on Form 5498-QA (or in the instructions to such form) identifying the type of the individual's impairment;

- (F) That the person establishing the account is the individual who will be the designated beneficiary of the account or is the person authorized under paragraph (c)(1)(i) of this section to establish the account; and
- (G) If required by the qualified ABLE program, the information provided by the diagnosing physician as to the categorization of the disability that may be used to determine, under the particular State's program, the appropriate frequency of required recertifications.

(2) **Frequency of recertification** —

- (i) **In general.** A determination of eligibility must be made annually unless the qualified ABLE program adopts a different method of ensuring a designated beneficiary's continuing status as an eligible individual. Alternative methods may include, without limitation, the use of certifications by the designated beneficiary under penalties of perjury, and the imposition of different recertification frequencies for different types of impairments.
- (ii) **Considerations.** In developing its rules on recertification, a qualified ABLE program may take into consideration whether an impairment is incurable and, if so, the likelihood that a cure may be found in the future. For example, a qualified ABLE program may provide that the initial certification will be deemed to be valid for a stated number of years, which may vary with the type of impairment. Even if the qualified ABLE program imposes an enforceable obligation on the designated beneficiary or other person with signature authority over the ABLE account to promptly report changes in the designated beneficiary's condition that would result in the designated beneficiary's failing to satisfy the definition of an eligible individual, the designated beneficiary will be considered an eligible individual until the end of the taxable year in which the change in the designated beneficiary's condition occurred. A qualified ABLE program that is compliant with the rules regarding recertification will not be considered to be noncompliant solely because a designated beneficiary fails to comply with this enforceable obligation.

- (3) **Loss of qualification as an eligible individual.** If the designated beneficiary of an ABLE account ceases to be an eligible individual, then for each taxable year in which the designated beneficiary is not an eligible individual, the account will continue to be an ABLE account, the designated beneficiary will continue to be the designated beneficiary of the ABLE account (and will be referred to as such), and the ABLE account will not be deemed to have been distributed. However, beginning on the first day of the designated beneficiary's first taxable year for which the designated beneficiary does not satisfy the definition of an eligible individual, additional contributions to the designated beneficiary's ABLE account must not be accepted by the qualified ABLE program. In addition, no expense incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of § 1.529A-1(b)(8)(i) or § 1.529A-2(e)(1)(i), whichever had applied, is a qualified disability expense even if the individual is an eligible individual for the rest of the year under paragraph (d)(1)(i) of this section. If the designated beneficiary subsequently again satisfies the definition of an eligible individual, contributions to the designated beneficiary's ABLE account again may be accepted, subject to the contribution limits under section 529A, and expenses that are incurred thereafter may meet the definition of a qualified disability expense in § 1.529A-1(b)(15) and paragraph (h) of this section.

(e) **Disability certification** —

- (1) **In general.** Except as provided in paragraph (e)(3) of this section or in additional guidance described in paragraph (e)(4) of this section, a disability certification with respect to an individual, that will be deemed filed with the Secretary as provided in paragraph (d)(1)(i) of this section, and is deemed satisfactory to the Secretary, is a certification signed under penalties of perjury by the individual, or by another individual establishing the ABLE account for the individual, that—
 - (i) Certifies that the individual—
 - (A) Has a medically determinable physical or mental impairment that results in marked and severe functional limitations (as defined in paragraph (e)(2) of this section), and that—
 - (1) Can be expected to result in death; or
 - (2) Has lasted or can be expected to last for a continuous period of not less than 12 months; or
 - (B) Is blind (within the meaning of section 1614(a)(2) of the Social Security Act);
 - (ii) Certifies that such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); and
 - (iii) Includes a certification that the individual has obtained and will continue to retain a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)) and including the name and address of the diagnosing physician and the date of the diagnosis.
- (2) **Marked and severe functional limitations.** For purposes of paragraph (e)(1) of this section, the phrase *marked and severe functional limitations* means the standard of disability in the Social Security Act for children claiming Supplemental Security Income for the Aged, Blind, and Disabled (SSI) benefits based on disability (see 20 CFR 416.906), but without regard to age or to whether the individual engages in substantial gainful activity. Specifically, this is a level of severity that meets, medically equals, or functionally equals the severity of any listing in appendix 1 of subpart P of 20 CFR part 404. See 20 CFR 416.906, 416.924 and 416.926a. Such phrase also includes any impairment or standard of disability identified in future guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). Consistent with the regulations promulgated by the SSA, the level of severity is determined by taking into account the effect of the individual's prescribed treatment. See 20 CFR 416.930.
- (3) **Compassionate allowance list.** Conditions listed in the “List of Compassionate Allowances Conditions” maintained by the SSA are deemed to meet the requirements of section 529A(e)(1)(B) regarding the filing of a disability certification, if the condition was present and produced marked and severe functional limitations before the date on which the individual attained age 26. To establish that an individual with such a condition satisfies the definition of an eligible individual, the individual must identify the condition and certify to the qualified ABLE program both the presence of the condition and its resulting marked and severe functional limitations prior to age 26, in a manner specified by the qualified ABLE program.
- (4) **Additional guidance.** Additional guidance on conditions deemed to meet the requirements of section 529A(e)(1)(B) may be identified in future guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

- (5) **Restriction on use of certification.** No inference may be drawn from a disability certification described in this paragraph (e) for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

(f) **Change of designated beneficiary –**

- (1) **In general.** A qualified ABLE program must permit a change in the designated beneficiary of an ABLE account made during the life of the designated beneficiary. At the time when the change becomes effective, the successor designated beneficiary must be an eligible individual. However, a qualified ABLE program may limit the change in designated beneficiary to a member of the family as defined in § 1.529A-1(b)(12) of the current designated beneficiary.
- (2) **Change effective upon death.** A qualified ABLE program may permit a change in the designated beneficiary of an ABLE account, made during the life of the designated beneficiary, to take effect upon the death of the designated beneficiary. The amount to be transferred pursuant to such a beneficiary designation is first subject to the payment of any qualified disability expenses incurred before the designated beneficiary's death but not yet paid and those described in paragraph (o) of this section, and is subject to the provisions of § 1.529A-4.

(g) **Contributions –**

- (1) **Permissible property.** Except in the case of a program-to-program transfer or a change in designated beneficiary to a new designated beneficiary who is an eligible individual and a member of the family of the former designated beneficiary, contributions to an ABLE account may be made only in cash. A qualified ABLE program may allow cash contributions to be made in the form of a check, money order, credit card, electronic transfer, after-tax payroll deduction, or similar method.

(2) **Annual contributions limit –**

- (i) **In general.** Except as provided in paragraph (g)(2)(ii) of this section, a qualified ABLE program must provide that no contribution to an ABLE account will be accepted to the extent such contribution, when added to all other contributions (whether from the designated beneficiary or one or more other persons) to that ABLE account made during the designated beneficiary's taxable year causes the total of such contributions during that year to exceed the amount in effect under section 2503(b) for the calendar year in which the designated beneficiary's taxable year begins. See paragraph (k)(2) of this section for purposes of applying the rules in this paragraph (g)(2) to rollovers, program-to-program transfers, and designated beneficiary changes.

(ii) **Additional contributions by an employed designated beneficiary –**

- (A) **In general.** An employed designated beneficiary defined in paragraph (g)(2)(iii)(A) of this section may contribute amounts up to the limit specified in paragraph (g)(2)(ii)(B) of this section in addition to the amount specified in paragraph (g)(2)(i) of this section. Although a designated beneficiary's contributions subject to this compensation income limit do not have to be made from that compensation income, any contribution of the designated beneficiary's compensation income made directly by the designated beneficiary's employer is a contribution made by the designated beneficiary. Once the designated beneficiary has made contributions equal to the limit described in paragraph (g)(2)(ii)(B) of this section, additional contributions by the designated beneficiary may be made if permissible under paragraph (g)(2)(i) of this section.

- (B) **Amount of additional permissible contribution.** Any additional contribution made by the designated beneficiary pursuant to paragraph (g)(2)(ii)(A) of this section is limited to the lesser of—
 - (1) The designated beneficiary's compensation as defined by section 219(f)(1) for the taxable year; or
 - (2) An amount equal to the applicable poverty line, as defined in paragraph (g)(2)(iii)(B) of this section, for a one-person household for the calendar year preceding the calendar year in which the designated beneficiary's taxable year begins.
- (iii) **Additional definitions.** In addition to the definitions in § 1.529A-1(b), the following definitions also apply for the purposes of this section—
 - (A) **Employed designated beneficiary** means a designated beneficiary who is an employee (including an employee within the meaning of section 401(c)), with respect to whom no contribution is made for the taxable year to—
 - (1) A defined contribution plan (within the meaning of section 414(i)) with respect to which the requirements of sections 401(a) or 403(a) are met;
 - (2) An annuity contract described in section 403(b); and
 - (3) An eligible deferred compensation plan described in section 457(b).
 - (B) **Applicable poverty line** means the amount provided in the poverty guidelines updated periodically in the FEDERAL REGISTER by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) for the State of residence of the employed designated beneficiary. If the designated beneficiary lives in more than one State during the taxable year, the applicable poverty line is the poverty line for the State in which the designated beneficiary resided longer than in any other State during that year.
 - (C) **Excess compensation contribution** means the amount by which the amount contributed during the taxable year of an employed designated beneficiary to the designated beneficiary's ABLE account exceeds the limit in effect under section 529A(b)(2)(B)(ii) and paragraph (g)(2)(ii)(B) of this section for the calendar year in which the taxable year of the employed designated beneficiary begins.
- (iv) **Example.** The provisions of paragraph (g)(2)(ii) of this section may be illustrated by the following example: In 2020, A, an employed designated beneficiary as defined in paragraph (g)(2)(iii)(A) of this section, lives in Hawaii. A's compensation, as defined by section 219(f)(1), for 2020 is \$20,000. The poverty line for a one-person household in Hawaii was \$14,380 in 2019. Because A's compensation exceeded the applicable poverty line amount, A's additional permissible contribution in 2019 is limited to \$14,380, the amount of the 2019 applicable poverty line.
- (v) **Ensuring contribution limit is met —**
 - (A) **Responsibility.** The employed designated beneficiary, or the person acting on his or her behalf, is solely responsible for ensuring that the requirements in section 529A(b)(2)(B)(ii) and paragraph (g)(2)(ii) of this section are met and for maintaining adequate records for that purpose.

- (B) **Certification.** A qualified ABLE program may allow a designated beneficiary (or the person acting on his or her behalf) to certify, under penalties of perjury, and in the manner specified by the qualified ABLE program that—
 - (1) The designated beneficiary is an employed designated beneficiary; and
 - (2) The designated beneficiary's contributions of compensation are not excess compensation contributions.
- (3) **Cumulative limit —**
 - (i) **In general.** A qualified ABLE program must provide adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by that State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions on behalf of a designated beneficiary include contributions to any prior ABLE account maintained by any State or its agency or instrumentality for the same designated beneficiary, or any former designated beneficiary to the extent his or her ABLE account funds were transferred to the designated beneficiary's ABLE account. The transfer of a designated beneficiary's ABLE account from one qualified ABLE program to another with a lower cumulative limit will not violate this rule, but qualified ABLE programs must prohibit subsequent contributions under this general rule. For purposes of this paragraph (g)(3), contributions do not include rollovers, program-to-program transfers or a designated beneficiary change to a new designated beneficiary who is an eligible individual and member of the family of the former designated beneficiary as defined in § 1.529A-1(b)(12).
 - (ii) **Safe harbor.** A qualified ABLE program maintained by a State or its agency or instrumentality satisfies the requirement under section 529A(b)(6) if it refuses to accept any additional contribution to an ABLE account (except as provided to the contrary in paragraph (g)(3)(i) of this section) while the balance in that account equals or exceeds the limit established by that State under section 529(b)(6). Nevertheless, without regard to the categories of transfers that caused the account balance to exceed the State limit, once the account balance falls below that limit, additional contributions, subject to the annual contributions limit under paragraph (g)(2) of this section and the limit established by such State under section 529(b)(6), again may be accepted.
- (4) **Return of excess contributions, excess compensation contributions, and excess aggregate contributions.** If an excess contribution as defined in § 1.529A-1(b)(9), an excess compensation contribution as defined in paragraph (g)(2)(iii)(C) of this section, or an excess aggregate contribution as defined in § 1.529A-1(b)(10) is deposited into or allocated to the ABLE account of a designated beneficiary, a qualified ABLE program must return that excess contribution, excess compensation contribution, or excess aggregate contribution, including all net income attributable to that contribution, as determined under the rules set forth in § 1.408-11 (treating references to an IRA as references to an ABLE account and references to returned contributions under section 408(d)(4) as references to excess contributions or excess aggregate contributions), to the person or persons who made that contribution. Each excess contribution, excess compensation contribution, and excess aggregate contribution must be returned to its contributor(s) on a last-in-first-out basis until the entire excess, along with all net income attributable to such excess, has been returned. In the case of an excess compensation contribution, the employed designated beneficiary, or the person acting on the employed designated beneficiary's behalf, is responsible for identifying any excess compensation contribution and for requesting the return of the excess compensation contribution. Returned contributions must be received by the contributor(s) on or before the due date (including

extensions) of the Federal income tax return of the designated beneficiary for the taxable year in which the excess contribution or excess aggregate contribution was made. See § 1.529A-3(a) for Federal income tax considerations for the contributor(s). If an excess contribution or excess aggregate contribution and the net income attributable to the excess contribution or excess aggregate contribution are returned to a contributor other than the designated beneficiary, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return. No notification is required if amounts are rejected by the qualified ABLE program before they are deposited into or allocated to the designated beneficiary's ABLE account.

- (5) **Restriction of contributors.** A qualified ABLE program may allow the designated beneficiary, from time to time, to restrict who may make contributions to the designated beneficiary's ABLE account.

(h) **Qualified disability expenses —**

- (1) **In general.** Qualified disability expenses are expenses incurred that relate to the blindness or disability of the designated beneficiary of the ABLE account and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life. See § 1.529A-1(b)(15). Such expenses include, but are not limited to, expenses related to the designated beneficiary's education, housing, transportation, employment training and support, assistive technology and related services, personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses, as well as other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. Qualified disability expenses include basic living expenses and are not limited to items for which there is a medical necessity or which solely benefit an individual with a disability.

- (2) **Example.** The following example illustrates this paragraph (h): B, an individual, has a medically determined mental impairment that causes marked and severe limitations on B's ability to navigate and communicate. A smart phone would enable B to navigate and communicate more safely and effectively, thereby helping B to maintain B's independence and to improve B's quality of life. Therefore, the expense of buying, using, and maintaining a smart phone that is used by B would be a qualified disability expense.

- (i) **Separate accounting.** A program will not be treated as a qualified ABLE program unless it provides separate accounting for each ABLE account. Separate accounting requires that contributions for the benefit of a designated beneficiary and any earnings attributable thereto must be allocated to that designated beneficiary's ABLE account. Whether or not a program provides each designated beneficiary an annual account statement showing the total account balance, the investment in the account, the accrued earnings, and the distributions from the account, the program must give this information to the designated beneficiary upon request.

- (j) **Program-to-program transfers.** A qualified ABLE program may permit a change of qualified ABLE program or a change of designated beneficiary by means of a program-to-program transfer as defined in § 1.529A-1(b)(13). In that event, subject to any contrary provisions or limitations adopted by the qualified ABLE program, rules similar to the rules of § 1.401(a)(31)-1, Q&A-3 and 4 (which apply for purposes of a direct rollover from a qualified plan to an eligible retirement plan) apply for purposes of determining whether an amount is paid in the form of a program-to-program transfer.

- (k) **Carryover of attributes —**

- (1) ***In general.*** Upon a rollover, program-to-program transfer, or change of designated beneficiary, all of the attributes of the former ABLE account relevant for purposes of calculating the investment in the account are applicable to the recipient ABLE account. The portion of the rollover or transfer amount that constituted investment in the account from which the distribution or transfer was made is added to investment in the recipient ABLE account. In addition, the portion of the rollover or transfer amount that constituted earnings of the account from which the distribution or transfer was made is added to the earnings of the recipient ABLE account.
 - (2) ***Annual contribution limit.*** Upon a rollover or program-to-program transfer, for purposes of applying the annual contribution limit under paragraph (g)(2) of this section to the transferee account, annual contributions to the designated beneficiary's transferor ABLE account during the taxable year in which the rollover or program-to-program transfer occurs are included. However, upon a change of designated beneficiary, or upon a rollover or program-to-program transfer to the ABLE account of a different designated beneficiary who is both a member of the family as defined in § 1.529A-1(b)(12) and an eligible individual, no amounts contributed to the prior designated beneficiary's ABLE account are included when applying the annual contribution limit under paragraph (g)(2) of this section.
 - (3) ***Investment direction limit.*** Upon a rollover or program-to-program transfer, the number of investment directions by the designated beneficiary include the number of investment directions made prior to the rollover or program-to-program transfer during the same taxable year for purposes of paragraph (l) of this section. However, upon a change of designated beneficiary, or upon a rollover or program-to-program transfer to the ABLE account of a different designated beneficiary who is both a member of the family as defined in § 1.529A-1(b)(12) and an eligible individual, the number of investment directions made for the prior designated beneficiary's ABLE account are not included in determining the number of investment directions made for the new designated beneficiary's ABLE account in that same year.
- (l) ***Investment direction.*** A program will not be treated as a qualified ABLE program unless it provides that the designated beneficiary of an ABLE account established under such program may direct, whether directly or indirectly, the investment of any contributions to the program (or any earnings thereon) no more than two times in any calendar year. Such an investment direction does not include a request to transfer any part of the account balance from an investment option to a cash equivalent option to effectuate a distribution, or the automatic rebalancing of the assets of an ABLE account to maintain the asset allocation level chosen when the account was established or by a subsequent investment direction.
 - (m) ***No pledging of interest as security for a loan.*** A program will not be treated as a qualified ABLE program unless the terms of the program, or a State statute or regulation that governs the program, prohibit any interest in the program or any portion thereof from being used as security for a loan. For this purpose, the program administrator's advance of funds to satisfy a withdrawal request during the period between the sale of an asset in the ABLE account (whose value is sufficient to satisfy the withdrawal request) and the clearing or settlement of that sale, does not constitute a loan, pledge, or grant of security for a loan. Similarly, the use of checking accounts or debit cards to facilitate a qualified ABLE program's ability to make distributions will not be treated as a pledge or grant of security for a loan during the period between the use of the check or debit card and the clearing or settlement of that transaction, provided that the ABLE program does not advance funds to a designated beneficiary in excess of the amount in the designated beneficiary's ABLE account.
 - (n) ***No sale or exchange.*** A qualified ABLE program must ensure that no interest in an ABLE account may be sold or exchanged.

- (o) **Post-death payments.** A qualified ABLE program must provide that a portion or all of the balance remaining in the ABLE account of a deceased designated beneficiary must be distributed to a State that files a claim against the designated beneficiary or the ABLE account itself with respect to benefits provided to the designated beneficiary under that State's Medicaid plan established under title XIX of the Social Security Act. The payment of such claim (if any) will be made only after providing for the payment from the designated beneficiary's ABLE account of the designated beneficiary's funeral and burial expenses (including the unpaid balance of a pre-death contract for those services) and all outstanding payments due for his or her other qualified disability expenses, and will be limited to the amount of the total medical assistance paid for the designated beneficiary after the establishment of the ABLE account over the amount of any premiums paid, whether from the ABLE account or otherwise by or on behalf of the designated beneficiary, to a Medicaid Buy-In program under any such State Medicaid plan. The establishment of the ABLE account is the date on which the ABLE account was established or, if earlier, the date on which was established any ABLE account for the same designated beneficiary from which amounts were rolled over or transferred to the ABLE account, but in no event earlier than the date on which the designated beneficiary became the designated beneficiary of the account from which amounts were transferred. After the expiration of the applicable statute of limitations for filing Medicaid claims against the designated beneficiary's estate, a qualified ABLE program may distribute the balance of the ABLE account to the successor designated beneficiary or, if none, to the deceased designated beneficiary's estate. A State law prohibiting the filing of such a claim against either the ABLE account or the designated beneficiary's estate will not prevent that State's program from being a qualified ABLE program.
- (p) **Reporting requirements.** A qualified ABLE program must comply with all applicable reporting requirements, including without limitation those described in §§ 1.529A-5 through 1.529A-7.
- (q) **Applicability date.** This section applies to calendar years beginning on or after January 1, 2021. See § 1.529A-8 for the provision of transition relief.

§ 1.529A-3 Tax treatment.

- (a) **Taxation of distributions —**
 - (1) **In general.** Each distribution from an ABLE account consists of an earnings portion of the account (computed in accordance with paragraph (c) of this section) and investment in the account. If the total amount distributed from an ABLE account to or for the benefit of the designated beneficiary of that ABLE account during his or her taxable year does not exceed the qualified disability expenses of the designated beneficiary paid during that year, no amount distributed is includible in the gross income of the designated beneficiary for that year. If the total amount distributed from an ABLE account to or for the benefit of the designated beneficiary of that ABLE account during his or her taxable year exceeds the qualified disability expenses of the designated beneficiary paid during that year (regardless of when incurred), the distributions from the ABLE account, except to the extent excluded from gross income under this section or any other provision of chapter 1 of the Internal Revenue Code, must be included in the gross income of the designated beneficiary in the manner provided under this section and section 72. The amount to be included in gross income is based on the earnings portion of each distribution, computed in accordance with paragraph (c) of this section. The earnings portion that is includible in gross income is the sum of the earnings portion of all distributions made in that year, reduced by an amount that bears the same ratio to the total earnings portion as the amount of qualified disability expenses paid during the year bears to such total distributions during the year. If an excess contribution or excess aggregate contribution is returned

within the time period required in § 1.529A-2(g)(4), any net income distributed is includible in the gross income of the contributor(s) in the taxable year in which the excess contribution or excess aggregate contribution was made.

- (2) **Additional period.** The designated beneficiary may treat as having been paid during the preceding taxable year qualified disability expenses paid on or before the 60th day immediately following the end of the designated beneficiary's preceding taxable year. Qualified disability expenses treated, pursuant to the rule in the preceding sentence, as having been paid during the designated beneficiary's taxable year immediately prior to the year of their actual payment may not be included in the total qualified disability expenses for the year in which they were paid.

(b) **Additional exclusions from gross income —**

- (1) **Rollover.** A rollover as defined in § 1.529A-1(b)(16) is not included in gross income under paragraph (a) of this section.

- (2) **Program-to-program transfers.** A program-to-program transfer as defined in § 1.529A-1(b)(13) is not a distribution and is not included in gross income under paragraph (a) of this section.

- (3) **Change of designated beneficiary —**

- (i) **In general.** A change of designated beneficiary of an ABLE account is not treated as a distribution for purposes of section 529A, and is not included in gross income under paragraph (a) of this section, if the successor designated beneficiary is—

- (A) An eligible individual for the taxable year in which the change is made; and

- (B) A member of the family (as defined in § 1.529A-1(b)(12)) of the former designated beneficiary.

- (ii) **Other designated beneficiary changes.** In the case of any change of designated beneficiary not described in paragraph (b)(3)(i) of this section, the former designated beneficiary of that ABLE account will be treated as having received a distribution of the fair market value of the assets in that ABLE account on the date on which the change is made to the new designated beneficiary.

- (4) **Payments to creditors post-death.** Distributions made after the death of the designated beneficiary in payment of outstanding obligations due for qualified disability expenses, as well as the funeral and burial expenses of the designated beneficiary, are not included in gross income of the designated beneficiary or his or her estate. Included among these obligations is the post-death payment of any part of a claim filed against the deceased designated beneficiary or his or her estate or ABLE account by a State with respect to benefits provided to the designated beneficiary under that State's Medicaid plan.

- (c) **Computation of earnings.** The earnings portion of a distribution is equal to the product of the amount of the distribution and the earnings ratio, as defined in § 1.529A-1(b)(7). The balance of the distribution (the amount of the distribution minus the earnings portion of that distribution) is the portion of that distribution that constitutes the return of investment in the account.

(d) **Additional tax on amounts includible in gross income —**

- (1) **In general.** If any amount of a distribution from an ABLE account is includible in the gross income of a person for any taxable year under paragraph (a) of this section (includible amount), the income tax imposed on that person by chapter 1 of the Internal Revenue Code will be increased by an amount equal to 10 percent of the includible amount.

(2) **Exceptions –**

- (i) **Distributions on or after the death of the designated beneficiary.** Paragraph (d)(1) of this section does not apply to any distribution made from the ABLÉ account on or after the death of the designated beneficiary to the estate of the designated beneficiary, to an heir or legatee of the designated beneficiary, or to a creditor described in paragraph (b)(4) of this section.
- (ii) **Returned excess contributions and additional accounts.** Paragraph (d)(1) of this section does not apply to any return made in accordance with § 1.529A-2(g)(4) of an excess contribution as defined in § 1.529A-1(b)(9), an excess compensation contribution as defined in § 1.529A-2(g)(2)(iii)(C), excess aggregate contribution as defined in § 1.529A-1(b)(10), or an additional account as referenced in § 1.529A-2(c)(3)(ii)(A), (B), or (C).
- (e) **Tax on excess contributions.** Under section 4973(h), a contribution to an ABLÉ account in excess of the annual contributions limit described in § 1.529A-2(g)(2) is subject to an excise tax in an amount equal to 6 percent of the excess contribution. However, any the excess contribution or excess compensation contribution as defined in § 1.529A-2(g)(2)(iii)(C) returned in accordance with the provisions of § 1.529A-2(g)(4) is not treated as a contribution.
- (f) **Filing requirements.** A qualified ABLÉ program is not required to file Form 990, "Return of Organization Exempt From Income Tax," Form 1041, "U.S. Income Tax Return for Estates and Trusts," or Form 1120, "U.S. Corporation Income Tax Return." However, a qualified ABLÉ program is required to file Form 990-T, "Exempt Organization Business Income Tax Return," if such filing would be required under the rules of §§ 1.6012-2(e) and 1.6012-3(a)(5) if the ABLÉ program were an organization described in those sections.
- (g) **No inference outside section 529A.** The rules provided in this section concerning the Federal tax treatment of contributions apply only for purposes of the application of section 529A. No inference is intended with respect to the application of any other Code provisions or Federal tax doctrines. For example, a contribution made by an employer to the ABLÉ account of an employee or an employee's family member is subject to the rules governing the Federal taxation of compensation.
- (h) **Applicability date.** This section applies to calendar years beginning on or after January 1, 2021. See § 1.529A-8 for the provision of transition relief.

§ 1.529A-4 Gift, estate, and generation-skipping transfer taxes.

(a) **Contributions –**

- (1) **In general.** Each contribution by a person to an ABLÉ account other than by the designated beneficiary of that account is treated as a completed gift to the designated beneficiary of the account for gift tax purposes. Under the applicable Federal gift tax rules, a contribution from a corporation, partnership, trust, estate, or other entity is treated as a gift by the shareholders, partners, or other beneficial owners in proportion to their respective ownership interests in the entity. See § 25.2511-1(c) and (h) of this chapter. A gift to an ABLÉ account is not treated as either a gift of a future interest in property, or a qualified transfer under section 2503(e). To the extent a contributor's gifts to the designated beneficiary, including gifts paid into the designated beneficiary's ABLÉ account, do not exceed the annual limit in section 2503(b), the contribution is not a taxable gift. This provision, however, does not change any other provision applicable to the transfer. For example, a contribution by the employer of the designated beneficiary's parent continues to constitute earned income to the parent and then a gift by the parent to the designated beneficiary. The timely return of an excess contribution or an excess aggregate contribution in accordance with § 1.529A-2(g)(4) is not a taxable gift.

- (2) **Generation-skipping transfer (GST) tax.** To the extent the contribution into an ABLE account is a nontaxable gift for Federal gift tax purposes, the inclusion ratio for purposes of the GST tax will be zero pursuant to section 2642(c)(1).
- (3) **Designated beneficiary as contributor.** A designated beneficiary may make a contribution to fund his or her own ABLE account. That contribution is not a gift.
- (b) **Distributions.** No distribution from an ABLE account to or for the benefit of the designated beneficiary is treated as a taxable gift to that designated beneficiary.
- (c) **Transfer to another designated beneficiary.** Neither gift tax nor generation-skipping transfer tax applies to the transfer (by rollover, program-to-program transfer, or change of beneficiary) of part or all of an ABLE account to the ABLE account of a different designated beneficiary if the successor designated beneficiary is both an eligible individual and a member of the family (as described in § 1.529A-1(b)(12)) of the designated beneficiary. Any other transfer will constitute a gift by the designated beneficiary to the successor designated beneficiary, and the usual gift and GST tax rules will apply.
- (d) **Transfer tax on death of designated beneficiary.** Upon the death of the designated beneficiary, the designated beneficiary's ABLE account is includible in his or her gross estate for estate tax purposes under section 2031. The payment of outstanding qualified disability expenses and the payment of certain claims made by a State under its Medicaid plan may be deductible for estate tax purposes if the requirements of section 2053 are satisfied.
- (e) **Applicability date.** This section applies to calendar years beginning on or after January 1, 2021. See § 1.529A-8 for the provision of transition relief.

§ 1.529A-5 Reporting of the establishment of and contributions to an ABLE account.

- (a) **In general.** A filer defined in paragraph (b)(1) of this section must, with respect to each ABLE account—
 - (1) File an annual information return, as described in paragraph (c) of this section, with the Internal Revenue Service; and
 - (2) Furnish an annual statement, as described in paragraph (d) of this section, to the designated beneficiary of the ABLE account.
- (b) **Additional definitions.** In addition to the definitions in § 1.529A-1(b), the following definitions also apply for purposes of this section—
 - (1) **Filer** means the State or its agency or instrumentality that establishes and maintains the qualified ABLE program under which an ABLE account is established. The filing may be done by either an officer or employee of the State or its agency or instrumentality having control of the qualified ABLE program, or the officer's or employee's designee.
 - (2) **TIN** means taxpayer identification number as defined in section 7701(a)(41).
- (c) **Requirement to file return —**
 - (1) **Form of return.** For purposes of reporting the information described in paragraph (c)(2) of this section, the filer must file Form 5498-QA, “ABLE Account Contribution Information,” or any successor form, together with Form 1096, “Annual Summary and Transmittal of U.S. Information Returns.”
 - (2) **Information included on return.** With respect to each ABLE account, the filer must include on the return—

- (i) The name, address, and TIN of the designated beneficiary of the ABLE account;
- (ii) The name, address, and TIN of the filer;
- (iii) Information regarding the establishment of the ABLE account, as required by the form and its instructions;
- (iv) Information regarding the disability certification or other basis for eligibility of the designated beneficiary, as required by the form and its instructions. For further information regarding eligibility and disability certification, see § 1.529A-2(d) and (e), respectively;
- (v) The total amount of any contributions made with respect to the ABLE account during the calendar year; such contributions do not include any contribution rejected and returned to the contributor before being deposited into or allocated to the ABLE account or any excess contributions, excess compensation contributions, or excess aggregate contributions returned as described in § 1.529A-2(g)(4);
- (vi) The fair market value of the ABLE account as of the last day of the calendar year; and
- (vii) Any other information required by the form, its instructions, or published guidance. See §§ 601.601(d) and 601.602 of this chapter.

(3) **Time and manner of filing return –**

- (i) **In general.** Except as provided in paragraph (c)(3)(ii) of this section, the information returns required under this paragraph must be filed on or before May 31 of the year following the calendar year with respect to which the return is being filed, in accordance with the forms and their instructions.
- (ii) **Extensions of time.** See §§ 1.6081-1 and 1.6081-8 for rules relating to extensions of time to file information returns required in this section.
- (iii) **Electronic filing.** See § 301.6011-2 of this chapter for rules relating to electronic filing. See also Instructions for Forms 1099-QA and 5498-QA, Distributions From ABLE Accounts and ABLE Account Contribution Information.
- (iv) **Substitute forms.** The filer may file the returns required under this paragraph (c) on an acceptable substitute form. See Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(d) **Requirement to furnish statement –**

- (1) **In general.** The filer must furnish a statement to the designated beneficiary of the ABLE account for which it is required to file a Form 5498-QA (or any successor form). The statement must include—
 - (i) The information required under paragraph (c)(2) of this section;
 - (ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service; and
 - (iii) The name and address of the office or department of the filer that is the information contact for questions regarding the ABLE account to which the Form 5498-QA relates.

(2) **Time and manner of furnishing statement –**

- (i) ***In general.*** Except as provided in paragraph (d)(2)(ii) of this section, the filer must furnish the statement described in paragraph (d)(1) of this section to the designated beneficiary on or before March 15 of the year following the calendar year with respect to which the statement is being furnished. If mailed, the statement must be sent to the designated beneficiary's last known address. The statement may be furnished electronically, as provided in § 1.529A-7.
 - (ii) ***Extensions of time.*** The Internal Revenue Service may, at its discretion, grant an extension of time to furnish statements required in this section.
- (3) ***Copy of Form 5498-QA.*** The filer may satisfy the requirement of this paragraph (d) by furnishing either a copy of Form 5498-QA (or successor form) or an acceptable substitute form. See Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."
- (e) ***Request for TIN of designated beneficiary.*** The filer must request the TIN of the designated beneficiary at the time the ABLE account is established if the filer does not already have a record of the designated beneficiary's correct TIN. The filer must clearly notify the designated beneficiary that the law requires the designated beneficiary to furnish a TIN so that it may be included on an information return to be filed by the filer. The designated beneficiary may provide his or her TIN in any manner including orally, in writing, or electronically. If the TIN is furnished in writing, no particular form is required. Form W-9, "Request for Taxpayer Identification Number and Certification," may be used, or the request may be incorporated into the forms related to the establishment of the ABLE account.
- (f) ***Penalties —***
 - (1) ***Failure to file return.*** The section 6693 penalty may apply to the filer that fails to file information returns at the time and in the manner required by this section, unless it is shown that such failure is due to reasonable cause. See section 6693 and § 301.6693-1 of this chapter.
 - (2) ***Failure to furnish TIN.*** The section 6723 penalty may apply to any designated beneficiary who fails to furnish his or her TIN to the filer. See section 6723, and § 301.6723-1 of this chapter, for rules relating to the penalty for failure to furnish a TIN.
- (g) ***Applicability date.*** The rules of this section apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2020. See § 1.529A-8 for the provision of transition relief.

§ 1.529A-6 Reporting of distributions from and termination of an ABLE account.

- (a) ***In general.*** The filer as defined in § 1.529A-5(b)(1) must, with respect to each ABLE account from which any distribution is made or which is terminated during the calendar year—
 - (1) File an annual information return, as described paragraph (b) of this section, with the Internal Revenue Service; and
 - (2) Furnish an annual statement, as described in paragraph (c) of this section, to the designated beneficiary of the ABLE account and to each contributor who received a returned contribution in accordance with § 1.529A-2(g)(4) attributable to the calendar year.
- (b) ***Requirement to file return —***
 - (1) ***Form of return.*** For purposes of reporting the information in paragraph (b)(2) of this section, the filer must file Form 1099-QA, "Distributions From ABLE Accounts," or any successor form, together with Form 1096, "Annual Summary and Transmittal of U.S. Information Returns."

(2) **Information included on return.** The filer must include on the return—

- (i) The name, address, and TIN of the recipient of the payment, whether the designated beneficiary of the ABLE account or any contributor who received a returned contribution in accordance with § 1.529A-2(g)(4) attributable to the calendar year;
- (ii) The name, address, and TIN of the filer;
- (iii) Whether the return is being filed with respect to the designated beneficiary or to a contributor;
- (iv) The aggregate amount of distributions or returned contributions (including net income attributable to the returned contributions) from the ABLE account to the recipient during the calendar year;
- (v) Information as to basis and earnings with respect to such distributions or returns of contributions;
- (vi) Information regarding termination (if any) of the ABLE account if the recipient is the designated beneficiary;
- (vii) Information regarding each program-to-program transfer from the ABLE account during the designated beneficiary's taxable year; and
- (viii) Any other information required by the form, its instructions, or published guidance. See §§ 601.601(d) and 601.602 of this chapter.

(3) **Information excluded.** A State filing a claim against the estate or ABLE account of a deceased designated beneficiary with respect to benefits provided to the designated beneficiary under that State's Medicaid plan is a creditor, and not a beneficiary, so the payment of the claim is not a distribution from the ABLE account and should not be reported as such on the Form 1099-QA for that year.

(4) **Time and manner of filing return —**

- (i) **In general.** Except as provided in paragraph (b)(4)(ii) of this section, the Forms 1099-QA and 1096 must be filed on or before February 28 (March 31 if filing electronically) of the year following the calendar year with respect to which the return is being filed, in accordance with the forms and their instructions.
- (ii) **Extensions of time.** See §§ 1.6081-1 and 1.6081-8 for rules relating to extensions of time to file information returns required in this section.
- (iii) **Electronic filing.** See § 301.6011-2 of this chapter for rules relating to electronic filing. See also Instructions for Forms 1099-QA and 5498-QA, Distributions From ABLE Accounts and ABLE Account Contribution Information.
- (iv) **Substitute forms.** The filer may file the return required under this paragraph (b) on an acceptable substitute form. See Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."

(c) **Requirement to furnish statement —**

- (1) **In general.** The filer must furnish a statement to the designated beneficiary and each contributor (if any) of the ABLE account for which it is required to file a Form 1099-QA (or any successor form). The statement must include—

- (i) The information required under paragraph (b)(2) of this section.
- (ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service; and
- (iii) The name and address of the office or department of the filer that is the information contact for questions regarding the ABLE account to which the Form 1099-QA relates.

(2) ***Time and manner of furnishing statement*** –

- (i) ***In general.*** Except as provided in paragraph (c)(2)(ii) of this section, a filer must furnish the statement described in paragraph (c)(1) of this section to the designated beneficiary or contributor on or before January 31 of the year following the calendar year with respect to which the statement is being furnished. If mailed, the statement must be sent to the recipient's last known address. The statement may be furnished electronically, as provided in § 1.529A-7.
- (ii) ***Extensions of time.*** The Internal Revenue Service may, at its discretion, grant an extension of time to furnish statements required in this section.

(3) ***Copy of Form 1099-QA.*** A filer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1099-QA (or successor form) or an acceptable substitute form. See Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."

(d) ***Request for TIN of contributor(s)*** –

- (1) ***In general.*** Except as provided in paragraph (d)(2) of this section, a filer must request the TIN of each contributor to the ABLE account at the time a contribution is made, if the filer does not already have a record of that person's correct TIN.
- (2) ***Exception.*** If the filer has a system in place to identify and reject amounts that either would constitute an excess contribution or excess aggregate contribution (as defined in § 1.529A-1(b)(9) or (10), respectively) or were contributed to an additional ABLE account as described in § 1.529A-2(c)(3)(ii)(C) (excess amounts) before those excess amounts are deposited into or allocated to an ABLE account, the filer need not request the TIN of each contributor at the time of contribution. A filer with such a system must request a contributor's TIN only if and when an excess contribution or excess aggregate contribution nevertheless is deposited into or allocated to an account and the filer must return the excess amounts including net income to the contributor. The filer must clearly notify each such contributor to the account that the law requires that person to furnish a TIN so that it may be included on an information return to be filed by the filer. The contributor may provide his or her TIN in any manner including orally, in writing, or electronically. If the TIN is furnished in writing, no particular form is required. Form W-9, "Request for Taxpayer Identification Number and Certification," may be used, or the request may be incorporated into the forms related to the establishment of the ABLE account.

(e) ***Penalties*** –

- (1) ***Failure to file return.*** The section 6693 penalty may apply to a filer that fails to file information returns at the time and in the manner required by this section, unless it is shown that such failure is due to reasonable cause. See section 6693 and § 301.6693-1 of this chapter.

- (2) **Failure to furnish TIN.** The section 6723 penalty may apply to any contributor who fails to furnish his or her TIN to the filer in accordance with paragraph (d) of this section. See section 6723, and § 301.6723-1 of this chapter, for rules relating to the penalty for failure to furnish a TIN.
- (f) **Applicability date.** The rules of this section apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2020. See § 1.529A-8 for the provision of transition relief.

§ 1.529A-7 Electronic furnishing of statements to designated beneficiaries and contributors.

(a) *Electronic furnishing of statements* —

- (1) **In general.** A filer required under § 1.529A-5 or § 1.529A-6 to furnish a written statement to a designated beneficiary of or contributor to an ABLE account may furnish the statement in an electronic format in lieu of a paper format. A filer who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.
- (2) **Consent** —
 - (i) **In general.** The recipient of the statement must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.
 - (ii) **Withdrawal of consent.** The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The filer may provide that a withdrawal of consent takes effect either on the date it is received by the filer or on another date no more than 60 days later. The filer also may provide that a request for a paper statement will be treated as a withdrawal of consent.
 - (iii) **Change in hardware or software requirements.** If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the filer must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the filer if the recipient does not want to withdraw the consent. After implementing the revised hardware and software, the filer must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.
 - (iv) **Examples.** For purposes of the following examples that illustrate the rules of this paragraph (a)(2), assume that the requirements of § 1.529A-7(a)(3) have been met:
 - (A) **Example 1.** Filer F sends Recipient R a letter stating that R may consent to receive statements required under § 1.529A-5 or § 1.529A-6 electronically on a website instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the website, downloading the consent document, completing the consent document, and emailing the completed consent back to F. The consent document posted on the website uses the same electronic format that F

will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(B) **Example 2.** Filer F sends Recipient R an email stating that R may consent to receive statements required under § 1.529A-5 or § 1.529A-6 electronically instead of in a paper format. The email contains an attachment instructing R how to consent to receive the statements electronically. The email attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(C) **Example 3.** Filer F posts a notice on its website stating that Recipient R may receive statements required under § 1.529A-5 or § 1.529A-6 electronically instead of in a paper format. The website contains instructions on how R may access a secure web page and consent to receive the statements electronically. By accessing the secure web page and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) **Required disclosures —**

- (i) **In general.** Prior to, or at the time of, a recipient's consent, the filer must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.
- (ii) **Paper statement.** The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.
- (iii) **Scope and duration of consent.** The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section, or only to the statement required to be furnished on or before the due date immediately following the date on which the consent is given.
- (iv) **Post-consent request for a paper statement.** The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent and whether a request for a paper statement will be treated as a withdrawal of consent.
- (v) **Withdrawal of consent.** The recipient must be informed that—
 - (A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, and email address is provided in the disclosure statement;
 - (B) The filer will confirm, in writing (electronically or on paper), the withdrawal and the date on which it takes effect; and
 - (C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

- (vi) **Notice of termination.** The recipient must be informed of the conditions under which a filer will cease furnishing statements electronically to the recipient.
 - (vii) **Updating information.** The recipient must be informed of the procedures for updating the information needed by the filer to contact the recipient. The filer must inform the recipient of any change in the filer's contact information.
 - (viii) **Hardware and software requirements.** The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the website.
- (4) **Format.** The electronic version of the statement must contain all required information. See Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns."
- (5) **Notice —**
- (i) **In general.** If the statement is furnished on a website, the filer must notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be in the subject line of the electronic mail.
 - (ii) **Undeliverable electronic address.** If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the filer's records or from the recipient, then the filer must furnish the notice by mail or in person within 30 days after the electronic notice is returned.
 - (iii) **Corrected statements.** If the filer has corrected a recipient's statement that was furnished electronically, the filer must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a website posting and the filer has corrected the statement, the filer must notify the recipient that it has posted the corrected statement on the website within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—
 - (A) An electronic notice of the website posting of an original statement or the corrected statement was returned as undeliverable; and
 - (B) The recipient has not provided a new email address.
- (6) **Access period.** Statements furnished on a website must be retained on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15 if October 15 falls on a Saturday, Sunday, or legal holiday). The filer must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15 if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later. The rules in this paragraph (a)(6) do not replace the filer's obligation to keep records under section 6001 and § 1.6001-1(a).
- (b) **Applicability date.** This section applies to statements required to be furnished after December 31, 2020. See § 1.529A-8 for the provision of transition relief.

§ 1.529A-8 Applicability dates and transition relief.

- (a) **Applicability dates.** Except as otherwise provided in paragraph (b) of this section, §§ 1.529A-1 through 1.529A-4 apply for calendar years beginning on or after January 1, 2021, §§ 1.529A-5 and 1.529A-6 apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2020, and § 1.529A-7 applies to statements required to be furnished after December 31, 2020.
- (b) **Transition relief —**
- (1) **In general.** Any program purporting to be a qualified ABLE program will not be disqualified during the transition period set forth in paragraph (b)(2) of this section (transition period) solely because of noncompliance with one or more provisions of §§ 1.529A-1 through 1.529A-7, provided that the program is established and operated in accordance with a reasonable, good faith interpretation of section 529A. Similarly, no ABLE account established and maintained under a program that meets the requirements of this paragraph will fail to qualify as an ABLE account during the transition period. However, to be a qualified ABLE program and an ABLE account under such a program after the transition period, the program and each account established and maintained under the program must be in compliance with §§ 1.529A-1 through 1.529A-7 by the end of the transition period. In no event, however, will a complete failure to file and furnish reports, information returns and payee statements required under section 529A(d)(1) for any accounts established and maintained under the program (including for calendar years beginning prior to January 1, 2021), be deemed to be due to reasonable cause for purposes of avoiding penalties imposed under section 6693.
- (2) **Transition period.** For purposes of paragraph (b)(1) of this section, the transition period begins with the establishment of the program purporting to be a qualified ABLE program and continues through the later of—
- (i) November 21, 2022; or
- (ii) The day immediately preceding the first day of the qualified ABLE program's first taxable year beginning after the close of the first regular session of the State legislature that begins after November 19, 2020. If a State has a two-year legislative session, each calendar year of such session will be deemed to be a separate regular session of the State legislature for purposes of this paragraph.
- (3) **Compliance after transition period.** After the transition period, a program and an account established and maintained under that program must be in compliance with §§ 1.529A-1 through 1.529A-7.

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Title 42 — Public Health

Chapter IV — Centers for Medicare & Medicaid Services, Department of Health and Human Services

Subchapter C — Medical Assistance Programs

Part 433 — State Fiscal Administration

Subpart A — Federal Matching and General Administration Provisions

Authority: 42 U.S.C. 1302.

Source: 43 FR 45201, Sept. 29, 1978, unless otherwise noted.

§ 433.36 Liens and recoveries.

- (a) **Basis and purpose.** This section implements sections 1902(a)(18) and 1917(a) and (b) of the Act, which describe the conditions under which an agency may impose a lien against a beneficiary's property, and when an agency may make an adjustment or recover funds in satisfaction of the claim against the individual's estate or real property.
- (b) **Definition of property.** For purposes of this section, "property" includes the homestead and all other personal and real property in which the beneficiary has a legal interest.
- (c) **State plan requirement.** If a State chooses to impose a lien against an individual's real property (or as provided in paragraph (g)(1) of this section, personal property), the State plan must provide that the provisions of paragraphs (d) through (i) of this section are met.
- (d) **Procedures.** The State plan must specify the process by which the State will determine that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home as provided in paragraph (g)(2)(ii) of this section. The description of the process must include the type of notice to be given the individual, the process by which the individual will be given the opportunity for a hearing, the hearing procedures, and by whom and on what basis the determination that the individual cannot reasonably be expected to be discharged from the institution will be made. The notice to the individual must explain what is meant by the term lien, and that imposing a lien does not mean that the individual will lose ownership of the home.
- (e) **Definitions.** The State plan must define the following terms used in this section:
 - (1) Individual's home.
 - (2) Equity interest in home.
 - (3) Residing in the home for at least 1 (or 2) year(s).
 - (4) On a continuing basis.
 - (5) Discharge from the medical institution and return home.
 - (6) Lawfully residing.
- (f) **Exception.** The State plan must specify the criteria by which a son or daughter can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution, as provided in paragraph (h)(2)(iii)(B) of this section.

(g) **Lien provisions —**

- (1) **Incorrect payments.** The agency may place a lien against an individual's property, both personal and real, before his or her death because of Medicaid claims paid or to be paid on behalf of that individual following a court judgement which determined that benefits were incorrectly paid for that individual.
- (2) **Correct payments.** Except as provided in paragraph (g)(3) of this section, the agency may place a lien against the real property of an individual at any age before his or her death because of Medicaid claims paid or to be paid for that individual when—
 - (i) An individual is an inpatient of a medical institution and must, as a condition of receiving services in the institution under the State plan, apply his or her income to the cost of care as provided in §§ 435.725, 435.832 and 436.832; and
 - (ii) The agency determines that he or she cannot reasonably be expected to be discharged and return home. The agency must notify the individual of its intention to make that determination and provide an opportunity for a hearing in accordance with State established procedures before the determination is made. The notice to an individual must include an explanation of liens and the effect on an individual's ownership of property.
- (3) **Restrictions on placing liens.** The agency may not place a lien on an individual's home under paragraph (g)(2) of this section if any of the following individuals is lawfully residing in the home:
 - (i) The spouse;
 - (ii) The individual's child who is under age 21 or blind or disabled as defined in the State plan; or
 - (iii) The individual's sibling (who has an equity interest in the home, and who was residing in the individual's home for at least one year immediately before the date the individual was admitted to the medical institution).
- (4) **Termination of lien.** Any lien imposed on an individual's real property under paragraph (g)(2) of this section will dissolve when that individual is discharged from the medical institution and returns home.

(h) **Adjustments and recoveries.**

- (1) The agency may make an adjustment or recover funds for Medicaid claims correctly paid for an individual as follows:
 - (i) From the estate of any individual who was 65 years of age or older when he or she received Medicaid; and
 - (ii) From the estate or upon sale of the property subject to a lien when the individual is institutionalized as described in paragraph (g)(2) of this section.
- (2) The agency may make an adjustment or recovery under paragraph (h)(1) of this section only:
 - (i) After the death of the individual's surviving spouse; and
 - (ii) When the individual has no surviving child under age 21 or blind or disabled as defined in the State plan; and
 - (iii) In the case of liens placed on an individual's home under paragraph (g)(2) of this section, when there is no—

- (A) Sibling of the individual residing in the home, who has resided there for at least one year immediately before the date of the individual's admission to the institution, and has resided there on a continuous basis since that time; or
- (B) Son or daughter of the individual residing in the home, who has resided there for at least two years immediately before the date of the individual's admission to the institution, has resided there on a continuous basis since that time, and can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution.

- (i) ***Prohibition of reduction of money payments.*** No money payment under another program may be reduced as a means of recovering Medicaid claims incorrectly paid.

[43 FR 45201, Sept. 29, 1978, as amended at 47 FR 43647, Oct. 1, 1982; 47 FR 49847, Nov. 3, 1982]

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Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 404 —Federal Old-Age, Survivors and Disability Insurance (1950-)

Subpart D —Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, and 902(a)(5)).

Source: 44 FR 34481, June 15, 1979, unless otherwise noted.

Child's Benefits

- § 404.350 Who is entitled to child's benefits?
- § 404.351 Who may be reentitled to child's benefits?
- § 404.352 When does my entitlement to child's benefits begin and end?
- § 404.353 Child's benefit amounts.
- § 404.354 Your relationship to the insured.
- § 404.355 Who is the insured's natural child?
- § 404.356 Who is the insured's legally adopted child?
- § 404.357 Who is the insured's stepchild?
- § 404.358 Who is the insured's grandchild or stepgrandchild?
- § 404.359 Who is the insured's equitably adopted child?
- § 404.360 When a child is dependent upon the insured person.
- § 404.361 When a natural child is dependent.
- § 404.362 When a legally adopted child is dependent.
- § 404.363 When is a stepchild dependent?
- § 404.364 When is a grandchild or stepgrandchild dependent?
- § 404.365 When an equitably adopted child is dependent.
- § 404.366 "Contributions for support," "one-half support," and "living with" the insured defined—determining first month of entitlement.
- § 404.367 When you are a "full-time elementary or secondary school student".
- § 404.368 When you are considered a full-time student during a period of nonattendance.

CHILD'S BENEFITS

§ 404.350 Who is entitled to child's benefits?

- (a) **General.** You are entitled to child's benefits on the earnings record of an insured person who is entitled to old-age or disability benefits or who has died if—

- (1) You are the insured person's child, based upon a relationship described in §§ 404.355 through 404.359;
 - (2) You are dependent on the insured, as defined in §§ 404.360 through 404.365;
 - (3) You apply;
 - (4) You are unmarried; and
 - (5) You are under age 18; you are 18 years old or older and have a disability that began before you became 22 years old; or you are 18 years or older and qualify for benefits as a full-time student as described in § 404.367.
- (b) **Entitlement preclusion for certain disabled children.** If you are a disabled child as referred to in paragraph (a)(5) of this section, and your disability was based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535) and your benefits ended after your receipt of 36 months of benefits, you will not be entitled to benefits based on disability for any month following such 36 months regardless of the number of entitlement periods you have had if, in such following months, drug addiction or alcoholism is a contributing factor material to the later determination of disability (as described in § 404.1535).

[44 FR 34481, June 15, 1979, as amended at 48 FR 21927, May 16, 1983; 60 FR 8146, Feb. 10, 1995; 61 FR 38363, July 24, 1996]

§ 404.351 Who may be reentitled to child's benefits?

If your entitlement to child's benefits has ended, you may be reentitled on the same earnings record if you have not married and if you apply for reentitlement. Your reentitlement may begin with—

- (a) The first month in which you qualify as a full-time student. (See § 404.367.)
- (b) The first month in which you are disabled, if your disability began before you became 22 years old.
- (c) The first month you are under a disability that began before the end of the 84th month following the month in which your benefits had ended because an earlier disability had ended; or
- (d) With respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at anytime if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity and you meet the other requirements for reentitlement. The 84-month time limit in paragraph (c) in this section continues to apply if your previous entitlement to childhood disability benefits terminated because of medical improvement.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21927, May 16, 1983; 61 FR 38363, July 24, 1996; 71 FR 66865, Nov. 17, 2006]

§ 404.352 When does my entitlement to child's benefits begin and end?

- (a) We will find your entitlement to child's benefits begins at the following times:
 - (1) If the insured is deceased, with the first month covered by your application in which you meet all other requirements for entitlement.
 - (2) If the insured is living and your first month of entitlement is September 1981 or later, with the first month covered by your application throughout which you meet all other requirements for entitlement.

- (3) If the insured is living and your first month of entitlement is before September 1981, with the first month covered by your application in which you meet all other requirements for entitlement.
- (b) We will find your entitlement to child's benefits ends at the earliest of the following times:
 - (1) With the month before the month in which you become 18 years old, if you are not disabled or a full-time student.
 - (2) With the second month following the month in which your disability ends, if you become 18 years old and you are disabled. If your disability ends on or after December 1, 1980, your entitlement to child's benefits continues, subject to the provisions of paragraphs (c) and (d) of this section, until the month before your termination month (§ 404.325).
 - (3) With the last month you are a full-time student or, if earlier, with the month before the month you become age 19, if you become 18 years old and you qualify as a full-time student who is not disabled. If you become age 19 in a month in which you have not completed the requirements for, or received, a diploma or equivalent certificate from an elementary or secondary school and you are required to enroll for each quarter or semester, we will find your entitlement ended with the month in which the quarter or semester in which you are enrolled ends. If the school you are attending does not have a quarter or semester system which requires reenrollment, we will find your entitlement to benefits ended with the month you complete the course or, if earlier, the first day of the third month following the month in which you become 19 years old.
 - (4) With the month before the month you marry. We will not find your benefits ended, however, if you are age 18 or older, disabled, and you marry a person entitled to child's benefits based on disability or person entitled to old-age, divorced wife's, divorced husband's, widow's, widower's, mother's, father's, parent's, or disability benefits.
 - (5) With the month before the month the insured's entitlement to old-age or disability benefits ends for a reason other than death or the attainment of full retirement age (as defined in § 404.409). Exception: We will continue your benefits if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in § 404.1535), the insured person's benefits ended after 36 months of payment (see § 404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see § 404.316(f)), and the insured person remains disabled.
 - (6) With the month before the month you die.
 - (7) With the month in which the divorce between your parent (including an adoptive parent) and the insured stepparent becomes final if you are entitled to benefits as a stepchild and the marriage between your parent (including an adoptive parent) and the insured stepparent ends in divorce.
- (c) If you are entitled to benefits as a disabled child age 18 or over and your disability is based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), we will find your entitlement to benefits ended under the following conditions:
 - (1) If your benefits have been suspended for a period of 12 consecutive months for failure to comply with treatment, with the month following the 12 months unless you are otherwise disabled without regard to drug addiction or alcoholism (see § 404.470(c)).
 - (2) If you have received 36 months of benefits on that basis when treatment is available, regardless of the number of entitlement periods you may have had, with the month following such 36-month payment period unless you are otherwise disabled without regard to drug addiction or alcoholism.

(d)

- (1) Your benefits may be continued after your impairment is no longer disabling if—
 - (i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);
 - (ii) You began participating in the program before the date your disability ended; and
 - (iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.
- (2) We generally will stop your benefits with the earliest of these months—
 - (i) The month in which you complete the program; or
 - (ii) The month in which you stop participating in the program for any reason (see § 404.327(b) for what we mean by “participating” in the program); or
 - (iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

Exception to paragraph (d) : In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

- (e) If, after November 1980, you have a disabling impairment (§ 404.1511), we will pay you benefits for all months in which you do not do substantial gainful activity during the reentitlement period (§ 404.1592a) following the end of your trial work period (§ 404.1592). If you are unable to do substantial gainful activity in the first month following the reentitlement period, we will pay you benefits until you are able to do substantial gainful activity. (Earnings during your trial work period do not affect the payment of your benefits during that period.) We will also pay you benefits for the first month after the trial work period in which you do substantial gainful activity and the two succeeding months, whether or not you do substantial gainful activity during those succeeding months. After those three months, we cannot pay you benefits for any months in which you do substantial gainful activity.

[68 FR 4707, Jan. 30, 2003, as amended at 70 FR 36506, June 24, 2005; 75 FR 52621, Aug. 27, 2010]

§ 404.353 Child's benefit amounts.

- (a) **General.** Your child's monthly benefit is equal to one-half of the insured person's primary insurance amount if he or she is alive and three-fourths of the primary insurance amount if he or she has died. The amount of your monthly benefit may change as explained in § 404.304.
- (b) **Entitlement to more than one benefit.** If you are entitled to a child's benefit on more than one person's earnings record, you will ordinarily receive only the benefit payable on the record with the highest primary insurance amount. If your benefit before any reduction would be larger on an earnings record with a lower primary insurance amount and no other person entitled to benefits on any earnings record would receive a smaller benefit as a result of your receiving benefits on the record with the lower primary insurance

amount, you will receive benefits on that record. See § 404.407(d) for a further explanation. If you are entitled to a child's benefit and to other dependent's or survivor's benefits, you can receive only the highest of the benefits.

[44 FR 34481, June 15, 1979; 44 FR 56691, Oct. 2, 1979, as amended at 48 FR 21928, May 16, 1983; 51 FR 12606, Apr. 14, 1986; 61 FR 38363, July 24, 1996]

§ 404.354 Your relationship to the insured.

You may be related to the insured person in one of several ways and be entitled to benefits as his or her child, *i.e.*, as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. For details on how we determine your relationship to the insured person, see §§ 404.355 through 404.359.

[63 FR 57593, Oct. 28, 1998]

§ 404.355 Who is the insured's natural child?

- (a) **Eligibility as a natural child.** You may be eligible for benefits as the insured's natural child if any of the following conditions is met:
- (1) You could inherit the insured's personal property as his or her natural child under State inheritance laws, as described in paragraph (b) of this section.
 - (2) You are the insured's natural child and the insured and your mother or father went through a ceremony which would have resulted in a valid marriage between them except for a "legal impediment" as described in § 404.346(a).
 - (3) You are the insured's natural child and your mother or father has not married the insured, but the insured has either acknowledged in writing that you are his or her child, been decreed by a court to be your father or mother, or been ordered by a court to contribute to your support because you are his or her child. If the insured is deceased, the acknowledgment, court decree, or court order must have been made or issued before his or her death. To determine whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a), the written acknowledgment, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.
 - (4) Your mother or father has not married the insured but you have evidence other than the evidence described in paragraph (a)(3) of this section to show that the insured is your natural father or mother. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he or she died. See § 404.366 for an explanation of the terms "living with" and "contributions for support."
- (b) **Use of State Laws —**
- (1) **General.** To decide whether you have inheritance rights as the natural child of the insured, we use the law on inheritance rights that the State courts would use to decide whether you could inherit a child's share of the insured's personal property if the insured were to die without leaving a will. If the insured is living, we look to the laws of the State where the insured has his or her permanent home when you apply for benefits. If the insured is deceased, we look to the laws of the State where the insured had

his or her permanent home when he or she died. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands, we will look to the laws of the District of Columbia. For a definition of permanent home, see § 404.303. For a further discussion of the State laws we use to determine whether you qualify as the insured's natural child, see paragraphs (b)(3) and (b)(4) of this section. If these laws would permit you to inherit the insured's personal property as his or her child, we will consider you the child of the insured.

- (2) **Standards.** We will not apply any State inheritance law requirement that an action to establish paternity must be taken within a specified period of time measured from the worker's death or the child's birth, or that an action to establish paternity must have been started or completed before the worker's death. If applicable State inheritance law requires a court determination of paternity, we will not require that you obtain such a determination but will decide your paternity by using the standard of proof that the State court would use as the basis for a determination of paternity.
- (3) **Insured is living.** If the insured is living, we apply the law of the State where the insured has his or her permanent home when you file your application for benefits. We apply the version of State law in effect when we make our final decision on your application for benefits. If you do not qualify as a child of the insured under that version of State law, we look at all versions of State law that were in effect from the first month for which you could be entitled to benefits up until the time of our final decision and apply the version of State law that is most beneficial to you.
- (4) **Insured is deceased.** If the insured is deceased, we apply the law of the State where the insured had his or her permanent home when he or she died. We apply the version of State law in effect when we make our final decision on your application for benefits. If you do not qualify as a child of the insured under that version of State law, we will apply the version of State law that was in effect at the time the insured died, or any version of State law in effect from the first month for which you could be entitled to benefits up until our final decision on your application. We will apply whichever version is most beneficial to you. We use the following rules to determine the law in effect as of the date of death:
 - (i) If a State inheritance law enacted after the insured's death indicates that the law would be retroactive to the time of death, we will apply that law; or
 - (ii) If the inheritance law in effect at the time of the insured's death was later declared unconstitutional, we will apply the State law which superseded the unconstitutional law.

[63 FR 57593, Oct. 28, 1998]

§ 404.356 Who is the insured's legally adopted child?

You may be eligible for benefits as the insured's child if you were legally adopted by the insured. If you were legally adopted after the insured's death by his or her surviving spouse you may also be considered the insured's legally adopted child. We apply the adoption laws of the State or foreign country where the adoption took place, not the State inheritance laws described in § 404.355, to determine whether you are the insured's legally adopted child.

[44 FR 34481, June 15, 1979, as amended at 63 FR 57594, Oct. 28, 1998]

§ 404.357 Who is the insured's stepchild?

You may be eligible for benefits as the insured's stepchild if, after your birth, your natural or adopting parent married the insured. You also may be eligible as a stepchild if you were conceived prior to the marriage of your natural parent to the insured but were born after the marriage and the insured is not your natural parent. The marriage between the insured and your parent must be a valid marriage under State law or a marriage which would be valid except for a *legal impediment* described in § 404.346(a). If the insured is alive when you apply, you must have been his or her stepchild for at least 1 year immediately preceding the day you apply. For purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), you will be considered to meet the one year duration requirement throughout the month in which the anniversary of the marriage occurs. If the insured is not alive when you apply, you must have been his or her stepchild for at least 9 months immediately preceding the day the insured died. This 9-month requirement will not have to be met if the marriage between the insured and your parent lasted less than 9 months under one of the conditions described in § 404.335(a)(2)(i)-(iii).

[48 FR 21928, May 16, 1983, as amended at 64 FR 14608, Mar. 26, 1999; 70 FR 61365, Oct. 24, 2005]

§ 404.358 Who is the insured's grandchild or stepgrandchild?

- (a) **Grandchild and stepgrandchild defined.** You may be eligible for benefits as the insured's grandchild or stepgrandchild if you are the natural child, adopted child, or stepchild of a person who is the insured's child as defined in §§ 404.355 through 404.357, or § 404.359. Additionally, for you to be eligible as a grandchild or stepgrandchild, your natural or adoptive parents must have been either deceased or under a disability, as defined in § 404.1501(a), at the time your grandparent or stepgrandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began. If your parent is deceased, for purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), your parent will be considered to be deceased as of the first day of the month of death.
- (b) **Legally adopted grandchild or stepgrandchild.** If you are the insured's grandchild or stepgrandchild and you are legally adopted by the insured or by the insured's surviving spouse after his or her death, you are considered an adopted child and the dependency requirements of § 404.362 must be met.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21928, May 16, 1983]

§ 404.359 Who is the insured's equitably adopted child?

You may be eligible for benefits as an equitably adopted child if the insured had agreed to adopt you as his or her child but the adoption did not occur. The agreement to adopt you must be one that would be recognized under State law so that you would be able to inherit a child's share of the insured's personal property if he or she were to die without leaving a will. The agreement must be in whatever form, and you must meet whatever requirements for performance under the agreement, that State law directs. If you apply for child's benefits after the insured's death, the law of the State where the insured had his or her permanent home at the time of his or her death will be followed. If you apply for child's benefits during the insured's life, the law of the State where the insured has his or her permanent home at the time of your application will be followed.

§ 404.360 When a child is dependent upon the insured person.

One of the requirements for entitlement to child's benefits is that you be dependent upon the insured. The evidence you need to prove your dependency is determined by how you are related to the insured. To prove your dependency you may be asked to show that at a specific time you lived with the insured, that you received contributions for your support from the insured, or that the insured provided at least one-half of your support. These dependency requirements, and the time at which they must be met, are explained in §§ 404.361 through 404.365. The terms *living with*, *contributions for support*, and *one-half support* are defined in § 404.366.

§ 404.361 When a natural child is dependent.

- (a) **Dependency of natural child.** If you are the insured's natural child, as defined in § 404.355, you are considered dependent upon him or her, except as stated in paragraph (b) of this section.
- (b) **Dependency of natural child legally adopted by someone other than the insured.**
 - (1) Except as indicated in paragraph (b)(2) of this section, if you are legally adopted by someone other than the insured (your natural parent) during the insured's lifetime, you are considered dependent upon the insured only if the insured was either living with you or contributing to your support at one of the following times:
 - (i) When you applied;
 - (ii) When the insured died; or
 - (iii) If the insured had a period of disability that lasted until he or she became entitled to disability or old-age benefits or died, at the beginning of the period of disability or at the time he or she became entitled to disability or old-age benefits.
 - (2) You are considered dependent upon the insured (your natural parent) if:
 - (i) You were adopted by someone other than the insured after you applied for child's benefits; or
 - (ii) The insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits or died, and you are adopted by someone other than the insured after the beginning of that period of disability.

[64 FR 14608, Mar. 26, 1999]

§ 404.362 When a legally adopted child is dependent.

- (a) **General.** If you were legally adopted by the insured before he or she became entitled to old-age or disability benefits, you are considered dependent upon him or her. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits during the life of the insured, you must meet the dependency requirements stated in paragraph (b) of this section. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits after the death of the insured, you are considered dependent upon him or her. If you were adopted after the insured's death by his or her surviving spouse, you may be considered dependent upon the insured only under the conditions described in paragraph (c) of this section.
- (b) **Adoption by the insured after he or she became entitled to benefits —**

- (1) **General.** If you are legally adopted by the insured after he or she became entitled to benefits and you are not the insured's natural child or stepchild, you are considered dependent on the insured during his or her lifetime only if—
 - (i) You had not attained age 18 when adoption proceedings were started, and your adoption was issued by a court of competent jurisdiction within the United States; or
 - (ii) You had attained age 18 before adoption proceedings were started; your adoption was issued by a court of competent jurisdiction within the United States; and you were living with or receiving at least one-half of your support from the insured for the year immediately preceding the month in which your adoption was issued.
- (2) **Natural child and stepchild.** If you were legally adopted by the insured after he or she became entitled to benefits and you are the insured's natural child or stepchild, you are considered dependent upon the insured.

(c) **Adoption by the insured's surviving spouse —**

- (1) **General.** If you are legally adopted by the insured's surviving spouse after the insured's death, you are considered dependent upon the insured as of the date of his or her death if—
 - (i) You were either living with or receiving at least one-half of your support from the insured at the time of his or her death; and,
 - (ii) The insured had started adoption proceedings before he or she died; or if the insured had not started the adoption proceedings before he or she died, his or her surviving spouse began and completed the adoption within 2 years of the insured's death.
- (2) **Grandchild or stepgrandchild adopted by the insured's surviving spouse.** If you are the grandchild or stepgrandchild of the insured and any time after the death of the insured you are legally adopted by the insured's surviving spouse, you are considered the dependent child of the insured as of the date of his or her death if—
 - (i) Your adoption took place in the United States;
 - (ii) At the time of the insured's death, your natural, adopting or stepparent was not living in the insured's household and making regular contributions toward your support; and
 - (iii) You meet the dependency requirements stated in § 404.364.

[44 FR 34481, June 15, 1979; 44 FR 56691, Oct. 2, 1979, as amended at 56 FR 24000, May 28, 1991; 57 FR 3938, Feb. 3, 1992]

§ 404.363 When is a stepchild dependent?

If you are the insured's stepchild, as defined in § 404.357, we consider you dependent on him or her if you were receiving at least one-half of your support from him or her at one of these times—

- (a) When you applied;
- (b) When the insured died; or
- (c) If the insured had a period of disability that lasted until his or her death or entitlement to disability or old-age benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

[44 FR 34481, June 15, 1979, as amended at 75 FR 52621, Aug. 27, 2010]

§ 404.364 When is a grandchild or stepgrandchild dependent?

If you are the insured's grandchild or stepgrandchild, as defined in § 404.358(a), you are considered dependent upon the insured if—

- (a) You began living with the insured before you became 18 years old; and
- (b) You were living with the insured in the United States and receiving at least one-half of your support from him or her for the year before he or she became entitled to old-age or disability benefits or died; or if the insured had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began. If you were born during the 1-year period, the insured must have lived with you and provided at least one-half of your support for *substantially all* of the period that begins on the date of your birth. Paragraph (c) of this section explains when the *substantially all* requirement is met.
- (c) The “substantially all” requirement will be met if, at one of the times described in paragraph (b) of this section, the insured was living with you and providing at least one-half of your support, and any period during which he or she was not living with you and providing one-half of your support did not exceed the lesser of 3 months or one-half of the period beginning with the month of your birth.

[44 FR 34481, June 15, 1979, as amended at 73 FR 40967, July 17, 2008]

§ 404.365 When an equitably adopted child is dependent.

If you are the insured's equitably adopted child, as defined in § 404.359, you are considered dependent upon him or her if you were either living with or receiving contributions for your support from the insured at the time of his or her death. If your equitable adoption is found to have occurred after the insured became entitled to old-age or disability benefits, your dependency cannot be established during the insured's life. If your equitable adoption is found to have occurred before the insured became entitled to old-age or disability benefits, you are considered dependent upon him or her if you were either living with or receiving contributions for your support from the insured at one of these times—

- (a) When you applied; or
- (b) If the insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.366 “Contributions for support,” “one-half support,” and “living with” the insured defined—determining first month of entitlement.

To be eligible for child's or parent's benefits, and in certain Government pension offset cases, you must be dependent upon the insured person at a particular time or be assumed dependent upon him or her. What it means to be a dependent child is explained in §§ 404.360 through 404.365; what it means to be a dependent parent is explained in § 404.370(f); and the Government pension offset is explained in § 404.408a. Your dependency upon the insured person may be based upon whether at a specified time you were receiving *contributions for your support* or *one-half of your support* from the insured person, or whether you were *living with* him or her. These terms are defined in paragraphs (a) through (c) of this section.

- (a) **Contributions for support.** The insured makes a contribution for your support if the following conditions are met:
- (1) The insured gives some of his or her own cash or goods to help support you. Support includes food, shelter, routine medical care, and other ordinary and customary items needed for your maintenance. The value of any goods the insured contributes is the same as the cost of the goods when he or she gave them for your support. If the insured provides services for you that would otherwise have to be paid for, the cash value of his or her services may be considered a contribution for your support. An example of this would be work the insured does to repair your home. The insured person is making a contribution for your support if you receive an allotment, allowance, or benefit based upon his or her military pay, veterans' pension or compensation, or social security earnings.
 - (2) Contributions must be made regularly and must be large enough to meet an important part of your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. If the insured person only provides gifts or donations once in a while for special purposes, they will not be considered contributions for your support. Although the insured's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the insured person's control, such as illness or unemployment, will be disregarded unless during this interruption someone else takes over responsibility for supporting you on a permanent basis.
- (b) **One-half support.** The insured person provides one-half of your support if he or she makes regular contributions for your ordinary living costs; the amount of these contributions equals or exceeds one-half of your ordinary living costs; and any income (from sources other than the insured person) you have available for support purposes is one-half or less of your ordinary living costs. We will consider any income which is available to you for your support whether or not that income is actually used for your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. A contribution may be in cash, goods, or services. The insured is not providing at least one-half of your support unless he or she has done so for a reasonable period of time. Ordinarily we consider a reasonable period to be the 12-month period immediately preceding the time when the one-half support requirement must be met under the rules in §§ 404.362(c)(1) and 404.363 (for child's benefits), in § 404.370(f) (for parent's benefits) and in § 404.408a(c) (for benefits where the Government pension offset may be applied). A shorter period will be considered reasonable under the following circumstances:
- (1) At some point within the 12-month period, the insured either begins or stops providing at least one-half of your support on a permanent basis and this is a change in the way you had been supported up to then. In these circumstances, the time from the change up to the end of the 12-month period will be considered a reasonable period, unless paragraph (b)(2) of this section applies. The change in your source of support must be permanent and not temporary. Changes caused by seasonal employment or customary visits to the insured's home are considered temporary.
 - (2) The insured provided one-half or more of your support for at least 3 months of the 12-month period, but was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over the responsibility for providing at least one-half of your support on a permanent basis. Any support you received from a public assistance program is not considered as a taking over of responsibility for your support by someone else. Under these circumstances, a reasonable period is that part of the 12-month period before the insured was forced to reduce or stop providing at least one-half of your support.

- (c) ***"Living with" the insured.*** You are living with the insured if you ordinarily live in the same home with the insured and he or she is exercising, or has the right to exercise, parental control and authority over your activities. You are living with the insured during temporary separations if you and the insured expect to live together in the same place after the separation. Temporary separations may include the insured's absence because of active military service or imprisonment if he or she still exercises parental control and authority. However, you are not considered to be living with the insured if you are in active military service or in prison. If *living with* is used to establish dependency for your eligibility to child's benefits and the date your application is filed is used for establishing the point for determining dependency, you must have been living with the insured throughout the month your application is filed in order to be entitled to benefits for that month.
- (d) ***Determining first month of entitlement.*** In evaluating whether dependency is established under paragraph (a), (b), or (c) of this section, for purposes of determining whether the conditions of entitlement are met *throughout* the first month as stated in § 404.352(a)(2)(i), we will not use the temporary separation or temporary interruption rules.

[44 FR 34481, June 15, 1979, as amended at 45 FR 65540, Oct. 3, 1980; 48 FR 21928, May 16, 1983; 52 FR 26955, July 17, 1987; 64 FR 14608, Mar. 26, 1999]

§ 404.367 When you are a "full-time elementary or secondary school student".

You may be eligible for child's benefits if you are a full-time elementary or secondary school student. For the purposes of determining whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a)(2)(i), if you are entitled as a student on the basis of attendance at an elementary or secondary school, you will be considered to be in full-time attendance for a month during any part of which you are in full-time attendance. You are a full-time elementary or secondary school student if you meet all the following conditions:

- (a) You attend a school which provides elementary or secondary education as determined under the law of the State or other jurisdiction in which it is located. Participation in the following programs also meets the requirements of this paragraph:
- (1) You are instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which you reside; or
 - (2) You are in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which you reside which is administered by the local school or school district/jurisdiction.
- (b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and you are carrying a subject load which is considered full-time for day students under the institution's standards and practices. If you are in a home schooling program as described in paragraph (a)(1) of this section, you must be carrying a subject load which is considered full-time for day students under standards and practices set by the State or other jurisdiction in which you reside;
- (c) To be considered in full-time attendance, your scheduled attendance must be at the rate of at least 20 hours per week unless one of the exceptions in paragraphs (c) (1) and (2) of this section applies. If you are in an independent study program as described in paragraph (a)(2) of this section, your number of

hours spent in school attendance are determined by combining the number of hours of attendance at a school facility with the agreed upon number of hours spent in independent study. You may still be considered in full-time attendance if your scheduled rate of attendance is below 20 hours per week if we find that:

- (1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or
- (2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.
- (d) You are not being paid while attending the school by an employer who has requested or required that you attend the school;
- (e) You are in grade 12 or below; and
- (f) You are not subject to the provisions in § 404.468 for nonpayment of benefits to certain prisoners and certain other inmates of publicly funded institutions.

[48 FR 21928, May 16, 1983, as amended at 48 FR 55452, Dec. 13, 1983; 56 FR 35999, July 30, 1991; 61 FR 38363, July 24, 1996]

§ 404.368 When you are considered a full-time student during a period of nonattendance.

If you are a full-time student, your eligibility may continue during a period of nonattendance (including part-time attendance) if all the following conditions are met:

- (a) The period of nonattendance is 4 consecutive months or less;
- (b) You show us that you intend to resume your studies as a full-time student at the end of the period or at the end of the period you are a full-time student; and
- (c) The period of nonattendance is not due to your expulsion or suspension from the school.

[48 FR 21929, May 16, 1983]

4 Comparing the eCFR in effect on **9/30/2024** to what was previously in effect on **9/29/2024**.

Changes are highlighted in the text below.

Title 20 —Employees' Benefits

Chapter III —Social Security Administration

Part 416 —Supplemental Security Income for the Aged, Blind, and Disabled

Subpart K —Income

ENHANCED CONTENT - TABLE OF CONTENTS

In-Kind Support and Maintenance	416.1130 – 416.1145
§ 416.1130	Introduction.
§ 416.1131	The one-third reduction rule.
§ 416.1132	What we mean by “living in another person's household”.
§ 416.1133	What is a pro rata share of household operating expenses.
§ 416.1140	The presumed value rule.
§ 416.1141	When the presumed value rule applies.
§ 416.1142	If you live in a public assistance household.
§ 416.1143	If you live in a noninstitutional care situation.
§ 416.1144	If you live in a nonprofit retirement home or similar institution.
§ 416.1145	How the presumed value rule applies in a nonmedical for-profit institution.

EDITORIAL NOTE ON PART 416

Editorial Note: Nomenclature changes to part 416 appear at 68 FR 53509, Sept. 11, 2003.

IN-KIND SUPPORT AND MAINTENANCE

§ 416.1130 Introduction.

GROSS REFERENCE

~~Link to an amendment published at 89 FR 21209, Mar. 27, 2024.~~

GROSS REFERENCE

~~Link to an amendment published at 89 FR 25514, Apr. 11, 2024.~~

- (a) **General.** Both earned income and unearned income include items received in-kind (see § 416.1102). Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food or shelter that is received as unearned income (in-kind support and maintenance *(a type of unearned income)*). This section and the ones that follow discuss these rules. In these sections (*i.e.*, §§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. ~~resides in his son's house and receives all of his meals from his son. Mr. Jones receives a monthly SSI Federal benefit rate that is reduced by one-third.~~ This one-third represents the value of the ~~income~~ *in-kind support and maintenance* he receives because he lives, *throughout a month*, in the household of ~~a his son, who provides both all of his food and shelter (in-kind support and maintenance).~~ In January, we increase his SSI benefit because of a cost-of-living adjustment. ~~We base his SSI payment for For that month on the, we determine that the VTR rule applies by considering the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in November, we use the, and we calculate the SSI payment using the~~ Federal benefit rate for January.

- (b) ~~How we define calculate in-kind support and maintenance. In~~

(1) ~~We calculate in-kind support and maintenance~~

means

considering any

food or

shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly

rent

required

to be paid equals the current market rental value (see § 416.1101). ~~Exception: In the States in the Seventh Circuit (Illinois, Indiana, and Wisconsin), a business arrangement exists when the amount of monthly~~

rent

required

to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1).

In those States, if

If the required amount of rent is less than the presumed maximum value, we will impute as in-kind support and maintenance

;

the difference between the required amount of rent and either the presumed maximum value or the current market rental value (see § 416.1101), whichever is less. In addition, cash payments to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

(

c) ~~How we value in-kind support and maintenance. Essentially, we~~

2) We have two rules for valuing the in-kind support and maintenance

which

that we

must

count. The one-third reduction rule applies if you are living in

~~the household of a person who provides you with both food and shelter (~~

another person's household, you receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals (see §§ 416.1131 through 416.1133). The presumed value rule applies in all other situations

where

in which you

are receiving

receive countable in-kind support and maintenance (see §§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These conditions are discussed in §§ 416.1141 through 416.1145.

[45-89 FR 65547, 21209, Oct-Mar. 327, 1980; 2024, as amended at 50-89 FR 48574, Nov. 26, 1985; 51 FR 13488, 25514, Apr. 21, 1986; 60 FR 16375, Mar. 30, 1995; 63 FR 33546, June 19, 1998; 70 FR 6345, Feb. 7, 2005; 75 FR 54297, Sept. 7, 2010; 11, 2024]

§ 416.1131 The one-third reduction rule.

CROSS-REFERENCE

Link to an amendment published at 89 FR 21210, Mar. 27, 2024.

(a) **What the rule is.** Instead of determining the actual dollar value of in-kind support and maintenance, we count one-third of the Federal benefit rate as additional income if you (or you and your eligible spouse)—

(1) Live in another person's household (see § 416.1132) for a full calendar month except for temporary absences (see § 416.1149); and

(2) Receive ~~both food and shelter from others living in the person in whose household you are living. (If you do not receive both food and shelter from this person~~ others living in the household, see § 416.1140); and

(3) Others within the household pay for or provide you with all of your meals. If others within the household do not pay for or provide you with all of your meals, any ISM received for shelter will be calculated under the PMV rule (see § 416.1140).

- (b) **How we apply the one-third reduction rule.** The one-third reduction applies in full or not at all. When you are living in another person's household, and the one-third reduction rule applies, we do not apply any income exclusions to the reduction amount. However, we do apply appropriate exclusions to any other earned or unearned income you receive. If you have an eligible spouse we apply the rules described in § 416.1147.
- (c) **If you receive other support and maintenance.** If the one-third reduction rule applies to you, we do not count any other in-kind support and maintenance you receive.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48574, Nov. 26, 1985; ~~89 FR 21210, Mar. 27, 2024~~]

§ 416.1132 What we mean by “living in another person's household”.

- (a) **Household.** For purposes of this subpart, we consider a household to be a personal place of residence. A commercial establishment such as a hotel or boarding house is not a household but a household can exist within a commercial establishment. If you live in a commercial establishment, we do not automatically consider you to be a member of the household of the proprietor. You may, however, live in the household of a roomer or boarder within the hotel or boarding house. An institution is not a household and a household cannot exist within an institution. (Institution is defined in § 416.1101.)
- (b) **Another person's household.** You live in another person's household if paragraph (c) of this section does not apply and if the person who supplies the support and maintenance lives in the same household and is not—
 - (1) Your spouse (as defined in § 416.1806);
 - (2) A minor child; or
 - (3) An ineligible person (your spouse, parent, or essential person) whose income may be deemed to you as described in §§ 416.1160 through 416.1169.
- (c) **Your own household—not another person's household.** You are not living in another person's household (you live in your own household) if —
 - (1) You (or your spouse who lives with you or any person whose income is deemed to you) have an ownership interest or a life estate interest in the home;
 - (2) You (or your spouse who lives with you or any person whose income is deemed to you) are liable to the landlord for payment of any part of the rental charges;
 - (3) You live in a noninstitutional care situation as described in § 416.1143;
 - (4) You pay at least a pro rata share of household and operating expenses (see § 416.1133); or
 - (5) All members of the household receive public income—maintenance payments (§ 416.1142).

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48574, Nov. 26, 1985]

§ 416.1133 What is a pro rata share of household operating expenses.

CROSS-REFERENCE

~~Link to an amendment published at 89 FR 21210, Mar. 27, 2024.~~

- (a) **General.** If you pay your pro rata share toward monthly household operating expenses, you are living in your own household and are not receiving in-kind support and maintenance from anyone else in the household. The one-third reduction, therefore, does not apply to you. (If you are receiving food or shelter from someone outside the household, we value it under the rule in § 416.1140.)
- (b) **How we determine a pro rata share.** Your pro rata share of household operating expenses is the average monthly household operating expenses (based on a reasonable estimate if exact figures are not available) divided by the number of people in the household, regardless of age.
- (c) ~~Average household operating expenses.~~ Household operating expenses are the household's total monthly expenditures for food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. (The term does not include the cost of these items if someone outside the household pays for them.) Generally, we average household operating expenses over the past 12 months to determine a pro rata share.

[45 FR 65547, Oct. 3, 1980, as amended at 70 FR 6345, Feb. 7, 2005; ~~89 FR 21210, Mar. 27, 2024~~]

§ 416.1140 The presumed value rule.

CROSS-REFERENCE

~~Link to an amendment published at 89 FR 21210, Mar. 27, 2024.~~

(a) How we apply the presumed value rule.

- (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any ~~food or shelter~~ you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(12).
- (2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—
 - (i) The current market value of any ~~food or shelter~~ you receive, minus any payment you make for them~~it~~, is lower than the presumed value; or
 - (ii) The actual amount someone else pays for your ~~food or shelter~~ is lower than the presumed value.

(b) How we determine the amount of your ~~unearned income~~ ISM under the presumed value rule.

- (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the ~~food or shelter~~ you receive, we use the presumed value to figure your ~~unearned income~~ ISM.
- (2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the ~~food or shelter~~ you receive, we use the actual amount to figure your ~~unearned income~~ ISM.

~~[45 FR 65547, 21210, Oct. 3, 1980, as amended at 50 FR 48575, Nov. 26, 1985; 58 FR 63888, Dec. 3, 1993; 70 FR 6345, Feb. 7, 2005; 27, 2024]~~

§ 416.1141 When the presumed value rule applies.**CROSS-REFERENCE**

~~Link to an amendment published at 89 FR 21210, Mar. 27, 2024.~~

The presumed value rule applies whenever we ~~must~~ count in-kind support and maintenance as unearned income and the one-third reduction rule does not apply. This means that the presumed value rule applies if you are living—

- (a) In another person's household (as described in § 416.1132(b)) ~~but not receiving both food and shelter from that person; you receive shelter from others living in the household; and others within the household do not pay for or provide you with all of your meals;~~
- (b) In your own household (as described in § 416.1132(c)). For exceptions, see § 416.1142 if you are in a public assistance household and § 416.1143 if you are in a noninstitutional ~~care case~~ situation; ~~or~~
- (c) In a nonmedical institution including any—
 - (1) Public nonmedical institution if you are there for less than a full calendar month;
 - (2) Public or private nonprofit educational or vocational training institution;
 - (3) Private nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. For exceptions, see § 416.1144; and
 - (4) For-profit institution where someone else pays for your support and maintenance. If you or the institution pay for it, see § 416.1145.

~~[45 FR 65547, Oct. 3, 1980, as amended at 89 FR 21210, Mar. 27, 2024]~~

§ 416.1142 If you live in a public assistance household.**CROSS-REFERENCE**

~~Link to an amendment published at 89 FR 28622, Apr. 19, 2024.~~

- (a) **Definition.** ~~A For purposes of our programs, a public assistance household is one in which every member receives some kind of public income that has both an SSI applicant or recipient, and at least one other household member who receives one or more of the listed public income maintenance payments. These are payments made under—~~
 - (1) Title IV-A of the Social Security Act (Temporary Assistance for Needy Families);

- (2) Title XVI of the Social Security Act (SSI, including federally administered State supplements and State administered mandatory supplements);
- (3) The Refugee Act of 1980 (Those payments based on need);
- (4) The Disaster Relief and Emergency Assistance Act;
- (5) General assistance programs of the Bureau of Indian Affairs;
- (6) State or local government assistance programs based on need (tax credits or refunds are not assistance based on need); and
- (7) U.S. Department of Veterans Affairs programs (those payments based on need); and
- (8) The Supplemental Nutrition Assistance Program (SNAP).

- (b) **How the presumed value rule applies.** If you live in a public assistance household, we consider that you are not receiving in-kind support and maintenance from members of the household. In this situation, we use the presumed value rule only if you receive food or shelter from someone outside the household.

[45 FR 65547, Oct. 3, 1980, as amended at 57 FR 53850, Nov. 13, 1992; 70 FR 6345, Feb. 7, 2005; 70 FR 41137, July 18, 2005; 89 FR 28622, Apr. 19, 2024]

● **§ 416.1143 If you live in a noninstitutional care situation.**

- (a) **Definitions.** For purposes of this subpart you live in a noninstitutional care situation if all the following conditions exist:

- (1) You are placed by a public or private agency under a specific program such as foster or family care;
- (2) The placing agency is responsible for your care;
- (3) You are in a private household (not an institution) which is licensed or approved by the placing agency to provide care; and
- (4) You, a public agency, or someone else pays for your care.

- (b) **How the presumed value rule applies.** You are not receiving in-kind support and maintenance and the presumed value rule does not apply if you pay the rate the placing agency establishes. We consider this established rate to be the current market value for the in-kind support and maintenance you are receiving. The presumed value rule applies if you pay less than the established rate and the difference is paid by someone else other than a public or private agency providing social services described in § 416.1103(b) or assistance based on need described in § 416.1124(c)(2).

● **§ 416.1144 If you live in a nonprofit retirement home or similar institution.**

- (a) **Definitions.** For purposes of this section the following definitions apply:

- (1) **Nonprofit retirement home or similar institution** means a nongovernmental institution as defined under § 416.1101, which is, or is controlled by, a private nonprofit organization and which does not provide you with—
 - (i) Services which are (or could be) covered under Medicaid, or
 - (ii) Education or vocational training.
- (2) **Nonprofit organization** means a private organization which is tax exempt under section 501(a) of the Internal Revenue Code of 1954 and is of the kind described in section 501 (c) or (d) of that code.
- (3) **An express obligation to provide your full support and maintenance** means there is either a legally enforceable written contract or set of membership rules providing that the home, institution, or organization—
 - (i) Will provide at least all of your food and shelter needs; and
 - (ii) Does not require any current or future payment for that food and shelter. (For purposes of this paragraph, a lump sum prepayment for lifetime care is not a current payment.)

- (b) **How the presumed value rule applies.** The presumed value rule applies if you are living in a nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. The rule does not apply to the extent that—

- (1) The home, institution, or nonprofit organization does not have an express obligation to provide your full support and maintenance; and
- (2) The home, institution, or nonprofit organization receives no payment for your food or shelter, or receives payment from another nonprofit organization.

[45 FR 65547, Oct. 3, 1980, as amended at 51 FR 34464, Sept. 29, 1986; 70 FR 6345, Feb. 7, 2005]

⦿ **§ 416.1145 How the presumed value rule applies in a nonmedical for-profit institution.**

If you live in a nonmedical for-profit institution, we consider the amount accepted by that institution as payment in full to be the current market value of whatever food or shelter the institution provides. If you are paying or are legally indebted for that amount, you are not receiving in-kind support and maintenance. We do not use the presumed value rule unless someone else pays for you.

[45 FR 65547, Oct. 3, 1980, as amended at 70 FR 6345, Feb. 7, 2005]