

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Docket No. FAA-2005-22290; Directorate Identifier 2005-NM-129-AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by October 6, 2005.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to all BAE Systems (Operations) Limited Model Jetstream 4101 airplanes, certificated in any category.

#### Unsafe Condition

- (d) This AD results from a report of total electrical failure just as the airplane landed. We are issuing this AD to prevent total electrical failure and consequent reduced controllability of the airplane.

#### Compliance

- (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Modification

- (f) Within 6 months after the effective date of this AD: Modify the wiring of the starter-generator terminal block in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41-24-041, dated May 10, 2004.

#### Alternative Methods of Compliance (AMOCs)

- (g) The Manager, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

#### Related Information

- (h) British airworthiness directive G-2005-0006, dated February 7, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on August 29, 2005.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-17610 Filed 9-2-05; 8:45 am]

**BILLING CODE 4910-13-P**

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 416

**RIN 0960-AG13**

### Changes to the Income and Resources Provisions for Supplemental Security Income (SSI) Based on Sections 430, 435, and 436 of the Social Security Protection Act (SSPA) of 2004

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to revise our regulations on how we determine an individual's income and resources under the SSI program based on the SSPA of 2004, enacted on March 2, 2004. Some of the provisions of the SSPA make a number of changes in the way we determine income and resources including: how we calculate infrequent and irregular income; what interest and dividend income we exclude; how we count cash military compensation; and when we exclude gifts for tuition or educational expenses from income or resources. We are also proposing to apply the exclusions required by the SSPA when determining the countable income and resources of an ineligible spouse or ineligible parent. **DATES:** To be sure that we consider your comments, we must receive them by November 7, 2005.

**ADDRESSES:** You may give us your comments: by using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/erm/rules.nsf/>

*Rules+Open+To+Comment* or the Federal eRulemaking Portal at <http://www.regulations.gov>; by e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); by telefax to (410) 966-2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

#### Electronic Version

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

#### FOR FURTHER INFORMATION CONTACT:

Barbara E. Snyder, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-5655 or TTY 1-800-966-5906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

The basic purpose of the SSI program (title XVI of the Social Security Act (the Act)) is to ensure a minimum level of income to people who are age 65 or older, or blind or disabled, and who have limited income and resources. Section 1611 of the Act provides that SSI payments can be made only to people who have income and resources below specified amounts. Therefore, the amount of income and resources a person has is a major factor in deciding whether the person can receive SSI benefits and in computing the amount of the benefits.

Public Law 108-203, the SSPA of 2004, was enacted on March 2, 2004. Sections 430, 435, and 436 of this law affect how income and resources are determined in the SSI program.

#### Section 430

Section 430 of Public Law 108-203 amended section 1612(b) of the Act as follows:

*Change the Calculation of Infrequent and Irregular Income From a Monthly to a Quarterly Basis*

Prior to the SSPA of 2004, we did not count up to \$10 of your earned income in a month or \$20 of unearned income in a month if it was infrequent or irregular; that is, if you received it only once in a calendar quarter from a single source or if you could not reasonably have expected it. If the total amount of your infrequent or irregular income for a month exceeded \$10 of earned income or \$20 of unearned income, we could not use this exclusion. Based on section 430 of the SSPA of 2004, we now exclude the first \$30 per calendar quarter of earned income and the first \$60 per calendar quarter of unearned income if you receive it infrequently or irregularly. This provision applies to benefits payable on or after July 1, 2004.

Consistent with the provision in section 1612(b)(3) of the Act (as amended by section 430(a) of the SSPA) which provides that this exclusion is “determined in accordance with criteria prescribed by the Commissioner of Social Security”, we are also proposing to revise the definition of infrequent income. We propose that we will consider income to be received infrequently if you receive it only once during a calendar quarter from a single source and you did not receive it in the month immediately preceding that month or in the month immediately subsequent to that month, regardless of whether or not these payments occur in different calendar quarters. We consider income to be received irregularly if you cannot reasonably expect to receive it.

*Exclude From Income All Interest and Dividend Income Earned on Countable Resources*

Prior to the SSPA of 2004, there was no specific exclusion for interest and dividend income you earned on countable and certain excludable resources. Based on section 430 of the SSPA of 2004, we will exclude from your income determination interest or dividend income you earn on resources which are countable under section 1613(a) of the Act. Also, based on section 430, we will not count interest or dividend income on resources that are excluded based on a Federal statute other than section 1613(a) of the Act. These amendments apply to benefits payable on or after July 1, 2004.

**Section 435**

Prior to the SSPA of 2004, we did not count as unearned income any portion of a grant, scholarship, or fellowship you used to pay tuition, fees, or other

necessary educational expenses. However, we did count any portion you set aside or actually used for food, clothing, or shelter as income in the month you received it and, to the extent any portion of it was retained, as a resource the month following the month you received it. Under these proposed rules, any portion set aside or used for food, clothing, or shelter will continue to count as income in the month received or as a resource if retained.

Section 435 of the SSPA of 2004 amended section 1612(b)(7) of the Act to provide that we will exclude a gift (or portion of a gift) you use to pay the cost of tuition and fees at any educational (including technical or vocational education) institution when we determine your income (and the income of your eligible spouse). Additionally, section 435 of the SSPA of 2004 amended section 1613(a) of the Act to provide that we will exclude from resources for 9 months after the month in which it is received, any grant, scholarship, fellowship, or gift (or portion of a gift) you use to pay the cost of tuition and fees at an educational (including technical or vocational education) institution. These amendments apply to benefits payable on or after June 1, 2004.

We also plan to extend this resource exclusion to any portion of a grant, scholarship, or fellowship retained after the month of receipt. Prior to the SSPA of 2004, section 1612(b)(7) had excluded “any portion” of a grant, scholarship, or fellowship from income. When the resource exclusion was added by the SSPA, the exclusion covered grants, scholarships, and fellowships, but only specifically referenced portions with respect to gifts. In order to have consistent policy on exclusions related to tuition and educational expenses, we are proposing to exclude from resources for 9 months any portion of a grant, scholarship, fellowship, or gift used to pay necessary educational expenses. In addition, we are providing in these proposed rules that any portion of a grant, scholarship, fellowship, or gift intended to be used for tuition, fees, or other necessary educational expenses that is used for another purpose during the 9-month resource exclusion period will be counted as income in the month it is used for another purpose.

**Section 436**

Under our current rules, your income is counted in the month you receive it rather than in the month you earn it. We count wages and unearned income at the earliest of the following points:

- When you receive them,

- When they are credited to your account, or
- When they are set aside for your use.

Members of a uniformed service (as defined in 20 CFR 404.1330) are paid twice per month, and receive one Leave and Earnings Statement (LES) at the beginning of the month, which reflects their earnings for services performed in the prior month. The earnings shown on the monthly LES consist of the money actually paid in the second payment from the previous month and the payment received at the beginning of the current month. The payment received at the beginning of the current month is actually for services performed in the last half of the previous month. Thus, both payments reflected on the LES represent services performed in the previous month. Because wages are counted when paid, the portion of the money that was paid in the previous month must be considered as received in the previous month, not the current month, and the portion paid at the beginning of the current month must be considered in the current month. Prior to the SSPA of 2004, we had to apply a complex formula to the information on the LES for 2 consecutive months to determine one month’s wages and unearned income.

Section 436 of the SSPA amended section 1611(c) of the Act to provide that remuneration you receive for services performed as a member of a uniformed service may be treated as received in the month in which you earned it, if the Commissioner of Social Security (the Commissioner) determines that this method would promote the economical and efficient administration of the SSI program. This method of counting allows us to count the money shown on the LES for any month as received in that month, thereby eliminating the need to apply a complex formula to determine monthly earnings. Instead, we can determine monthly earnings by simply adding the amounts shown on the LES issued for that month.

**Extending Exclusions in Section 430, 435, and 436 to the Deeming Process**

Section 1614(f) of the Act requires that, when we determine an individual’s eligibility for SSI benefits, we must consider the income and resources of an ineligible spouse living in the same household, or, in the case of a child under the age of 18, the income and resources of an ineligible parent living in the same household. We use the term “deeming” to identify this process of considering part of an ineligible spouse’s or parent’s income and

resources to be the individual's own income and resources. Section 1614(f) also grants the Commissioner the discretion to waive the deeming of income and resources from an ineligible spouse or parent to an eligible individual when the Commissioner determines that deeming would be inequitable under the circumstances.

In addition to adding to our regulations the changes in how we determine an eligible individual's income and resources required by the SSPA, we propose to apply these changes when determining the countable income and resources of an ineligible spouse or ineligible parent. These changes are:

- Change the calculation of infrequent and irregular income from a monthly to a quarterly basis, and revise the definition of infrequent income.
- Exclude from income interest or dividends earned on countable resources and resources excluded under other Federal statutes.
- Exclude from *income* gifts used to pay tuition, fees, or other necessary educational expenses at any educational institution, including vocational and technical institutions.
- Exclude from *resources* gifts used to pay tuition, fees, or other necessary educational expenses at an educational institution (including vocational or technical institution) for 9 months beginning the month after the month the educational assistance was received.
- Consider wages and unearned income from a uniformed service to be received in the month in which such compensation is earned.

Extending these changes to the deeming process is consistent with the SSI program's longstanding treatment of income and resources of spouses and parents, as authorized by section 1614(f) of the Act. This treatment avoids using assistance programs that benefit spouses and parents to indirectly support SSI recipients and provides consistent treatment of income and resources throughout the program.

#### Explanation of Proposed Changes

We propose to make the following changes to our rules on determining income and resources under the SSI program to implement the provisions of the SSPA:

- We propose to revise § 416.1112(c)(2) and § 416.1124(c)(6) to reflect the provision of section 430 that changes the calculation of infrequent and irregular income from a monthly to a quarterly basis, and to revise the definition of infrequent income.
- We also propose to add a new § 416.1124(c)(22) to reflect the provision

of section 430 that excludes from income interest or dividends earned on countable resources and resources excluded under other Federal statutes.

- We propose to amend § 416.1124(c)(3) to reflect the provision in section 435 that states that gifts (or portions of gifts) used to pay tuition and fees at any educational institution, including vocational and technical institutions, are excluded from income.
- Additionally, we propose to add a new § 416.1210(u) and a new § 416.1250 to reflect the provision in section 435 that excludes from resources any grants, scholarships, fellowships, or gifts used to pay tuition and fees at an educational institution (including vocational or technical institution) for 9 months beginning the month after the month the educational assistance was received.
- We propose to amend § 416.1111(a) and § 416.1123(a), and add a new § 416.1123(f) to reflect section 436 that states that we may consider wages and unearned income from a uniformed service to be received in the month in which such compensation is earned. We also propose a technical amendment to add a cross-reference in § 416.1123(a) to § 416.1123(e).
- Finally, we propose to amend § 416.1161 by revising paragraph (a)(4) and adding a new paragraph (a)(26) to exclude certain interest and dividends and gifts used to pay educational expenses from the income of an ineligible spouse and ineligible parent for deeming purposes.

#### Clarity of These Regulations

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

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

#### Regulatory Procedures

*Executive Order 12866, as Amended by Executive Order 13258*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB.

#### Regulatory Flexibility Act

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

#### Paperwork Reduction Act

These proposed rules impose no reporting or recordkeeping requirements subject to OMB clearance.

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

#### List of Subjects in 20 CFR Part 416

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

Dated: August 22, 2005.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set forth in the preamble, we propose to amend subparts K and L of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

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

##### **Subpart K—[Amended]**

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

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

2. Section 416.1111, paragraph (a), is amended by adding a sentence at the end to read as follows:

##### **§ 416.1111 How we count earned income.**

(a) \* \* \* We count wages from a uniformed service (as defined in

§ 404.1330 of this chapter) as received in the month in which they are earned.

3. Section 416.1112 is amended by revising paragraph (c)(2) to read as follows:

§ 416.1112 Earned income we do not count.

(c) \* \* \*

(2) The first \$30 of earned income received in a calendar quarter if you receive it infrequently or irregularly. We consider income to be received infrequently if you receive it only once during a calendar quarter from a single source and you did not receive it in the month immediately preceding that month or in the month immediately subsequent to that month. We consider income to be received irregularly if you cannot reasonably expect to receive it.

4. Section 416.1123 is amended by revising paragraph (a) and adding a new paragraph (f) to read as follows:

§ 416.1123 How we count unearned income.

(a) When we count unearned income. We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each month. We describe exceptions to the rule on how we count unearned income in paragraphs (d), (e) and (f) of this section.

(f) Uniformed service compensation. We count compensation from a uniformed service (as defined in § 404.1330 of this chapter) as received in the month in which it is earned.

5. Section 416.1124 is amended by revising the first sentence in paragraph (c)(3), by revising paragraph (c)(6), by removing the word "and" at the end of paragraph (c)(20), by removing the period at the end of paragraph (c)(21) and adding a semicolon in its place followed by the word "and", and by adding paragraph (c)(22) to read as follows:

§ 416.1124 Unearned income we do not count.

(c) \* \* \*

(3) Any portion of a grant, scholarship, fellowship, or gift used or set aside for paying tuition, fees, or other necessary educational expenses.

(6) The first \$60 of unearned income received in a calendar quarter if you

receive it infrequently or irregularly. We consider income to be received infrequently if you receive it only once during a calendar quarter from a single source and you did not receive it in the month immediately preceding that month or in the month immediately subsequent to that month. We consider income to be received irregularly if you cannot reasonably expect to receive it.

(22) Interest and dividend income from a countable resource or from a resource excluded under a Federal statute other than section 1613(a) of the Social Security Act.

6. Section 416.1161 is amended by revising paragraph (a)(4), by removing the word "and" at the end of paragraph (a)(24), by removing the period at the end of paragraph (a)(25) and adding a semicolon in its place followed by the word "and", and by adding a new paragraph (a)(26) to read as follows:

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

(a) \* \* \*

(4) Any portion of a grant, scholarship, fellowship, or gift used or set aside to pay tuition, fees or other necessary educational expenses;

(26) Interest and dividend income from a countable resource or from a resource excluded under a Federal statute other than section 1613(a) of the Social Security Act.

Subpart L—[Amended]

7. The authority citation for subpart L of part 416 continues to read as follows:

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

8. Section 416.1210 is amended by removing the word "and" at the end of paragraph (s), by removing the period at the end of paragraph (t) and adding a semicolon in its place followed by the word "and", and by adding a new paragraph (u) to read as follows:

§ 416.1210 Exclusions from resources; general.

\* \* \*

(u) Any portion of a grant, scholarship, fellowship, or gift used or set aside for paying tuition, fees, or other necessary educational expenses as provided in § 416.1250.

9. Section 416.1250 is added to read as follows:

§ 416.1250 How we count grants, scholarships, fellowships or gifts.

(a) When we determine your resources (or your spouse's, if any), we will exclude for 9 months any portion of any grant, scholarship, fellowship, or gift that you use or set aside to pay the cost of tuition, fees, or other necessary educational expenses at any educational institution, including vocational or technical institutions. The 9 months begin the month after the month you receive the educational assistance.

(b) We will count as a resource any portion of a grant, scholarship, fellowship, or gift you (or your spouse, if any) did not use or set aside to pay tuition, fees, or other necessary educational expenses. We will count such portion of a grant, scholarship, fellowship or gift as a resource in the month following the month of receipt. If you use funds that were set aside for tuition, fees, or other necessary educational expenses for another purpose, or if the funds are no longer set aside for paying tuition, fees, or other necessary educational expenses within the 9-month exclusion period, we will count the funds as income in the month you use them for another purpose, or in the month when they are no longer set aside for paying tuition, fees, or other necessary educational expenses, whichever occurs first. We will consider any remaining funds as a resource in the month following the month we count them as income. We will count any portion of grants, scholarships, fellowships, or gifts remaining unspent after the 9-month exclusion period as a resource beginning with the 10th month after you received the educational assistance.

[FR Doc. 05-17588 Filed 9-2-05; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-108524-00]

RIN 1545-BD80

Section 1446 Regulations; Withholding on Effectively-Connected Taxable Income Allocable to Foreign Partners; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.