

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.350 is amended by revising paragraph (a)(5) to read as follows:

§ 404.350 Who is entitled to child's benefits.

(a) * * *

(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.

* * * * *

3. Section 404.351 is amended by revising paragraph (a) to read as follows:

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

* * * * *

(a) The first month in which you qualify as a full-time student. (See § 404.367.)

* * * * *

4. Section 404.352 is amended by revising the fourth sentence of paragraph (b)(1) to read as follows:

§ 404.352 When child's benefits begin and end.

* * * * *

(b) * * *

(1) * * * If you become 18 years old and you qualify as a full-time student who is not disabled, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you become age 19.

* * * * *

5. Section 404.353 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 404.353 Child's benefit amounts.

(a) * * * The amount of your monthly benefit may change as explained in § 404.304.

* * * * *

6. Section 404.367 is amended by revising the first sentence of the introductory text; revising paragraphs (a) and (b); redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively; adding paragraph (c); and, revising paragraph (f) to read as follows:

§ 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. * * *

(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.

* * * * *

(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.

§ 404.369 [Removed]

7. Section 404.369 is removed.

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20 CFR Part 404

RIN 0960-AE00

Miscellaneous Coverage Provisions of the Social Security Independence and Program Improvements Act of 1994; Coverage Provisions of the Social Security Domestic Employment Reform Act of 1994

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations reflect sections 303, 305, 319 and 320 of the Social Security Independence and Program Improvements Act of 1994, which made several amendments to the Social Security Act (the Act) concerning the Social Security coverage of State and local government election officials and election workers effective beginning January 1, 1995, police officers and firefighters effective with respect to modifications filed under section 218 of the Act on and after August 16, 1994, Federal employees transferred to international organizations effective January 1, 1995, and nonresident aliens who enter the United States under a cultural exchange program effective October 1, 1994. These final regulations also reflect section 1001(d)(2)(E) of the Technical and Miscellaneous Revenue Act of 1988, which excludes from coverage certain services performed by certain nonresident aliens temporarily in the United States to pursue a vocational or nonacademic technical education. In addition, these final regulations also reflect section 2 of the Social Security Domestic Employment Reform Act of 1994, which concerns the coverage of domestic services performed in a private home of the employer.

EFFECTIVE DATE: These regulations are effective July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1713 for information about these rules. For information on eligibility, claiming benefits, or coverage of earnings, call

our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: Public Law 103-296, which established SSA as an independent agency, also made a number of miscellaneous program improvements. These final rules reflect sections 303, 305, 319 and 320 of Public Law 103-296, which amended sections 210 and 218 of the Act with respect to the Social Security coverage of certain workers.

Section 303 of Public Law 103-296 amended section 210(a)(7)(F)(iv) of the Act to provide that services performed by State and local government election officials and workers who earn less than \$1000 in a calendar year for those services are excluded from the mandatory Social Security and Medicare coverage generally provided under section 210(a)(7)(F) for State and local government employees who are not members of a State or local government retirement system. Similarly, section 303 amended section 210(p)(2)(E) of the Act to provide that services of election officials and workers who earn less than the \$1,000 annual amount also are excluded from the mandatory Medicare only coverage generally provided under section 210(p)(2) for State and local government employees hired after March 31, 1986. Section 303 also amended section 218(c)(8) of the Act to provide that services of election officials and workers who earn less than the \$1,000 annual amount may, at the option of the State, be excluded from a voluntary section 218 coverage agreement entered into by a State. Finally, section 303 provides that the \$1,000 amount will be adjusted for all three exclusions beginning in calendar year 2000 to reflect changes in wages in the economy. Prior to these statutory amendments, these three exclusions applied to election officials and workers who earned less than \$100 in a calendar year, rather than \$1,000. This increase in the threshold amount to \$1000 for these exclusions is effective for services performed on or after January 1, 1995. However, the higher threshold for the optional exclusion from voluntary coverage under a section 218 agreement will apply only if the State executes a modification to its coverage agreement electing to take the exclusion with the increased \$1000 based limit. We are amending §§ 404.1018b(c)(1)(v), 404.1020(a)(3)(iv) and 404.1210(e) to reflect the statutory changes made by section 303.

Section 305 of Public Law 103-296 amended section 218(l) of the Act to give all States the option to extend Social Security coverage to police

officers and firefighters who are under the State or political subdivision employer's retirement system. This amendment is effective with respect to section 218 coverage modifications filed by States on or after August 16, 1994. Prior to this amendment, section 218(l) authorized only 23 named States to provide this coverage. We are amending §§ 404.1206 (a) and (f), 404.1211(d), and 404.1212 to reflect this amendment and to update the terminology so that "policeman" or "policemen" are now referred to as "police officer(s)", and "fireman" or "firemen" are now referred to as "firefighter(s)".

Section 319 of Public Law 103-296 amended section 210 of the Act by adding a new subsection, subsection (r), to provide for the continuation of Social Security coverage as employment of services performed by Federal civilian employees temporarily transferred to an international organization regardless of whether the international organization is within or outside the United States. Prior to this amendment, which is effective with respect to services performed on or after January 1, 1995, coverage would not continue if the services were performed outside the United States and it would continue as self-employment if performed within the United States. Specifically, under new subsection (r), work performed in the employ of an international organization, pursuant to a temporary transfer from a Federal agency under section 3582 of title 5 of the United States Code, is covered employment if the individual worked in covered employment for a Federal agency immediately prior to the transfer and would be entitled, upon separation from the international organization and proper application, to reemployment with the Federal agency under section 3582. We are amending §§ 404.1004, 404.1018, 404.1034 and 404.1068(d) to reflect this statutory change.

Section 320 of Public Law 103-296 amended section 210(a)(19) of the Act to exclude from Social Security coverage certain services performed by nonresident aliens who enter the United States on a temporary basis as part of a cultural exchange program under a visa issued under section 101(A)(15)(Q) of the Immigration and Nationality Act. This provision is effective October 1, 1994. We are revising § 404.1036 to reflect this statutory change. We also are revising § 404.1036 to reflect section 1001(d)(2)(E) of Public Law 100-647, the Technical and Miscellaneous Revenue Act of 1988, which, effective after December 31, 1986, amended section 210(a)(19) of the Act to exclude

from coverage certain services performed by nonresident aliens temporarily in the United States as nonimmigrants to pursue a vocational or nonacademic technical education. These individuals are "M" visa holders under section 101(a)(15)(M) of the Immigration and Nationality Act. Finally, we are revising § 404.1036 to reflect section 9(a)(1) of Public Law 100-525 which in 1988 amended section 101(a)(15)(J) of the Immigration and Nationality Act by substituting "Director of United States Information Agency" for "Secretary of State."

Section 2 of Public Law 103-387, the Social Security Domestic Employment Reform Act of 1994, made several changes with respect to the coverage of domestic services which are also reflected in these final rules. First, section 2 amended section 209(a)(6)(B) of the Act to raise the threshold per employer for coverage of payments made to an employee for domestic services in the employer's private home from \$50 per calendar quarter to \$1,000 per calendar year beginning in 1994. However, under a special provision for calendar year 1994, if a domestic employee was paid less than \$1,000 by an employer, the employer must report the earnings on form W-2 if the services would have been covered under the law as it existed prior to the enactment of Public Law 103-387. Although payment of Social Security taxes on such 1994 earnings is not required, the employee will receive Social Security coverage credit for those 1994 earnings which must be reported. In calendar years after 1995, the \$1000 threshold will be subject to adjustment in \$100 increments based on the formula in section 215(a)(1)(B)(i) of the Act to reflect changes in wages in the economy. We are amending §§ 404.1042(c)(2) and 404.1057(a) to reflect the statutory increase in the coverage threshold for domestic services.

Section 2 of Public Law 103-387 also amended section 209(a)(6)(B) to provide that, effective with respect to remuneration paid after 1993, the coverage of earnings for domestic services in the private home of an employer on a farm operated for profit is determined in the same manner as earnings for any other domestic services and those earnings are subject to the new threshold instead of the threshold applicable to other agricultural labor. Prior to the statutory amendment, which is subject to the special provision for 1994 discussed above, the coverage threshold generally applicable to domestic services did not apply to domestic services which also

constituted agricultural labor under section 210(f) of the Act. We are amending §§ 404.1055 and 404.1056(a)(6) to reflect this statutory change. In addition, we are amending § 404.1055(c)(1) to provide a technical clarification consistent with the example currently provided in that paragraph. We are also amending § 404.1056(a)(6) to update cross-references to §§ 404.1058 and 404.1059 to reflect the fact that those sections were redesignated as §§ 404.1057 and 404.1058, respectively, on March 1, 1990 (55 FR 7306, 7310).

Finally, section 2 of Public Law 103-387 added a new paragraph (21) to section 210(a) of the Act to provide that domestic services performed after December 31, 1994, in the private home of the employer are excluded from Social Security coverage, regardless of the amount earned, in any year in which the employee is under age 18 if the domestic service is not the employee's principal occupation. We are adding § 404.1038 to reflect this provision and we are also amending §§ 404.1001(d)(2), 404.1003, 404.1004(a) and 404.1012 to provide cross-references to new § 404.1038.

Regulatory Procedures

Justification for Final Rules

Pursuant to section 702(a)(5) of the Act, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of the notice and public comment procedures for these regulations. Opportunity for prior public comment is unnecessary because these regulations contain no discretionary policy and only reflect provisions in Public Law 103-296, Public Law 103-387, and Public Law 100-647 and make nonsubstantive, technical changes. Therefore, we are issuing these changes to our regulations as final rules. Also, since these regulations reflect the statute, the 30-day delay in effectuating regulations, as provided in 5 U.S.C. 553(d), does not apply.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small

entities, including small governmental jurisdictions. Any economic impact involved in the regulations results directly from the statutory amendments, not from the regulations. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; and 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind benefits, Disability benefits, Old-Age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social security.

Dated: July 8, 1996.

Approved:

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, subparts K and M of part 404 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart K—[Amended]

1. The authority citation for subpart K of part 404 continues to read as follows:

Authority: Secs. 202(v), 205(a), 209, 210, 211, 229(a), 230, 231, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(v), 405(a), 409, 410, 411, 429(a), 430, 431, and 902(a)(5)).

2. Section 404.1001 is amended by revising paragraph (d)(2) to read as follows:

§ 404.1001 Introduction.

* * * * *

(d) * * *

(2) In §§ 404.1012 through 404.1038 we discuss various types of work that

are not covered as employment for social security purposes.

* * * * *

3. Section 404.1003 is amended by revising the fourth sentence to read as follows:

§ 404.1003 Employment.

* * * Exceptions to the general rule are contained in §§ 404.1012 through 404.1038 which explain the kinds of work excluded from employment. * * *

4. Section 404.1004 is amended by revising the introductory text of paragraph (a) and by adding a new paragraph (a)(5) to read as follows:

§ 404.1004 What work is covered as employment.

(a) *General requirements of employment.* Unless otherwise excluded from coverage under §§ 404.1012 through 404.1038, the work you perform as an employee for your employer is covered as employment under social security if one of the following situations applies:

* * * * *

(5) Your work performed after December 31, 1994, is in the employ of an international organization pursuant to a transfer from a Federal agency under section 3582 of title 5 of the United States Code and both the following are met:

(i) Immediately before the transfer, your work for the Federal agency was covered employment; and

(ii) You would be entitled, upon separation from the international organization and proper application, to reemployment with the Federal agency under section 3582.

* * * * *

5. Section 404.1012 is amended by revising the second sentence to read as follows:

§ 404.1012 Work excluded from employment.

* * * They are described in §§ 404.1014 through 404.1038 and are exceptions to the general rule in § 404.1004 on the kinds of work that are covered as employment. * * *

6. Section 404.1018 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

§ 404.1018 Work by civilians for the United States Government or its instrumentalities—wages paid after 1983.

* * * * *

(g) *Work for international organizations.* Work performed for an international organization by an employee who was transferred from a Federal agency is generally covered as

employment if, immediately before the transfer, the employee's services for the Federal agency were covered. (See § 404.1004(a)(5) and § 404.1034(c).)

* * * * *

7. Section 404.1018b is amended by revising paragraph (c)(1)(v) to read as follows:

§ 404.1018b Medicare qualified government employment.

* * * * *

(c) * * *

(1) * * *

(v) By an election official or election worker paid less than \$100 in a calendar year for such service prior to 1995, or less than \$1,000 for service performed in any calendar year after 1994 and before 2000, or, for service performed in any calendar year after 1999, less than the \$1,000 base amount, as adjusted pursuant to section 218(c)(8)(B) of the Social Security Act to reflect changes in wages in the economy. We will publish this adjustment of the \$1,000 base amount in the Federal Register on or before November 1 preceding the year for which the adjustment is made.

* * * * *

8. Section 404.1020 is amended by revising paragraph (a)(3)(iv) to read as follows:

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

(a) * * *

(3) * * *

(iv) As an election official or election worker if the remuneration paid in a calendar year for such service prior to 1995 is less than \$100, or less than \$1000 for service performed in any calendar year after 1994 and before 2000, or, for service performed in any calendar year after 1999, less than the \$1000 base amount, as adjusted pursuant to section 218(c)(8)(B) of the Social Security Act to reflect changes in wages in the economy. We will publish this adjustment of the \$1000 base amount in the Federal Register on or before November 1 preceding the year for which the adjustment is made.

9. Section 404.1034 is amended by revising the first sentence in the introductory text of paragraph (a), by redesignating paragraph (c) as paragraph (d) and revising it, and by adding a new paragraph (c) to read as follows:

§ 404.1034 Work for an international organization.

(a) If you work as an employee of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat.

669), your work is excluded from employment except as described in paragraphs (b) and (c) of this section.

* * *

(c) Your work performed after December 31, 1994 will not be excluded under this section if you perform service in the employ of an international organization pursuant to a transfer from a Federal agency under section 3582 of title 5 of the United States Code and

(i) Immediately before such transfer you performed service with a Federal agency which was covered as employment; and

(ii) You would be entitled, upon separation from the international organization and proper application, to reemployment with the Federal agency under section 3582.

(d) If you are a citizen of the United States and work in the United States as an employee of an international organization that meets the conditions in paragraph (a) of this section and you are not subject to coverage based on paragraph (c) of this section, you are considered to be self-employed (§ 404.1068(d)).

10. Section 404.1036 is revised to read as follows:

§ 404.1036 Certain nonresident aliens.

(a) *Foreign students.* (1) Foreign students (nonimmigrant aliens) may be temporarily in the United States under subparagraph (F) of section 101(a)(15) of the Immigration and Nationality Act to attend a school or other recognized place of study approved by the Attorney General. On-campus work or work under permission granted by the Immigration and Naturalization Service which is done by these students is excluded from employment. Other work done by these foreign students is not excluded from employment under this section.

(2) Foreign students (nonimmigrant aliens) may be temporarily in the United States under subparagraph (M) of section 101(a)(15) of the Immigration and Nationality Act to pursue a vocational or nonacademic technical education approved by the Attorney General. Work done by these students to carry out the purpose for which they were admitted is excluded from employment. Other work done by these foreign students is not excluded from employment under this section.

(b) *Exchange visitors.* (1) Exchange visitors (nonimmigrant aliens) may be temporarily in the United States under subparagraph (I) of section 101(a)(15) of the Immigration and Nationality Act to participate in exchange visitor programs designated by the Director of the United

States Information Agency. Work done by these exchange visitors to carry out the purpose for which they were admitted and for which permission has been granted by the sponsor, is excluded from employment. Other work done by these exchange visitors is not excluded from employment under this section.

(2) Exchange visitors (nonimmigrant aliens) may be temporarily in the United States under subparagraph (Q) of section 101(a)(15) of the Immigration and Nationality Act to participate in an international cultural exchange program approved by the Attorney General. Effective October 1, 1994, work done by these exchange visitors to carry out the purpose for which they were admitted is excluded from employment. Other work done by these exchange visitors is not excluded from employment under this section.

(c) *Spouse and children.* Work done by a foreign student's or exchange visitor's alien spouse or minor child who is also temporarily in the United States under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act is not excluded from employment under this section unless that spouse or child and the work that is done meets the conditions of paragraph (a) or (b) of this section.

11. Section 404.1038 is added under the undesignated center heading "Work Excluded From Employment" to read as follows:

§ 404.1038 Domestic employees under age 18.

Domestic services you perform in a private home of your employer are excluded from employment, regardless of the amount earned, in any year in which you are under age 18 if domestic service is not your principal occupation. The exclusion applies to the entire year if you are under age 18 in any part of the year. See § 404.1057.

12. In § 404.1042, paragraph (c)(2) is revised to read as follows:

§ 404.1042 Wages when paid and received.

* * * * *

(c) * * *

(2) We also apply this rule to domestic work in a private home of the employer, except see § 404.1057(a)(1) for the applicable dollar amount.

* * * * *

13. Section 404.1055 is amended by revising paragraph (a), the heading for paragraph (b), paragraph (b)(1), and the second sentence of paragraph (c)(1) to read as follows:

§ 404.1055 Payments for agricultural labor.

(a) *When cash payments are not wages.* We do not include as wages your cash payments in a calendar year after 1987 from an employer for agricultural labor (see § 404.1056) if your employer's total expenditures for agricultural labor are less than \$2500 in that year and your employer paid you less than \$150 cash remuneration in that year for your agricultural labor. If you perform domestic service in the private home of an employer on a farm operated for profit, we do not include as wages the cash payments for those services if they are less than the applicable dollar threshold described in § 404.1057(a).

(b) *Exclusions for noncash payments and payments for seasonal agricultural labor.* (1) Noncash payments for agricultural labor are not wages.

* * * * *

(c) * * *

(1) * * * If the amounts paid are less than \$150, we count only those amounts paid for agricultural labor in determining if the \$2500 expenditure test is met. * * *

* * * * *

14. Section 404.1056 is amended by revising paragraph (a)(6) to read as follows:

§ 404.1056 Explanation of agricultural labor.

(a) * * *

(6) If you do nonbusiness work or domestic work in the private home of your employer, it is agricultural labor if you do the work on a farm operated for profit. However, if you do domestic work in the private home of your employer on a farm operated for profit, coverage of your earnings for the domestic services is determined in the same manner as earnings for any other domestic employee. Whether those earnings are covered will be determined based on the threshold described in § 404.1057(a) and the other coverage rules applicable to domestic service instead of the threshold applicable to other agricultural employees. A farm is not operated for profit if the employer primarily uses it as a residence or for personal or family recreation or pleasure. (See § 404.1057 for an explanation of domestic work and § 404.1058(a) for an explanation of nonbusiness work.)

* * * * *

15. Section 404.1057 is amended by revising paragraphs (a) (1), (2) and (3) and the last sentence in paragraph (a)(4) to read as follows:

§ 404.1057 Domestic service in the employer's home.

(a) * * *

(1) *The applicable dollar threshold.* We do not include as wages cash payments that an employer makes to you in any calendar year for domestic service in the employer's private home if the cash pay in that calendar year is less than the applicable dollar threshold. The threshold per employer is \$1000 in calendar year 1995. In calendar years after 1995, this amount will be subject to adjustment in \$100 increments based on the formula in section 215(a)(1)(B)(i) of the Act to reflect changes in wages in the economy. Non-cash payments for domestic service are not counted as wages.

(2) *How evaluation is made.* We apply the applicable dollar threshold described in paragraph (a)(1) of this section based on when the payments are made to you rather than when the pay is earned. To count toward the applicable dollar threshold, payment must be made to you in cash (including checks or other forms of money). We apply the applicable dollar threshold only to services performed as a domestic employee. If an employer pays you for performing other work, the cash pay for the nondomestic work does not count toward the applicable dollar threshold domestic service pay required for the remuneration to count as wages.

(3) *More than one domestic employer.* The applicable dollar threshold as explained in paragraph (a)(1) of this section applies to each employer when you perform domestic services for more than one employer in a calendar year. The wages paid by more than one employer for domestic services may not be combined to decide whether you have been paid the applicable dollar threshold or more in a calendar year. The standard applies to each employee when an employer has two or more domestic employees during a calendar year.

(4) * * * If an employer uses this method to report a cash payment to you for domestic services in his or her private home in a calendar year, he or she must use the same method to report payments to other employees in that year for similar services.

* * * * *

16. Section 404.1068 is amended by revising paragraph (d) to read as follows:

§ 404.1068 Employees who are considered self-employed.

* * * * *

(d) *Employees of a foreign government, an instrumentality wholly owned by a foreign government, or an international organization.* If you are a United States citizen and perform the

services that are described in § 404.1032, § 404.1033(a), or § 404.1034(a), you are engaged in a trade or business if the services are performed in the United States and are not covered as employment based upon § 404.1034(c).

* * * * *

Subpart M—[Amended]

17. The authority citation for subpart M of part 404 continues to read as follows:

Authority: Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99-272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99-509, 100 Stat. 1970.

18. Section 404.1206 is amended by revising the introductory text of paragraph (a), paragraphs (a)(6) and (a)(7), by adding a new paragraph (a)(8), and by revising the last sentence in paragraph (f)(2) to read as follows:

§ 404.1206 Retirement system coverage groups.

(a) *General.* Section 218(d) of the Act authorizes coverage of services of employees in positions under a retirement system. For purposes of obtaining coverage, a system may be considered a separate retirement system authorized by sections 218(d)(6) (A) or (B) or 218(l) of the Act. Under these sections of the Act a State may designate the positions of any one of the following groupings of employees as a separate retirement system:

* * * * *

(6) The employees of each institution of higher learning, including junior colleges and teachers colleges;

(7) The employees of a hospital which is an integral part of a political subdivision; or

(8) The employees in police officers' positions or firefighters' positions, or both.

* * * * *

(f) * * *

(2) * * * This rule also applies to the coverage of services in police officers' and firefighters' positions in States and interstate instrumentalities as discussed in § 404.1212(c).

19. Section 404.1210 is amended by revising paragraph (e) to read as follows:

§ 404.1210 Optionally excluded services.

* * * * *

(e) For modifications executed after 1994, services performed by election officials or election workers if the payments for those services in a calendar year are less than \$1000 for calendar years after 1994 and before 2000, or, for calendar years after 1999,

are less than the \$1000 base amount as adjusted pursuant to section 218(c)(8)(B) of the Act to reflect changes in wages in the economy. We will publish this adjustment of the \$1000 base amount in the Federal Register on or before November 1 preceding the year for which the adjustment is made.

20. Section 404.1211 is amended by revising paragraph (d) to read as follows:

§ 404.1211 Interstate instrumentalities.

* * * * *

(d) They may provide coverage for firefighters and police officers in positions under a retirement system.

21. Section 404.1212 is revised to read as follows:

§ 404.1212 Police officers and firefighters.

(a) *General.* For Social Security coverage purposes under section 218 of the Act, a police officer's or firefighter's position is any position so classified under State statutes or court decisions. Generally, these positions are in the organized police and fire departments of incorporated cities, towns, and villages. In most States, a police officer is a member of the "police" which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms "police officer" and "firefighter" do not include services in positions which, although connected with police and firefighting functions, are not police officer or firefighter positions.

(b) *Providing coverage.* A State may provide coverage of:

(1) Police officers' and firefighters' positions not under a retirement system as part of an absolute coverage group; or

(2) Police officers' of firefighters' positions, or both, as part of a retirement system coverage group.

(c) *Police officers and firefighters in positions under a retirement system.* All States and interstate instrumentalities may provide coverage for employees in police officers' or firefighters' positions, or both, which are under a retirement system by following the majority vote referendum procedures in § 404.1206(d). In addition, all interstate instrumentalities and the States listed in § 404.1207 may use the desire for coverage procedures described in § 404.1207.

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Governing Debt-Collection Procedures for Administrative Offset and Federal Income Tax Refund Offset

AGENCY: National Labor Relations Board.

ACTION: Interim rules with request for comments.

SUMMARY: The National Labor Relations Board (Board) is issuing interim regulations to implement debt-collection procedures for administrative offset and Federal income tax refund offset provided for under the Debt Collection Act of 1982. The Debt Collection Act of 1982 (Pub. L. 97365) amends the Federal Claims Collection Act of 1966 to authorize the federal government to employ various debt collection techniques commonly available to the private sector, including administrative offset and Federal income tax refund offset. These interim regulations, set forth as new Subparts U (administrative offset) and V (Federal income tax refund offset) to Part 102 of the Board's Rules and Regulations, Series 8, are required in order to enable the Board to utilize these debt collection procedures that have proven to be cost effective mechanisms for collection of delinquent debt.

The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the federal government to collect debts owed it by means of administrative offset from other payments due the debtor from the United States, without the debtor's consent, provided that the debtor is properly notified and given the opportunity to exercise certain administrative rights. In Subpart V of the interim rules, the Board establishes Agency procedures that will be followed to implement 31 U.S.C. 3716, so that delinquent debts owed to the Board may be collected by means of administrative offset.

In 1992, the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992 which requires federal agencies to participate in the Internal Revenue Service (IRS) income tax refund offset program in which federal agencies refer delinquent debt to the IRS for collection by offset from a federal income tax refund that may be due the delinquent debtor. In Subpart W of the interim rules, the Board establishes Agency procedures that will be followed to implement 26 U.S.C.

6402(d) of the Internal Revenue Code and 31 U.S.C. 3720A, so that delinquent debts owed to the Board may be referred to the Internal Revenue Service (IRS) for collection by offset against Federal income tax refunds.

DATES: Effective Date: These regulations are effective July 24, 1996.

Comments: Comments must be submitted on or before September 29, 1996.

ADDRESSES: Send or deliver written comments to John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11602, Washington, DC 20570-0001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, (202) 273-1940.

SUPPLEMENTARY INFORMATION: Effective debt collection by the Board is a necessary tool for enforcement of the federal labor laws. Under the Federal Claims Collection Standards (FCCS), 4 CFR 101.2(9), a debt exists when an amount of money or property has been determined by an appropriate Agency official to be owed to the United States. The Board's General Counsel and Regional Office staffs are authorized to assert and settle claims on behalf of the Board. 29 CFR 101.7-101.9.

As an agency of the United States Government, the Board is entitled to utilize the offset provisions of Title 31, because debts owed pursuant to Board orders are in fact debts owed to the United States. This is because the Board is the public agent chosen by Congress to enforce the National Labor Relations Act and its backpay orders seek reparations designed to vindicate the public policy of the statute. *NLRB v. Nathanson*, 344 U.S. 25, 27 (1952). In short, the Board acts primarily in the public interest as the champion and enforcer of federal labor laws and policies. *NLRB v. Deena Artware*, 361 U.S. 398, 412 (1960) (Frankfurter, J., concurring) ("[the Board's] primary function . . . is to prevent the conduct defined as unfair labor practices."); *National Licorice Co. v. NLRB*, 309 U.S. 350, 362 (1940) ("The Board acts in a public capacity to give effect to the declared public policy of the [National labor Relations] Act."). Thus, judgments of the United States Circuit Courts of Appeals enforcing the make-whole orders of the Board are rendered exclusively in favor of the Board as the judgment creditor. Therefore, although the Board's debt collection actions may ultimately benefit wronged employees, the debts owed are in fact debts owed to the United States. *NLRB v. E.D.P. Medical Computer Systems, Inc.*, 6 F.3d 951, 954-55 (2d Cir. 1993). Accord: General Accounting Office—Decision of