

§ 416.1233

additional 12 months in the case of a catastrophe which is declared to be a major disaster by the President of the United States if the excluded resource is geographically located within the disaster area as defined by the Presidential order; the individual intends to repair or replace the excluded resource; and, the individual demonstrates good cause why he or she has not been able to repair or replace the excluded resource within the 18-month period.

(d) Where an extension of the time period is made for good cause and the individual changes his or her intent to repair or replace the excluded resource, funds previously held for replacement or repair will be counted as a resource effective with the month that the individual reports this change of intent.

[44 FR 15662, Mar. 15, 1979, as amended at 50 FR 48579, Nov. 26, 1985; 61 FR 5944, Feb. 15, 1996]

§ 416.1233 Exclusion of certain underpayments from resources.

(a) *General.* In determining the resources of an eligible individual (and spouse, if any), we will exclude, for 9 months following the month of receipt, the unspent portion of any title II or title XVI retroactive payment received on or after March 2, 2004. *Exception:* We will exclude for 6 months following the month of receipt the unspent portion of any title II or title XVI retroactive payment received before March 2, 2004. This exclusion also applies to such payments received by any other person whose resources are subject to deeming under this subpart.

(b) *Retroactive payments.* For purposes of this exclusion, a retroactive payment is one that is paid after the month in which it was due. A title XVI retroactive payment includes any retroactive amount of federally administered State supplementation.

(c) *Limitation on exclusion.* This exclusion applies only to any unspent portion of retroactive payments made under title II or XVI. Once the money from the retroactive payment is spent, this exclusion does not apply to items purchased with the money, even if the 6-month or 9-month period, whichever is applicable (see paragraph (a) of this section), has not expired. However, other exclusions may be applicable. As

20 CFR Ch. III (4-1-10 Edition)

long as the funds from the retroactive payment are not spent, they are excluded for the full 6-month or 9-month period, whichever is applicable.

(d) *Funds must be identifiable.* Unspent money from a retroactive payment must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds but, if this is done in such a fashion that the retroactive amount can no longer be separately identified, that amount will count toward the resource limit described in § 416.1205.

(e) *Written notice.* We will give each recipient a written notice of the exclusion limitation when we make the retroactive payment.

[51 FR 34464, Sept. 29, 1986, as amended at 54 FR 19164, May 4, 1989; 70 FR 41138, July 18, 2005]

§ 416.1234 Exclusion of Indian lands.

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, we will exclude any interest of the individual (or spouse, if any) in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the Federal Government.

[59 FR 8538, Feb. 23, 1994]

§ 416.1235 Exclusion of certain payments related to tax credits.

(a) In determining the resources of an individual (and spouse, if any), we exclude for the 9 months following the month of receipt the following funds received on or after March 2, 2004, the unspent portion of:

(1) Any payment of a refundable credit pursuant to section 32 of the Internal Revenue Code (relating to the earned income tax credit);

(2) Any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of the earned income tax credit); or

(3) Any payment of a refundable credit pursuant to section 24 of the Internal