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: Final rule.

SUMMARY: We are revising 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 or 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 applying the exclusions required by the SSPA when we determine the countable income and resources of an ineligible spouse or ineligible parent.

DATES: These final rules are effective September 8, 2006.

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 1–800–966–5609, for information about this **Federal Register** document. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

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

Background

The 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. Sections 430, 435, and 436 of the SSPA (Pub. L. 108–203), affect how we determine income and resources in the SSI program.

Section 430

Section 430 of the SSPA amended section 1612(b) of the Act as follows:

• *Change the Calculation of Infrequent or Irregular Income from a Monthly to a Quarterly Basis*

Prior to enactment of the SSPA, 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, we will 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.

Section 1612(b)(3) of the Act (as amended by section 430(a) of the SSPA) provides that this exclusion is ''determined in accordance with criteria prescribed by the Commissioner of Social Security''. Consistent with this provision, we are also revising the definition of infrequent income to prevent a result that we believe is inconsistent with the intent of section 430. Under these final rules, 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 enactment of the SSPA, 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, when we determine your income, we will exclude interest or dividend income you earn on resources that are countable under section 1613(a) of the Act. In addition, we also will not count interest or dividend income you earn 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 enactment of the SSPA, we did not count as unearned income any portion of a grant, scholarship, or fellowship that you used to pay tuition, fees, or other necessary educational expenses. However, we did count any portion that 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 final rules, any portion of a grant, scholarship or fellowship set aside or used for food or shelter will continue to count as income in the month received or as a resource if retained.

Section 435 of the SSPA amended section 1612(b)(7) of the Act to provide that we will also exclude a gift (or portion of a gift) that you use to pay the cost of tuition and fees at any educational (including technical or vocational educational, institution when we determine your income (and the income of your eligible spouse). Additionally, section 435 of the SSPA 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) that 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 are also extending this resource exclusion to any portion of a grant, scholarship, or fellowship that you retain after the month of receipt. Prior to enactment of the SSPA, section 1612(b)(7) had excluded ''any portion'' of a grant, scholarship, or fellowship from income. When the SSPA added the resource exclusion, 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 excluding 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 final 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 enactment of the SSPA, 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 will 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* grants, scholarships, fellowships, or 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 Changes

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

- We are revising §§ 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 are also adding 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 are amending § 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 are adding 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 are amending §§ 416.1111(a) and 416.1123(a), and adding 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 are making a technical amendment to add a cross-reference in § 416.1123(a) to § 416.1123(e).
- Finally, we are amending § 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.

Public Comments

On September 6, 2005, we published proposed rules in the **Federal Register** at 70 FR 52949 and provided a 60-day comment period for interested persons to comment. We received comments from three organizations and three individuals. We carefully considered all of the comments in publishing these final rules. Because some of the comments were long, we have condensed, summarized and

paraphrased them. However, we have tried to present all of the commenter's views adequately and have addressed all of the significant issues raised by the commenters that are within the scope of the proposed rules. We have not addressed in this preamble comments that are outside the scope of this regulatory proceeding.

Comment: One commenter expressed confusion about the treatment of gifts for educational purposes when all or some of the excluded funds are used for purposes other than education. The commenter requested that § 416.1250(b) be modified to ensure that only those funds used for non-educational purposes be considered income in the month used and that the remaining funds held for educational purposes continue to be excluded.

Response: We have revised § 416.1250(b) to clarify that only those funds used for non-educational purposes would be considered income in the month used, and that the remaining funds held for educational purposes will continue to be excluded.

Comment: One commenter suggested that we address reporting responsibilities in these final rules in order to prevent overpayments. The commenter referred to the need to report to us when an individual uses some or all of a gift which was given for educational purposes for a different purpose. As an alternative, the commenter suggested that we revise the current reporting requirement regulations to address this specific issue.

Response: Section 416.708(b) and (c) of our current reporting requirements regulations specify that you must report any changes in income and resources. Detailed reporting requirements for specific types of income and resources are an operational issue and not appropriate to include in regulations. However, we reviewed our current operating instructions and determined that reporting requirements related to gifts given for educational use that are used for other purposes should be addressed. We modified our operating instructions. We have made no changes to the final rules based on this comment.

Comment: One commenter suggested that we revise the definition of infrequent income to allow exclusion of income received more than once in a calendar quarter. The commenter also made several other suggestions based on a misunderstanding of the proposed regulatory policy related to the source of the income.

Response: We are not adopting this comment. The intent of the quarterly basis exclusion was to permit beneficiaries to receive small amounts of income without their benefits being adversely affected, and to simplify program administration by reducing the required benefit adjustment (S. Rept. 108–176, at 40 (2003)). The revised definition provides that to be considered infrequent, the income can only be received once in a calendar quarter from a single source and not also received in consecutive months. Thus, we consider income to be received infrequently if it is received only once during a calendar quarter from a single source and it was not received in the month immediately preceding that month or in the month immediately subsequent to that month. The revised definition does not require that the income only be received from a single source to qualify for exclusion as infrequent. It does, however, prohibit the same type of income received two or more times in a calendar quarter from a single source from being considered infrequent. If you receive the same type of income multiple times from the same source during a quarter or in successive months it denotes a certain frequency of such income that would not meet the definition of infrequent income. However, the definition does permit exclusion of income received multiple times in a quarter from different sources. The same type of income received from different sources within the same calendar quarter can be considered infrequent income.

Comment: Two commenters suggested that changes in the definition of infrequent income were disadvantageous. Both commenters suggested that we eliminate the restriction that income cannot be infrequent if it is received in consecutive months. One of the commenters provides an example as illustration. If a person received a Christmas gift in December and a birthday gift in January from the same person, the new definition of infrequent income would only permit exclusion of the December gift. The January gift would not be excludable as infrequent income. Under the previous definition in our regulations, both gifts could be excludable as infrequent income.

Response: We disagree with the commenter that we would not be able to exclude the birthday gift in January under these final rules. In the example cited by the commenter, both the December gift and the January gift could still be excludable as irregular income (income you cannot reasonably expect to receive). Under these final rules, there are two separate exclusions: one for infrequent income, and one for irregular income. Thus, the end result is the same-both gifts can be excludable. There is no disadvantage caused by our interpretation of section 430 in this case.

If we adopted the commenter's suggestion that income from that same source should be considered ''infrequent'' if it is received in consecutive months, the new statutory language could be misinterpreted to result in some regular, recurring payments meeting the definition of infrequent income because of the change in the counting period from a monthly time period to a quarterly period. For example, a regular, recurring series of payments could begin in the third month of a calendar quarter. Under the prior definition of infrequent, this first payment could be considered to be infrequent income because it was received once in a calendar quarter from a single source, even if it will be received every month thereafter. We do not believe such a result is consistent with the intent of section 430. As explained in our response to the prior comment, to address this situation, these rules clarify the definition of infrequent in §§ 416.1112(c)(2) and 416.1124(c)(6) so that payments from the same source received in consecutive months are not considered to be infrequent.

Other Changes

In addition to the changes already discussed, we have made a minor, nonsubstantive change to §§ 416.1111(a) and 416.1123(f) for clarification purposes only. We have changed the wording of those sections to more closely reflect the statutory language that requires a person to be a member of the uniformed services by adding the words ''for services performed as a member of'' to both sections. We have also made one additional nonsubstantive editorial correction.

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 final 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. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final 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 final 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: May 4, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending 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, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383(b); secs. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

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

§ 416.1111 How we count earned income.

(a) * * * We count wages for services performed as a member of 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 for services performed as a member of 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 paragraphs (a)(22) and (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, 1631 and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383 and 1383(b); 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)(1) 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.

(2) If you use any of the funds that were set aside for tuition, fees, or other necessary educational expenses for another purpose within the 9-month exclusion period, we will count such portion of the funds used for another purpose as income in the month you use them.

(3) If any portion of 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 portion of the funds no longer set aside as income in the month when they are no longer set aside for paying tuition, fees, or other necessary educational expenses. We will consider any remaining funds that are no longer set aside or used to pay tuition, fees, or other educational expenses as a resource in the month following the month we count them as income.

(4) 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. E6–12942 Filed 8–8–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9280]

RIN 1545–BE10

Section 411(d)(6) Protected Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on certain issues under section 411(d)(6) of the Internal Revenue Code (Code), including the interaction between the anti-cutback rules of section 411(d)(6) and the nonforfeitability requirements of section 411(a). These regulations also provide a utilization test under which certain plan amendments are permitted to eliminate or reduce certain early retirement benefits, retirement-type subsidies, or optional forms of benefit. These regulations generally affect sponsors of, and participants and beneficiaries in, qualified retirement plans.

DATES: *Effective Date:* These regulations are effective August 9, 2006.

Applicability Date: For dates of applicability, see § 1.411(d)–3(j) of these regulations.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 411(d)(6) of the Code. These regulations revise § 1.411(d)–3 to provide guidance on the application of section 411(d)(6) to a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules of section 411(a)(3) through (11). These rules are intended to reflect *Central Laborers' Pension Fund* v. *Heinz*, 541 U.S. 739 (2004). These regulations also set forth standards for the utilization test, which is a permitted method of eliminating optional forms of benefit that are burdensome to the plan and of de minimis value to plan participants.

Section 401(a)(7) provides that a trust does not constitute a qualified trust unless its related plan satisfies the requirements of section 411. Section 411(a) generally provides that an employee's right to the accrued benefit derived from employer contributions must become nonforfeitable within a specified period of service. Section 411(a)(3) provides circumstances under which an employee's benefit is permitted to be forfeited without violating section 411(a). Section 411(a)(3)(B) provides that a right to an accrued benefit derived from employer contributions is not treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits, either (1) by the employer who maintains the plan under which such benefits were being paid, in the case of a plan other than a multiemployer plan, or (2) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The definition of employment for which benefit payments are permitted to be suspended is set forth in 29 CFR 2530.203–3 of the Department of Labor Regulations, which interprets section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, the counterpart to section 411(a)(3)(B) of the Code. Employment that satisfies the conditions described in section 203(a)(3)(B) of ERISA and the regulations are referred to as ''section 203(a)(3)(B) service.'' See 29 CFR 2530.203–3(c).

Under section 411(a)(10), a plan amendment changing the plan's vesting schedule must satisfy certain requirements. Section 411(a)(10)(A) provides that a plan amendment changing any vesting schedule under the plan does not satisfy the minimum vesting standards of section 411(a)(2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the applicable amendment date) [1] of any employee who is a participant in the plan is less than the nonforfeitable percentage computed under the plan without regard to the amendment. Section 411(a)(10)(B) provides that a plan amendment changing any vesting schedule under the plan does not satisfy the minimum vesting standards of section 411(a)(2) unless each participant with at least 3 years of service is permitted to elect to have his or her nonforfeitable percentage computed under the plan without regard to the plan amendment.

Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8) of the Code or section 4281 of ERISA. Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment, is treated as impermissibly reducing accrued benefits. This protection applies with

[1] The term *applicable amendment date* means the later of the effective date of the amendment or the date that the amendmdent is adopted. See § 1.411(d)–3(g)(4).