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November 29, 2006

MEMO

to: EDI

from: Ray Cebula

re: Proposed Rules for issuing work report receipts, etc.

The Commissioner of Social Security issued a Notice of Final Rules on November 17, 2006, following up on rules proposed on October 18, 2005. This notice contains file rules governing the issuance of receipts for work reports made by claimants, the payment of benefits for TWP service months after a federal conviction for fraudulently concealing work activity, changes to the student earned income exclusion, and expansion of the re-entitlement period for childhood disability benefits previously terminated as a result of the performance of substantial gainful activity.

These rules are intended to implement sections of the Social Security Protection Act of 2004. Section 202 of the SSPA requires SSA to issue a receipt each time a claimant reports a change in work activity or provides a document indicating a change in earnings if that claimant is receiving benefits on the basis of disability or blindness. Once SSA has fully implemented a universal computer system intended to keep work related reporting current, the requirement to provide receipts will cease. However recipients, or their representatives, will continue to be able to request a receipt upon making a report.

Section 208 of the SSPA changed the way SSA pays benefits during the TWP when a claimant has been convicted by a Federal Court of fraudulently concealing work activity.

Section 420A changed the way a claimant can become re-entitled to childhood disability benefits at any time if the previous entitlement was terminated because of the performance of SGA.

Section 432 changed the application of the student earned income credit.

Only two organizations and one individual submitted comments to the proposed regulations. While most of the set of proposed rules remains in tact, some minor changes have been made to provide better public explanation of the intention of the final rules.

A comparison chart containing current and proposed regulations follows:

SSDI PROVISIONS – WORK REPORT RECEIPTS

CURRENT REGULATIONS

PROPOSED REGULATIONS

<p>20 CFR 404.903 – Administrative actions that are not initial determinations.</p> <p>No current language.</p>	<p>(aa) Issuing a receipt in response to your report of a change in your work activity.</p>
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The issuance of a work report receipt by a local Social Security office will not be seen as an “initial determination” and, as a result, will not give rise to administrative appeal rights.

CURRENT REGULATIONS

PROPOSED REGULATIONS

<p>20 CFR 404.1588 – Your responsibility to tell us of events that may change your disability status.</p> <p>If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if—</p> <ul style="list-style-type: none"> (a) Your condition improves; (b) You return to work; (c) You increase the amount of your work; or (d) Your earnings increase. 	<p>(a) Your responsibility to report changes to us. If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if--</p> <ul style="list-style-type: none"> (1) Your condition improves; (2) You return to work; (3) You increase the amount of your work; or (4) Your earnings increase. <p>(b) Our responsibility when you report your work to us. When you or your representative report changes in your work activity to us under paragraphs (a)(2), (a)(3), and (a)(4) of this section, we will issue a receipt to you or your representative at least until a centralized computer file that records the information that you give us and the date that you make your report is in place. Once the</p>
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	centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.
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The final rule echoes current regulations concerning what and when a beneficiary must report to SSA. The rule goes on to explain SSA responsibilities once a work activity report is made by a beneficiary or the beneficiary's representative. The SSPA required that SSA issue a receipt each time a work report is made. This practice must continue until SSA's central computer file is up and running (the notice of final rule indicates that this is expected in the summer of 2006). In the past, the reports made to SSA have not been processed in a timely manner. This may have caused the payment of benefits to which the beneficiary was not entitled, a failure to consider the impact of work activity on benefits and potentially causing overpayments. Issuing a receipt when a work activity report is made will provide the beneficiary with proof that reporting responsibilities were fulfilled. This will become critically important given other regulatory proposals concerning the fraudulent concealing, failure to report and/or withholding information related to beneficiary work activity. Individuals reporting work activity may want to request that their SSA worker make computer inputs immediately. Once the requirement to issue receipts ceases, SSA will continue to issue work report receipts upon request.

SSI PROVISIONS – WORK REPORT RECEIPTS

CURRENT REGULATIONS

PROPOSED REGULATIONS

<p>20 CFR 416.1403 – Administrative actions that are not initial determinations.</p> <p>No current language</p>	<p>(25) Issuing a receipt in response to your report of a change in your earned income.</p>
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See discussion of 20 CFR 404.903 above.

SSDI PROVISIONS – TRIAL WORK PERIOD

CURRENT REGULATIONS

PROPOSED REGULATIONS

<p>NO CURRENT SECTION.</p>	<p>Sec. 404.471 Nonpayment of disability benefits for trial work period service months upon a conviction of fraudulently concealing work activity.</p> <p>(a) Nonpayment of benefits during the trial work period. Beginning with work activity performed in March 2004 and thereafter, if you are convicted by a Federal court of fraudulently concealing</p>
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	<p>your work activity and the concealment of the work activity occurred while you were in a trial work period, monthly disability benefits under title II of the Social Security Act are not payable for months in which you performed services during that trial work period prior to the conviction (see Sec. 404.1592 for a definition of a trial work period and services). Benefits already received for months of work activity in the trial work period prior to the conviction and in the same period of disability during which the fraudulently concealed work activity occurred, will be considered an overpayment on the record.</p> <p>(b) Concealment of work activity. You can be found to be fraudulently concealing work activity if--</p> <p>(1) You provide false information to us concerning the amount of earnings you received or are receiving for a particular period;</p> <p>(2) You received or are receiving disability benefits while engaging in work activity under another identity (this would include working under another social security number or a forged social security number); or</p> <p>(3) You take other actions to conceal work activity with the intent of fraudulently obtaining benefits in excess of amounts that are due.</p>
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Section 208 of the SSPA provided that if an individual has been convicted of fraud by a Federal Court for fraudulently concealing work activity during the trial work period, no cash benefits will be payable for any trial work service month. The months impacted by the section are those after March of 2004 and after the date of the conviction. An individual can be found to have fraudulently concealed information related to work activity if the individual provides false information about earnings, the individual completes work activity under another identity or SSN, or “other actions” are taken by the individual to conceal work activity with the intent to fraudulently receive benefits.

SSI PROVISIONS – STUDENT EARNED INCOME CREDIT

CURRENT REGULATIONS

PROPOSED REGULATIONS

<p>20 CFR 416. 1112 – Earned income we do not count.</p> <p><i>(c) Other earned income we do not count.</i> We do not count as earned income—</p> <p>(3) If you are a blind or disabled child who is a student regularly attending school as described in §416.1861:</p>	<p>(c) * * *</p> <p>(3) If you are under age 22 and a student who is regularly attending school as described in Sec. 416.1861:</p>
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The final rule amends the definition of student in order to comply with the expansion of the student earned income credit by the SSPA. The “student” only must now be under the age of 22 and regularly attending a school, college, or university or be participating in a course of vocational or technical training to prepare for gainful employment.

CURRENT REGULATIONS

PROPOSED REGULATIONS

<p>20 CFR 416.1161 – Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.</p> <p><i>(a) For an ineligible spouse or parent.</i> We do not include any of the following types of income (see §416.1102) of an ineligible spouse or parent:</p> <p>No current section (27)</p>	<p>Sec. 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.</p> <p>(a) * * *</p> <p>(27) Earned income of a student as described in Sec. 416.1112(c)(3).</p>
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The student earned income exclusion is a provision that allows SSA to exclude a greater amount of earned income from consideration when determining a monthly SSI payment. This section of the final rule expands the exclusion to ineligible spouses, ineligible parents and essential persons who are also students and will prevent a certain amount of earned income from being “deemed” to an eligible child.

CURRENT REGULATIONS

PROPOSED REGULATIONS

<p>20 CFR 416.1861 – Deciding whether you are a child: Are you a student?</p> <p>(b) <i>If you have to stay home.</i> You may be a student regularly attending school, college, or training to prepare you for a paying job if—</p> <p>(1) You have to stay home because of your disability;</p> <p>(2) You are studying at home a course or courses given by a school (grades 7-12), college, university, or government agency; and</p> <p>(3) A home visitor or tutor directs your study or training.</p> <p>(f) <i>What evidence we need.</i> If we need evidence that you are a student, you must—</p> <p>(1) Show us any paper you have that shows you are a student in a school, college, or training program, such as a student identification card or tuition receipt; and</p> <p>(2) Tell us—</p> <p>(i) What courses you are taking;</p> <p>(ii) How many hours a week you spend in classes;</p> <p>(iii) The name and address of the school or college you attend or the agency training you; and</p> <p>(iv) The name and telephone number of someone at the school, college, or agency who can tell us more about your courses, in case we need information you cannot give us.</p>	<p>(b) If you are instructed at home. You may be a student regularly attending school if you are instructed at home in grades 7-12 in accordance with a home school law of the State or other jurisdiction in which you reside and for at least 12 hours a week.</p> <p>f) When we need evidence that you are a student. We need evidence that you are a student if you are 18 years old or older but under age 22, because we will not consider you to be a child unless we consider you to be a student.</p>
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The SSPA allows for student status to be secured for those meeting the requirements set forth in the proposal for home schooling. The student must receive instruction for at least 12 hours per week of hours and in compliance with state law.

CURRENT REGULATIONS**PROPOSED REGULATIONS**

NO CURRENT SECTION	<p>Who Is Considered a Student for Purposes of the Student Earned Income Exclusion</p> <p>Sec. 416.1870 Effect of being considered a student.</p> <p>If we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount. If you are an ineligible spouse or ineligible parent for deeming purposes and we consider you to be a student, we will not count all of your income when we determine how much of your income to deem. Section 416.1110 explains what we mean by earned income. Section 416.1112(c)(3) explains how much of your earned income we will not count. Section 416.1161(a)(27) explains how the student earned income exclusion applies to deemons.</p>
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CURRENT REGULATIONS**PROPOSED REGULATIONS**

NO CURRENT SECTION	<p>Sec. 416.1872 Who is considered a student.</p> <p>We consider you to be a student if you are under 22 years old and you regularly attend school or college or training that is designed to prepare you for a paying job as described in Sec. 416.1861(a) through (e).</p>
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CURRENT REGULATIONS**PROPOSED REGULATIONS**

NO CURRENT SECTION	<p>Sec. 416.1874 When we need evidence that you are a student.</p> <p>We need evidence that you are a student if you are under age 22 and you expect to earn over \$65 in any month. Section 416.1861(g) explains what evidence we need.</p>
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The above final rules are intended to make existing regulations consistent with SSPA legislative changes. The changes will be effective for benefits payable after April 1, 2005. The changes relating to home schooling will be effective 30 days after publication of the final regulations.

SSDI PROVISIONS – EXPANSION OF RE-ENTITLEMENT TO CHILDHOOD DISABILITY BENEFITS**CURRENT REGULATIONS****PROPOSED REGULATIONS**

<p>20 CFR 404.351 – Who may be reentitled to child’s benefits.</p> <p>NO CURRENT SECTION (d)</p>	<p>(d) With respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at anytime if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity and you meet the other requirements for reentitlement. The 84-month time limit in paragraph (c) in this section continues to apply if your previous entitlement to childhood disability benefits terminated because of medical improvement.</p>
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This rule will allow an individual to become re-entitled to childhood disability benefits (CDB), formerly called DAC benefits, where earlier entitlement was ended due to the performance of SGA indefinitely. According to the SSPA, an individual may become re-entitled to childhood disability benefits at any time if that individual becomes disabled again and meets certain other requirements. Prior to the legislative change an individual could only become re-entitled to CDB if that individual

again became disabled within 7 years of the date of the earlier termination. The SSPA removed this significant work disincentive by allowing re-entitlement at any time the individual again becomes disabled after an earlier termination based on SGA. Note that the 7 year restriction on re-entitlement to CDB will still apply to those whose earlier terminations were based on medical improvement.