



**Cornell University**  
**School of Industrial**  
**and Labor Relations**

**Raymond Cebula**  
Extension Associate Faculty  
Work Incentives Support Center  
Employment and Disability  
Institute  
25 Tobey Rd., #57  
Dracut, MA 01826  
t. 617.312.3261  
f. 978.937.0799  
tty. 607.255.2891  
[ray.cebula@comcast.net](mailto:ray.cebula@comcast.net)

December 15, 2005

**to: PABSS, BPAO, EDI**

**from: Ray Cebula**

**re: NPRM, Nonpayment of Benefits to Fugitive  
Felons and Probation or Parole Violators, December  
5, 2005**

---

---

The Commissioner of SSA has released a notice of public rulemaking concerning the nonpayment of benefits to fugitive felons and probation or parole violators. Comments must be submitted by February 3, 2006, in order to be considered by the Commissioner during the promulgation of final regulations. Comments can be submitted via the web on the SSA website: [www.socialsecurity.gov](http://www.socialsecurity.gov)

This set of regulations will be effective January, 2005. SSA has begun to implement the statutory provisions without regulation.

**What is the purpose of this notice of proposed rulemaking?**

Section 203 of the Social Security Protection Act of 2004 (SSPA) requires that Title II and Title XVI benefits not be paid to a person who is a "fleeing felon" or probation or parole violator unless "good cause" is shown. "Good cause" has a specific definition for this purpose and is also set forth in the SSPA. The NPRM proposes to make the regulations consistent with the SSPA, make certain technical amendments concerning the "fleeing felon" provisions of the SSPA and clarify SSA's interpretation of the SSPA language concerning "fleeing to avoid" prosecution or confinement for purposes of both Titles II and XVI.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 provided that SSI benefits were non-payable for any month during which an individual was avoiding prosecution for a felony, was avoiding confinement for the conviction of a felony, or was violating parole or probation. This Act also indicated that the non-payment language applied to "high misdemeanors" in the State of New Jersey.

The SSPA expanded the non-payment provisions to Title II benefits and added "good cause" provisions for both Title II and Title XVI non-payment. The SSPA also removed reference to New Jersey law and provided that the non-payment provisions would apply to a crime that is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed.

The specific proposed changes are set forth below:

**CURRENT REGULATION**

**PROPOSED REGULATION**

<p><b>20 CFR 404.401 – Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.</b></p> <p>(d) <i>Nonpayments.</i> Nonpayment of monthly benefits may be required because: NO CURRENT LANGUAGE</p>	<p>(d) * * *</p> <p>(5)(i) The individual has an outstanding arrest warrant for prosecution of a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant; or</p> <p>(ii) The individual has an outstanding arrest warrant for avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant; or</p> <p>(iii) The individual has an outstanding arrest warrant for violating a condition of Federal or State probation or parole.</p> <p>(iv) In jurisdictions in the United States and abroad that do not define crimes as felonies, the provisions of paragraph (d)(5) of this section apply if the crime (or the attempt to commit a crime) is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed.</p>
--	--

The new language will require nonpayment of Title II benefits if an individual has an outstanding arrest warrant for prosecution of a crime (or attempt to commit a crime) that is a felony, or is avoiding custody or confinement after conviction of a felony (or attempt to commit a felony) or is violating federal or state parole or probation.

**CURRENT REGULATION**

**PROPOSED REGULATION**

<p><b>20 CFR 404.471 – Nonpayment of benefits to fugitive felons and probation or parole violators.</b></p> <p>NO CURRENT SECTION</p>	<p>(a) Basis for nonpayment. Beginning with the month of January 2005, we will not pay you a monthly benefit for any month during which you have an outstanding warrant if that warrant has been in effect for more than 30 days and the warrant--</p> <p>(1) Is for your arrest for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year, regardless of the actual sentence imposed,</p> <p>or</p> <p>(2) Is for avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year, regardless of the actual sentence imposed, or</p> <p>(3) Is for violating a condition of probation or parole imposed under Federal or State law.</p> <p>(b) Good cause exception to nonpayment. (1) We will not apply the provisions of paragraph (a) of this section if you contact us at any time and supply proof within 90 days of the date that you contact us that:</p>
---	---

	<p>(i) A court or equivalent body (such as the United States Parole Commission) of competent jurisdiction:</p> <p>(A) Found you not guilty of the criminal offense which is the basis for the issuance of the warrant, or</p> <p>(B) Dismissed the underlying charges relating to the criminal offense which is the basis for the issuance of the warrant, or</p> <p>(C) Vacated the warrant for your arrest for the criminal offense, or</p> <p>(D) Issued any similar exonerating order or took a similar exonerating action, or</p> <p>(ii) You were erroneously implicated in connection with the criminal offense by reason of identity fraud or mistaken identity.</p> <p>(2) If none of the criteria in paragraph (b)(1) of this section are met, we may pay you benefits if you contact us within 1 year of the date you receive our notice of nonpayment and supply proof within 90 days after the date that you contact us that all of the following apply:</p> <p>(i) The crime, attempt to commit a crime, or violating a condition of probation or parole which the warrant is based on was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related. Violent crimes are those that threaten, attempt to use, or actually use physical force against a person; e.g., assault, homicide, kidnapping/abduction, robbery, and forcible sex offenses. Drug-related crimes are those involving the unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or</p>
--	--

	<p>narcotic substance, and</p> <p>(ii) You have neither been convicted of nor pled guilty to another felony (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed) since the date of the warrant, and</p> <p>(iii) The law enforcement agency that issued the warrant reports that it will not extradite you for the charges on the warrant, or that it will not take action on the warrant for your arrest.</p> <p>(3) If paragraphs (b)(1) and (2) of this section do not apply, we will pay you benefits if you contact us within 1 year of the date you receive our notice of nonpayment and supply proof within 90 days after the date that you contact us that all of the following apply:</p> <p>(i) The crime, attempt to commit a crime, or violating a condition of probation or parole on which the warrant is based was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related, as defined in paragraph (b)(2)(i), and</p> <p>(ii) You have neither been convicted of nor pled guilty to another felony crime (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence</p>
--	--

	<p>imposed) since the date of the warrant, and</p> <p>(iii) The warrant was issued 10 or more years ago, and</p> <p>(iv) Your medical condition impairs your mental capability to resolve the warrant; or you are incapable of managing your benefits; or you are legally incompetent; or we have appointed a representative payee to handle your benefits; or you are residing in a long-term care facility, such as a nursing home or mental treatment/care facility.</p> <p>(c) Resumption of payments. If benefits are otherwise payable, they will be resumed effective with the first month throughout which you no longer have an outstanding warrant, or are no longer violating a condition of probation or parole. If we determine that you meet the requirements in paragraph (b) of this section, we will pay you benefits, and repay any benefits previously withheld under paragraph (a) of this section, beginning with either the month the arrest warrant was issued, the month of initial title II entitlement, or January 2005, whichever is later.</p>
--	--

SSA will not pay Title II benefits to fugitive felons and probation or parole violators beginning January, 2005. The nonpayment provisions will apply in 3 situations:

1. When the individual has an outstanding arrest warrant if the warrant has been in effect for more than 30 days,
2. When the warrant has been in effect for more than 30 days and the individual is avoiding custody or confinement after conviction, or

3. When the warrant has been in effect for more than 30 days and the warrant is issued because the individual is violating parole or probation.

Mandatory and discretionary “good cause” provisions are also contained within this section of the proposal. If good cause is found to exist, benefits will be paid. Mandatory good cause will be found in two situations:

1. Good cause will be found at any time an individual can show that a court or equivalent body has found the person not guilty of the criminal offense, has dismissed the charges, has vacated the warrant, or issued a similar exonerating order.

2. Good cause will also be found when an individual can show that s/he was erroneously implicated in connection with the offense because identity was stolen or because of mistaken identity.

Discretionary good cause authority was also granted to SSA by the SSPA. Discretionary good cause will be found based upon mitigating circumstances if the individual establishes that the offense was both nonviolent and not drug related. Mitigating circumstances will consider the nature and severity of the crime, the length of time that has passed since the warrant was issued, whether other offenses were committed in the interim period, and the individual’s mental capacity to resolve the issue(s). In order to avail oneself of discretionary good cause the individual must contact SSA within one year after receiving the Title II or Title XVI notice of nonpayment. Proof of mitigating circumstances must be submitted within 90 days after this contact is made. Proof of such mitigating circumstances must indicate that:

1. The crime was both nonviolent and not drug related.

2. The individual was not convicted of, nor pleaded guilty to, any other crime since the date of the issuance of the warrant subject of the dispute.

3. The law enforcement agency reports that it will not extradite the individual for the charges on the warrant or will not take action on the arrest warrant.

If numbers 1 & 2 are proved but not number 3, SSA may still find discretionary good cause if the existing warrant was issued 10 or more years ago and the person’s medical condition or mental capacity impairs the ability to resolve the issue(s). The inability to manage benefits (receiving benefits through a representative payee), a finding of legal incompetency, or the individual’s residence is a long-term care facility will all meet this criteria.

If good cause is found, current and withheld benefits will be paid.

**SSI PROPOSALS**

**CURRENT REGULATION**

**PROPOSED REGULATION**

<p><b>20 CFR 416.202 – Who may get SSI benefits.</b></p> <p><b>***</b></p> <p>(f) You are not—</p> <p>(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);</p> <p>(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or</p> <p>(3) Violating a condition of probation or parole imposed under Federal or State law.</p>	<p><b>***</b></p> <p>(f) You do not have an outstanding warrant for--</p> <p>(1) Your arrest for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or</p> <p>(2) Avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or</p> <p>(3) Violating a condition of probation or parole imposed under Federal or State law.</p>
---	---

See discussion below 20 CFR 416.1339.

**CURRENT REGULATION**

**PROPOSED REGULATION**

**20 CFR 416.1339 – Suspension of benefits for fugitive felons and probation or parole violators.**

(a) *Basis for suspension.* An individual is ineligible for SSI benefits for any month during which he or she is—

1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

(b) *Suspension effective date.* (1) Suspension of benefit payments because an individual is a fugitive as described in paragraph (a)(1) or (a)(2) of this section or a probation or parole violator as described in paragraph (a)(3) of this section is effective with the first day of whichever of the following months is earlier—

(i) The month in which a warrant or order for the individual's arrest or apprehension, an order requiring the

(a) Basis for suspension. Beginning with the month of August 1996, you will be ineligible for SSI benefits for any month during which you have an outstanding warrant if that warrant—

(1) Is for your arrest for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(2) Is for avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony under the laws of the place that issued the warrant, or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(3) Is for violating a condition of probation or parole imposed under Federal or State law.

(b) Good cause exception to ineligibility. Beginning with the month of January 2005:

(1) We will not apply the provisions of paragraph (a) of this section if you contact us at any time and supply proof within 90 days of the date that you contact us that:

(i) A court or equivalent body (such as the United States Parole Commission) of competent jurisdiction:

(A) Found you not guilty of the criminal

<p>individual's appearance before a court or other appropriate tribunal (e.g., a parole board), or similar order is issued by a court or other duly authorized tribunal on the basis of an appropriate finding that the individual—</p> <p>(A) Is fleeing, or has fled, to avoid prosecution as described in paragraph (a)(1) of this section;</p> <p>(B) Is fleeing, or has fled, to avoid custody or confinement after conviction as described in paragraph (a)(2) of this section;</p> <p>(C) Is violating, or has violated, a condition of his or her probation or parole as described in paragraph (a)(3) of this section; or</p> <p>(ii) The first month during which the individual fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of his or her probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal.</p> <p>(2) An individual will not be considered to be ineligible for SSI benefits and benefit payments will not be suspended under this section for any month prior to August 1996.</p>	<p>offense which is the basis for the issuance of the warrant, or</p> <p>(B) Dismissed the underlying charges relating to the criminal offense which is the basis for the issuance of the warrant, or</p> <p>(C) Vacated the warrant for your arrest for the criminal offense, or</p> <p>(D) Issued any similar exonerating order or took a similar exonerating action, or</p> <p>(ii) You were erroneously implicated in connection with the criminal offense by reason of identity fraud or mistaken identity.</p> <p>(2) If none of the actions in paragraph (b)(1) of this section are met, we may find you eligible and pay you benefits if you contact us within 1 year of the date you receive our notice of planned action and supply proof within 90 days after the date you contact us that all of the following apply:</p> <p>(i) The crime, attempt to commit a crime, or violating a condition of probation or parole which the warrant is based on was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related. Violent crimes are those that threaten, attempt to use, or actually use physical force against a person; e.g., assault, homicide, kidnapping/abduction, robbery, and forcible sex offenses. Drug-related crimes are those involving the unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance, and</p> <p>(ii) You have neither been convicted of nor pled guilty to another felony crime (or, in jurisdictions in the United States and abroad that do not define crimes as</p>
---	--

	<p>felonies, is punishable by death or imprisonment for more than 1 year regardless of the actual sentence imposed) since the date of the warrant, and</p> <p>(iii) The law enforcement agency that issued the warrant reports that it will not extradite you for the charges on the warrant, or that it will not take action on the warrant for your arrest.</p> <p>(3) If paragraphs (b)(1) and (2) of this section do not apply, we will find you eligible and pay you benefits if you contact us within 1 year of the date you receive our notice of planned action and supply proof within 90 days after the date that you contact us that all of the following apply:</p> <p>(i) The crime, attempt to commit a crime, or violating a condition of probation or parole which the warrant is based on was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related, as defined in paragraph (b)(2)(i) of this section, and</p> <p>(ii) You have neither been convicted of nor pled guilty to another felony crime (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed) since the date of the warrant, and</p> <p>(iii) The warrant was issued 10 or more years ago, and</p> <p>(iv) Your medical condition impairs your mental capability to resolve the warrant; or you are incapable of managing your benefits; or you are legally incompetent; or we have appointed a representative payee to handle your benefits; or you are residing in a long-term care facility, such as a nursing home or mental treatment/care</p>
--	--

<p>c) <i>Resumption of payments.</i> If benefits are otherwise payable, they will be resumed effective with the first month throughout which the individual is determined to be no longer fleeing to avoid such prosecution, fleeing to avoid such custody or confinement after conviction, or violating a condition of his or her probation or parole.</p>	<p>facility.</p> <p>c) Resumption of payments. If benefits are otherwise payable, they will be resumed effective with the first month throughout which you no longer have an outstanding warrant, or are no longer violating a condition of probation or parole. If we determine that you meet the requirements in paragraph (b) of this section, we will pay you benefits and repay any benefits previously withheld under paragraph (a) of this section, beginning with either the month the arrest warrant was issued, the month of initial title XVI eligibility, or January 2005, whichever is later.</p>
---	--

Both Title XVI §§20 CFR 416.202 and 416.1339 specify that an individual is not eligible for payment of an SSI benefit for any month in which that individual is “fleeing to avoid” prosecution, custody or confinement. The new proposal attempts to clarify who will be determined to be a fugitive felon. Clarification will require removal of the term “fleeing.” A person will be determined to be a fugitive felon when an outstanding felony warrant for the person’s arrest exists, even if that person is unaware that an outstanding warrant exists. SSA is taking the position that the issuance of a warrant will assume that the individual is “fleeing” for purposes of the SSPA. Despite many federal court decisions to the contrary, SSA is interpreting Congressional intent to mandate this result.

This is page two. Notice that the top and left margins are 1". **In order to use page 2, you will need to start your second page of content on this page.**

A section break occurs at the end of page 1. If you simply continue to input content above the section break, you will not see the new margins.

If you find that you do not require a second page, PLEASE DO NOT DELETE THIS PAGE. You will adversely affect the layout of page 1. Simply print only page 1.