

DMS to examine the draft economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-10463 (63 FR 17676, April 10, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. FAA-2005-23159; Directorate Identifier 2005-SW-10-AD. Supersedes AD 98-08-14, Amendment 39-10463, Docket No. 97-SW-21-AD.

Applicability: Model SA-365N, SA-365N1, AS-365N2, and SA-366G1 helicopters with a main gearbox (MGB) suspension diagonal cross-member (diagonal cross-member) part number (P/N) 365A38-3023-20, -21, -22, -23, or -24 installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the diagonal cross-member, pivoting of the MGB, severe vibrations, and subsequent forced landing, do the following:

(a) For Model SA-365N and SA-365N1 helicopters, before accumulating 15,000 operating cycles; and for Model AS-365N2 and SA-366G1 helicopters, before accumulating 11,000 operating cycles:

(1) Inspect the diagonal cross-member for a crack in the area of the center borehole. Use a borescope with a 90-degree drive, a video assembly with optical fiber illumination, or any other appropriate device that allows you to visually inspect the center area of the part.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at intervals not to exceed 250 operating cycles or 50 hours time-in-service, whichever occurs first.

Note 1: "Operating cycles" are defined in the Airworthiness Limitations Section of the Master Servicing Recommendations.

(b) If a crack is found as a result of the inspections required by this AD, before further flight, replace the diagonal cross-member with an airworthy diagonal cross-member.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Note 2: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1997-093-041(A) R2, dated June 25, 2003, and 2003-241(A), dated June 25, 2003.

Issued in Fort Worth, Texas, on November 23, 2005.

Carl F. Mittag,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. 05-23602 Filed 12-2-05; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AG12

Nonpayment of Benefits to Fugitive Felons and Probation or Parole Violators

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: To implement section 203 of the Social Security Protection Act of 2004 (SSPA), we propose to revise our regulations on the payment of Social Security and Supplemental Security Income benefits under titles II and XVI of the Social Security Act (the Act). Section 203 requires that title II benefits will not be paid to a person who is a fugitive felon or probation or parole violator, unless good cause is shown as specified in this new law. Section 203 also added a good cause exception to

the title XVI fugitive felon ineligibility provision. In addition, we propose to make other changes in our regulations, required by this legislation, such as removing the reference to high misdemeanors in the state of New Jersey. Finally, we propose to clarify our interpretation of the statutory language "fleeing to avoid" for the purposes of the title II and title XVI provisions.

DATES: To be sure that we consider your comments, we must receive them by February 3, 2006.

ADDRESSES: You may give us your comments by: Using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to regulations@ssa.gov; telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

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>.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1758 or TTY (410) 966-5609. 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: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104-193) provided in section 1611(e)(4) of the Act that a person is ineligible for payments under title XVI for any month he or she is avoiding prosecution for a felony, is avoiding confinement for conviction of a felony, or is violating a condition of probation or parole. Prior to the enactment of the SSPA (Pub. L. 108-203) on March 2, 2004, section 1611(e)(4) of the Act also provided that

these provisions apply to high misdemeanors in the State of New Jersey. Section 203 of the SSPA provides for the nonpayment of title II benefits to fugitive felons and probation or parole violators, by amending section 202(x) of the Act. Section 203 also provides a good cause exception to the nonpayment of title II benefits and adds a good cause exception to the SSI ineligibility provision. Finally, section 203 removes the reference to New Jersey crimes known as high misdemeanors. Instead, it provides that, in jurisdictions that do not define crimes as felonies, a crime that would result in nonpayment of title II benefits to or SSI ineligibility for fugitive felons and probation or parole violators is one that is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed.

Proposed Changes

We propose to amend subpart E of part 404 and subparts B and M of part 416 of chapter III of title 20 of the Code of Federal Regulations (20 CFR) by adding a new § 404.471 and revising existing §§ 404.401, 416.202 and 416.1339. In § 404.401(d), we propose to add a new paragraph (d)(5) to the existing list of reasons for the nonpayment of benefits. The new paragraph would require nonpayment of title II benefits if a person has an outstanding arrest warrant for prosecution of a crime (or an attempt to commit a crime) that is a felony, or is avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony, or is violating a condition of Federal or State probation or parole.

In proposed § 404.471, we explain that we will not pay title II benefits to fugitive felons and probation or parole violators beginning in January 2005. We also explain that the nonpayment of benefits under title II of the Act applies in three situations. First, we will not pay benefits under title II when the person has an outstanding arrest warrant if that warrant has been in effect for more than 30 days and the warrant is for prosecution of a crime (or an attempt to commit a crime) that is a felony. We will also apply the nonpayment or ineligibility provisions of section 203 of the SSPA when an outstanding arrest warrant has been in effect for more than 30 days and the warrant is issued because a person is avoiding custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony. Finally, we will apply the nonpayment or ineligibility provisions of section 203 of the SSPA when a warrant has been in

effect for more than 30 days and the warrant is issued because the person is violating a condition of Federal or State probation or parole. We also explain that in jurisdictions that do not define crimes as felonies, we will apply these provisions if the crime or attempt to commit a crime is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed. We base the requirement that the outstanding arrest warrant must be in effect for more than 30 consecutive days on the statutory 30-day requirement in section 202(x) of the Act. Section 1611(e)(1) of the Act has no such requirement; consequently, as we explain below, our corresponding rules for title XVI cases do not contain this requirement.

We also propose in §§ 404.471 and 416.1339 to establish the rules that we will apply in administering the mandatory and discretionary good cause exceptions to nonpayment of title II benefits or title XVI ineligibility.

The Act contains both mandatory and discretionary exceptions to the requirements that we not pay benefits under title II or that we will find that a person is ineligible under title XVI if he or she is a fugitive felon or probation or parole violator. Consistent with the statute, we propose that we will find mandatory good cause to pay title II benefits or to determine that a person is eligible for SSI, after January 1, 2005, in two situations. First, we will find good cause at any time a person can show or when we determine that a court or equivalent body (such as the United States Parole Commission) of competent jurisdiction has found the person not guilty of the criminal offense, has dismissed the underlying charges relating to the criminal offense, has vacated the warrant for arrest for the criminal offense, or issued any similar exonerating order or took a similar exonerating action. In applying the mandatory good cause exception, we recognize that terms used by courts or an equivalent body to describe actions taken to dispose of a warrant may vary in different jurisdictions; *e.g.*, instead of using the word “vacated” courts or an equivalent body may use words such as rescinded, recalled, or quashed. Second, we will also find good cause at any time a person can show or when we determine that the person was erroneously implicated in connection with the criminal offense because someone stole his or her identity, or because of mistaken identity.

Section 203 of the SSPA also gives us the discretionary authority to find good cause based on mitigating circumstances if the person establishes that the offense

underlying the warrant and imposition of the probation or parole (as well as violating probation or parole) was both nonviolent and not drug-related. We consider “violent” crimes to be 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. In identifying these violent and drug-related crimes we will use selected National Crime Information Center (NCIC) codes, a list of which is published in our operating instructions.

In the SSPA’s legislative history (149 Cong. Rec. S16180 (daily ed. Dec. 9, 2003)), Congress explained that we may establish good cause based on mitigating factors such as the nature and severity of the crime, the length of time that has passed since the warrant was issued, whether other crimes have been committed in the interim, and the beneficiary’s mental capacity to resolve the issue. We propose to incorporate these factors into our regulations that discuss the discretionary good cause exception. We propose to exercise our discretion to find good cause to pay benefits based on mitigating circumstances after January 1, 2005, when the person contacts us within 1 year after he or she receives our title II nonpayment notice or the title XVI notice of planned action and supplies proof within 90 days of that contact that all of the following apply:

- The crime or violating the probation or parole which the warrant is based on was both nonviolent and not drug-related and, if for violating probation or parole, the original crime(s) was both nonviolent and not drug-related; and
- The person has neither been convicted of nor pled guilty to another felony crime since the date of the warrant; and
- The law enforcement agency that issued the warrant reports that it will not extradite the person for the charges on the warrant or that it will not take action on the arrest warrant.

If the first two requirements above apply but not the third, we may also find good cause if the following two criteria apply:

- The only existing warrant was issued 10 or more years ago; and
- The person’s medical condition impairs his or her mental capability to resolve the warrant; or he or she is incapable of managing his or her benefits; or he or she is legally

incompetent; or we have appointed a representative payee to handle the benefits; or he or she is residing in a long-term care facility, such as a nursing home or mental treatment/care facility.

If the person does not contact us within 1 year after receipt of the title II notice of nonpayment or title XVI notice of planned action, we will not find good cause for continuing payments based on mitigating circumstances. Each time a person contacts us within the 1-year timeframe with the intent to show good cause based on mitigating circumstances, the person will have 90 days to supply the necessary proof. If the evidence is not supplied within 90 days, we will determine that good cause has not been shown for that request.

Although Congress explained in SSPA's legislative history (149 Cong. Rec. S16180 (daily ed. Dec. 9, 2003)) that "the length of time that has passed since the warrant was issued" may be a mitigating factor for establishing good cause, Congress gave no guidance as to how old the warrant should be in order to be considered a mitigating circumstance. In determining what age of a warrant we would use as a mitigating factor, we reviewed certain statutes of limitations for guidance. For example, there is a 6-year statute of limitations in sections 1128A(c)(1) and 1129(b)(1) of the Act, beyond which we (or the Secretary of Health and Human Services under section 1128A(c)(1)) do not refer cases to the Department of Justice for civil monetary penalty prosecution. Our review gave us a range of years to consider when determining the age of a warrant that would be appropriate to consider as a mitigating factor. Based on our review and our strong commitment to responsible stewardship of the Social Security Trust Fund and the General Fund, we decided to take a careful approach and propose 10 years as the age of a warrant that would constitute a mitigating factor. We may revisit that decision after considering public comments on these proposed rules. We invite you to comment on our proposed use of 10 years for "the length of time that has passed since the warrant was issued" and, if you believe a different length of time would be more appropriate, to provide your rationale for the different length of time.

If we find good cause to pay title II and/or title XVI benefits we will do so, and, if appropriate, repay any benefits previously withheld for being a fugitive felon beginning with either the month the arrest warrant was issued, the month of initial title II entitlement or title XVI eligibility, or January 2005, whichever is later.

Currently, §§ 416.202 and 416.1339 specify that a person is ineligible for title XVI payments for any month in which he or she is "fleeing to avoid" prosecution, or custody or confinement after conviction for a crime. We propose to clarify how we determine who is a fugitive felon. In order to clarify this point, we propose to remove the references to "fleeing" in §§ 416.202 and 416.1339. We interpret the statutory term "fleeing to avoid" prosecution, or custody or confinement, to mean that a person has an outstanding warrant for his or her arrest. It is the responsibility of federal, state, local, and foreign courts and law enforcement officials to issue warrants and ensure that they are issued in appropriate circumstances. Therefore, we propose to determine that a person is 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.

Some courts have found that "fleeing to avoid prosecution" requires intent on the part of the person to evade the criminal justice system. We believe that the law enforcement agencies and courts that issued the warrant make this intent determination. We rely on the identification of a person as a fugitive felon by federal, state, local, or foreign courts and law enforcement officials in part because we lack the expertise to identify someone as a fugitive within the context of the criminal justice system. Law enforcement officials have identified a person as a fugitive when an outstanding arrest warrant exists. Therefore, we need not make that determination for our program purpose, *i.e.*, for the purpose of determining whether or not to pay benefits.

We believe this position is consistent with one of the intended results of Congress's actions in section 203 of SSPA and section 202 of PRWORA; *i.e.*, to encourage persons to resolve outstanding warrants against them. Further, the legislative history makes clear that a person should be considered "fleeing" if it is reasonable to conclude that he or she knew or should have known that criminal charges are pending (148 Cong. Rec. S16181 (daily ed. Dec. 9, 2003)). From this, we do not believe that Congress intended that we be the arbiters of these disputes concerning whether or not an individual is actually a fugitive; instead, if a person wishes to challenge a warrant he or she should deal with the appropriate law enforcement authority to resolve the matter. The position we take here will encourage persons to do that.

Furthermore, interpreting the statute to require us to inquire into, and possibly adjudicate, the subjective

intent of felons runs counter to one of Congress's, and our, overriding goals: to ensure the efficient administration of the largest benefits programs in the world, involving millions of applications and tens of millions of beneficiaries.

We also propose to remove from the revised §§ 416.202 and 416.1339 the reference to high misdemeanors in New Jersey because the phrase is obsolete, as recognized by Congress in section 203 of the SSPA.

Finally, section 103 of the SSPA disqualifies persons from serving as representative payees if they are avoiding prosecution for a felony or are avoiding confinement for conviction of a felony. We are publishing our proposed rules resulting from section 103 of the SSPA in a separate notice of proposed rulemaking.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the following table.

Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
§ 404.471	12,000	1	30	6,000
§ 416.1339	12,000	1	30	6,000
Total	24,000	—	—	12,000

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be faxed to the Office of Management and Budget at the following number:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410-965-0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: August 25, 2005.

Jo Anne B. Barnhart,
Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart E of part 404 and subparts B and M of part 416 of chapter III of title 20 of the

Code of Federal Regulations as set forth below:

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

Subpart E—[Amended]

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

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 423(e), 424a, 425, 902(a)(5) and 1320a-8a) and 48 U.S.C. 1801.

2. Amend § 404.401 by adding paragraph (d)(5) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(d) * * *

(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

(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

(iii) The individual has an outstanding arrest warrant for violating a condition of Federal or State probation or parole.

(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.

* * * * *

3. Add § 404.471 to read as follows:

§ 404.471 Nonpayment of benefits to fugitive felons and probation or parole violators.

(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—

(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 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:

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

(A) Found you not guilty of the criminal offense which is the basis for the issuance of the warrant, or

(B) Dismissed the underlying charges relating to the criminal offense which is the basis for the issuance of the warrant, or

(C) Vacated the warrant for your arrest for the criminal offense, or

(D) Issued any similar exonerating order or took a similar exonerating action, or

(ii) You were erroneously implicated in connection with the criminal offense by reason of identity fraud or mistaken identity.

(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:

(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

(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

(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.

(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:

(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

(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

(iii) The warrant was issued 10 or more years ago, and

(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.

(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.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—[Amended]

4. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h note).

5. Amend § 416.202 by revising paragraph (f) to read as follows:

§ 416.202 Who may get SSI benefits.

* * * * *

(f) You do not have an outstanding warrant for—

(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

(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

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

* * * * *

Subpart M—[Amended]

6. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1614, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382c, 1382h, and 1383).

7. Revise § 416.1339 to read as follows:

§ 416.1339 Suspension of benefits for fugitive felons and probation or parole violators.

(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 offense which is the basis for the issuance of the warrant, or

(B) Dismissed the underlying charges relating to the criminal offense which is the basis for the issuance of the warrant, or

(C) Vacated the warrant for your arrest for the criminal offense, or

(D) Issued any similar exonerating order or took a similar exonerating action, or

(ii) You were erroneously implicated in connection with the criminal offense by reason of identity fraud or mistaken identity.

(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:

(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

(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

(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.

(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:

(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

(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

(iii) The warrant was issued 10 or more years ago, and

(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.

(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.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AG19

Continuing Disability Review Failure To Cooperate Process

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend our regulations to provide that we will suspend your disability benefits before we make a determination during a continuing disability review (CDR) under title II and title XVI of the Social Security Act (the Act) when you fail to comply with our request for necessary information. Should you remain non-compliant for a period of one year following your suspension, we will then terminate your disability benefits. Although our current title XVI regulations generally provide for the termination of payments after 12 months of suspension, we are proposing

to amend our regulations by adding this policy to our title II regulations and by restating it in the title XVI CDR regulatory provisions.

DATES: To be sure that your comments are considered, we must receive them no later than February 3, 2006.

ADDRESSES: You may give us your comments by: using our Internet site facility (i.e., Social Security Online) at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to regulations@ssa.gov; by telefax to (410) 966-2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment>, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

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>. It is also available on the Internet site for SSA (i.e., Social Security Online) at <http://www.policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment>.

FOR FURTHER INFORMATION CONTACT: Don Harvey, Social Insurance Specialist, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 597-1026 or TTY (410) 966-5609. 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 Web site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Statutory Background

Sections 221(i) and 1614(a)(3)(H)(ii)(I) of the Act and §§ 404.1589, 416.987 and 416.989 of our regulations require that after we find that you are disabled, we evaluate your impairment(s) from time to time to determine if you remain disabled. We call this evaluation a continuing disability review (CDR). If the medical and other evidence shows that you are not disabled under the standards set out in sections 223(f) and 1614(a)(4) of the Act, we will end the