

with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93-233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

§ 428. Benefits at age 72 for certain uninsured individuals

(a) Eligibility

Every individual who—

(1) has attained the age of 72,

(2)(A) attained such age before 1968, or (B)(i) attained such age after 1967 and before 1972, and (ii) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he or she attained such age,

(3) is a resident of the United States (as defined in subsection (e) of this section), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 410(i) of this title) continuously during the 5 years immediately preceding the month in which he or she files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he or she becomes so entitled to such benefits and ending with the month preceding the month in which he or she dies. No application under this section which is filed by an individual more than 3 months before the first month in which he or she meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

(b) Amount of benefits

The benefit amount to which an individual is entitled under this section for any month shall be the larger of \$64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Reduction for government pension system benefits

(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he or she is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the benefit amount as determined without regard to this subsection.

(3) In the case of a husband or wife both of whom are entitled to benefits under this section for any month, the benefit amount of each spouse, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of

any periodic benefits under governmental pension systems for which the other spouse is eligible for such month, over (B) the benefit amount of such other spouse as determined without regard to this subsection.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his or her spouse having retired, such individual and his or her spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Commissioner of Social Security shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than \$1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of \$0.10, it shall be raised to the next higher multiple of \$0.10.

(8) Under regulations prescribed by the Commissioner of Social Security, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than \$5 may be accumulated until they equal or exceed \$5.

(d) Suspension for months in which cash payments are made under public assistance or in which supplemental security income benefits are payable

The benefit to which any individual is entitled under this section for any month shall not be paid for such month if—

(1) such individual receives aid or assistance in the form of money payments in such month under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or under a State program funded under part A of subchapter IV of this chapter, or

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Commissioner of Social Security, at such time and in such manner as may be prescribed in accordance with regulations of the Commissioner of Social Security, that such payments to

such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month and such individual is not an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93-66 for the following month, nor shall such benefit be paid for such month if such individual is an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93-66 for such month, unless the Commissioner of Social Security determines that such benefits are not payable with respect to such individual for the month following such month.

(e) Suspension where individual is residing outside United States

The benefit to which any individual is entitled under this section for any month shall not be paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term "United States" means the 50 States and the District of Columbia.

(f) Treatment as monthly insurance benefits

For purposes of subsections (t) and (u) of section 402 of this title, and of section 1395s of this title, a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 402 of this title.

(g) Annual reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Commissioner of Social Security deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

(h) Definitions

For purposes of this section—

(1) The term "quarter of coverage" includes a quarter of coverage as defined in section 228e(l) of title 45.

(2) The term "governmental pension system" means the insurance system established by this subchapter or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired

pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen's compensation law or any payment by the Secretary of Veterans Affairs as compensation for service-connected disability or death).

(3) The term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 416 of this title without regard to subsections (b) and (f) of section 416 of this title.

(Aug. 14, 1935, ch. 531, title II, § 228, as added Pub. L. 89-368, title III, § 302(a), Mar. 15, 1966, 80 Stat. 67; amended Pub. L. 90-248, title I, § 102(b), title II, § 241(a) Jan. 2, 1968, 81 Stat. 827, 916; Pub. L. 91-172, title X, § 1003(b), Dec. 30, 1969, 83 Stat. 740; Pub. L. 92-5, title II, § 202(b), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92-336, title II, § 201(g)(2), July 1, 1972, 86 Stat. 411; Pub. L. 93-233, §§ 2(b)(1), 18(c), Dec. 31, 1973, 87 Stat. 952, 968; Pub. L. 98-21, title III, § 305(a)-(d), Apr. 20, 1983, 97 Stat. 113; Pub. L. 98-369, div. B, title VI, §§ 2662(e), 2663(j)(3)(A)(iv), July 18, 1984, 98 Stat. 1159, 1170; Pub. L. 101-508, title V, § 5114(a), Nov. 5, 1990, 104 Stat. 1388-273; Pub. L. 102-54, § 13(q)(3)(B)(i), June 13, 1991, 105 Stat. 279; Pub. L. 103-296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 104-193, title I, § 108(a)(2), Aug. 22, 1996, 110 Stat. 2165.)

REFERENCES IN TEXT

Section 211 of Pub. L. 93-66, referred to in subsec. (d), is set out as a note under section 1382 of this title.

Section 228e(l) of title 45, referred to in subsec. (h)(1), is a reference to section 5(l) of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Section 228e of title 45 is covered by section 231e of Title 45.

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104-193 inserted "under a State program funded under" before "part A of subchapter IV of this chapter".

1994—Subsecs. (c)(5), (8), (d), (g). Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary" wherever appearing.

1991—Subsec. (h)(2). Pub. L. 102-54 substituted "Secretary of Veterans Affairs" for "Veterans' Administration".

1990—Subsec. (a)(2). Pub. L. 101-508 substituted "(B)(i) attained such age after 1967 and before 1972, and (ii) for "(B)".

1984—Subsec. (c)(4)(C). Pub. L. 98-369, § 2662(e), amended directory language of Pub. L. 98-21, § 305(d)(2). See 1983 Amendment note below.

Subsec. (g). Pub. L. 98-369, § 2663(j)(3)(A)(iv), struck out "of Health, Education, and Welfare" after "Secretary".

1983—Subsec. (a). Pub. L. 98-21, § 305(d)(1), substituted "he or she" for "he" wherever appearing.

Subsec. (b). Pub. L. 98-21, § 305(a), substituted "The" for "(1) Except as provided in paragraph (2), the" and struck out par. (2), which had provided that if both husband and wife were entitled or would have been entitled upon application to benefits under this section for any month, the amount of the husband's benefit for such month would be the larger of \$64.40 or the amount most

recently established in lieu thereof under section 415(i) of this title, and the amount of the wife's benefit for such month the larger of \$32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(1). Pub. L. 98-21, §305(d)(1), substituted "he or she" for "he".

Subsec. (c)(2). Pub. L. 98-21, §305(b), substituted "(B) the benefit amount as determined without regard to this subsection" for "(B) the larger of \$32.20 or the amount most recently established in lieu thereof under section 415(i) of this title".

Subsec. (c)(3). Pub. L. 98-21, §305(c), amended par. (3) generally, substituting provisions relating to either a husband or wife for provision that the benefit amount of the wife, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband was eligible for such month, over (ii) the larger of \$64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and that the benefit amount of the husband, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife was eligible for such month, over (ii) the larger of \$32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(4)(C). Pub. L. 98-21, §305(d)(2), as amended by Pub. L. 98-369, §2662(e), substituted "his or her" for "his" wherever appearing.

1973—Subsec. (b). Pub. L. 93-233, §2(b)(1), substituted "the larger of \$64.40 or the amount most recently established in lieu thereof under section 415(i) of this title" for "\$58.00" in pars. (1) and (2) and "the larger of \$32.20 or the amount most recently established in lieu thereof under section 415(i) of this title" for "\$29.00" in par. (2).

Subsec. (c). Pub. L. 93-233, §2(b)(1), substituted "the larger of \$64.40 or the amount most recently established in lieu thereof under section 415(i) of this title" for "\$58.00" in par. (3), subpar. (A) and "the larger of \$32.20 or the amount most recently established in lieu thereof under section 415(i) of this title" for "\$29.00" in par. (2) and par. (3) subpar. (B).

Subsec. (d). Pub. L. 93-233, §18(c) provided for elimination of benefits at age 72 for uninsured individuals receiving supplemental security income benefits.

1972—Subsec. (b)(1). Pub. L. 92-336, §201(g)(2)(A), substituted "\$58.00" for "\$48.30".

Subsec. (b)(2). Pub. L. 92-336, §201(g)(2)(B), substituted "\$58.00" for "\$48.30" and "\$29.00" for "\$24.20".

Subsec. (c)(2). Pub. L. 92-336, §201(g)(2)(C), substituted "\$29.00" for "\$24.20".

Subsec. (c)(3)(A). Pub. L. 92-336, §201(g)(2)(D), substituted "\$58.00" for "\$48.30".

Subsec. (c)(3)(B). Pub. L. 92-336, §201(g)(2)(E), substituted "\$29.00" for "\$24.20".

1971—Subsec. (b)(1). Pub. L. 92-5, §202(b)(1), substituted "\$48.30" for "\$46".

Subsec. (b)(2). Pub. L. 92-5, §202(b)(2), substituted "\$48.30" for "\$46" and "\$24.20" for "\$23".

Subsec. (c)(2). Pub. L. 92-5, §202(b)(3), substituted "\$24.20" for "\$23".

Subsec. (c)(3)(A). Pub. L. 92-5, §202(b)(4), substituted "\$48.30" for "\$46".

Subsec. (c)(3)(B). Pub. L. 92-5, §202(b)(5), substituted "\$24.20" for "\$23".

1969—Subsec. (b)(1). Pub. L. 91-172, §1003(b)(1), substituted "\$46" for "\$40".

Subsec. (b)(2). Pub. L. 91-172, §1003(b)(2), substituted "\$46" for "\$40" and "\$23" for "\$20".

Subsec. (c)(2). Pub. L. 91-172, §1003(b)(3), substituted "\$23" for "\$20".

Subsec. (c)(3)(A). Pub. L. 91-172, §1003(b)(4), substituted "\$46" for "\$40".

Subsec. (c)(3)(B). Pub. L. 91-172, §1003(b)(5), substituted "\$23" for "\$20".

1968—Subsec. (b)(1). Pub. L. 90-248, §102(b)(1), substituted "\$40" for "\$35".

Subsec. (b)(2). Pub. L. 90-248, §102(b)(2), substituted "\$40" for "\$35" and "\$20" for "\$17.50".

Subsec. (c)(2). Pub. L. 90-248, §102(b)(3), substituted "\$20" for "\$17.50".

Subsec. (c)(3)(A). Pub. L. 90-248, §102(b)(4), substituted "\$40" for "\$35".

Subsec. (c)(3)(B). Pub. L. 90-248, §102(b)(5), substituted "\$20" for "\$17.50".

Subsec. (d)(1). Pub. L. 90-248, §241(a), struck out "IV," after "I," and inserted "or part A of subchapter IV of this chapter," after "XVI of this chapter,".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title V, §5114(b), Nov. 5, 1990, 104 Stat. 1388-274, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect [to] benefits payable on the basis of applications filed after the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2662(e) of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663(j)(3)(A)(iv) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93-233, §2(b)(1), Dec. 31, 1973, 87 Stat. 952, provided that the amendment made by that section is effective June 1, 1974.

Amendment by section 2(b)(1) of Pub. L. 93-233 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see section 2(c) of Pub. L. 93-233, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972, see section 201(i) of Pub. L. 92-336, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-5 applicable with respect to monthly benefits under subchapter II of this chapter

for months after December 1970, see section 202(c) of Pub. L. 92-5, set out as a note under section 427 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable for months after December 1969, see section 1003(c) of Pub. L. 91-172, set out as a note under section 427 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 102(b) of Pub. L. 90-248 applicable with respect to monthly benefits under this subchapter for months after January 1968, see section 102(c) of Pub. L. 90-248, set out as a note under section 427 of this title.

REPEAL OF AMENDMENT OF SUBSECS. (b)(1), (2) AND (c)(3)(A), (B) PRIOR TO EFFECTIVE DATE

Pub. L. 92-336, title II, §202(a)(4), July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1975, substituted "the larger of \$58.00 or the amount most recently established in lieu thereof under section 415(i) of this title" for "\$58.00" and "the larger of \$29.00 or the amount most recently established in lieu thereof under section 415(i) of this title" for "\$29.00", was repealed prior to its effective date by Pub. L. 93-233, §2(b)(2), Dec. 31, 1973, 87 Stat. 952, applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93-233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 56593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

INCREASES TO TAKE INTO ACCOUNT GENERAL BENEFIT INCREASES

Pub. L. 98-21, title III, §305(e), Apr. 20, 1983, 97 Stat. 113, provided that: "The Secretary shall increase the amounts specified in section 228 of the Social Security Act [this section], as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act [42 U.S.C. 415(i)(3)]), and any increases under section 215(i) of such Act, which have occurred after June 1974 or may hereafter occur."

SPECIAL \$50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of \$50 as soon as practicable after Mar. 29, 1975, by Secretary of the Treasury to each individual who, for month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94-12, set out as a note under section 402 of this title.

APPLICATIONS FOR TRANSITIONAL COVERAGE OF UNINSURED INDIVIDUALS FOR HOSPITAL INSURANCE BENEFITS

Pub. L. 89-368, title III, §302(b), Mar. 15, 1966, 80 Stat. 70, provided that: "For purposes of paragraph (4) of section 228(a) of the Social Security Act [42 U.S.C. 428(a)(4)] (added by subsection (a) of this section), an application filed under section 103 of the Social Security Amendments of 1965 [set out as a note under section 426 of this title] before July 1966 shall be regarded as an application under such section 228 [42 U.S.C. 428] and shall, for purposes of such paragraph and of the last sentence of such section 228(a), be deemed to have been filed in July 1966, unless the person by whom or on whose behalf such application was filed notifies the

Secretary that he does not want such application so regarded."

§ 429. Benefits in case of members of uniformed services

For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual, if he was paid wages for service as a member of a uniformed service (as defined in section 410(m) of this title) which was included in the term "employment" as defined in section 410(a) of this title as a result of the provisions of section 410(l)(1)(A) of this title, shall be deemed to have been paid—

(1) in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of \$300, and

(2) in each calendar year occurring after 1977 and before 2002 in which he was paid such wages, additional wages of \$100 for each \$300 of such wages, up to a maximum of \$1,200 of additional wages for any calendar year.

(Aug. 14, 1935, ch. 531, title II, §229, as added Pub. L. 90-428, title I, §106, Jan. 2, 1968, 81 Stat. 833; amended Pub. L. 92-603, title I, §120(a), Oct. 30, 1972, 86 Stat. 1352; Pub. L. 95-216, title III, §353(d), Dec. 20, 1977, 91 Stat. 1554; Pub. L. 98-21, title I, §151(b)(1), Apr. 20, 1983, 97 Stat. 104; Pub. L. 98-369, div. B, title VI, §2661(n), July 18, 1984, 98 Stat. 1158; Pub. L. 100-203, title IX, §9001(c), Dec. 22, 1987, 101 Stat. 1330-286; Pub. L. 103-296, title I, §107(a)(4), title III, §321(c)(6)(J), Aug. 15, 1994, 108 Stat. 1478, 1538; Pub. L. 108-203, title IV, §420(b), Mar. 2, 2004, 118 Stat. 535.)

AMENDMENTS

2004—Pub. L. 108-203, §420(b)(1), struck out subsec. (a) designation before "For purposes of" and struck out subsec. (b), which authorized to be appropriated to each of the Trust Funds, for transfer on July 1 of each calendar year to such Fund, an amount equal to the total of the additional amounts which would be appropriated to such Fund for the fiscal year ending Sept. 30 of such calendar year under section 401 or 1395i of this title if the amounts of the additional wages deemed to have been paid for such calendar year constituted remuneration for employment for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 and set forth provisions relating to determination of amounts authorized to be appropriated and adjustments to such amounts.

Par. (2). Pub. L. 108-203, §420(b)(2), inserted "and before 2002" after "1977".

1994—Subsec. (b). Pub. L. 103-296, §321(c)(6)(J), substituted "1986" for "1954" after "Code of" in two places.

Pub. L. 103-296, §107(a)(4), substituted "Commissioner of Social Security" for "Secretary" in two places.

1987—Subsec. (a). Pub. L. 100-203 substituted "section 410(l)(1)(A)" for "section 410(l)".

1984—Subsec. (b). Pub. L. 98-369 inserted at end "Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Secretary, on the basis of appropriate data, determines should have been so transferred."