

section to section 2639(d) of Pub. L. 98-369, set out as a note above, is effective as of Oct. 1, 1987.]

Amendment by section 2663(g)(3), (4) 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 AND TERMINATION DATES OF 1983
AMENDMENT

Pub. L. 97-424, title V, § 545(c), Jan. 6, 1983, 96 Stat. 2198, and Pub. L. 98-21, title IV, § 404(c), Apr. 20, 1983, 97 Stat. 140, which had provided for the effective and termination dates covering the enactment and subsequent amendment of subsec. (b)(13) of this section by section 545(a) of Pub. L. 97-424 and section 404(a) of Pub. L. 98-21, were repealed by Pub. L. 98-369, div. B, title VI, § 2639(c), (d), July 18, 1984, 98 Stat. 1145, effective with respect to months beginning after Sept. 30, 1984.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective with respect to months after first calendar quarter which ends more than five months after August 1981, with provision for transitional payments, see section 2341(c) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment and Transitional Provisions note under section 1382 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-265, title II, § 202(b), June 9, 1980, 94 Stat. 449, provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to remuneration received in months after September 1980."

Amendment by section 302(b) of Pub. L. 96-265 applicable with respect to expenses incurred on or after first day of sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96-265, set out as a note under section 423 of this title.

Pub. L. 96-222, title I, § 101(b)(1)(B), Apr. 1, 1980, 94 Stat. 205, provided that: "The amendments made by subparagraphs (A) and (B) of subsection (a)(2) [amending this section and section 602 of this title] shall apply to payments for months beginning after December 31, 1979."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-171, § 8(b), Nov. 12, 1977, 91 Stat. 1355, provided that: "The amendment made by this section [amending this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 31, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-566 effective Oct. 1, 1976, see section 505(e) of Pub. L. 94-566, set out as a note under section 1382 of this title.

Pub. L. 94-331, § 2(b), June 30, 1976, 90 Stat. 782, as amended by Pub. L. 95-171, § 6(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: "The amendments made by this Act [amending this section and sections 815, 3402, 6153, and 6154 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 815 and 3402 of Title 26] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976."

Pub. L. 94-331, § 4(b), June 30, 1976, 90 Stat. 783, as amended by Pub. L. 95-171, § 7(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: "The amendments made by this Act [see section 2(b) of Pub. L. 94-331, set out above] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-484, § 4, Oct. 26, 1974, 88 Stat. 1460, provided that the amendment made by that section is effective Jan. 1, 1974.

EFFECTIVE DATE

Pub. L. 92-603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, provided that this section is effective Jan. 1, 1974.

FINDINGS

Pub. L. 111-255, § 2, Oct. 5, 2010, 124 Stat. 2640, provided that: "Congress finds the following:

"(1) Advances in medicine depend on clinical trial research conducted at public and private research institutions across the United States.

"(2) The challenges associated with enrolling participants in clinical research studies are especially difficult for studies that evaluate treatments for rare diseases and conditions (defined by the Orphan Drug Act [Pub. L. 97-414, see Short Title of 1983 Amendments note set out under section 301 of Title 21, Food and Drugs] as a disease or condition affecting fewer than 200,000 Americans), where the available number of willing and able research participants may be very small.

"(3) In accordance with ethical standards established by the National Institutes of Health, sponsors of clinical research may provide payments to trial participants for out-of-pocket costs associated with trial enrollment and for the time and commitment demanded by those who participate in a study. When offering compensation, clinical trial sponsors are required to provide such payments to all participants.

"(4) The offer of payment for research participation may pose a barrier to trial enrollment when such payments threaten the eligibility of clinical trial participants for Supplemental Security Income and Medicaid benefits.

"(5) With a small number of potential trial participants and the possible loss of Supplemental Security Income and Medicaid benefits for many who wish to participate, clinical trial research for rare diseases and conditions becomes exceptionally difficult and may hinder research on new treatments and potential cures for these rare diseases and conditions."

[Section 2 of Pub. L. 111-255, set out above, repealed 5 years after Oct. 5, 2010, see section 3(e) of Pub. L. 111-255, set out as an Effective and Termination Dates of 2010 Amendment note above.]

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to 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. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92-603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92-603, set out as a note under section 301 of this title.

§ 1382b. Resources

(a) Exclusions from resources

In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home (including the land that appertains thereto);

(2)(A) household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Commissioner of Social Security determines to be reasonable; and

(B) the value of any burial space or agreement (including any interest accumulated thereon) representing the purchase of a burial space (subject to such limits as to size or value as the Commissioner of Social Security may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or any other member of his immediate family;

(3) other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Commissioner of Social Security, except that the Commissioner of Social Security shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee;

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(h) and section 1607(c) of title 43;

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1382a(b)(12) of this title;

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this subchapter or subchapter II of this chapter, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter; but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the first 9 months following the month in which such amount is received, and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount;

(8) the value of assistance referred to in section 1382a(b)(14) of this title, paid with respect to the dwelling unit occupied by such individual (or such individual and spouse);

(9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime;

(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions¹ Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];

(11) for the 9-month period beginning after the month in which received—

(A) notwithstanding section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, any refund of Federal income taxes made to such individual (or such spouse) under section 24 of the Internal Revenue Code of 1986 (relating to child tax credit) by reason of subsection (d) thereof; and

(B) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);

(12) any account, including accrued interest or other earnings thereon, established and maintained in accordance with section 1383(a)(2)(F) of this title;

(13) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code—

(A) in the case of an in-kind gift, if the gift is not converted to cash; or

(B) in the case of a cash gift, only to the extent that the total amount excluded from the resources of the individual pursuant to this paragraph in the calendar year in which the gift is made does not exceed \$2,000;

(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter as restitution for benefits under this subchapter, subchapter II of this chapter, or subchapter VIII of this chapter that a representative payee of such individual (or spouse) or such other person under section 405(j), 1007, or 1383(a)(2) of this title has misused;

(15) for the 9-month period beginning after the month in which received, any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution;

(16) for the month of receipt and every month thereafter, any annuity paid by a State to the individual (or such spouse) on the basis of the individual's being a veteran (as defined in section 101 of title 38), and blind, disabled, or aged; and

¹ So in original. Probably should be "Acquisition".

(17) any amount received by such individual (or such spouse) which is excluded from income under section 1382a(b)(26) of this title (relating to compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition).

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is \$1,500 or less, no part of the value of any such policy shall be taken into account.

(b) Disposition of resources; grounds for exemption from disposition requirements

(1) The Commissioner of Social Security shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

(2) Notwithstanding the provisions of paragraph (1), the Commissioner of Social Security shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Commissioner of Social Security, the owner's reasonable efforts to sell it have been unsuccessful.

(c) Disposal of resources for less than fair market value

(1)(A)(i) If an individual or the spouse of an individual disposes of resources for less than fair market value on or after the look-back date described in clause (ii)(I), the individual is ineligible for benefits under this subchapter for months during the period beginning on the date described in clause (iii) and equal to the number of months calculated as provided in clause (iv).

(ii)(I) The look-back date described in this subclause is a date that is 36 months before the date described in subclause (II).

(II) The date described in this subclause is the date on which the individual applies for benefits under this subchapter or, if later, the date on which the individual (or the spouse of the individual) disposes of resources for less than fair market value.

(iii) The date described in this clause is the first day of the first month in or after which resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

(iv) The number of months calculated under this clause shall be equal to—

(I) the total, cumulative uncompensated value of all resources so disposed of by the individual (or the spouse of the individual) on or after the look-back date described in clause (ii)(I); divided by

(II) the amount of the maximum monthly benefit payable under section 1382(b) of this title, plus the amount (if any) of the maximum State supplementary payment corresponding to the State's payment level applicable to the individual's living arrangement and eligibility category that would otherwise be payable to the individual by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93-66, for the month in which occurs the date described in clause (ii)(II),

rounded, in the case of any fraction, to the nearest whole number, but shall not in any case exceed 36 months.

(B)(i) Notwithstanding subparagraph (A), this subsection shall not apply to a transfer of a resource to a trust if the portion of the trust attributable to the resource is considered a resource available to the individual pursuant to subsection (e)(3) of this section (or would be so considered but for the application of subsection (e)(4) of this section).

(ii) In the case of a trust established by an individual or an individual's spouse (within the meaning of subsection (e) of this section), if from such portion of the trust, if any, that is considered a resource available to the individual pursuant to subsection (e)(3) of this section (or would be so considered but for the application of subsection (e)(4) of this section) or the residue of the portion on the termination of the trust—

(I) there is made a payment other than to or for the benefit of the individual; or

(II) no payment could under any circumstance be made to the individual,

then, for purposes of this subsection, the payment described in clause (I) or the foreclosure of payment described in clause (II) shall be considered a transfer of resources by the individual or the individual's spouse as of the date of the payment or foreclosure, as the case may be.

(C) An individual shall not be ineligible for benefits under this subchapter by reason of the application of this paragraph to a disposal of resources by the individual or the spouse of the individual, to the extent that—

(i) the resources are a home and title to the home was transferred to—

(I) the spouse of the transferor;

(II) a child of the transferor who has not attained 21 years of age, or is blind or disabled;

(III) a sibling of the transferor who has an equity interest in such home and who was residing in the transferor's home for a period of at least 1 year immediately before the date the transferor becomes an institutionalized individual; or

(IV) a son or daughter of the transferor (other than a child described in subclause (II)) who was residing in the transferor's home for a period of at least 2 years immediately before the date the transferor becomes an institutionalized individual, and who provided care to the transferor which permitted the transferor to reside at home rather than in such an institution or facility;

(ii) the resources—

(I) were transferred to the transferor's spouse or to another for the sole benefit of the transferor's spouse;

(II) were transferred from the transferor's spouse to another for the sole benefit of the transferor's spouse;

(III) were transferred to, or to a trust (including a trust described in section 1396p(d)(4) of this title) established solely for the benefit of, the transferor's child who is blind or disabled; or

(IV) were transferred to a trust (including a trust described in section 1396p(d)(4) of this title) established solely for the benefit of an individual who has not attained 65 years of age and who is disabled;

(iii) a satisfactory showing is made to the Commissioner of Social Security (in accordance with regulations promulgated by the Commissioner) that—

(I) the individual who disposed of the resources intended to dispose of the resources either at fair market value, or for other valuable consideration;

(II) the resources were transferred exclusively for a purpose other than to qualify for benefits under this subchapter; or

(III) all resources transferred for less than fair market value have been returned to the transferor; or

(iv) the Commissioner determines, under procedures established by the Commissioner, that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Commissioner.

(D) For purposes of this subsection, in the case of a resource held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the resource (or the affected portion of such resource) shall be considered to be disposed of by the individual when any action is taken, either by the individual or by any other person, that reduces or eliminates the individual's ownership or control of such resource.

(E) In the case of a transfer by the spouse of an individual that results in a period of ineligibility for the individual under this subsection, the Commissioner shall apportion the period (or any portion of the period) among the individual and the individual's spouse if the spouse becomes eligible for benefits under this subchapter.

(F) For purposes of this paragraph—

(i) the term "benefits under this subchapter" includes payments of the type described in section 1382e(a) of this title and of the type described in section 212(b) of Public Law 93-66;

(ii) the term "institutionalized individual" has the meaning given such term in section 1396p(e)(3)² of this title; and

(iii) the term "trust" has the meaning given such term in subsection (e)(6)(A) of this section.

(2)(A) At the time an individual (and the individual's eligible spouse, if any) applies for bene-

fits under this subchapter, and at the time the eligibility of an individual (and such spouse, if any) for such benefits is redetermined, the Commissioner of Social Security shall—

(i) inform such individual of the provisions of paragraph (1) and section 1396p(c) of this title providing for a period of ineligibility for benefits under this subchapter and subchapter XIX of this chapter, respectively, for individuals who make certain dispositions of resources for less than fair market value, and inform such individual that information obtained pursuant to clause (ii) will be made available to the State agency administering a State plan under subchapter XIX of this chapter (as provided in subparagraph (B)); and

(ii) obtain from such individual information which may be used in determining whether or not a period of ineligibility for such benefits would be required by reason of paragraph (1) or section 1396p(c) of this title.

(B) The Commissioner of Social Security shall make the information obtained under subparagraph (A)(ii) available, on request, to any State agency administering a State plan approved under subchapter XIX of this chapter.

(d) Funds set aside for burial expenses

(1) In determining the resources of an individual, there shall be excluded an amount, not in excess of \$1,500 each with respect to such individual and his spouse (if any), that is separately identifiable and has been set aside to meet the burial and related expenses of such individual or spouse.

(2) The amount of \$1,500, referred to in paragraph (1), with respect to an individual shall be reduced by an amount equal to (A) the total face value of all insurance policies on his life which are owned by him or his spouse and the cash surrender value of which has been excluded in determining the resources of such individual or of such individual and his spouse, and (B) the total of any amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial and related expenses of such individual or his spouse.

(3) If the Commissioner of Social Security finds that any part of the amount excluded under paragraph (1) was used for purposes other than those for which it was set aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title, the Commissioner shall reduce any future benefits payable to the eligible individual (or to such individual and his spouse) by an amount equal to such part.

(4) The Commissioner of Social Security may provide by regulations that whenever an amount set aside to meet burial and related expenses is excluded under paragraph (1) in determining the resources of an individual, any interest earned or accrued on such amount (and left to accumulate), and any appreciation in the value of prepaid burial arrangements for which such amount was set aside, shall also be excluded (to such extent and subject to such conditions or limitations as such regulations may prescribe) in de-

² See References in Text note below.

termining the resources (and the income) of such individual.

(e) Trusts

(1) In determining the resources of an individual, paragraph (3) shall apply to a trust (other than a trust described in paragraph (5)) established by the individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual (or of the individual's spouse) are transferred to the trust other than by will.

(B) In the case of an irrevocable trust to which are transferred the assets of an individual (or of the individual's spouse) and the assets of any other person, this subsection shall apply to the portion of the trust attributable to the assets of the individual (or of the individual's spouse).

(C) This subsection shall apply to a trust without regard to—

(i) the purposes for which the trust is established;

(ii) whether the trustees have or exercise any discretion under the trust;

(iii) any restrictions on when or whether distributions may be made from the trust; or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust established by an individual, the corpus of the trust shall be considered a resource available to the individual.

(B) In the case of an irrevocable trust established by an individual, if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual (or of the individual's spouse), the portion of the corpus from which payment to or for the benefit of the individual (or of the individual's spouse) could be made shall be considered a resource available to the individual.

(4) The Commissioner of Social Security may waive the application of this subsection with respect to an individual if the Commissioner determines that such application would work an undue hardship (as determined on the basis of criteria established by the Commissioner) on the individual.

(5) This subsection shall not apply to a trust described in subparagraph (A) or (C) of section 1396p(d)(4) of this title.

(6) For purposes of this subsection—

(A) the term "trust" includes any legal instrument or device that is similar to a trust;

(B) the term "corpus" means, with respect to a trust, all property and other interests held by the trust, including accumulated earnings and any other addition to the trust after its establishment (except that such term does not include any such earnings or addition in the month in which the earnings or addition is credited or otherwise transferred to the trust); and

(C) the term "asset" includes any income or resource of the individual (or of the individual's spouse), including—

(i) any income excluded by section 1382a(b) of this title;

(ii) any resource otherwise excluded by this section; and

(iii) any other payment or property to which the individual (or of the individual's spouse) is entitled but does not receive or have access to because of action by—

(I) the individual or spouse;

(II) a person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or spouse; or

(III) a person or entity (including a court) acting at the direction of, or on the request of, the individual or spouse.

(Aug. 14, 1935, ch. 531, title XVI, §1613, as added Pub. L. 92-603, title III, §301, Oct. 30, 1972, 86 Stat. 1470; amended Pub. L. 94-569, §5, Oct. 20, 1976, 90 Stat. 2700; Pub. L. 95-171, §9(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 96-611, §5(a), Dec. 28, 1980, 94 Stat. 3567; Pub. L. 97-248, title I, §185(a), (b), Sept. 3, 1982, 96 Stat. 406; Pub. L. 98-369, div. B, title VI, §§2614, 2663(g)(5), July 18, 1984, 98 Stat. 1132, 1168; Pub. L. 100-203, title IX, §§9103(a), 9104(a), 9105(a), 9114(a), Dec. 22, 1987, 101 Stat. 1330-301, 1330-304; Pub. L. 100-360, title III, §303(c)(1), July 1, 1988, 102 Stat. 762; Pub. L. 100-647, title VIII, §8103(b), Nov. 10, 1988, 102 Stat. 3795; Pub. L. 101-239, title VIII, §§8013(b), 8014(a), Dec. 19, 1989, 103 Stat. 2465; Pub. L. 101-508, title V, §§5031(b), 5035(b), title XI, §11115(b)(2), Nov. 5, 1990, 104 Stat. 1388-224, 1388-225, 1388-414; Pub. L. 103-296, title I, §107(a)(4), title III, §321(h)(2), Aug. 15, 1994, 108 Stat. 1478, 1544; Pub. L. 104-193, title II, §213(b), Aug. 22, 1996, 110 Stat. 2195; Pub. L. 105-306, §7(b), Oct. 28, 1998, 112 Stat. 2928; Pub. L. 106-169, title II, §§205(a), 206(a), Dec. 14, 1999, 113 Stat. 1833, 1834; Pub. L. 108-203, title I, §101(c)(2), title IV, §§431(a), (b), 435(b), Mar. 2, 2004, 118 Stat. 496, 539, 540; Pub. L. 110-245, title II, §202(b), June 17, 2008, 122 Stat. 1637; Pub. L. 111-255, §3(b), Oct. 5, 2010, 124 Stat. 2641.)

AMENDMENT OF SECTION

For repeal of amendment by section 3(e) of Pub. L. 111-255, see Effective and Termination Dates of 2010 Amendment note below.

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (a)(10), is Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, as amended. Title II of the Act enacted subchapter II (§4621 et seq.) of chapter 61 of this title, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(11), (13), is classified generally to Title 26, Internal Revenue Code.

Section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (a)(11)(A), is section 203 of Pub. L. 107-16, which is set out as a note under section 24 of Title 26, Internal Revenue Code.

Section 212(b) of Public Law 93-66, referred to in subsec. (c)(1)(A)(iv)(II), (F)(i), is section 212(b) of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

Section 1396p(e)(3) of this title, referred to in subsec. (c)(1)(F)(ii), was redesignated section 1396p(h)(3) of this

title by Pub. L. 109-171, title VI, §§6012(a), 6014(a), 6015(b), Feb. 8, 2006, 120 Stat. 62, 64, 65.

AMENDMENTS

2010—Subsec. (a)(17). Pub. L. 111-255, §3(b), (e), temporarily added par. (17). See Effective and Termination Dates of 2010 Amendment note below.

2008—Subsec. (a)(16). Pub. L. 110-245 added par. (16).

2004—Subsec. (a)(7). Pub. L. 108-203, §431(a), substituted “limited to the first 9 months” for “limited to the first 6 months” and struck out “(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)” after “month in which such amount is received”.

Subsec. (a)(11). Pub. L. 108-203, §431(b), amended par. (11) generally. Prior to amendment, par. (11) read as follows: “for the month of receipt and the following month, any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);”.

Subsec. (a)(14). Pub. L. 108-203, §101(c)(2), added par. (14).

Subsec. (a)(15). Pub. L. 108-203, §435(b), added par. (15).
1999—Subsec. (c). Pub. L. 106-169, §206(a)(1), struck out “Notification of medicaid policy restricting eligibility of institutionalized individuals for benefits based on” before “Disposal” in subsec. heading.

Subsec. (c)(1). Pub. L. 106-169, §206(a)(5), added par. (1). Former par. (1) redesignated (2)(A).

Subsec. (c)(2)(A). Pub. L. 106-169, §206(a)(4), redesignated par. (1) as (2)(A).

Subsec. (c)(2)(A)(i). Pub. L. 106-169, §206(a)(2)(A), (C), redesignated par. (1)(A) as (2)(A)(i), inserted “paragraph (1) and” after “provisions of”, and substituted “benefits under this subchapter and subchapter XIX of this chapter, respectively,” for “benefits under subchapter XIX of this chapter”, “clause (ii)” for “subparagraph (B)”, and “subparagraph (B)” for “paragraph (2)”.

Subsec. (c)(2)(A)(ii). Pub. L. 106-169, §206(a)(2)(B), (C), redesignated par. (1)(B) as (2)(A)(ii), struck out “by the State agency” after “which may be used”, and substituted “paragraph (1) or section 1396p(c) of this title.” for “section 1396p(c) of this title if such individual (or such spouse, if any) enters a medical institution or nursing facility.”

Subsec. (c)(2)(B). Pub. L. 106-169, §206(a)(3), redesignated par. (2) as (2)(B) and substituted “subparagraph (A)(ii)” for “paragraph (1)(B)”.

Subsec. (e). Pub. L. 106-169, §205(a), added subsec. (e).

1998—Subsec. (a)(13). Pub. L. 105-306 added par. (13).

1996—Subsec. (a)(12). Pub. L. 104-193 added par. (12).

1994—Subsec. (a)(2) to (4), (6). Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

Subsec. (a)(9) to (11). Pub. L. 103-296, §321(h)(2), struck out “and” at end of par. (9), substituted “; and” for period at end of par. (10) relating to relocation assistance, and redesignated par. (10) relating to refunds of Federal income taxes as (11).

Subsecs. (b) to (d). Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “the Commissioner shall” for “he shall” in subsec. (d)(3).

1990—Subsec. (a)(9). Pub. L. 101-508, §5031(b), added par. (9).

Subsec. (a)(10). Pub. L. 101-508, §11115(b)(2), added par. (10) relating to refunds of Federal income taxes.

Pub. L. 101-508, §5053(b), added par. (10) relating to relocation assistance.

1989—Subsec. (a)(2)(B). Pub. L. 101-239, §8013(b), inserted “or agreement (including any interest accumulated thereon) representing the purchase of a burial space”.

Subsec. (a)(3). Pub. L. 101-239, §8014(a), amended par. (3) generally. Prior to amendment, par. (3) read as fol-

lows: “other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;”.

1988—Subsec. (a)(8). Pub. L. 100-647 added par. (8).

Subsec. (c). Pub. L. 100-360 substituted “Notification of medicaid policy restricting eligibility of institutionalized individuals for benefits based on disposal of resources for less than fair market value” for “Disposal of resources for less than fair market value” in heading and amended text generally, substituting pars. (1) and (2) for former pars. (1) to (4).

1987—Subsec. (a)(7). Pub. L. 100-203, §9114(a), inserted “(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)” after “such amount is received”.

Subsec. (b). Pub. L. 100-203, §9103, designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 100-203, §9104(a)(1), inserted “, and subject to paragraph (4) of this subsection” after “subsection (a) of this section”.

Subsec. (c)(4). Pub. L. 100-203, §9104(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 100-203, §9105(a)(1), struck out “if the inclusion of any portion of such amount or amounts would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title” after “individual or spouse”.

Subsec. (d)(3). Pub. L. 100-203, §9105(a)(2), substituted “aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title” for “aside”.

1984—Subsec. (a)(7). Pub. L. 98-369, §2614, added par. (7).

Subsec. (c). Pub. L. 98-369, §2663(g)(5), amended heading.

1982—Subsec. (a)(2). Pub. L. 97-248, §185(a), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 97-248, §185(b), added subsec. (d).

1980—Subsec. (c). Pub. L. 96-611 added subsec. (c).

1977—Subsec. (a)(6). Pub. L. 95-171 added par. (6).

1976—Subsec. (a)(1). Pub. L. 94-569 struck out “, to the extent that its value does not exceed such amount as the Secretary determines to be reasonable” after “the home (including the land that appertains thereto)”.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111-255 effective on the earlier of the effective date of final regulations promulgated by the Commissioner of Social Security to carry out such amendment or 180 days after Oct. 5, 2010, see section 3(d) of Pub. L. 111-255, set out as a note under section 1382a of this title.

Amendment by Pub. L. 111-255 repealed 5 years after Oct. 5, 2010, see section 3(e) of Pub. L. 111-255, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-245 effective with respect to benefits payable for months beginning after 60 days after June 17, 2008, see section 204 of Pub. L. 110-245, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(c)(2) of Pub. L. 108-203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Pub. L. 108-203, title IV, §431(c), Mar. 2, 2004, 118 Stat. 539, provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Mar. 2, 2004], and shall apply to amounts described in paragraph (7) of section 1613(a) of the Social Security Act [subsec. (a)(7) of this section] and refunds of Federal income taxes described in paragraph (11) of such section, that are received by an eligible individual or eligible spouse on or after such date."

Amendment by section 435(b) of Pub. L. 108-203 applicable to benefits payable for months that begin more than 90 days after Mar. 2, 2004, see section 435(c) of Pub. L. 108-203, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 205(a) of Pub. L. 106-169 effective Jan. 1, 2000, and applicable to trusts established on or after such date, see section 205(d) of Pub. L. 106-169, set out as a note under section 1382a of this title.

Pub. L. 106-169, title II, §206(c), Dec. 14, 1999, 113 Stat. 1837, provided that: "The amendments made by this section [amending this section and section 1396a of this title] shall be effective with respect to disposals made on or after the date of the enactment of this Act [Dec. 14, 1999]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-306 applicable to gifts made on or after the date that is 2 years before Oct. 28, 1998, see section 7(c) of Pub. L. 105-306, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 213(b) of Pub. L. 104-193 applicable to payments made after Aug. 22, 1996, see section 213(d) of Pub. L. 104-193, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of 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.

Pub. L. 103-296, title III, §321(h)(3), Aug. 15, 1994, 108 Stat. 1544, provided that: "The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5031(b) of Pub. L. 101-508 applicable with respect to benefits for months beginning on or after the first day of the 6th calendar month following November 1990, see section 5031(d) of Pub. L. 101-508, set out as a note under section 1382a of this title.

Amendment by section 5035(b) of Pub. L. 101-508 applicable with respect to benefits for calendar months beginning on or after the first day of the 6th calendar month following November 1990, see section 5035(c) of Pub. L. 101-508, as amended, set out as a note under section 1382a of this title.

Amendment by section 11115(b)(2) of Pub. L. 101-508 applicable to determinations of income or resources made for any period after Dec. 31, 1990, see section 11115(e) of Pub. L. 101-508, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 8013(b) of Pub. L. 101-239 effective on 1st day of 4th month beginning after Dec. 19, 1989, see section 8013(c) of Pub. L. 101-239, set out as a note under section 1382a of this title.

Pub. L. 101-239, title VIII, §8014(b), Dec. 19, 1989, 103 Stat. 2465, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 5th calendar month beginning

after the date of the enactment of this Act [Dec. 19, 1989]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective as though included in section 162 of Housing and Community Development Act of 1987, Pub. L. 100-242, at the time of its enactment, on Feb. 5, 1988, see section 8103(c) of Pub. L. 100-647, set out as a note under section 1382a of this title.

Amendment by Pub. L. 100-360 applicable to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 303(g)(3) of Pub. L. 100-360, set out as a note under section 1396r-5 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9103(b), Dec. 22, 1987, 101 Stat. 1330-301, provided that: "The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988."

Pub. L. 100-203, title IX, §9104(b), Dec. 22, 1987, 101 Stat. 1330-301, provided that: "The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988."

Pub. L. 100-203, title IX, §9105(b), Dec. 22, 1987, 101 Stat. 1330-301, provided that: "The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988."

Pub. L. 100-203, title IX, §9114(b), Dec. 22, 1987, 101 Stat. 1330-304, provided that: "The amendment made by subsection (a) [amending this section] shall become effective January 1, 1988."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2614 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(5) 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 1982 AMENDMENT

Pub. L. 97-248, title I, §185(c), Sept. 3, 1982, 96 Stat. 407, provided that: "The amendment made by this section [amending this section] shall take effect on the first day of the second month after the month in which this Act is enacted [September 1982]."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-611, §5(c), Dec. 28, 1980, 94 Stat. 3568, provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to applications for benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] filed on or after the first day of the first month which begins at least 60 days after the date of enactment of this Act [Dec. 28, 1980]."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-171, §9(b), Nov. 12, 1977, 91 Stat. 1356, provided that: "The amendment made by this section [amending this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 1, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977]."

EFFECTIVE DATE

Pub. L. 92-603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, provided that this section is effective Jan. 1, 1974.

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. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92-603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92-603, set out as a note under section 301 of this title.

§ 1382c. Definitions

(a)(1) For purposes of this subchapter, the term “aged, blind, or disabled individual” means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1182(d)(5) of title 8), or

(ii) is a child who is a citizen of the United States, and who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this subchapter if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this subchapter if he is blind as defined under a State plan approved under subchapter X or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or wheth-

er a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), “work which exists in the national economy” means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C)(i) An individual under the age of 18 shall be considered disabled for the purposes of this subchapter if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(ii) Notwithstanding clause (i), no individual under the age of 18 who engages in substantial gainful activity (determined in accordance with regulations prescribed pursuant to subparagraph (E)) may be considered to be disabled.

(D) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(E) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria shall be found not to be disabled. The Commissioner of Social Security shall make determinations under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.

(F) Notwithstanding the provisions of subparagraphs (A) through (E), an individual shall also be considered to be disabled for purposes of this subchapter if he is permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.