

chapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, if greater, in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage.

Subsec. (b). Pub. L. 98-21, §401(a)(2), substituted "subsection (a) of this subsection" for "this section".

Subsec. (c). Pub. L. 98-21, §401(a)(1), added subsec. (c). 1982—Pub. L. 97-248 redesignated existing provisions as subsec. (a), revised method of computation into pars. (1) and (2) and among other changes increased base for rounding-off from a multiple of \$1.20 to a multiple of \$12.00, and struck out provisions relating to publication of increased dollar amounts in the Federal Register, and added subsec. (b).

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title I, §182(b), Sept. 3, 1982, 96 Stat. 405, provided that: "The amendment made by this section [amending this section] shall become effective on October 1, 1982."

#### COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Payment of increased benefits under program covered in subchapter II of this chapter, see section 1 of Pub. L. 98-604, set out as a 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. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

### § 1382g. Payments to State for operation of supplementation program

#### (a) Eligibility; agreement with Commissioner

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), on or after June 30, 1977, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to expenditures for any calendar quarter which begins—

- (1) after June 30, 1977, or, if later,
- (2) after the calendar quarter in which it first makes such supplementary payments,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

- (3) continue to make such supplementary payments, and
- (4) maintain such supplementary payments at levels which are not lower than the levels of such payments in effect in December 1976, or, if no such payments were made in that month, the levels for the first subsequent month in which such payments were made.

#### (b) Levels of supplementary payments

(1) The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for a particular month or months if the State's expenditures for such payments in the twelve-month period (within which such month or months fall)

beginning on the effective date of any increase in the level of supplemental security income benefits pursuant to section 1382f of this title are not less than its expenditures for such payments in the preceding twelve-month period.

(2) For purposes of determining under paragraph (1) whether a State's expenditures for supplementary payments in the 12-month period beginning on the effective date of any increase in the level of supplemental security income benefits are not less than the State's expenditures for such payments in the preceding 12-month period, the Commissioner of Social Security, in computing the State's expenditures, shall disregard, pursuant to a 1-time election of the State, all expenditures by the State for retroactive supplementary payments that are required to be made in connection with the retroactive supplemental security income benefits referred to in section 5041 of the Omnibus Budget Reconciliation Act of 1990.

#### (c) Election to apply subsection (a)(4)

Any State which satisfies the requirements of this section solely by reason of subsection (b) of this section for a particular month or months in any 12-month period (described in such subsection) ending on or after June 30, 1982, may elect, with respect to any month in any subsequent 12-month period (so described), to apply subsection (a)(4) of this section as though the reference to December 1976 in such subsection were a reference to the month of December which occurred in the 12-month period immediately preceding such subsequent period.

#### (d) Determinations respecting any portion of period July 1, 1980, through June 30, 1981

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for any portion of the period July 1, 1980, through June 30, 1981, if the State's expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976, through June 30, 1977 (or, if the State made no supplementary payments in the period July 1, 1976, through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).

#### (e) Meeting subsection (a)(4) requirements for any month after March 1983

(1) For any particular month after March 1983, a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) of this section by reason of subsection (b) of this section shall be treated as meeting such requirements if and only if—

(A) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93-66, for that particular month,

is not less than—

(B) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of

such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93-66, for March 1983, increased by the amount of all cost-of-living adjustments under section 1382f of this title (and any other benefit increases under this subchapter) which have occurred after March 1983 and before that particular month.

(2) In determining the amount of any increase in the combined level involved under paragraph (1)(B) of this subsection, any portion of such amount which would otherwise be attributable to the increase under section 1382f(c) of this title shall be deemed instead to be equal to the amount of the cost-of-living adjustment which would have occurred in July 1983 (without regard to the 3-percent limitation contained in section 415(i)(1)(B) of this title) if section 111 of the Social Security Amendments of 1983 had not been enacted.

**(f) Passthrough relating to optional State supplementation**

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by subsection (a) of this section with respect to the levels of its supplementary payments for the period January 1, 1984, through December 31, 1985, if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels (other than to recipients of benefits determined under section 1382(e)(1)(B) of this title) are not less than those in effect in December 1976, increased by a percentage equal to the percentage by which payments under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93-66 have been increased as a result of all adjustments under section 1382f(a) and (c) of this title which have occurred after December 1976 and before February 1986.

**(g) Mandatory pass-through of increased personal needs allowance**

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66) to recipients of benefits determined under section 1382(e)(1)(B) of this title, on or after October 1, 1987, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to any calendar quarter which begins—

- (1) after October 1, 1987, or, if later
- (2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

- (3) continue to make such supplementary payments to recipients of benefits so determined, and
- (4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with July 1988) that—

(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under sec-

tion 1382(e)(1)(B) of this title for that particular month,

is not less than—

(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

(i) in a case to which clause (i) of such section 1382(e)(1)(B) of this title applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by \$5, and

(ii) in a case to which clause (iii) of such section 1382(e)(1)(B) of this title applies, by \$10.

(Aug. 14, 1935, ch. 531, title XVI, §1618, as added Pub. L. 94-585, §2(a), Oct. 21, 1976, 90 Stat. 2901; amended Pub. L. 97-248, title I, §186, Sept. 3, 1982, 96 Stat. 407; Pub. L. 97-377, title I, §147, Dec. 21, 1982, 96 Stat. 1917; Pub. L. 98-21, title IV, §402, Apr. 20, 1983, 97 Stat. 139; Pub. L. 98-369, div. B, title VI, §2663(g)(9), July 18, 1984, 98 Stat. 1169; Pub. L. 99-272, title XII, §12201(a), Apr. 7, 1986, 100 Stat. 289; Pub. L. 100-203, title IX, §9119(b), Dec. 22, 1987, 101 Stat. 1330-309; Pub. L. 103-296, title I, §107(a)(4), title II, §209(a), Aug. 15, 1994, 108 Stat. 1478, 1517.)

REFERENCES IN TEXT

Sections 211(a)(1)(A) and 212(a) of Public Law 93-66, referred to in subsecs. (a), (e)(1), (f), and (g), are sections 211(a)(1)(A) and 212(a) of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 154, 155, as amended, which are set out as notes under section 1382 of this title.

Section 5041 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (b)(2), is section 5041 of Pub. L. 101-508, title V, Nov. 5, 1990, 104 Stat. 1388-227, which is not classified to the Code.

Section 111 of the Social Security Amendments of 1983, referred to in subsec. (e)(2), is section 111 of Pub. L. 98-21, title I, Apr. 20, 1983, 97 Stat. 72, which amended sections 402, 403, 415, and 430 of this title and enacted provisions set out as notes under sections 402 and 415 of this title and section 5123 of Title 38, Veterans' Benefits.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-296, §107(a)(4), substituted "Commissioner of Social Security" for "Secretary".

Subsec. (b). Pub. L. 103-296, §209(a), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103-296, §107(a)(4), in subsec. (b) as amended by Pub. L. 103-296, §209(a), substituted "Commissioner of Social Security" for "Secretary" in two places.

Subsecs. (d), (f), (g). Pub. L. 103-296, §107(a)(4), substituted "Commissioner of Social Security" for "Secretary".

1987—Subsec. (g). Pub. L. 100-203 added subsec. (g).

1986—Subsec. (f). Pub. L. 99-272 added subsec. (f).

1984—Subsec. (d). Pub. L. 98-369, §2663(g)(9)(A), realigned margin of subsec. (d).

Pub. L. 98-369, §2663(g)(9)(B), (C), struck out the comma after "levels of its", and inserted a comma after "1980" and after "1976", wherever appearing.

1983—Subsecs. (c), (d). Pub. L. 98-21 redesignated subsec. (c), added by Pub. L. 97-377, as (d).

Subsec. (e). Pub. L. 98-21 added subsec. (e).

1982—Subsec. (c). Pub. L. 97-377 added subsec. (c) relating to conditions under which the Secretary shall

not find that a State has failed to meet the requirements of subsec. (a)(4) of this section concerning levels of supplementary payments.

Pub. L. 97-248 added subsec. (c) relating to conditions under which a State may elect to apply subsec. (a)(4) of this section.

#### 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 II, §209(b), Aug. 15, 1994, 108 Stat. 1517, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to increases in the level of supplemental security income benefits under title XVI of the Social Security Act [this subchapter] whether occurring before, on, or after the date of the enactment of this Act [Aug. 15, 1994]."

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective July 1, 1988, see section 9119(c) of Pub. L. 100-203, set out as a note under section 1382 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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

Pub. L. 94-585, §2(c), Oct. 21, 1976, 90 Stat. 2902, provided that: "The provisions of this section [enacting this section and provisions set out as a note under section 1382e of this title] shall be effective with respect to benefits payable for months after June 1977."

#### 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.

### § 1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment

#### (a) Eligible individuals

(1) Except as provided in section 1383(j) of this title, any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382 of this title (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Commissioner of Social Security ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1382 of this title) equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered to be receiving supplemental security income benefits under this subchapter, for so long as—

(A) such individual continues to have the disabling physical or mental impairment on

the basis of which such individual was found to be under a disability; and

(B) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 of this title and such individual meets all other non-disability-related requirements for eligibility for benefits under this subchapter.

(2) The Commissioner of Social Security shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.

#### (b) Blind or disabled individuals receiving supplemental security income benefits

(1) Except as provided in section 1383(j) of this title, for purposes of subchapter XIX of this chapter, any individual who was determined to be a blind or disabled individual eligible to receive a benefit under section 1382 of this title or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this subchapter (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Commissioner of Social Security determines under regulations that—

(A) such individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, meets all non-disability-related requirements for eligibility for benefits under this subchapter;

(B) the income of such individual would not, except for his earnings and increases pursuant to section 415(i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments);

(C) the termination of eligibility for benefits under subchapter XIX of this chapter would seriously inhibit his ability to continue his employment; and

(D) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under this subchapter (including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance), which would be available to him in the absence of such earnings.

(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.