

tion 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

“Fiscal Service” substituted for “Division of Disbursement” in subsec. (b)(3) on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into Fiscal Service of Treasury Department. See section 306 of Title 31, Money and Finance.

NONDUPLICATION OF PAYMENTS TO STATES: PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89-97, set out as a note under section 1396b of this title.

**§ 304. Stopping payment on deviation from required provisions of plan or failure to comply therewith**

In the case of any State plan which has been approved under this subchapter by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 302(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 302(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title I, § 4, 49 Stat. 622; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86-778, title VI, § 601(e), Sept. 13, 1960, 74 Stat. 991; Pub. L. 90-248, title II, § 245, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEAL OF SECTION

*Pub. L. 92-603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.*

AMENDMENTS

1968—Pub. L. 90-248 inserted “(or, in his discretion, that payments will be limited to categories under or

parts of the State plan not affected by such failure)” after “further payments will not be made to the State” and substituted in last sentence “further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)” for “further certification to the Secretary of the Treasury with respect to such State”.

1960—Pub. L. 86-778 substituted “State plan which has been approved under this subchapter” for “State plan for old-age assistance which has been approved”.

1950—Act Aug. 28, 1950, substituted “Administrator” for “Board”, and “he”, “him”, or “his” for “it”, or “its”, wherever appearing.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-778 effective Oct. 1, 1960, see section 604 of Pub. L. 86-778, set out as a note under section 301 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

**§ 305. Omitted**

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title I, § 5, 49 Stat. 622, made an appropriation for the fiscal year ending June 30, 1936.

**§ 306. Definitions**

(a) For the purposes of this subchapter, the term “old-age assistance” means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 302 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for

determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of assistance under such plan.

(b), (c) Repealed. Pub. L. 97-35, title XXI, §2184(a)(5), Aug. 13, 1981, 95 Stat. 817.

(Aug. 14, 1935, ch. 531, title I, §6, 49 Stat. 622; Aug. 10, 1939, ch. 666, title I, §103, 53 Stat. 1362; Aug. 28, 1950, ch. 809, title III, pt. 1, §303(a), 64 Stat. 549; Pub. L. 86-778, title VI, §601(f), Sept. 13, 1960, 74 Stat. 991; Pub. L. 87-543, title I, §156(a), July 25, 1962, 76 Stat. 207; Pub. L. 89-97, title II, §§221(a)(1), (2), 222(a), title IV, §402(a), July 30, 1965, 79 Stat. 356, 360, 415; Pub. L. 92-603, title IV, §§408(a), 409(a), Oct. 30, 1972, 86 Stat. 1489, 1490; Pub. L. 97-35, title XXI, §2184(a)(5), Aug. 13, 1981, 95 Stat. 817.)

#### REPEAL OF SECTION

*Pub. L. 92-603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.*

#### AMENDMENTS

1981—Subsecs. (b), (c). Pub. L. 97-35 struck out subsecs. (b) and (c) which defined “medical assistance for the aged” and “Federal medical percentage”, respectively.

1972—Subsec. (a). Pub. L. 92-603 authorized the State, at its option, to include within term “old-age assistance” provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Subsec. (a). Pub. L. 89-97, §221(a)(1), struck out from definition of “old-age assistance” the exclusion of (1) payments to or medical care in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases, or (2) payments to any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof, or (3) medical care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, as a result of such diagnosis, for forty-two days.

Pub. L. 89-97, §402(a), extended definition of “old-age assistance” to include payments made on behalf of the recipient to an individual who (as determined in accordance with the standards prescribed by the Secretary) is interested in or concerned with the welfare of the recipient and inserted an enumeration of the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs, special efforts to protect welfare, periodic review, and opportunity for fair hearing.

Subsec. (b). Pub. L. 89-97, §§221(a)(2), 222(a), struck out from provision at end of cl. (12) excluding certain payments from definition of “medical assistance for the aged” payments with respect to care or services for any individual who is a patient in an institution for tuberculosis or mental diseases or for any individual who is a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, for forty-two days and inserted in text preceding cl. (1) “(except, for any month, for recipients of old-age assistance who are admitted to or discharged from a medical institution during such month)” after “who are not recipients of old-age assistance”, respectively.

1962—Subsec. (a). Pub. L. 87-543, §156(a)(1), inserted “(if provided in or after the third month before the month in which the recipient makes application for assistance)” before “medical care”.

Subsec. (b). Pub. L. 87-543, §156(a)(2), inserted “(if provided in or after the third month before the month in which the recipient makes application for assistance)” after “care and services”.

1960—Subsec. (a). Pub. L. 86-778, §601(f)(1), (2), designated existing provisions as subsec. (a) and inserted provisions excluding from definition of “old-age assistance” any care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in an institution, as a result of such diagnosis, for forty-two days.

Subsecs. (b), (c). Pub. L. 86-778, §601(f)(2), added subsecs. (b) and (c).

1950—Act Aug. 28, 1950, redefined “old-age assistance”.

1939—Act Aug. 10, 1939, inserted “needy” before “individuals who”.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221 of Pub. L. 89-97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89-97, set out as a note under section 302 of this title.

Pub. L. 89-97, title II, §222(c), July 30, 1965, 79 Stat. 360, provided that: “The amendments made by this section [amending this section and section 1385 of this title] shall apply in the case of expenditures under a State plan approved under title I or XVI of the Social Security Act [42 U.S.C. 301 et seq., 1381 et seq.] with respect to care and services provided under such plan after June 1965.”

Pub. L. 89-97, title IV, §402(e), July 30, 1965, 79 Stat. 418, provided that: “The amendments made by this section [amending this section and sections 1206, 1355, and

1385 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, X, XIV or XVI of the Social Security Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.].”

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-543, title I, §156(e), July 25, 1962, 76 Stat. 207, provided that: “The amendments made by this section [amending this section and sections 606, 1206, and 1355 of this title] shall apply in the case of applications made after September 30, 1962, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [42 U.S.C. 301 et seq., 601 et seq., 1201 et seq., 1351 et seq.].”

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-778 effective Oct. 1, 1960, see section 604 of Pub. L. 86-778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Act Aug. 28, 1950, ch. 809, title III, §303(b), 64 Stat. 549, provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 6 of the Social Security Act as so amended [clauses (a) or (b) of this section] shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952.”

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

AMENDMENTS

1956—Act Aug. 1, 1956, ch. 836, title I, §103(i), 70 Stat. 824, included disability insurance benefits in subchapter heading.

§ 401. Trust Funds

(a) Federal Old-Age and Survivors Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the “Federal Old-Age and Survivors Insurance Trust Fund”. The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1), and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939 (and covered into the Treasury) which are deposited into the Treasury by collectors of internal revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and before January 1, 1953, with respect to assessments of such taxes made before January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) of this subsection shall be transferred from time to time from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred from time to time from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection. All