

gard to the limitations specified in sections 409(a) and 411(b)(1) of this title” before “for the five”, and inserted last sentence authorizing the Secretary, in certain cases, to estimate the total of wages and self-employment income for purposes of cl. (B) indicating the extent such earnings exceed the limitations in sections 409(a) and 411(b)(1) of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. B, title II, §201(b), Dec. 19, 2014, 128 Stat. 4064, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to any individual who attains 65 years of age on or after the date that is 12 months after the date of the enactment of this Act [Dec. 19, 2014].”

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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(2)(A), (C) of Pub. L. 101-239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101-239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99-509 set out as a note under section 418 of this title.

Pub. L. 99-272, title XII, §12109(b), Apr. 7, 1986, 100 Stat. 287, provided that:

“(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97-35, amending this section].

“(2) The amendment made by subsection (a)(2) [amending this section] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act [42 U.S.C. 423(d)]) after the month in which this Act is enacted [April 1986].”

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title XXII, §2208(b), Aug. 13, 1981, 95 Stat. 840, provided that: “The amendments made by subsection (a) [amending this section] shall be effective with respect to individuals who first become entitled to benefits under section 223(a) of the Social Security Act [42 U.S.C. 423(a)] for months beginning after the month in which this Act is enacted [August 1981], but only in the case of an individual who became disabled within the meaning of section 223(d) of such Act after the sixth month preceding the month in which this Act is enacted.”

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 205(d) of Pub. L. 95-216 effective with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, see section 206 of Pub. L. 95-216, set out as a note under section 402 of this title.

Pub. L. 95-216, title III, §353(c)(1), Dec. 20, 1977, 91 Stat. 1553, provided that the amendment made by that section is effective with respect to the estimates for calendar years beginning after Dec. 31, 1977.

Amendment by section 353(c)(2) of Pub. L. 95-216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95-216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-603, title I, §119(c), Oct. 30, 1972, 86 Stat. 1352, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for months after December 1972.”

EFFECTIVE DATE OF 1968 AMENDMENTS; DETERMINATION OF AVERAGE CURRENT EARNINGS UPON REDETERMINATION OF BENEFITS SUBJECT TO REDUCTION

Pub. L. 90-248, title I, §159(b), Jan. 2, 1968, 81 Stat. 869, provided that:

“(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for months after January 1968.

“(2) For purposes of any redetermination which is made under section 224(f) of the Social Security Act [42 U.S.C. 424a(f)] in the case of benefits subject to reduction under section 224 of such Act, where such reduction as first computed was effective with respect to benefits for the month in which this Act is enacted [January 1968] or a prior month, the amendments made by subsection (a) of this section [amending subsec. (a) of this section] shall also be deemed to have applied in the initial determination of the ‘average current earnings’ of the individual whose wages and self-employment income are involved.”

EFFECTIVE DATE

Pub. L. 89-97, title III, §335, July 30, 1965, 79 Stat. 406, provided that this section is effective with respect to benefits under this subchapter for months after December 1965 based on the wages and self-employment income of individuals entitled to benefits under section 423 of this title whose period of disability (as defined in this subchapter) began after June 1, 1965.

**§ 425. Additional rules relating to benefits based on disability**

**(a) Suspension of benefits**

If the Commissioner of Social Security, on the basis of information obtained by or submitted to the Commissioner, believes that an individual entitled to benefits under section 423 of this title, or that a child who has attained the age of eighteen and is entitled to benefits under section 402(d) of this title, or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower or surviving divorced husband who has not attained age 60 and is entitled to benefits under section 402(f) of this title, may have ceased to be under a disability, the Commissioner of Social Security may suspend the payment of benefits under such section 402(d), 402(e), 402(f), or 423 of this title until it is determined (as provided in section 421 of this title) whether or not such individual’s disability has ceased or until the Commissioner of Social Security believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 421(b) of this title, the Commissioner of Social Security shall promptly notify the appropriate State of the Commissioner’s action under this subsection and shall request a prompt determination of whether such individual’s disability has ceased. For purposes of this subsection, the term “disability” has the meaning assigned to such term in section 423(d) of this title. Whenever the bene-

fits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).

**(b) Continued payments during rehabilitation program**

Notwithstanding any other provision of this subchapter, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement to such benefits is based, has or may have ceased, if—

(1) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b-19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(2) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

**(c) Access to information held by payroll data providers**

(1) The Commissioner of Social Security may require each individual who applies for or is entitled to monthly insurance benefits under subsections (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), and (f)(1)(B)(ii) of section 402 of this title and subsection (a)(1) of section 423 of this title to provide authorization by the individual for the Commissioner to obtain from any payroll data provider (as defined in section 1320e-3(c)(1) of this title) any record held by the payroll data provider with respect to the individual whenever the Commissioner determines the record is needed in connection with a determination of initial or ongoing entitlement to such benefits.

(2) An authorization provided by an individual under this subsection shall remain effective until the earliest of—

(A) the rendering of a final adverse decision on the individual's application or entitlement to benefits under this subchapter;

(B) the termination of the individual's entitlement to benefits under this subchapter; or

(C) the express revocation by the individual of the authorization, in a written notification to the Commissioner.

(3) The Commissioner of Social Security is not required to furnish any authorization obtained pursuant to this subsection to the payroll data provider.

(4) The Commissioner shall inform any person who provides authorization pursuant to this

clause of the duration and scope of the authorization.

(5) If an individual who applies for or is entitled to benefits under this subchapter refuses to provide, or revokes, any authorization under this subsection, subsection (d) shall not apply to such individual beginning with the first day of the first month in which he or she refuses or revokes such authorization.

**(d) Reporting responsibilities for beneficiaries subject to information exchange with payroll data provider**

An individual who has authorized the Commissioner of Social Security to obtain records from a payroll data provider under subsection (c) shall not be subject to a penalty under section 1320a-8a of this title for any omission or error with respect to such individual's wages as reported by the payroll data provider.

(Aug. 14, 1935, ch. 531, title II, §225, as added Aug. 1, 1956, ch. 836, title I, §103(a), 70 Stat. 817; amended Pub. L. 85-840, title II, §205(o), Aug. 28, 1958, 72 Stat. 1025; Pub. L. 89-97, title III, §306(c)(15), July 30, 1965, 79 Stat. 373; Pub. L. 90-248, title I, §§104(d)(5), 158(c)(9), Jan. 2, 1968, 81 Stat. 833, 869; Pub. L. 92-603, title I, §107(b)(5), Oct. 30, 1972, 86 Stat. 1343; Pub. L. 96-265, title III, §301(a), June 9, 1980, 94 Stat. 449; Pub. L. 98-21, title III, §309(p), Apr. 20, 1983, 97 Stat. 117; Pub. L. 101-508, title V, §5113(a), Nov. 5, 1990, 104 Stat. 1388-273; Pub. L. 103-296, title I, §107(a)(4), title II, §201(a)(3)(A), Aug. 15, 1994, 108 Stat. 1478, 1494; Pub. L. 104-121, title I, §105(a)(4), Mar. 29, 1996, 110 Stat. 853; Pub. L. 106-170, title I, §101(b)(1)(D), Dec. 17, 1999, 113 Stat. 1873; Pub. L. 114-74, title VIII, §824(b)(1), (c)(1), Nov. 2, 2015, 129 Stat. 608, 609.)

AMENDMENTS

2015—Subsec. (c). Pub. L. 114-74, §824(b)(1), added subsec. (c).

Subsec. (d). Pub. L. 114-74, §824(c)(1), added subsec. (d).

1999—Subsec. (b)(1). Pub. L. 106-170 substituted “a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b-19 of this title or another program of vocational rehabilitation services, employment services, or other support services” for “a program of vocational rehabilitation services”.

1996—Subsec. (c). Pub. L. 104-121 struck out subsec. (c) which related to nonpayment or termination of benefits where entitlement involved alcoholism or drug addiction.

1994—Pub. L. 103-296, §201(a)(3)(A)(i), amended section catchline.

Subsec. (a). Pub. L. 103-296, §201(a)(3)(A)(i), inserted heading.

Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “to the Commissioner” for “to him”, and “the Commissioner’s” for “his”.

Subsec. (b). Pub. L. 103-296, §201(a)(3)(A)(ii), inserted heading.

Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” in pars. (1) and (2).

Subsec. (c). Pub. L. 103-296, §201(a)(3)(A)(iii), added subsec. (c).

Pub. L. 103-296, §107(a)(4), in subsec. (c) as added by Pub. L. 103-296, §201(a)(3)(A)(iii), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “Commissioner’s” for “Secretary’s” wherever appearing.

1990—Subsec. (b)(1). Pub. L. 101-508, §5113(a)(1), added par. (1) and struck out former par. (1) which read as fol-

lows: “such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and”.

Subsec. (b)(2). Pub. L. 101-508, § 5113(a)(2), substituted “Secretary” for “Commissioner of Social Security”.

1983—Subsec. (a). Pub. L. 98-21 inserted “or surviving divorced husband” after “widower”.

1980—Pub. L. 96-265 designated existing provisions as subsec. (a), made conforming amendments in subsec. (a) as so designated, and added subsec. (b).

1972—Pub. L. 92-603 substituted “age 60” for “age 62”.

1968—Pub. L. 90-248 in first sentence inserted “or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower who has not attained age 62 and is entitled to benefits under section 402(f) of this title,” after “section 402(d) of this title,” and substituted “402(d), 402(e), 402(f), or 423” for “423 or 402(d)”, and substituted in third sentence reference to “423(d)” for “423(c)(2)”.

1965—Pub. L. 89-97 inserted “The first sentence of this section shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).”

1958—Pub. L. 85-840 provided that whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-74, title VIII, § 824(e), Nov. 2, 2015, 129 Stat. 610, provided that: “The amendments made by this section [enacting section 1320e-3 of this title and amending this section and section 1383 of this title] shall take effect on the date that is 1 year after the date of the enactment of this Act [Nov 2, 2015].”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106-170, see section 101(c) of Pub. L. 106-170, set out as an Effective Date note under section 1320b-19 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 applicable to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule for any individual who applied, and whose claim has been finally adjudicated, before Mar. 29, 1996, see section 105(a)(5) of Pub. L. 104-121, set out as a note under section 405 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT; SUNSET PROVISION

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, § 201(a)(3)(C), (E), Aug. 15, 1994, 108 Stat. 1497, provided that:

“(C) SUNSET OF 36-MONTH RULE.—Section 225(c)(7) of the Social Security Act [42 U.S.C. 425(c)(7)] (added by subparagraph (A)) shall cease to be effective with respect to benefits for months after September 2004.

“(E) EFFECTIVE DATE.—

“(i) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this paragraph [amending this section and sections 426 and 426-1 of this title] shall apply with respect to benefits based on disability (as defined in section 225(c)(9) of the Social Security Act [42 U.S.C. 425(c)(9)], added by

this section) which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after the date of the enactment of this Act.

“(ii) REFERRAL AND MONITORING AGENCIES.—Section 225(c)(5) of the Social Security Act [42 U.S.C. 425(c)(5)] (added by this subsection) shall take effect 180 days after the date of the enactment of this Act.

“(iii) TERMINATION AFTER 36 MONTHS.—Section 225(c)(7) of the Social Security Act [42 U.S.C. 425(c)(7)] (added by this subsection) shall apply with respect to benefits based on disability (as so defined) for months beginning after 180 days after the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title V, § 5113(c), Nov. 5, 1990, 104 Stat. 1388-273, provided that: “The amendments made by this section [amending this section and section 1383 of this title] shall be effective with respect to benefits payable for months after the eleventh month following the month in which this Act is enacted [November 1990] and shall apply only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month.”

#### 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 1980 AMENDMENT

Pub. L. 96-265, title III, § 301(c), June 9, 1980, 94 Stat. 450, provided that: “The amendments made by this section [amending this section and section 1383 of this title] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to individuals whose disability has not been determined to have ceased prior to such first day.”

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-603 applicable with respect to monthly benefits under this subchapter for months after December 1972, with specified exceptions, see section 107(c) of Pub. L. 92-603, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104(d)(5) of Pub. L. 90-248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90-248, set out as a note under section 402 of this title.

Amendment by section 158(c)(9) of Pub. L. 90-248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90-248, set out as a note under section 423 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(o) of Pub. L. 85-840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85-840, set out as a note under section 416 of this title.

#### EFFECTIVE DATE

Section applicable only with respect to monthly benefits under this subchapter for months after June 1957,

see section 103(a) of act Aug. 1, 1956, set out as a note under section 423 of this title.

REPORT ON REFERRAL, MONITORING, TESTING AND TREATMENT OF INDIVIDUALS WHERE ENTITLEMENT TO OR TERMINATION OF BENEFITS INVOLVES ALCOHOLISM OR DRUG ADDICTION

Pub. L. 103-296, title II, §201(a)(3)(B), Aug. 15, 1994, 108 Stat. 1497, provided that not later than Dec. 31, 1996, the Secretary was to submit to Congress a full and complete report on the Secretary's activities under former subsec. (c)(5) of this section, which was to include the number and percentage of individuals referred to in such provision who had not received regular drug testing since the effective date of such provision, prior to repeal by Pub. L. 105-33, title V, §5525(c), Aug. 5, 1997, 111 Stat. 625.

TRANSITION RULES FOR CURRENT BENEFICIARIES

Pub. L. 103-296, title II, §201(a)(3)(F), Aug. 15, 1994, 108 Stat. 1498, provided that: "In any case in which an individual is entitled to benefits based on disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability—

"(i) TREATMENT REQUIREMENT.—Paragraphs (1) through (4) of section 225(c) of the Social Security Act [42 U.S.C. 425(c)(1)-(4)] (added by this subsection) shall apply only with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary's determination and that such individual is therefore required to comply with the provisions of section 225(c) of such Act.

"(ii) TERMINATION AFTER 36 MONTHS.—

"(I) IN GENERAL.—For purposes of section 225(c)(7) of the Social Security Act [42 U.S.C. 425(c)(7)] (added by this subsection), the first month of entitlement beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994] shall be treated as the individual's first month of entitlement to such benefits.

"(II) CONCURRENT BENEFICIARIES CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI [42 U.S.C. 1381 et seq.] and, as of 180 days after the date of the enactment of this Act, such individual is undergoing treatment required under section 1611(e)(3) of the Social Security Act [42 U.S.C. 1382(e)(3)] (as in effect immediately before the date of the enactment of this Act), the Secretary of Health and Human Services shall notify such individual of the provisions of section 225(c)(7) of the Social Security Act (added by this subsection) not later than 180 days after the date of the enactment of this Act.

"(III) CONCURRENT BENEFICIARIES NOT CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI but, as of 180 days after the date of the enactment of this Act, such individual is not undergoing treatment described in subclause (II), section 225(c)(7) (added by this subsection) shall apply only with respect to benefits for months after the month in which treatment required under section 1611(e)(3) of the Social Security Act (as amended by subsection (b)) is available, as determined under regulations of the Secretary of Health and Human Services, and the Secretary notifies such individual of the availability of such treatment and describes in such no-

tification the provisions of section 225(c)(7) of the Social Security Act (added by this subsection)."

DEMONSTRATION PROJECTS RELATING TO REFERRAL, MONITORING, AND TREATMENT FOR ALCOHOLICS OR DRUG ADDICTS

Pub. L. 103-296, title II, §201(c), Aug. 15, 1994, 108 Stat. 1506, related to demonstration projects relating to referral, monitoring, and treatment for alcoholics or drug addicts, prior to repeal by Pub. L. 104-121, title I, §105(c), Mar. 29, 1996, 110 Stat. 855.

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment of sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98-460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98-460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

§ 426. Entitlement to hospital insurance benefits

(a) Individuals over 65 years

Every individual who—

(1) has attained age 65, and

(2)(A) is entitled to monthly insurance benefits under section 402 of this title, would be entitled to those benefits except that he has not filed an application therefor (or application has not been made for a benefit the entitlement to which for any individual is a condition of entitlement therefor), or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month, and, in conformity with regulations of the Secretary, files an application for hospital insurance benefits under part A of subchapter XVIII,

(B) is a qualified railroad retirement beneficiary, or

(C)(i) would meet the requirements of subparagraph (A) upon filing application for the monthly insurance benefits involved if medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and (ii) files an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII,

shall be entitled to hospital insurance benefits under part A of subchapter XVIII for each month for which he meets the condition specified in paragraph (2), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) Individuals under 65 years

Every individual who—

(1) has not attained age 65, and

(2)(A) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 423 of this title or (ii) child's insurance benefits under section 402(d) of this title by reason of a disability (as defined in section 423(d) of this title) or (iii)