

**§ 404.458**

termination of Title I of the First War Powers Act, 1941, on or in connection with any vessel as an officer or crew member; and

(2) The services were performed in the employ of the United States and employment was through the War Shipping Administration or, for services performed before February 11, 1942, through the United States Maritime Commission; and

(3) The services, under the provisions of § 404.1041 of this part, constituted employment for the purposes of title II of the Social Security Act; and

(4) The taxes imposed (by section 1400 of the Internal Revenue Code of 1939, as amended) with respect to such services were neither deducted from the individual's wages nor paid by the employer.

(b) *Amount of deduction.* The deduction required by paragraph (a) of this section is an amount equal to 1 percent of the wages with respect to which the taxes described in paragraph (a)(4) of this section were neither deducted nor paid by the employer.

(c) *How deduction is made.* The deduction required by paragraph (a) of this section is made by withholding an amount as determined under paragraph (b) of this section from any monthly benefit or lump-sum death payment based on the earnings record of the individual who performed the services described in paragraph (a) of this section.

[32 FR 19159, Dec. 20, 1967, as amended at 65 FR 16813, Mar. 30, 2000]

**§ 404.458 Limiting deductions where total family benefits payable would not be affected or would be only partly affected.**

Notwithstanding the provisions described in §§ 404.415, 404.417, 404.421, 404.451, and 404.453 about the amount of the deduction to be imposed for a month, no such deduction is imposed for a month when the benefits payable for that month to all persons entitled to benefits on the same earnings record and living in the same household remain equal to the maximum benefits payable to them on that earnings record. Where making such deductions and increasing the benefits to others in the household (for the month in which the deduction event occurred) would

give members of the household less than the *maximum* (as determined under § 404.404) payable to them, the amount of deduction imposed is reduced to the difference between the maximum amount of benefits payable to them and the total amount which would have been paid if the benefits of members of the household not subject to deductions were increased for that month. The individual subject to the deduction for such month may be paid the difference between the deduction so reduced and his benefit as adjusted under § 404.403 (without application of § 404.402(a)). All other persons in the household are paid, for such month, their benefits as adjusted under § 404.403 without application of § 404.402(a).

[47 FR 43673, Oct. 4, 1982, as amended at 68 FR 15659, Apr. 1, 2003; 68 FR 40123, July 7, 2003]

**§ 404.459 Penalty for making false or misleading statements or withholding information.**

(a) *Why would SSA penalize me?* You will be subject to a penalty if:

(1) You make, or cause to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, that you know or should know is false or misleading; or

(2) You make a statement or representation of a material fact for use as described in paragraph (a)(1) of this section with knowing disregard for the truth; or

(3) You omit from a statement or representation made for use as described in paragraph (a)(1) of this section, or otherwise withhold disclosure (for example, fail to come forward to notify us) of, a fact which you know or should know is material to the determination of any initial or continuing right to, or the amount of, monthly insurance benefits under title II or benefits or payments under title XVI, if you know, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading.

(b) *What is the penalty?* The penalty is nonpayment of benefits under title II

that we would otherwise pay you and ineligibility for cash benefits under title XVI (including State supplementary payments made by SSA according to § 416.2005).

(c) *How long will the penalty last?* The penalty will last—

(1) Six consecutive months the first time we penalize you;

(2) Twelve consecutive months the second time we penalize you; and

(3) Twenty-four consecutive months the third or subsequent time we penalize you.

(d) *Will this penalty affect any of my other government benefits?* If we penalize you, the penalty will apply only to your eligibility for benefits under titles II and XVI (including State supplementary payments made by us according to § 416.2005). The penalty will not affect—

(1) Your eligibility for benefits that you would otherwise be eligible for under titles XVIII and XIX but for the imposition of the penalty; and

(2) The eligibility or amount of benefits payable under titles II or XVI to another person. For example, another person (such as your spouse or child) may be entitled to benefits under title II based on your earnings record. Benefits would still be payable to that person to the extent that you would be receiving such benefits but for the imposition of the penalty. As another example, if you are receiving title II benefits that are limited under the family maximum provision (§ 404.403) and we stop your benefits because we impose a penalty on you, we will not increase the benefits of other family members who are limited by the family maximum provision simply because you are not receiving benefits because of the penalty.

(e) *How will SSA make its decision to penalize me?* In order to impose a penalty on you, we must find that you knowingly (knew or should have known or acted with knowing disregard for the truth) made a false or misleading statement or omitted or failed to report a material fact if you knew, or should have known, that the omission or failure to disclose was misleading. We will base our decision to penalize you on the evidence and the reasonable inferences that can be drawn from that

evidence, not on speculation or suspicion. Our decision to penalize you will be documented with the basis and rationale for that decision. In determining whether you knowingly made a false or misleading statement or omitted or failed to report a material fact so as to justify imposition of the penalty, we will consider all evidence in the record, including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time. In determining whether you acted knowingly, we will also consider the significance of the false or misleading statement or omission or failure to disclose in terms of its likely impact on your benefits.

(f) *What should I do if I disagree with SSA's initial determination to penalize me?* If you disagree with our initial determination to impose a penalty, you have the right to request reconsideration of the penalty decision as explained in § 404.907. We will give you a chance to present your case, including the opportunity for a face-to-face conference. If you request reconsideration of our initial determination to penalize you, you have the choice of a case review, informal conference, or formal conference, as described in § 416.1413(a) through (c). If you disagree with our reconsidered determination you have the right to follow the normal administrative and judicial review process by requesting a hearing before an administrative law judge, Appeals Council review and Federal court review, as explained in § 404.900.

(g) *When will the penalty period begin and end?* Subject to the additional limitations noted in paragraphs (g)(1) and (g)(2) of this section, the penalty period will begin the first day of the month for which you would otherwise receive payment of benefits under title II or title XVI were it not for imposition of the penalty. Once a sanction begins, it will run continuously even if payments are intermittent. If more than one penalty has been imposed, but they have not yet run, the penalties will not run concurrently.

(1) If you do not request reconsideration of our initial determination to penalize you, the penalty period will begin no earlier than the first day of

the second month following the month in which the time limit for requesting reconsideration ends. The penalty period will end on the last day of the final month of the penalty period. For example, if the time period for requesting reconsideration ends on January 10, a 6-month period of nonpayment begins on March 1 if you would otherwise be eligible to receive benefits for that month, and ends on August 31.

(2) If you request reconsideration of our initial determination to penalize you and the reconsidered determination does not change our original decision to penalize you, the penalty period will begin no earlier than the first day of the second month following the month we notify you of our reconsidered determination. The penalty period will end on the last day of the final month of the penalty period. For example, if we notify you of our reconsidered determination on August 31, 2001, and you are not otherwise eligible for payment of benefits at that time, but would again be eligible to receive payment of benefits on October 1, 2003, a 6-month period of nonpayment would begin on October 1, 2003 and end on March 31, 2004.

[65 FR 42285, July 10, 2000, as amended at 71 FR 61407, Oct. 18, 2006]

**§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.**

(a) *Nonpayment of monthly benefits to aliens outside the United States more than 6 months.* Except as described in paragraph (b) and subject to the limitations in paragraph (c) of this section after December 1956 no monthly benefit may be paid to any individual who is not a citizen or national of the United States, for any month after the sixth consecutive calendar month during all of which he is outside the United States, and before the first calendar month for all of which he is in the United States after such absence. (See § 404.380 regarding special payments at age 72.)

(1) For nonpayment of benefits under this section, it is necessary that the beneficiary be an alien, and while an alien, be outside the United States for more than six full consecutive calendar months. In determining whether, at

the time of a beneficiary's initial entitlement to benefits, he or she has been outside the United States for a period exceeding six full consecutive calendar months, not more than the six calendar months immediately preceding the month of initial entitlement may be considered. For the purposes of this section, *outside the United States* means outside the territorial boundaries of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) Effective with 6-month periods beginning after January 2, 1968, after an alien has been outside the United States for any period of 30 consecutive days, he is deemed to be outside the United States continuously until he has returned to the United States and remained in the United States for a period of 30 consecutive days.

(3) Payments which have been discontinued pursuant to the provisions of this section will not be resumed until the alien beneficiary has been in the United States for a full calendar month. A full calendar month includes 24 hours of each day of the calendar month.

(4) Nonpayment of benefits to an individual under this section does not cause nonpayment of benefits to other persons receiving benefits based on the individual's earnings record.

*Example:* R, an alien, leaves the United States on August 15, 1967, and returns on February 1, 1968. He leaves again on February 15, 1968, and does not return until May 15, 1968, when he spends 1 day in the United States. He has been receiving monthly benefits since July 1967.

R's first 6-month period of absence begins September 1, 1967. Since this period begins before January 2, 1968, his visit (Feb. 1, 1968, to Feb. 15, 1968) to the United States for less than 30 consecutive days is sufficient to break this 6-month period.

R's second 6-month period of absence begins March 1, 1968. Since this period begins after January 2, 1968, and he was outside the United States for 30 consecutive days, he must return and spend 30 consecutive days in the United States prior to September 1, 1968, to prevent nonpayment of benefits beginning September 1968. If R fails to return to the United States for 30 consecutive days prior to September 1, 1968, payments will be discontinued and will not be resumed until R