current operating procedures since those procedures already conform to the 1984 legislation.

Hostile Fire Pay

Although it is unlikely that an active member of the uniformed services would apply or be eligible for SSI benefits, some military service members have spouses and children who apply for and receive SSI benefits.

Under section 209(d) of the Act, basic pay is the only form of compensation to members of the uniformed services that is treated as wages for title II purposes. Under section 1612(a)(1) of the Act, earned income in the form of wages for SSI purposes is the same as wages for the title II annual earnings test. Therefore, basic pay is the only form of military compensation that is treated as wages, and hence, as earned income, for SSI purposes.

All other forms of compensation to members of the uniformed services are considered unearned income. These other forms of compensation include allowances paid in cash for food, clothing, and shelter; free food, clothing, and shelter; and special and incentive

pay.

One form of special pay is hostile fire pay, which is authorized under 37 U.S.C. 310. Hostile fire pay is a type of special pay to a service member who, for any month he/she is entitled to basic pay, is:

- Subject to hostile fire or explosion of hostile mines; or
- On duty in an area in which he/she is in imminent danger of being exposed to hostile fire or explosion of hostile mines, and

While on duty in that area, other service members in the same area are subject to hostile fire or explosion of hostile mines; or

 Killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

Section 13733(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. 103–66, amended section 1612(b) of the Act to exclude from income any hostile fire pay received in or after October 1993.

Current regulations do not reflect the exclusion from income of hostile fire pay for eligible individuals, but hostile fire pay has been excluded under SSI operating procedure since October 1, 1993. Moreover, under these instructions, such pay has been excluded in determining the income of ineligible spouses and parents whose income is deemed to eligible individuals.

In addition to adding to the regulations the statutorily required

exclusion of hostile fire pay from an eligible individual's income, we propose to include the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. The proposed inclusion reflects the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out hostile fire pay for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. The statutory exclusion of hostile fire pay would have little meaning if not applied to ineligible spouses and parents since, as noted above, it is unlikely that an active member of the uniformed services would be eligible for SSI.

Impairment-Related Work Expenses

Impairment-related work expenses (IRWE) are expenses for items or services which are directly related to enabling a person with a disability to work and which are necessarily incurred by that individual because of a physical or mental impairment as explained at regulations §§ 404.1576 and 416.976.

Prior to December 1, 1990, in determining countable income, an individual's IRWE were deducted from his/her earned income once eligibility was established without using this exclusion. Effective December 1, 1990, section 5033 of Public Law 101–508 amended section 1612(b)(4)(B)(ii) of the Act and liberalized the IRWE exclusion. The legislation allows an individual to use the IRWE exclusion to establish eligibility.

Regulations at § 416.1112(c)(6) recently have been revised to implement changes enacted by section 5033 of Public Law 101–508. These regulatory revisions were published in the Federal Register on August 12, 1994, at 59 FR 41400, 41405.

Regulations at § 416.1161(a) list the types of income that are excluded from the income of an ineligible spouse and ineligible parent for deeming purposes. IRWE are not included in this list, but IRWE have been excluded from the income of ineligible spouses and

ineligible parents under SSI operating procedures since 1990.

We propose to add to the regulations the current operating procedure which is to exclude IRWE when determining the countable income of an ineligible spouse or ineligible parent for deeming purposes. By specifically singling out IRWE for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. The proposed regulations would reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances.

Interest and Appreciation in Value of Excluded Burial Funds and Burial Space Purchase Agreements

Effective November 1, 1982, section 185 of Public Law 97–248 amended the Act to provide that any interest earned on excluded burial funds and any appreciation in the value of excluded burial arrangements left to accumulate, may be excluded from income by regulation. Effective April 1, 1990, section 8013 of Pub. L. 101–239 amended the Act to provide that interest earned on the value of agreements representing the purchase of excluded burial spaces is excluded from income if left to accumulate.

Regulations at § 416.1124(c)(9) implement the exclusion of interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements, effective November 1, 1982. Regulations at § 416.1124(c)(15) implement the exclusion of any interest earned on the value of agreements representing the purchase of excluded burial spaces, effective April 1, 1990.

Regulations at § 416.1161(a) (relating to the treatment of income of an ineligible spouse or ineligible parent) do not apply these exclusions for purposes of deeming income, but both types of interest and appreciation have been excluded from the income of ineligible spouses and ineligible parents under SSI operating procedure.

We propose to add to the regulations the current operating procedure which is to exclude interest on burial funds, appreciation in the value of burial arrangements, and interest on the value of burial space purchase agreements,