

(6) To determine 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 SSI benefits are not less than the State's expenditures for the payments in the preceding 12-month period, in computing the State's expenditures, we disregard, pursuant to a one-time election of the State, all expenditures by the State for the retroactive supplementary payments that are required to be made under the *Sullivan v. Zebley*, 493 U.S. 521 (1990) class action.

(d) *Payments to residents to Medicaid facilities.* A Medicaid facility is a medical care facility where Medicaid pays more than 50 percent of the cost of a person's care. In order to be eligible to receive Medicaid reimbursement, any State that has a supplementary payment level for residents of Medicaid facilities on or after October 1, 1987, must have in effect an agreement with the Commissioner to maintain such supplementary payment level at least equal to the October 1987 level (or if a State first makes such supplementary payments after October 1, 1987, but before July 1, 1988, the level for the first month the State makes such supplementary payments).

[52 FR 36241, Sept. 28, 1987, as amended at 54 FR 19165, May 4, 1989; 56 FR 55453, Oct. 28, 1991; 62 FR 30984, June 6, 1997; 62 FR 38455, July 18, 1997; 65 FR 16815, Mar. 30, 2000]

**§ 416.2097 Combined supplementary/SSI payment levels.**

(a) Other than the level for residents of Medicaid facilities (see paragraph (d) of this section), the combined supplementary/SSI payment level for each payment category that must be provided in any month after March 1983 (or if a State first made supplementary payments after March 1983, the combined supplementary SSI payment levels in effect the first month the State made supplementary payments) in order for a State to meet the requirement of the first sentence of § 416.2096(b) is the sum of—

(1) The SSI Federal benefit rate (FBR) for March 1983 for a recipient with no countable income;

(2) That portion of the July 1983 benefit increase computed in accordance with paragraph (b) of this section;

(3) The full amount of all SSI benefit increases after July 1983; and

(4) The State supplementary payment level for March 1983 as determined under § 416.2098.

(b) The monthly FBR's were increased in July 1983 by \$20 for an eligible individual and \$30 for an eligible couple, and the monthly increment for essential persons was increased by \$10 in lieu of the expected cost-of-living adjustment which was delayed until January 1984. However, in computing the required combined supplementary/SSI payment levels for the purpose of determining pass-along compliance, we use only the amounts by which the FBR's and the essential person increment would have increased had there been a cost-of-living adjustment in July 1983 (a 3.5 percent increase would have occurred). These amounts are \$9.70 for an eligible individual, \$14.60 for an eligible couple and \$4.50 for an essential person.

(c) For the 24-month period January 1, 1984, through December 31, 1985, a State will not be found out of compliance with respect to its payment levels if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels are not less than its supplementary payment levels in effect in December 1976 increased by the percentage by which the FBR has increased after December 1976 and before February 1986. The FBR for an individual in December 1976 was \$167.80. The FBR for an individual in effect on January 31, 1986, was \$336.00, an increase of 100.24 percent over the December 1976 FBR. In order for a State to take advantage of this provision for the 24-month period January 1, 1984, through December 31, 1985, the State supplementary payment levels in effect for calendar year 1986 must be at least 100.24 percent higher than the State supplementary payment levels in effect in December 1976. This provision does not apply to State supplementary payments to recipients in Federal living arrangement "D" (residents of a medical facility where title XIX pays more than 50 percent of the costs).

(d) The combined supplementary/SSI payment level which must be maintained for residents of Medicaid facilities is the State supplement payable on October 1, 1987, or if no such payments were made on October 1, 1987, the supplementary payment amount made in the first month that a supplementary payment was made after October 1987 but before July 1, 1988, plus the Federal benefit rate in effect in October 1987 increased by \$5 for an individual/\$10 for a couple effective July 1, 1988.

[52 FR 36242, Sept. 28, 1987, as amended at 54 FR 19165, May 4, 1989; 54 FR 23018, May 30, 1989]

**§ 416.2098 Supplementary payment levels.**

(a) *General.* For the purpose of determining the combined supplementary/SSI payment levels described in § 416.2097(a) (i.e., the levels that must be provided in any month after March 1983), the supplementary payment level, except for the level for residents of Medicaid facilities (see § 416.2097(d)), for each payment category must be no less than the total State payment for March 1983 for that payment category that a State provided an eligible individual (or couple) with no countable income in excess of the FBR for March 1983. For States that did not make supplementary payments in March 1983, the supplementary payment level for each payment category must be no less than the total State payment for the first month after March 1983 in which a State makes supplementary payments.

(b) *Calculation of the required mandatory minimum State supplementary payment level.* (1) Except for States described in paragraph (b)(2) of this section, the mandatory minimum State supplementary payment level for March 1983 is a recipient's December 1973 income, as defined in section 212(a)(3)(B) of Pub. L. 93-66, plus any State increases prior to April 1983, less any reductions made at any time after December 1973 due to changes in special needs or circumstances, less the March 1983 FBR. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later the amount calculated in the first sentence shall continue except that it may be

reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., \$10.30), so long as that reduction does not cause the mandatory minimum State supplementary level to fall below that required by section 212(a)(3)(A) of Pub. L. 93-66.

(2) Section 1618(c) of the Act permitted any State that had satisfied the requirements of section 1618 of the Act by the total-expenditures method for the 12-month period July 1, 1981, through June 30, 1982, and that elected to change and meet the section 1618 requirements by the maintenance-of-payment-levels method for the period July 1, 1982, through June 30, 1983, to do so by paying benefits at levels no lower than the levels of such payments in effect for December 1981. However, a recipient's December 1981 total income (December 1981 mandatory minimum State supplement plus the FBR) could not be less than the recipient's total income for December 1973 as defined in section 212(a)(3)(B) of Pub. L. 93-66. For a State that elected the option in the preceding two sentences, the mandatory minimum State supplementary payment level for March 1983 is a recipient's December 1981 total income (but not less than the total income for December 1973 as defined by section 212(a)(3)(B) of Pub. L. 93-66) plus any State increases after December 1981 and prior to April 1983, less any reductions made at any time after December 1981 due to changes in special needs or circumstances, less the March 1983 FBR. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later, the amount calculated under the preceding sentence defining the required March 1983 mandatory minimum State supplementary payment level would continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., \$10.30), so long as that reduction does not cause the mandatory minimum State supplementary level to fall below that required by section 212(a)(3)(A) of Pub. L. 93-66.

(c) *Calculation of the required optional State supplementary payment level for flat grant amounts.* The optional State