

SUPPLEMENTARY INFORMATION**Background**

The Social Security Amendments of 1965, Public Law 89-97, section 306, defined a full-time student as "an individual who is in full-time attendance as a student at an educational institution." An "educational institution" was defined as "(i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a non-accredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited * * *." This definition of an educational institution was chosen by Congress, as explained in the Senate report, "to establish that the institution the child attends is a bona fide school." (See S. Rep. No. 404, 89th Cong., 1st Sess., reprinted in 1965 U.S. Code Cong. & Admin. News 1943, 2036-37.)

The Senate report also stated: "The committee believes that a child over age 18 who is attending school full-time is dependent just as a child under 18 or a disabled older child is dependent, and that it is not realistic to stop such a child's benefit at age 18." Ibid. We understand this to mean that the committee believed that full-time students attending class are less likely to be able to support themselves through employment than are part-time or correspondence students.

The Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, section 2210, replaced the term "educational institution" and its definition with the requirement that the student be in full-time attendance at an "elementary or secondary school," which is defined as a "school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located." (See section 202(d)(7)(C)(i) of the Social Security Act (the Act) as amended.) The purpose of this amendment was to eliminate child's insurance benefits in the case of children age 18 or older who attend postsecondary schools. Section 2210 also eliminated child's insurance benefits for children in elementary or secondary school after they attained age 19. (See S. Rep. No. 139, 97th Cong., 1st Sess. 427, reprinted in 1981 U.S. Code Cong. & Admin. News 396, 693.)

Present Policy

Child's insurance benefits under sections 202(d)(6) and (7) of the Act usually terminate when the child attains age 18. However, there is an exception that allows for continuation of entitlement to child's benefits for persons age 18 until attainment of age 19 who are full-time elementary or secondary school students.

Section 202(d)(7)(A) of the Act defines a full-time elementary or secondary school student as "an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner (in accordance with regulations prescribed by him) in the light of the standards and practices of the schools involved * * *."

Section 404.367 of our current regulations states, in pertinent part:

* * * You are a full-time elementary or secondary school student if you meet all the following conditions:

(a) You attend a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located;

(b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and are carrying a subject load which is considered full-time for day students under the institution's standards and practices. Additionally, your scheduled attendance must be at the rate of at least 20 hours per week unless we find that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or

(2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.

Proposed Policy

Current regulations do not provide guidance on alternative education programs covered under the laws of the State (or other jurisdiction) in which a student resides. Before the development of such programs, our policy had been in keeping with the traditional definition of educational institutions. Such traditional institutional-type schools include public, private, and religious schools. Except for the two specific exceptions noted in the regulations, we also consistently have required that the student be scheduled to attend school for at least 20 hours per week to be considered a full-time student.

Because most States (or other jurisdictions) have begun providing for

education based on alternative education methods, we evaluated cases involving home schooling or independent study programs on an individual basis. This evaluation has provided sufficient information to formulate these proposed regulations.

Many States or other jurisdictions have laws recognizing home schooling. Home schooling is an educational program in which the student is generally taught within the home by a parent/teacher. The State or other jurisdiction specifies the requirements that must be met and the procedures that must be followed in these situations. There must be a parent or other home school teacher participating in the home school instruction. This participation may be in the form of actual instruction, answering questions, administering tests, keeping attendance records, etc. The student must be carrying a course load that is considered full-time using the same standards and practices used for full-time day students in the traditional setting, as determined under the law of the State or other jurisdiction in which the student resides.

The child's home schooling teacher must submit evidence that legal requirements for home schooling are met. Depending on these requirements, this evidence might include a copy of the certificate of intent that is filed with the local school or school district, documentation that State-mandated tests were taken, a list of the courses being taught, and a copy of the attendance log or chart.

Also, some States or other jurisdictions authorize the governing board of a school district or a county office of education to offer independent study to meet the educational needs of pupils in accordance with certain requirements. An independent study course could (but need not) include instruction in the student's home or elsewhere outside the classroom. The study program is conducted in accordance with written policies and rules. It is coordinated, evaluated, and under the supervision of an employee of the school district or county office of education who has been certified to act as a home teacher. Independent study programs which involve instruction and supervision by a teacher employed by the school (or local school district) include written agreements for each independent study student specifying, among other things, the duration of the agreement and a statement of the number of course credits to be earned by the pupil upon completion. The effect of the written agreement is to extend the educational setting beyond the