

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 416, and 422

[Docket No. SSA–2016–0039]

RIN 0960–AH88

Use of Electronic Payroll Data To Improve Program Administration

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 824 of the Bipartisan Budget Act of 2015 (BBA) authorizes the Commissioner of Social Security to enter into information exchanges with payroll data providers to obtain wage and employment information. We use wage and employment information to administer the Old-Age, Survivors, and Disability Insurance (OASDI) disability and Supplemental Security Income (SSI) programs under titles II and XVI of the Social Security Act (Act). We are proposing these rules pursuant to section 824 of the BBA, which requires us to prescribe, by regulation, procedures for implementing the access to and use of the information held by payroll data providers. We expect these proposed rules will support proper use of information exchanges with payroll data providers that will help us administer our programs more efficiently and prevent improper payments under titles II and XVI of the Act, which can otherwise occur when we do not receive timely and accurate wage and employment information.

DATES: To ensure that your comments are considered, we must receive them no later than April 15, 2024.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2016–0039 so that we may associate your comments with the correct rule.

Caution: You should be careful to include in your comments only

information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the Search function to find docket number SSA–2016–0039. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to 1–833–410–1631.

3. *Mail:* Mail your comments to the Office of Legislation and Congressional Affairs, Regulations and Reports Clearance Staff, Social Security Administration, Mail Stop 3253 Altmeyer, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Nicole Dunham, Policy Analyst, Office of Supplemental Security Income and Program Integrity Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–9078. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at <https://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

We administer the OASDI disability and SSI programs under titles II and XVI of the Act, respectively. The OASDI program pays benefits to individuals who meet certain requirements, including those who are disabled and insured for disability.¹ OASDI also pays benefits to certain members of disabled

individuals' families.² We refer to meeting the requirements for OASDI disability benefits as OASDI disability "entitlement." The SSI program provides financial support to: (1) adults and children with a disability or blindness; and (2) adults aged 65 and older. These individuals must meet all program eligibility requirements, including having resources and income below specified amounts.³ We refer to meeting the factors of eligibility for SSI payments as SSI "eligibility."

We take seriously our responsibilities to ensure eligible individuals receive the benefits to which they are entitled and to safeguard the integrity of benefit programs to better serve our customers. Our commitment includes working to ensure we have accurate wage data as quickly as practicable to avoid overpayments before they occur or correct them quickly.

We use wage and employment information to decide who can receive OASDI disability benefits and SSI payments. We also use it to determine SSI payment amounts. Receiving complete, accurate, and timely wage and employment information allows us to administer our programs efficiently and to avoid improper payments that can occur when we do not have such information. Reviews of post-entitlement cases show that substantial gainful activity (SGA)⁴ continues to be the leading cause of overpayments in the OASDI disability program. In fact, SGA-related overpayments in the OASDI program averaged approximately \$500 million annually as of fiscal year 2022.⁵ Further, wage discrepancies,

² This can include, for example, a child of the disabled individual, a child of the disabled individual entitled to an adult child disability benefit, a spouse caring for a minor or disabled child of the disabled individual, or retirement benefits for a spouse age 62 or older of the disabled individual. See 20 CFR 404.330, 404.350, 404.351.

³ See 20 CFR 416.202 for a full list of the SSI eligibility requirements.

⁴ A requirement for disability for both OASDI disability and SSI is that you cannot be engaged in SGA, which is defined as work that involves significant and productive physical or mental duties, and is done, or intended to be done, for pay or profit. 20 CFR 404.1510, 404.1520(b), 416.910, 416.920(b).

⁵ FY2023 Agency Financial Report, page 180, available at <https://www.ssa.gov/finance/2023/Full%20FY%202023%20AFR.pdf>. Beneficiaries' failure to report earnings in a timely manner accounted for 82 percent of SGA-related improper payments and our failure to take the proper actions

Continued

¹ See 20 CFR 404.315 for a full list of the OASDI disability eligibility requirements.

which reached an annual average of approximately \$1.4 billion in improper payments as of fiscal year 2022, have been a leading cause of improper payments in the SSI program for more than a decade.⁶

Currently, we rely on individuals to report certain wage and employment information to us. Individuals who are entitled to OASDI disability must report to us when their condition improves, when they return to work, when they increase the amount they work, and when their earnings increase.⁷ Individuals who are eligible for SSI based on disability or blindness must make similar reports.⁸ All SSI recipients and deemors⁹ must also report to us any change in income¹⁰ as soon as a reportable event happens.¹¹ For OASDI disability and SSI, they can report these changes by phone, fax, mail, in person,¹² or by using *mySocialSecurity*. In many cases, SSI recipients may also report wages through the SSA Mobile Wage Reporting (SSAMWR) application and the SSI Telephone Wage Reporting (SSITWR) system. We may also request this information from the employer(s) or payroll data providers when the information we receive is incomplete or

to process work reports accounted for the remainder.

⁶ *Id.* at 184 and 185. Wage discrepancies occur when the recipient or their devisor has actual wages that differ from the wage amount we used to calculate the SSI payment, either because the recipient failed to report a change, or we failed to make changes to payments in a timely manner.

⁷ See 20 CFR 404.1588(a). We require reporting an increase in work or earnings because that may indicate the beneficiary has performed SGA (see 20 CFR 404.1572 and 404.1574) and will no longer be entitled to an OASDI disability benefit (20 CFR 404.1520(b)).

⁸ See 20 CFR 416.988. As with OASDI disability, we require these reports because they may indicate SGA (see 20 CFR 972 and 416.974), which may affect SSI eligibility (20 CFR 416.920(b)).

⁹ A devisor is any person whose income or resources are material to determining the eligibility of someone filing for or receiving SSI. 20 CFR 416.1160; SI 01310.127.

¹⁰ See 20 CFR 416.708(c). Income in our SSI regulations is a broad term that includes “anything you receive in cash or in kind that you can use to meet your daily needs for food and shelter.” See 20 CFR 416.1102. One type of income is wages, which are divided into two categories: wages paid in cash and wages paid in kind. See 20 CFR 416.1110. Wages paid in cash may include salaries, commissions, bonuses, severance pay, and any other special payments received because of employment. *Id.*

¹¹ See 20 CFR 416.714.

¹² When we receive reports by phone, fax, mail, or in person, our technicians process them manually. Manual processing by technicians includes calculating the total wage amount for the month, posting the amount to the record, and providing a receipt to the customer. Electronic methods of reporting accept wage reports on any day during the reporting month. Wage reports submitted by electronic methods are automatically posted to the record and the payment is adjusted accordingly.

we are unable to obtain it from the individual. Because many individuals work in jobs where earnings may vary from week to week, some individuals report these changes to us each month or more frequently. In FY 2022, we received 1.1 million wage reports¹³ for individuals who received OASDI disability or OASDI disability and SSI concurrently, and who were in current pay status (this does not include SSI only wage reports). Though we strive to make reporting as easy as possible, individuals must keep track of their reportable events, report them as soon as they happen, and spend time making the reports, which can be burdensome.¹⁴ We estimate that there are about 1,100,000 OASDI disability beneficiaries, between 200,000 and 300,000 SSI recipients, and another 500,000 to 600,000 deemors of SSI recipients who work in a given year. Despite the many reporting options, we do not always receive complete or timely reports. Even when we receive complete reports, we may still need to verify them with independent or collateral sources when we do not have proper wage evidence to verify the report, such as a paystub. Currently, to verify wage reports, we conduct a manual query, requesting records from payroll data providers, and sometimes employers, on a case-by-case basis. This is time-consuming, prolongs the resolution of the case, and adds to our workloads. An automated information exchange would allow us to obtain this information more efficiently because it could automatically process large numbers of queries at once.

As we discuss later in this proposed rule, when individuals become eligible for reduced reporting responsibilities, we would no longer burden them with frequent reporting of certain wage information. They would no longer need to keep track of certain reportable events, report them as soon as they happen, and spend time making the

¹³ A “wage report” is anytime SSA becomes aware of wages, whether through self-reporting (mail, fax, office visit, or a self-report through an electronic method), third party data provider, IRS annual wage data, or State reported wage data.

¹⁴ To be considered in time to process a particular month’s payment, SSI recipients or their representative payees must report income changes within the first ten days of the month following the month of change (20 CFR 416.714). Receiving this information earlier in the month allows us more time to calculate the correct payment, send a Notice of Planned Action (NOPA) when an adverse action applies, and adjust benefits for the following month. If a change is reported after the first ten days of the month and the change results in a change in the recipient’s payment amount, then it is likely that we will not be able to adjust benefits for the following month, resulting in an overpayment or underpayment.

reports. Further, we would no longer need to burden employers with requests for this information. As discussed in the regulatory analysis section, we project that identifying overpayments more quickly will reduce the quantity and size of overpayments, benefitting both recipients and employers, and better fulfill our stewardship obligations.

Section 824 of the BBA and the Proposed Automated Process

Section 824 of the BBA¹⁵ authorizes the Commissioner of Social Security to enter into information exchanges with payroll data providers¹⁶ to obtain wage and employment information. It authorizes these information exchanges for the purposes of efficient program administration and to prevent improper OASDI disability and SSI payments¹⁷ without the need for verification by independent or collateral sources.¹⁸ Section 824 adds a new section 1184 to the Act and also adds language to sections 225 and 1631(e) of the Act¹⁹ to clarify the role that information exchanges will play in determining payment amount and making eligibility and entitlement determinations and decisions for the OASDI disability and SSI programs.

As discussed above, we require wage and employment information to administer the OASDI disability and SSI programs. An information exchange would allow us to automate the process of obtaining and recording the wage and employment data we receive from a payroll data provider through the information exchange to the appropriate OASDI disability and SSI systems records.²⁰ We will use this information

¹⁵ Public Law 114–74, 129 Stat. 584, 607.

¹⁶ “Payroll data providers” include payroll providers, wage verification companies, and other commercial or non-commercial entities that collect and maintain information regarding employment and wages. 42 U.S.C. 1320e–3(c)(1).

¹⁷ Under 42 U.S.C. 1320e–3(a)(1) the information exchange is limited to disability insurance beneficiaries (those under subsections (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), and (f)(1)(B)(ii) of section 202 and subsection (a)(1) of section 223) and supplemental security income benefits under title XVI. The law does not allow us to use the information exchange to obtain wage information for other beneficiaries under Title II (e.g., individuals who continue to work while receiving old-age benefits).

¹⁸ 42 U.S.C. 1320e–3(a). “Information exchanges” are the automated comparison of our system(s) of records with information of payroll data providers. 42 U.S.C. 1320e–3(c)(2).

¹⁹ 42 U.S.C. 425, 1320e–3, and 1383(e).

²⁰ Implementation of the information exchange will not affect our quarterly data-matches with the National Directory of New Hires (NDNH) or our annual match with the Master Earnings File, both of which supply us with limited wage data. The NDNH is a federally mandated national repository of employment, unemployment insurance, and quarterly wage information submitted by state

to efficiently administer OASDI and SSI benefits, including adjusting payment amounts and making entitlement or eligibility determinations for the OASDI disability and SSI programs based on the information we receive from a payroll data provider. We will also use this information to avoid making improper payments of those benefits.

Advantages of Using Information Exchanges With Payroll Data Providers

We expect that receiving monthly wage and employment information for our claimants, beneficiaries, recipients, and deemors²¹ automatically through an information exchange with a payroll data provider who provides sufficiently accurate, up-to-date, and complete information will improve payment accuracy. It will also reduce improper payments that occur when we do not receive wage or employment reports timely (although, as indicated in the E.O. 12866 analysis section, we do not estimate the reduction in improper payments). Further, this process would reduce the burden of self-reporting on individuals who authorize us to obtain wage and employment information from a participating payroll data provider and we receive their wage and employment information from their employer through an information exchange. Additionally, individuals who provide authorization would not be subject to certain penalties under section 1129A of the Act²² for any omission or error with respect to wages reported by a participating payroll data provider (in FY 2022 we performed 54 cases of administrative sanctions in the SSI program and 82 administrative sanctions in the Social Security Disability Insurance (SSDI) program; in FY 2023 it was 59 cases and 24 cases, respectively). We define a participating payroll data provider as a payroll data provider that has an information exchange arrangement with us to provide wage and employment information.

We anticipate that implementation of an information exchange would result in more efficient use of our limited administrative resources. If we receive

directories of new hires, state workforce agencies, and Federal employers. The Master Earnings File contains data derived from IRS Form W-2, quarterly earnings records, and annual income tax forms. These data include regular wages and salaries, tips, self-employment income, and deferred compensation (contributions or distributions).

²¹ As explained above, a deemor is any person whose income or resources are material to determining the eligibility of someone filing for or receiving SSI. 20 CFR 416.1160; SI 01310.127.

²² 42 U.S.C. 1320a-8a. See also 20 CFR 404.459 and 416.1340.

wage and employment information through an information exchange with a participating payroll data provider, our technicians can reduce the amount of time spent manually requesting this information from payroll data providers and employers, manually entering data into our systems from an individual's pay records, contacting individuals, and assisting individuals with the results of incomplete or untimely reporting.

Solicitation for Payroll Data Provider

In May 2019, we solicited proposals for payroll providers using full and open competition in accordance with Federal Acquisition Regulations (FAR) Part 15. As stated in our solicitation, we based our award decision on a trade-off process (best value), considering both price and non-price factors.²³

Equifax Workforce Solutions (Equifax) was the only payroll provider to respond to our solicitation. We evaluated the proposal against the evaluation criteria listed above, which consisted of technical approach, corporate experience, past performance, and price. The Technical Evaluation Committee²⁴ determined the Non-Price Proposal to be acceptable and assigned favorable ratings for the three non-price factors. The Contracting Officer evaluated the Business Proposal (*i.e.*, price proposal) and determined the proposed prices were fair and reasonable according to FAR 15.404-1(b) and the terms of the solicitation. In September 2019, the agency awarded the Payroll Information Exchange contract to Equifax, as we determined Equifax offered the best value to the government, all factors considered.²⁵

Accuracy Study

We conducted an accuracy study²⁶ of data we received from Equifax through a database known as *The Work*

²³ In accordance with FAR Subpart 15.101-1(a), a trade-off process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest rated offeror. The non-price factors (listed in descending order of importance) used were: 1. Technical approach, 2. Corporate experience, and 3. Past performance. The solicitation stated factors 1, 2, and 3 when combined were approximately equal in importance to price.

²⁴ The Technical Evaluation Committee supports the source selection for the acquisition. It is typically comprised of no more than three individuals with the appropriate technical expertise to evaluate proposals in accordance with the solicited evaluation factors.

²⁵ We published notice of our information exchange with Equifax, pursuant to section 824 of the BBA, on January 19, 2021. 86 FR 5303.

²⁶ The study, "Evaluation of Payroll Information Exchange (PIE) Wage Data Accuracy," is available in the rulemaking record at www.regulations.gov as a supporting document for Docket SSA-2016-0039.

Number.²⁷ Equifax reports that The Work Number covers over two-thirds of non-farm payroll, although neither SSA nor Equifax has analyzed whether working disability benefit recipients are represented in a similar proportion in the database. This study compared wage and employment information we received from Equifax to wage and employment information we obtained from paystubs that users uploaded to the SSAMWR application, an online wage reporting tool currently available to SSI recipients, deemors, and their representative payees. We identified about 40,000 samples from March 2022 through September 2022 where both Equifax and SSAMWR had information on the same paystub for the same employee, employer, and time period.²⁸ We then compared the information that Equifax and SSAMWR had for these paystubs using the following four variables: pay period start date, pay period end date, pay date, and gross earnings amount.

We evaluated the accuracy through two steps. First, we matched seven months of information exchange records to SSAMWR based on SSN and pay periods as identified by the variables pay period start date, pay period end date, and pay date. Of the roughly 40,000 records with SSNs in both datasets, we found that 80.43% exactly matched both gross earning and all date fields. In 13.35% of the cases all dates matched but gross earnings did not. In the remainder of the cases there were iterations of partial earnings matches but with inaccurate dates.

To study the cause of the 7,976 cases with matching errors, our second step was to randomly sample 4% (341) and manually review the cases. We first found that a large source of gross earnings match errors between information exchange data and SSAMWR were due to optical scanning inaccuracies from our SSAMWR file compared with the actual photo of the paystub the beneficiary had uploaded to SSAMWR. To further determine the accuracy of information exchange-reported data, we compared the information exchange data against actual images of the paystubs which

²⁷ We performed a limited period of exchanges through September 2022 with Equifax. We used this data to test systems we created to receive, interpret, and incorporate the data Equifax sent. We were also able to use this data to perform this accuracy study.

²⁸ The sampling choices limit the types of conclusions that can be drawn about the accuracy of Equifax's data across the entire covered population. For example, if Equifax reports payroll information on an individual who was not working during a pay period, such an error would lower the true accuracy of using the Equifax database but would not be identified in this study.

were submitted in SSAMWR. Through this process, we determined that in 77.4% of the sampled cases,²⁹ all dates and gross earnings matched between the information exchange and the true paystub.

By extrapolating this sample to the broader set of 7,976 cases where there were initial mismatches between information exchange records and SSAMWR, we concluded that in 95.6 percent³⁰ of the original roughly 40,000 cases, all four variables matched between the actual paystub and the information exchange record. Although some data differed in 4.4 percent of these cases between Equifax and SSAMWR, the study did not determine whether the differences would have affected our benefit determinations. For example, one of the pay period variables we evaluated, pay period start date, would have no discernable impact on benefit determinations.³¹ While some other variable inconsistencies likewise may have had little or no impact on benefit determinations, potential errors related to total pay (such as over- or under-reporting actual income) could result in us initiating an action to change benefit amount.³²

Based on the results of this accuracy study, we are confident the information exchange will supply the accurate wage and employment information we need to make benefit determinations in most circumstances.

Requirements of Section 824 of the BBA

Section 824(d) of the BBA³³ requires us to publish regulations prescribing

²⁹ The 95 percent confidence interval for this estimate had a lower bound of 73.0 percent and an upper bound of 81.8 percent.

³⁰ The 95 percent confidence interval for this estimate had a lower bound of 94.7 percent and an upper bound of 96.5 percent.

³¹ The pay period start date obtained through this exchange is not used for benefit determinations. For OASDI disability determinations, we use pay period end date, gross earnings, and sometimes pay date. For SSI determinations, we use only the pay date and gross earnings. When we removed the pay period start date variable from the study data, the match rate increased from 95.6 percent to 97.1 percent.

³² Regarding the sample of cases that did not match on gross earnings, representing roughly half of the 4.4 percent of mismatched data, the study did not determine, for example, whether the mismatch in gross earnings was a significant difference that would result in an incorrect benefit determination. Mismatched earnings may not impact benefit eligibility or amounts if the earnings are below relevant thresholds or not relevant to the calculation based on when they are paid (for SSI) or earned (for OASDI disability). The study did not determine how mismatched cases impacted benefit determinations. Also, the study only looked at single instances of paystubs and not the full monthly earnings amount. Therefore, the study was unable to determine the true impact of those inaccuracies.

³³ Public Law 114–74, 129 Stat. 584, 610.

procedures for implementing the access and use of the information held by payroll data providers, including: (1) guidelines for establishing and maintaining information exchanges with payroll data providers, pursuant to section 1184 of the Act; (2) beneficiary authorizations; (3) reduced wage reporting responsibilities for individuals when they authorize us to access information held by payroll data providers through an information exchange; and (4) procedures for notifying individuals in writing when they become subject to such reduced wage reporting requirements and when such reduced wage reporting requirements no longer apply to them. We discuss each of these four items below.

1. Guidelines for Establishing and Maintaining Information Exchanges With Payroll Data Providers

As discussed above, we need wage and employment information to decide who can receive OASDI disability benefits and SSI payments and to determine SSI payment amounts.³⁴ Although individuals are required to report this information to us, they do not always report it to us timely or provide complete information. As required by section 824 of the BBA, we propose to prescribe guidelines for establishing and maintaining an information exchange.

To establish an information exchange, we will identify the payroll data providers (as defined in proposed §§ 404.702 and 416.702) that may be interested in participating in an information exchange with us. Before we establish an information exchange with a payroll data provider, we will consider such factors as the provider's ability and willingness to: engage in an information exchange; provide us with wage and employment information that includes all necessary data elements needed to make program determinations and payment amount decisions; and provide data that is sufficiently accurate,³⁵ complete,³⁶ and up-to-

date.³⁷ We will also consider and evaluate any conditions and limitations associated with our receipt of the data.

Any arrangement with a selected payroll data provider will describe: the records to be matched; the procedure for conducting the match; any requirements established relating to ensuring records are accurate, complete, and up-to-date; procedures for ensuring the administrative, technical, and physical security of the records matched; and such other provisions as are necessary. Further, before we enter into an information exchange,³⁸ we will publish a notice in the **Federal Register** describing the information exchange,³⁹ including our assessment that the information received through the exchange is relevant and necessary to administer our programs and an explanation for why the information is sufficiently accurate, complete, and up-to-date. Receiving accurate, complete, and up-to-date, information from an information exchange is necessary to allow us to decide claims earlier and avoid improper payments that may arise from untimely, incomplete, or missing wage and employment reports.

Once we enter into an information exchange with a payroll data provider, we will maintain the information exchange by periodically assessing whether the data we receive continues to be accurate, complete, and up-to-date. We will also monitor compliance with the requirements of the information exchange.

2. Beneficiary Authorizations

When an individual applies for benefits under OASDI disability or SSI, we will request authorization from the individual to obtain their wage and employment information from a payroll data provider.⁴⁰ We will also ask for

amounts under title XVI of the Act. We note that, in cases in which our current participating payroll data provider cannot supply all the wage and employment information we require to make benefit determinations, we investigate further to gather additional information.

³⁷ By “up-to-date” we mean the latest wage and employment information received from the payroll data provider each month. For example, our current participating payroll data provider makes wage and employment information available within 24 hours of receipt from employers.

³⁸ We have interpreted this to mean before implementing an information exchange by data sharing, which would occur after establishing an arrangement with a payroll data provider (e.g., contract) to develop the exchange.

³⁹ On January 19, 2021, we published a notice in the **Federal Register** that provided advance notification to the public regarding an information exchange we established with Equifax (86 FR 5303). To date, that is the only information exchange we have established under section 824 of the BBA.

⁴⁰ The law allows SSA to require the authorization. SSA has decided that we will request

³⁴ Section 824 of the BBA also permits us to obtain wage and employment information from a participating payroll data provider for the purpose of making OASDI disability benefit amount determinations. 42 U.S.C. 1320e–3(b)(1)(A). Currently, we do not use wage and employment information from a payroll data provider for OASDI disability benefit amount determinations.

³⁵ By “accurate” we mean that the exchange supplies the correct wage and employment information received for the requested individual.

³⁶ By “complete” we mean the wage and employment information received from the participating payroll data provider contains all the required data elements necessary for us to make determinations and decisions regarding entitlement under title II of the Act. and eligibility and payment

authorization during other post-entitlement events, such as a redetermination for SSI. Although we have not started using payroll data, in anticipation of implementing the information exchange, we began collecting authorizations in late 2017 (which we currently collect via paper form or through attestation).⁴¹ In the future, we could accept authorization electronically. For OASDI disability, we request authorization from individuals who apply for or are entitled to benefits.⁴² For SSI, we request authorization from individuals who apply for or receive SSI, as well as deemors, ineligible children, and individuals who turn age 18.⁴³ An authorization applies to all pending and approved claims under the specific program until the authorization is revoked or terminated.

When we request authorization, we explain the authorization's scope and duration. With regard to scope, we explain that we will use the authorization to obtain information from a payroll data provider to determine initial or ongoing entitlement to disability benefits for OASDI, as well as eligibility and payment amounts for SSI. We also explain that we may use the authorization for additional claims associated with the claim filed, such as an SSI claim by a spouse or child. In addition, we explain how we may use and disclose records obtained from payroll data providers consistent with applicable Federal law and any privacy notices we provide the individual. For example, we may use the individual's wage and employment information to decide whether they may be entitled to or eligible for benefits under both the

OASDI disability and SSI programs, even if the individual's authorization was given for only one of those programs.

With respect to the duration of an authorization, we inform individuals that the authorization remains in effect until the earliest of the following occurs:

- (a) the individual revokes their authorization in writing;
- (b) we terminate all entitlement(s) to benefits or eligibility for payments, there are no other claims or appeals pending, and all periods for appealing the determination or decision to terminate entitlement or eligibility have lapsed;⁴⁴
- (c) there has been an adverse determination or decision under the OASDI disability or SSI program, and, for that program, the individual is not otherwise currently entitled to benefits or eligible for payments, there are no other claims or appeals pending, and the period for appealing the adverse determination or decision has lapsed; or
- (d) for SSI deemors, the deeming relationship ends.⁴⁵

Individuals may revoke their authorization in writing at any time. If they revoke their authorization, we will apply the revocation to all pending or approved claims under the OASDI disability and SSI programs from the time we process the revocation, including claims involving deemors. If the authorization is revoked, we will no longer request new information from payroll data providers for that individual.

3. Reduced Wage Reporting Responsibilities When Individuals Authorize Us To Access Information Held by Payroll Data Providers Through an Information Exchange

Currently, if individuals become entitled to OASDI disability or eligible for SSI, they must report certain wage and employment information to us. We use this information to make program determinations. We expect that, once implemented, the information exchanges will help us reduce the wage reporting obligations of some

individuals. Further explanation follows.

Under section 824 of the BBA and these regulations, when individuals apply for or become entitled to a benefit based on disability under OASDI or any type of benefit under SSI and they authorize us to obtain information from payroll data providers, their reporting responsibilities may be reduced. The reduced wage reporting responsibilities depends on whether we receive their wage and employment information for their employer(s) through a participating payroll data provider. We will send a notice to individuals whenever their wage reporting responsibilities change, as discussed in the next section.

Under our current rules, individuals who are entitled to OASDI disability must report to us when their condition improves, when they return to work, when they increase the amount they work, or if their earnings increase.⁴⁶ There are many ways to do this. As mentioned above, individuals receiving OASDI disability can report changes in work activity by phone, fax, mail, in person, or online via their mySocialSecurity account. Under the proposed rules, we would require reporting only when their condition improves, they return to work, or they have a new employer. However, if individuals provide authorization and we receive their wage and employment information from their employer(s) through a participating payroll data provider, they would no longer have to report an increase in the amount of their work or an increase in their earnings with that employer, because we will obtain that information directly from the payroll data provider.

For SSI, wage reporting responsibilities may affect both eligibility and the payment amount. Individuals must report events that might change their disability or blindness status, including when their condition improves, when they return to work, when they increase the amount of their work, or when their earnings increase.⁴⁷ To determine SSI eligibility and payment amount, we require individuals to report various events to us, among them any change in income⁴⁸ and individuals must report to us as

this authorization on a voluntary basis, and that there will be no automatic assumption of inclusion without obtaining prior authorization. Under the law, individuals may refuse to provide this authorization and may revoke it. We will follow the BBA 824 requirements about the specific information to be provided with the authorization.

⁴¹ Attestation is the action taken by an SSA employee of confirming and annotating on record the proper individual's intent to sign an SSA form.

⁴² For OASDI disability, we request authorization at the initial claim, expedited reinstatement (EXR), and work continuing disability review (CDR) stages. When unsuccessful or if the individual is not available to provide authorization at the time we request it, we mail the paper SSA-8240 to the authorizing person, including a cover letter indicating the individual should complete, sign, and return the paper SSA-8240 form.

⁴³ For SSI, we request authorization at the full and deferred initial claims, and redetermination stages. We attempt to collect the authorization verbally and record it in our relevant system of record. When unsuccessful or if the individual is not available to provide authorization at the time we request it, we mail the paper SSA-8240 to the authorizing person, including a cover letter indicating the individual should complete, sign, and return the paper SSA-8240 form.

⁴⁴ In cases with multiple claims, if one of the claims has an adverse determination or decision and the appeals period for that determination or decision has ended or the benefits terminate, we will no longer use the authorization for that specific claim. However, we will continue to use the authorization for all other current claims under the program for which the individual provided authorization and there is no other reason to end the authorization.

⁴⁵ Additionally, if a parent or legal guardian gave us the initial authorization for an individual who is not a legally incompetent adult, the authorization will terminate when the individual turns 18 years of age. See, e.g., POMS SI 00515.001.C.

⁴⁶ 20 CFR 404.1588(a). We require reporting an increase in work or earnings because that may indicate that the beneficiary has performed substantial gainful activity (see 20 CFR 404.1572 and 404.1574) and will no longer be entitled to an OASDI disability benefit (20 CFR 404.1520(b)).

⁴⁷ See 20 CFR 416.988.

⁴⁸ See 20 CFR 416.708(c).

soon as a reportable event happens.⁴⁹ As mentioned above, individuals receiving SSI can report changes in work activity by phone, fax, mail, in person, online via their mySocialSecurity account, or by using SSAMWR or SSITWR. However, if individuals provide

authorization and we receive their wage and employment information from their employer(s) through a participating payroll data provider, they will no longer have to report an increase in the amount of their work for that employer, an increase in earnings from that

employer, or changes to wages paid in cash⁵⁰ from that employer, because we will obtain that information directly from the payroll data provider. All other reporting obligations apply, as detailed in the chart.

Program	Reporting responsibilities under current regulations	Reporting responsibilities under proposed regulations when we receive wage and employment information for an employer through a payroll data provider
OASDI disability	Individuals must report to us when: <ul style="list-style-type: none"> • their condition improves; • they return to work; • they increase the amount they work; or • their earnings increase. 	Individuals must report to us when: <ul style="list-style-type: none"> • their condition improves; • they return to work; or • they have a new employer.
SSI	Individuals must report to us any change in income as soon as a reportable event happens. They must also report to us when: <ul style="list-style-type: none"> • their condition improves; • they return to work; • they increase the amount they work; or • their earnings increase. See § 416.708 for additional reporting requirements.	Individuals no longer have to report changes to wages paid in cash. They must report to us when: <ul style="list-style-type: none"> • their condition improves; • they return to work; or • they have a new employer. See § 416.708 for additional reporting requirements.

In addition to the reduced wage reporting responsibilities described above, individuals may not be subject to certain penalties related to reporting if they authorize us to obtain information from a payroll data provider. Individuals who authorize us to obtain wage and employment information from a payroll data provider will not be subject to penalties under section 1129A of the Act for omissions or errors in the data we receive from a participating payroll data provider, excluding situations where there may be fraud or similar fault.⁵¹

Further, if individuals report changes in income late or not at all in connection with SSI payments, they may be subject to penalties under section 1631(e)(2) of the Act, unless they have good cause for the failure to report timely.⁵² In cases in which an individual has authorized us to obtain information from a payroll data provider, however, we will find good cause for a failure of, or delay by, an individual reporting a change in employer.⁵³ In our notice of a change in reporting responsibilities, we will

include any changes in penalty relief that may apply or when we may make the good cause finding described above.

Penalties that we may impose for failure to report are distinct from any attempts we may make to recover money that is improperly paid as a result of an overpayment. While individuals may not be subject to penalties for omissions or errors that may occur as a result of wage reporting, if we discover an overpayment, we will still attempt to recover any improperly paid funds. Although we do not propose it at this time, we are considering clarifying that for individuals who are exempt from reporting responsibilities because we get their wage and income information from a payroll data provider, any overpayments which result from inaccurate reporting of their income by the payroll data provider would be treated as an overpayment which they were “without fault” in causing under 20 CFR 404.507 (for OASDI) and 20 CFR 416.552 (for SSI). While we still initially may seek recovery of an overpayment from an individual who is considered “without

fault” in causing the overpayment, these individuals may request a waiver of the overpayment recovery which we may grant if, among other reasons, we determine that recovering the overpayment would either be “against equity and good conscience” or “defeat the purpose” of the program. Because one benefit of the payroll exchange is to facilitate the automatic transmission of wage data without the beneficiary manually reviewing and reporting this information to us, this alternative would provide an additional protection for participating beneficiaries against payroll inaccuracies. As discussed in the Solicitation for Public comment section below, prior to adopting this alternative policy we seek comments on if it would lower burdens for our beneficiaries or improve administrative efficiencies, other improvements we might consider related to addressing overpayments associated with workers who participate in the payroll exchange, as well as whether we should consider any other consequences of this alternative.

⁴⁹ See 20 CFR 416.714.

⁵⁰ By “wages paid in cash” we are referring to wages paid in money or its equivalent, as opposed to wages paid “in kind,” which refers to the value of food, clothing, shelter, or other items provided as wages instead of cash. See 20 CFR 416.1110.

⁵¹ 42 U.S.C. 1320a–8a. See 20 CFR 404.459, 416.1340. The relevant penalty under section 1129A of the Act and 20 CFR 404.459, 416.1340 is the non-payment of OASDI disability benefits and

ineligibility for SSI cash benefits. Other penalties under section 1129A of the Act may apply in situations involving false or misleading statements, including statements regarding wages and employment.

⁵² 42 U.S.C. 1383(e)(2). See 20 CFR 416.722 to 416.732. This penalty may be assessed for failure or delay in making certain reports to us.

⁵³ This comes directly from the BBA and we expect the intent was to provide additional relief

from reporting obligations for SSI cases with authorizations. In section 824(c)(2)(B), the BBA added language to section 1631(e)(2)(B) of the Act clarifying that if someone authorizes, and there is a failure or delay to report a change in employer, SSA will find good cause for that failure or delay if “the event or change in circumstance is a change in the individual’s employer.” We would anticipate receiving this information through the information exchange.

Program	Penalties under current law affected by the BBA	Penalty relief when providing authorization
OASDI disability	<ul style="list-style-type: none"> Individuals are subject to penalties for omissions or errors in wage and employment information under section 1129A. 	<ul style="list-style-type: none"> Individuals are no longer subject to penalties under section 1129A for omissions or errors in wage and employment information that we receive from a payroll data provider through an information exchange.
SSI	<ul style="list-style-type: none"> Individuals are subject to penalties for omissions or errors in wage and employment information under section 1129A. We may impose a penalty under section 1631(e)(2) of the Act for a failure or delay in reporting certain events or changes in circumstances relevant to SSI eligibility or payment amount unless the individual can show good cause for the failure or delay. 	<ul style="list-style-type: none"> Individuals are no longer subject to penalties under section 1129A for omissions or errors in wage and employment information that we receive from a payroll data provider through an information exchange. We will find good cause for a failure of, or delay by, an individual reporting a change in employer. This means the penalty would not apply.

4. Procedures for Notifying Individuals in Writing When They Become Subject to Reduced or Increased Wage Reporting Requirements and When Penalty Relief Applies

We will notify individuals in writing of changes in their reporting responsibilities whenever we start or stop receiving their wage and employment information from a payroll data provider through an information exchange. We also explain whether they may be subject to penalties under section 1129A of the Act at the time they provide authorization.⁵⁴ If they receive SSI, we will also explain when we will find good cause for a failure or delay in reporting a change in employer under section 1631(e)(2) of the Act.

As discussed above, if individuals authorize us to obtain information from a payroll data provider, and we receive their wage and employment information for their employer(s) through a participating payroll data provider, they will not have to report, for that employer, changes in earnings for OASDI disability and SSI or wages paid in cash for SSI. This will continue for as long as we continue to receive this information through a participating payroll data provider for that employer, and we will send a notice to the individual informing them of the change to their reporting responsibilities. We will also send notices whenever we start and stop receiving information about their employer and their reporting responsibilities change. All other reporting requirements will still apply.

If individuals work multiple jobs, they will not have to report an increase

in earnings for OASDI disability and SSI or wages paid in cash for SSI from any employer(s) whose wage and employment information we receive from a participating payroll data provider, as long as we continue to receive this information through a participating payroll data provider for that employer(s). We will send a notice⁵⁵ to the individual informing them of any change to their reporting responsibilities. When an individual gives us authorization to obtain their wage and employment information from a payroll data provider, we promptly issue them a receipt that includes the scope and duration of their authorization and explains their wage reporting responsibilities related to the information exchange. This receipt explains they are required to continue to report their wage and employment information to us until they receive a specific notice telling them that they no longer must report. The notice will identify the employer(s) for whom the individual will not need to report wage and employment information to us. Individuals must still report an increase in earnings for OASDI disability and SSI and wages paid in cash for SSI from any employer(s) whose wage and employment information we do not receive through a participating payroll data provider. They must also tell us if they have a new employer.

If individuals revoke their authorization, we will notify them in writing to explain that all reporting responsibilities apply and that penalties relating to reporting may apply.

When Individuals Disagree With Wage and Employment Information Obtained From a Payroll Data Provider

As noted above, wage and employment information may affect OASDI disability entitlement, SSI eligibility, and SSI payment amounts

because we use that information to determine or decide who can receive benefits and the amount of the SSI payments for eligible individuals. If we implement the information exchange, we would obtain the payroll data from the previous month on or around the 7th day of the current month. For example, on November 7, 2023, we would receive the wage and employment information for October 2023. If our use of wage and employment information from a payroll data provider affects entitlement, eligibility, or payment amounts, all of our usual procedures apply.⁵⁶ By receiving this information early in a month for SSI cases, we should have enough time to calculate the correct payment, send an advance notice or Notice of Planned Action (NOPA) when an adverse action applies, and adjust benefits accurately for the following month (December 2023 in this example).⁵⁷

For OASDI disability, we send a notice to the beneficiary before taking an adverse action (e.g., reduction, suspension, or termination of benefits) if we learned of the reason for the action from a source other than a first party report. We call this an advance notice. Once we issue the advance notice, the beneficiary has 15 days or 35 days to rebut the information in the advance notice before the adverse action will

⁵⁶ As described in this and subsequent paragraphs, we will provide adequate notice to beneficiaries before adversely adjusting their benefits. However, we do not undertake any specialized review of payroll data to identify potential aberrations or other indicators that a reported income may be particularly unlikely to be accurate.

⁵⁷ We note that the monthly information exchange only provides us data for the previous month but does not provide any updates to revisions made for earlier months. For example, if during the May 7th, 2024 information exchange we received information that a beneficiary earned \$500 in April, but during the month of May the employer corrected that amount in their own payroll system to \$800, the June 7th, 2024 information exchange would not alert us to the change in reported income for April.

⁵⁴ There are certain instances where an individual may be subject to penalties even though they have authorized the use of an information exchange. For example, if an individual authorizes the use of an information exchange but their employer does not actually participate in one, they may be subject to penalties for failure to report their income. As another example, if an individual's employer participates in the information exchange but the individual fails to report a separate stream of self-employment income, they may be subject to penalties for failure to report their income.

⁵⁵ Following publication of this proposed rule, we will submit to OMB a request for a revision to an existing information collection under the Paperwork Reduction Act (5 CFR 1320.11).

occur.⁵⁸ If we do not hear from the beneficiary within the timeframe, we assume the information in the advance

notice is correct and we will take the adverse action. When we take the adverse action, the beneficiary will

receive a final (initial determination) notice,⁵⁹ which provides the beneficiary with the right to appeal the action taken.

OASDI DISABILITY

Estimated Date by Which Information Must Be Received for an Adverse Action.

For adverse actions that do not involve an automated computer or non-automated data match: At least 15 days in advance.

For adverse actions that involve an automated computer or non-automated data match: At least 35 days in advance.

Note: Individuals whose wage and employment information is received through an information exchange will have 35 days to rebut the information.

For SSI, we send a NOPA to the beneficiary before taking an adverse action (e.g., reduction, suspension, or termination of benefits). This NOPA, also referred to as a Goldberg Kelly (GK) notice, is a written notice of proposed adverse action. The notice includes the basis for the adverse action and an explanation of appeal rights. It allows a recipient the necessary time to appeal the planned action and continue to receive unreduced benefits pending a determination on the appeal. After receiving the NOPA, the individual has 60 days to file an appeal. If an appeal is filed within 60 days, the recipient

will receive, unless waived, continued, or reinstated SSI payments until we make a determination at the reconsideration level.⁶⁰

Because we must provide a NOPA before reducing or terminating benefits, we will only take an adverse action if we receive information leading to that action at least 15 days before the first day of the adverse action month. This allows time for mailing and for the individual to respond. If there is insufficient time remaining in the month to accommodate the NOPA procedures, we will not take the adverse action until the following month. For

example, if we received information adversely affecting ongoing benefits on March 26, 2024, we would send a NOPA that notifies the recipient of the adverse action that will occur in May 2024. The first month we could reduce or terminate benefits would be May 2024.⁶¹ Because the wage and employment information from the information exchange is always requested for the prior month, the pay period cycle (i.e., the date the individual receives payment) has a minimal effect on the information exchange.

SSI

Estimated Date by Which Earnings Must Be Received for an Adverse Action.

For adverse actions: At least 15 days before the first day of the adverse action month.

As noted above, our usual procedures apply. This includes our procedures for seeking review of an initial determination and any related procedures. Our administrative review process is described in existing regulations § 404.900 for OASDI disability and § 416.1400 for SSI. As in any other case, the process consists of several administrative review steps which generally must be completed within certain time periods, and in the

following order: (1) initial determination, (2) reconsideration, (3) hearing held by an administrative law judge, and (4) Appeals Council review.⁶² An individual who is dissatisfied with our final decision may seek judicial review.⁶³

A claimant, recipient, beneficiary, or deemor may present us with evidence such as pay stubs or we may send requests to their employers for this information, if the individual believes our information is not correct.⁶⁴ We will

consider all evidence submitted and use it to determine the appropriate action for the individual's record. We will prioritize pay stubs over payroll data provider information in situations in which the individual questions the wage and employment information we receive from payroll data providers through an information exchange. We have longstanding policies for resolving discrepancies in wage evidence, which we would leverage. Individuals are

⁵⁸ The time frame for rebuttal is 15 days for cases that involve adverse actions or adjustments that do not involve an automated computer or non-automated data match and 35 days for cases that involve automated computer or non-automated data match. See POMS GN 03001.015. Individuals whose wage and employment information is received through an information exchange will have 35 days to rebut the information.

⁵⁹ Initial determinations are the determinations we make that are subject to administrative and judicial review. We base our initial determination on the preponderance of the evidence. We state the important facts and give the reasons for our conclusions in the initial determination. See 20 CFR 404.902, 20 CFR 404.900, 20 CFR 416.1402, and 20 CFR 416.1400. We mail a written notice of our initial determination to them at their last known address. The written notice will explain in simple and clear language what we have determined and the reasons for and the effect of our

determination. If our determination involves a determination of disability that is in whole or in part unfavorable to them, our written notice also will contain in understandable language a statement of the case setting forth the evidence on which our determination is based. The notice also will inform them of their right to reconsideration. We will not mail a notice if the beneficiary's entitlement to benefits has ended because of their death. See 20 CFR 404.904 and 20 CFR 416.1404. Initial determinations may be appealed within 60 days (or longer with good cause). See 20 CFR 404.909, 20 CFR 404.901, 20 CFR 416.1409, and 20 CFR 416.1401. To appeal an initial determination, an individual may file an SSA-561-U2 Reconsideration Request available at: <https://www.ssa.gov/forms/ssa-561-u2.pdf>. To appeal a Reconsideration Determination, an individual can file an HA-501-U5 Request for Hearing by Administrative Law Judge available at <https://www.ssa.gov/forms/ha-501.pdf>. To appeal a hearing

decision, an individual can file an HA-520 Request for Review of Hearing Decision/Order available at <https://www.ssa.gov/forms/ha-520.html>. To appeal an Appeals Council Decision or if the Appeals Council denies review of the hearing decision, an individual can file an action in Federal District Court. The SSA-561-U2, HA-501-U5, and HA-520 can be completed and submitted online via the Non-Medical Appeal Page available at <https://secure.ssa.gov/iApplNMD/start>.

⁶⁰ 20 CFR 416.1336(b) and EM 21064REV.

⁶¹ POMS SI 02301.301.

⁶² See subpart J of 20 CFR 404 and subpart N of 20 CFR 416.

⁶³ See section 205(g) of the Act, 42 U.S.C. 405(g).

⁶⁴ Section 824 of the BBA allows us to treat the wage and employment information we receive from the from a payroll data provider through the information exchange as verified and does not require additional verification.

generally responsible for providing evidence to us, but if a situation arises in which it is difficult for them to obtain evidence, we may assist them. Our policies direct technicians to use other acceptable evidence of wages when discrepancies are present, and to document the discrepancy, resolution, and associated evidence. If a technician determines based on acceptable evidence that the earnings do not belong to the individual, those earnings will be removed and will not affect SSI eligibility or payment determinations.

In addition, if an individual is not satisfied with the wage and employment information we are receiving from payroll data providers through an information exchange, they have the option to revoke authorization at any time.

Finally, we are requesting public input on expanding the methods which are available under our regulations to initiate a reconsideration (which is the first step of appealing an adverse decision). We do not intend to make any changes to the appeals filing process at this time, but we will consider public input for future rulemaking. One such option would be removing the requirement that reconsideration requests must be “written.” Under our current regulations, a request for reconsideration can only be made as a “written request” (see 20 CFR 404.909(a) and 20 CFR 416.1409(a)). As a result, if an individual participating in the payroll exchange receives an advanced notice or NOPA indicating that their benefits may be reduced, they do not have the option of calling our 800 number or a field office to initiate the process of requesting a reconsideration (currently, available options for initiating a reconsideration request including completing and mailing paper form SSA-561, visiting a field office and completing an SSA-561 in-person, or completing the i561 through www.ssa.gov). This alternative would allow individuals, if they desired, to submit a request by calling us (which may be the preferred option for many of our beneficiaries). As discussed in the Solicitation for Public comment section below, we seek comments on if this would lower burdens for our beneficiaries as well as whether we should consider any other consequences of this alternative.

Summary of Changes

In § 404.702 and § 416.702, we propose to add definitions for “Participating payroll data provider” and “Payroll data provider.”

In § 404.703, we propose to designate the existing text as paragraph (a) and

add paragraph (b) to explain that we will ask individuals for written authorization so that we can obtain their wage and employment information from a payroll data provider when they apply for or become entitled to monthly insurance benefits. We will also explain the scope and duration of the authorization and how we will use it.

In § 404.1588, we propose to clarify in paragraph (a) that an individual must report if they have a new employer. This clarification will more effectively cover the situation where an individual starts a new job, rather than requiring individuals to report all increased work when reduced reporting applies. We also propose to add a new paragraph (b) to explain OASDI disability reporting obligations when individuals authorize us to obtain their wage and employment information from payroll data providers. Proposed § 404.1588(b) explains that if we have the authorization described in § 404.703, we will reduce reporting responsibilities if we receive the individuals’ wage and employment information from their employer(s) through a participating payroll data provider, but only for that employer(s). We will notify individuals in writing whenever there is a change in their reporting responsibilities related to the authorization, or when they may be subject to certain penalties. However, the OASDI disability beneficiary will always have to report when their condition improves, when they return to work, and when they have a new employer.

We also explain that individuals may revoke their authorization in writing at any time and that if they do, we will apply the revocation to all pending or approved disability claims under OASDI and all pending or approved claims under SSI from the time we process the revocation. If they revoke their authorizations, they will be subject to all reporting responsibilities and possible penalties. Also, we removed references to the centralized computer file from redesignated paragraph (c) because these references were outdated.⁶⁵

We propose to revise § 416.701 to explain that subpart G discusses what events individuals must report to us. We inform individuals what their reports must include, when reports are due, and

when certain reporting requirements and penalties relating to reporting requirements do not apply.

We propose to revise § 416.708 to explain that individuals must report any increase or decrease in their income and any increase or decrease in the income of certain other individuals, unless the circumstances in § 416.709(a) and (c) apply. Those circumstances are:

- they authorize us to obtain information from a payroll data provider; and
- we receive their wage and employment information from their employer(s) through a participating payroll data provider.

Also, we removed references to the centralized computer file from paragraph (c) because these references were outdated.⁶⁶

We propose to add a new section, § 416.709, to explain the potential for reduced reporting responsibilities for SSI when an individual authorizes us to obtain wage and employment information from payroll data providers through an information exchange. As proposed, § 416.709(a) explains that we will ask individuals for written authorization to obtain wage and employment information about them from a payroll data provider whenever we determine the information is needed in connection with a determination of initial or ongoing eligibility for SSI benefits. We further explain the scope and duration of the authorization, and when reporting requirements change in proposed paragraphs (b) and (c) of § 416.709. Reporting responsibilities will change based on whether we receive an individual’s wage and employment information from their employer(s) through a participating payroll data provider. If we receive wage and employment information from an individual’s employer(s) through a participating payroll data provider, they will not have to report changes in their wages paid in cash from that employer(s) only. However, the individual will have to comply with all other reporting requirements.

In proposed paragraph (c) in § 416.709, we also explain that when we inform individuals about changes in their reporting responsibilities, we will also inform them whether they may be subject to certain penalties, and when and how they may revoke their authorization.

We propose to revise § 416.988 to explain that, if we receive wage and employment information from an individual’s employer(s) through a participating payroll data provider, they

⁶⁵ We are proposing to remove outdated language in this section and in § 416.709 (discussed below) explaining that the establishment of a centralized computer file may cause us to stop issuing receipts under certain circumstances. Because we do not use the centralized computer file described in the regulations, we are removing references to it. We will continue to issue receipts whenever we get information about the changes described in this section or in earned income described in § 416.709.

⁶⁶ *Id.*

will not have to report an increase in the amount of work or an earnings increase from that employer(s) only. As with § 404.1588, we have clarified that an individual must report a new employer. This clarification will more effectively cover the situation where an individual starts a new job, rather than requiring individuals to report all increased work when reduced reporting applies.

We also propose to add a new section, § 422.150, to explain our guidelines for establishing and maintaining an information exchange with payroll data providers. We will identify and review payroll data providers to determine their ability to engage in an information exchange with us. We also explain that consistent with applicable law and regulations, we will establish an information exchange with the selected payroll data provider. Proposed § 422.150(a) also explains the requirements for an information exchange, and that we will publish a notice in the **Federal Register** describing the information exchange and other factors before we receive and use information from a payroll data provider. Finally, proposed § 422.150(b) explains that we will periodically assess whether the data we receive under an information exchange continues to be accurate, complete, and up-to-date, and monitor compliance with the requirements of the information exchange.

Solicitation for Public Comment

As discussed elsewhere in this NPRM, we are seeking public comment. Questions that interested parties may wish to consider when evaluating this proposed rule:

1. If we receive someone's wage and employment information through the payroll exchange, should we treat any overpayments which result from inaccurate reporting of their wage and employment information by their employer or the payroll data provider as an overpayment which the individual was "without fault" in causing? Would this lower burdens for our beneficiaries or improve administrative efficiencies, are there other improvements we might consider related to addressing overpayments associated with workers who participate in the payroll exchange, or are there any other consequences that we should consider?

2. Should we revise our regulations to remove the requirement that reconsideration be received only via "written request" to accommodate the ability to receive reconsideration requests via the phone? Would this lower burden for beneficiaries and are

there any other consequences that we should consider?

Rulemaking Analyses and Notices

Clarity of These Rules

Executive Order (E.O.) 12866 as supplemented by E.O. 13563 and amended by E.O. 14094 require each agency to write all rules in plain language. In addition to your substantive comments on this NPRM, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

Regulatory Procedures

E.O. 12866 as Supplemented by E.O. 13563 and Amended by E.O. 14094

We consulted with the Office of Management and Budget (OMB) and OMB has determined that this proposed rule meets the criteria for a Section 3(f)(1) significant regulatory action under E.O. 12866, as supplemented by E.O. 13563 and amended by E.O. 14094 and is subject to OMB review.

Assumptions

We estimate that, by 2033, 96% of SSI recipients will have authorized us to obtain this information from payroll data providers through information exchanges, and about 60% of disabled OASDI beneficiaries will have also provided this authorization. We base this estimate on current rates of adoption as we have sought authorization from beneficiaries during both new enrollment and disability review processes since late 2017. Since 2017, 98% of OASDI disability beneficiaries and SSI recipients who have been asked have provided authorization—this corresponds to about 25% of all current OASDI disability beneficiaries as of May 2023. As of July 2022, 56% of all current SSI recipients and 67% of SSI deemors have provided authorization.⁶⁷

⁶⁷ We do not know why SSI deemors have provided authorization at a higher rate than beneficiaries.

We estimate that there are about 1,100,000 OASDI disability beneficiaries, between 200,000 and 300,000 SSI recipients, and another 500,000 to 600,000 deemors of SSI recipients who work in a given year. Because employers representing approximately two-thirds of the non-farm payroll of employees will automatically provide payroll data to us, we expect individuals will submit fewer wage reports.⁶⁸

Additionally, we estimate that there are 100,000 OASDI disability beneficiaries who are overpaid due to working at or above the SGA level. Over FYs 2018 through 2022, these individuals were overpaid an annual average of \$1,163 million. We estimate that, through the information exchange, we will be able to identify both wages we otherwise would not have known about, as well as wages that will be identified timelier than under current processes. Additionally, we estimate that we will identify and assess approximately an additional 10% of overpayments due to working at or above SGA (OASDI) or having wages from employment (SSI) which we never would have identified through our current processes.⁶⁹

Anticipated Costs to the Public

There are minor costs to the public associated with this rulemaking. Individuals who apply for or are receiving OASDI disability, individuals who apply for or are receiving SSI, and SSI deemors, will need to spend a

⁶⁸ As stated in the preamble, neither SSA nor Equifax has analyzed whether working disability benefit recipients are represented in a similar proportion in the database, but we assume it for the purposes of this analysis.

⁶⁹ We do not have data to specifically support the assumption that we will identify 10% more overpayments. However, we do know certain small overpayments may be currently overlooked through our current systems. Through review processes such as the Master Earnings File, SSA is generally able to identify overpayments from unreported wage changes at least on an annual basis. In certain circumstances, however, annual earnings as identified on the Master Earnings File or on a quarterly match may be below the threshold for identifying an overpayment even though the beneficiary's monthly earnings in certain months would have resulted in changes to the amount they were owed. For example, if an OASDI disability beneficiary worked at \$50 above SGA for 11 months of the year, and worked \$0 in the 12th month, they would generally be passed over in the annual match because their total annual wages would be below 12 times SGA. Having the monthly data would give SSA more exact information and the agency would be able to compare on a monthly basis whether earnings exceeds SGA. As another example, certain *de minimis* changes in benefit payment rates due to changes in income may not be assessed under current policy because of required efforts under current processes; because these processes will be automated through PIE, these changes will be made in a timely manner.

minimal amount of time to complete the authorization to allow us to obtain wage and employment information from payroll data providers through an information exchange. Similarly, individuals who want to revoke their authorizations would need to spend a minimal amount of time to do so. We anticipate this time would be more than offset by the time saved by individuals who would no longer need to spend time reporting certain wage and employment information and work activity.

There is a potential for lost benefits to the beneficiary or recipient in instances where we make an unfavorable or partially favorable determination or decision based on potentially inaccurate information obtained from payroll data providers through an information exchange. We have not estimated at this time the number of additional NOPAs which might be due to inaccurate payroll information.

There is a potential burden on the public to correct any inaccurate data reported to us from a payroll data provider if an individual identifies an error in the information we receive through an information exchange. However, the primary burden related to these rules is the time it would take for the individual to correct information with us. Additionally, although individuals can give us information that we may use to correct our records, they may also have to work with the payroll data provider directly to correct any inaccurate data in its records, because we can only update our records.⁷⁰

We anticipate minimal costs to the public associated with reporting inaccurate data based on the accuracy rate recorded in the accuracy analysis study previously discussed and included in the rulemaking record.

Anticipated Benefit to the Public

An information exchange has many benefits. Individuals will have reduced wage reporting responsibilities if they provide us with authorization to obtain their wage and employment information from a payroll data provider and we obtain that information from a participating payroll data provider through an information exchange. Reducing reporting responsibilities relieves the burden placed on

individuals to report certain wage and employment information to us if we are already receiving it from a payroll data provider through an information exchange. This reduced reporting responsibility should make it easier for individuals to comply with our wage reporting rules. It reduces the individual's need to report certain wage and employment information to us which includes the burden of the time it takes the individual to report this information and the burden of remembering to report it to us within a certain timeframe.

The timely receipt of wage and employment information from a payroll data provider through an information exchange would also help us reduce improper payments, which may be a source of confusion for the public and may cause individuals to spend time addressing errors associated with improper payments or filing appeals or waiver requests. Lastly, authorizing us to obtain records from a payroll data provider through an information exchange may relieve individuals from certain penalties under section 1129A of the Act for any omission or error with respect to wages reported to us by a participating payroll data provider. And for SSI, we will find good cause for a failure or delay in reporting a change in employer, which can avoid certain additional penalties.

Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this proposed rule would result in a total net reduction in OASDI benefit payments of \$1.8 billion and a total net reduction in Federal SSI payments of \$1.9 billion over fiscal years 2024 through 2033. The estimates assume implementation of this rule on October 1, 2023, and that SSA will not, during the estimate period, contract with any other payroll data provider beyond Equifax. We note that the increase in the amount of overpayments identified or prevented in this period would be larger than the reduction in actual benefits paid in this period. First, regarding overpayments newly identified, as discussed in our *Assumptions* section, these estimates assume that 50 percent of work-related overpayments identified for OASDI beneficiaries and 80 percent of earned-income related overpayments for SSI recipients will be recovered within 10 years after they are identified. Thus, much of the overpayments newly identified, especially those identified late in this 10-year period, will be only partially recovered with subsequent reductions in payments through fiscal year 2033. Second, while potential

overpayments that would be prevented due to implementation of this rule will immediately reduce benefit payments, such early identification of earnings will also avoid subsequent potential overpayments through fiscal year 2033 and beyond.

Anticipated Administrative Costs to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this proposal will result in a net administrative cost of \$419 million for the 10-year period from FY 2024 to FY 2033. The net administrative cost is mainly a result of the contract and IT costs to administer the information exchange. The total costs are offset by some administrative savings from a shorter wage development process in affected cases during title XVI (SSI) pre-effectuation reviews, redeterminations, post-eligibility actions, and overpayments, as well as during title II (OASDI) work continuing disability reviews. However, we do not attempt to estimate these time savings. As explained above, under our current process, we sometimes conduct a manual query to request records from payroll data providers or employers. We estimate we would save approximately 20 minutes of our staff's time each time we no longer need to complete this query.⁷¹

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because it primarily affects individuals. In some instances, this proposed change may reduce the burden on employers because we may need to contact employers for information less frequently when we receive wage and employment information from payroll data providers through an information exchange. Because our contact with employers for this reason is limited now, we do not expect a significant

⁷⁰ When an individual believes the information we are receiving from a payroll data provider is incorrect, they can correct the information with us. A beneficiary may also wish to contact the payroll data provider to resolve a recurring issue or if, for example, they believe the error may be due to potential fraud. We will provide information in the advance notice (for OASDI disability) or NOPA (for SSI) for how to contact the payroll data provider directly.

⁷¹ We note these savings are for our staff. They do not represent public reporting burden savings.

difference. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended. We discuss the time burden savings for employers stemming from this proposed rule in the Paperwork Reduction Act section of the preamble.

Paperwork Reduction Act Statement

SSA already has existing OMB-approved information collection tools relating to this proposed rule: the Letter to Employer Requesting Information About Wages Earned by Beneficiary (SSA-L725, OMB Control No. 0960-0034); Letter to Employer Requesting Wage Information (SSA-L4201, OMB Control No. 0960-0138); Monthly SSI Wage Reporting (SSA's Mobile Wage Reporting, Telephone Wage Reporting, and Internet myWage Report application, OMB Control No. 0960-0715); the Authorization for the Social Security Administration to Obtain Wage and Employment Information from Payroll Data Providers (Form SSA-8240,

OMB Control No. 0960-0807); and the Notice to Electronic Information Exchange Partners to Provide Contractor List (SSA-731, OMB Control No. 0960-0820). While we previously obtained OMB approval for the new form (under OMB Control No. 0960-0807) to collect the authorization for the wage and employment information from payroll data providers, SSA has not utilized this information through an automated information exchange, because those exchanges have not yet gone live. The proposed rule provides additional information on OASDI and SSI reduced reporting requirements, as well as the effects of beneficiaries, recipients, and deemors authorizing us to obtain records from payroll data providers. In addition, the proposed rule describes the establishment of the requirements to enter into an information exchange with payroll data providers. SSA established the information collection for the Authorization for the Social Security Administration to Obtain Wage and

Employment Information from Payroll Data Providers (0960-0807) prior to the creation of this new rule. We will include the appropriate CFR citations under that OMB approved information collection upon publication of the final rule. In addition, we will obtain OMB approval for revisions to the collection instruments as needed simultaneously with the publication of the final rule. Finally, the implementation of this proposed rule would decrease the time burden for the public, as it would remove the need for individuals or employers to submit wages to SSA when we receive them from payroll data providers through an information exchange instead. While we acknowledge that there is a burden on the public for 20 CFR 422.150(a)(3), we did not include it in the chart below because fewer than 10 providers submit this information to SSA. The following chart shows the anticipated burden reduction due to the other regulatory requirements from this proposed rule:

OMB #: form #: CFR citations	Number of respondents	Frequency of response	Current average burden per response (minutes)	Current estimated total burden (hours)	Anticipated new number of respondents under regulation	Anticipated new burden per response under regulation (minutes)	Anticipated estimated total burden under regulation (hours)	Estimated burden savings (hours)
0960-0034—SSA-L725	170,000	1	40	113,333	170,000	40	113,333	*0
0960-0138—SSA-L4201	133,000	1	30	66,500	133,000	30	66,500	*0
0960-0715—Mobile Wage reporting, 404.703(a), 416.708(c), 416.709 (new)	88,382	12	6	106,058	36,237	6	43,484	62,574
0960-0715—Telephone Wage reporting, 404.703(a), 416.708(c), 416.709 (new)	16,341	12	5	16,341	6,700	5	6,700	9,641
0960-0715—myWage Report, 404.703(a), 416.708(c), 416.709 (new)	3,557	12	7	4,980	1,458	7	2,041	**2,939
0960-0807—SSA-8240, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	150,000	1	8	20,000	150,000	8	20,000	*0
0960-0807—MCS/SSI Claim System, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	697,580	1	3	34,879	697,580	3	34,879	*0
0960-0807—Internet, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	147,820	1	3	7,391	147,820	3	7,391	*0
Totals	1,406,680	.....	.....	369,482	1,342,795	.....	294,328	75,154

* These proposed rules will not significantly affect the burden for this information collection; therefore, we do not anticipate any burden reduction for this information collection due to the implementation of this rule.

** SSA is providing this figure as a current best estimate for burden reduction under these proposed rules. We will not have accurate data until we implement the rule.

The following chart shows the reduction in theoretical cost burdens associated with the proposed rule:

OMB #: form #: CFR citations	Anticipated new number of respondents	Estimated burden per response from chart above (minutes)	Anticipated estimated total burden under regulation (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office and/or teleservice centers (minutes) **	Anticipated annual opportunity cost (dollars) ***
0960-0034—SSA-L725	170,000	40	113,333	* \$25.14	0	*** \$2,849,192
0960-0138—SSA-L4201	133,000	30	66,500	* 25.14	0	*** 1,671,810
0960-0715—Mobile Wage reporting, 404.703(a), 416.708(c), 416.709 (new)	36,237	6	43,484	* 21.29	0	*** 925,774

OMB #: form #: CFR citations	Anticipated new number of respondents	Estimated burden per response per chart above (minutes)	Anticipated estimated total burden under regulation (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office and/or teleservice centers (minutes) **	Anticipated annual opportunity cost (dollars) ***
0960-0715—Telephone Wage reporting, 404.703(a), 416.708(c), 416.709 (new)	6,700	5	6,700	* 21.29	0	*** 142,643
0960-0715—myWage Report, 404.703(a), 416.708(c), 416.709 (new)	1,458	7	2,041	* 21.29	0	*** 43,453
0960-0807—SSA-8240, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	150,000	8	20,000	* 21.29	** 24	*** 1,703,200
0960-0807—MCS/SSI Claim System, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	697,580	3	34,879	* 21.29	** 21	*** 5,940,591
0960-0807—Internet, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	147,820	3	7,391	* 21.29	** 21	*** 1,258,835
Totals	1,342,795	.....	294,328	.....	.....	*** 14,535,498

* We based this figure on the average Payroll and Timekeeping Clerks hourly salary, as reported by the Bureau of Labor Statistics data (<https://www.bls.gov/oes/current/oes433051.htm>); as well as the averaging of SSDI payments based on SSA's current FY 2023 data (<https://www.ssa.gov/legislation/2023factsheet.pdf>) and the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2023 wait times for field offices and hearings office, as well as by averaging both the average FY 2023 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

SSA submitted a single new Information Collection Request which encompasses revisions to information collections currently under OMB Numbers 0960-0034, 0960-0138, 0960-0715, 0960-0807) to OMB for the approval of the changes due to the proposed rule. After approval at the final rule stage, we will adjust the figures associated with the current OMB numbers for these forms to reflect the new burden. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. In addition, we are specifically seeking comment on whether you have any questions or suggestions for edits to the forms referenced above in the context of this proposed regulatory change. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974

Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: OR.Reports.Clearance@ssa.gov

You can submit comments until April 15, 2024, which is 60 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure; Organization and functions (Government agencies); Operational effectiveness; Social Security.

The Commissioner of Social Security, Martin O'Malley, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III parts 404, 416, and 422 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

Subpart H—Evidence

■ 1. The authority citation for subpart H of part 404 is revised to read as follows:

Authority: 42 U.S.C. 405(a), 902(a)(5), and 1320e-3.

■ 2. Amend § 404.702 by adding, in alphabetical order, the definitions of “Participating payroll data provider” and “Payroll data provider” to read as follows:

§ 404.702 Definitions.

* * * * *

Participating payroll data provider means a payroll data provider that has established an information exchange with us to provide wage and employment information.

Payroll data provider means payroll providers, wage verification companies, and other commercial or non-commercial entities that collect and maintain information regarding employment and wages.

* * * * *

■ 3. Revise § 404.703 to read as follows:

§ 404.703 When evidence is needed.

(a) *Evidence.* When you apply for benefits, we will ask for evidence that you are eligible for them. After you become entitled to benefits, we may ask for evidence showing whether you continue to be entitled to benefits; or evidence showing whether your benefit payments should be reduced or stopped. See § 404.401 for a list showing when benefit payments must be reduced or stopped.

(b) *Authorization to obtain data from a payroll data provider.*

(1) We will ask you for a written authorization to obtain information about you from a payroll data provider whenever we determine the information is needed in connection with a determination of initial or ongoing entitlement to benefits.

(2) When we ask for your authorization, we will explain the authorization's scope and duration.

(i) We will explain to you that we will use the information obtained from a payroll data provider when it is needed in connection with a determination of initial or ongoing entitlement to title II benefits based on disability, or for eligibility or the amount of benefits under the Supplemental Security Income program of title XVI of the Social Security Act, and to prevent improper payments. We will explain to you that we may also use the authorization to obtain wage and employment information from a payroll data provider for claims associated with the claim filed, such as a claim for benefits by a spouse or child. We will also explain that we may use and disclose your information consistent with applicable Federal law (see, e.g., part 401 of this chapter) and any privacy notices we provide to you.

(ii) We will also inform you that your authorization will remain effective until the earliest of one of the following occurrences: (A) you revoke your authorization in writing (see § 404.1588(b)(4)); (B) we have terminated all entitlement for benefits, you have no other claims or appeals pending under this title, and the period for appealing the determination or decision terminating entitlement has lapsed; or (C) there has been an adverse determination or decision on your claim, you have no other claims or appeals pending under this title, and the period for appealing the adverse determination or decision has lapsed.

Subpart P—Determining Disability and Blindness

■ 4. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: 42 U.S.C. 402, 405(a)-(b) and (d)-(h), 416(i), 421(a) and (h)-(j), 422(c), 423, 425, 902(a)(5), and 1320e-3; sec. 211(b), Pub. L. 104-193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 5. Amend § 404.1588 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) and revising paragraphs (a) and (c) to read as follows:

§ 404.1588 Your responsibility to tell us of events that may change your disability status.

(a) *Your responsibility to report changes to us.* If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if—

- (1) Your condition improves;
- (2) You return to work;
- (3) You have a new employer;
- (4) You increase the amount of your work; or
- (5) Your earnings increase.

(b) *Effect of authorizing us to obtain your information from payroll data providers.*

(1) We will reduce your reporting responsibilities as described in paragraphs (a)(4) and (a)(5) of this section if we have your authorization to obtain wage and employment information from a payroll data provider (see § 404.703), and we receive your wage and employment information from your employer(s) through a participating payroll data provider (see § 404.702).

(2) We will notify you in writing whenever there is a change in your reporting responsibilities relating to the authorization described in § 404.703. When we tell you about changes in your reporting responsibilities, we will also tell you whether you may be subject to a penalty of nonpayment of benefits (see § 404.459) related to information we receive from a participating payroll data provider. You are always required to submit any changes described in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(3) When your reporting requirements will change—

(i) If we have your authorization to obtain wage and employment information from a payroll data provider (see § 404.703), and we receive your wage and employment information from your employer through a participating payroll data provider, you will not have to report when your earnings from that employer increase.

(ii) If we have your authorization to obtain wage and employment information from a payroll data provider (see § 404.703), but we do not receive your wage and employment information from your employer through a participating payroll data provider, we will not reduce your reporting responsibilities.

(iii) If we have your authorization to obtain wage and employment information from a payroll data provider (see § 404.703) and you have more than one employer,

(A) you do not need to report when your earnings increase for an employer if we receive your wage and

employment information for that employer through a participating payroll data provider, and

(B) you must still report when your earnings increase for an employer if we do not receive your wage and employment information for that employer through a participating payroll data provider.

(4) You may revoke your authorization at any time, but you must do so in writing. We will apply the revocation to all pending or approved disability claims under this title, as well as all pending or approved claims under title XVI, from the time we process your revocation. If you revoke your authorization, all your reporting responsibilities will resume, and you will again be subject to all related penalties. We will notify you in writing of these changes.

(c) *Our responsibility when you report your work to us.* When you or your representative report changes in your work activity to us under paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this section, we will issue a receipt to you or your representative.

Part 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart G—Reports Required

■ 6. The authority citation for subpart G of part 416 is revised to read as follows:

Authority: 42 U.S.C. 902(a)(5), 1320a-8a, 1320e-3, 1382, 1382a, 1382b, 1382c, and 1383; sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note); sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 7. Amend § 416.701 by revising the third sentence of paragraph (a) to read as follows:

§ 416.701 Scope of subpart.

(a) * * * This subpart tells you what events you must report; what your reports must include; when reports are due; and when certain reporting requirements, and penalties relating to reporting requirements, do not apply.

* * *

* * * * *

■ 8. Amend 416.702 by adding, in alphabetical order, the definitions of “Participating payroll data provider” and “Payroll data provider” to read as follows:

§ 416.702 Definitions.

* * * * *

Participating payroll data provider means a payroll data provider that has established an information exchange with us to provide wage and employment information.

Payroll data provider means payroll providers, wage verification companies, and other commercial or non-commercial entities that collect and maintain information regarding employment and wages.

* * * * *

■ 9. Amend § 416.708 by revising paragraph (c) to read as follows:

§ 416.708 What you must report.

* * * * *

(c) *A change in income.* Unless the circumstances in § 416.709(a) and (c) apply, you must report to us any increase or decrease in your income and any increase or decrease in the income of—

- (1) Your ineligible spouse who lives with you;
- (2) Your essential person;
- (3) Your parent, if you are an eligible child and your parent lives with you; or
- (4) An ineligible child who lives with you.

However, you need not report an increase in your Social Security benefits if the increase is only a cost-of-living adjustment. (For a complete discussion of what we consider income, see subpart K of this part. See § 416.1323 regarding suspension because of excess income.) If you receive benefits based on disability, when you or your representative report changes in your earned income, we will issue a receipt to you or your representative.

* * * * *

■ 10. Add § 416.709 to read as follows:

§ 416.709 Reduced reporting requirements when you authorize us to obtain your information from payroll data providers.

(a) *Authorization to obtain data from a payroll data provider.* We will ask you for written authorization to obtain information about you from a payroll data provider whenever we determine the information is needed in connection with a determination of initial or ongoing eligibility for benefits.

(b) *Scope and duration.* When we ask for your authorization, we will explain the authorization's scope and duration.

(1) We will explain to you that we will use information obtained from a payroll data provider, when it is needed, in connection with a determination of eligibility or the amount of benefits under this title, or for the initial or ongoing entitlement to disability benefits under title II of the Social Security Act, and to prevent improper payments. We will explain to you that we may also use the authorization to obtain wage and employment information from a payroll data provider for claims associated with the claim filed, such as an SSI claim by

a spouse or child. We will also explain that we may use and disclose your information consistent with applicable Federal law (see part 401 of this chapter) and any privacy notices we provide to you.

(2) We will also inform you that your authorization will remain effective until the earliest of one of the following occurrences: (A) you revoke your authorization in writing (see paragraph (c)(4) of this section); (B) we have terminated all eligibility for benefits and you have no other claims or appeals pending under this title, and the period for appealing the determination or decision terminating entitlement has lapsed; (C) there has been an adverse determination or decision on your claim, you have no other claims or appeals pending under this title, and the period for appealing the determination or decision terminating eligibility has lapsed; or (D) your deemed relationship ends.

(c) *When reporting requirements will change.* We will notify you in writing whenever there is a change in your reporting responsibilities relating to the authorization described in paragraph (a) of this section. When we tell you about changes in your reporting responsibilities, we will also tell you whether you may be subject to a penalty of ineligibility for cash benefits (see § 416.1340) related to information we receive from a participating payroll data provider. We will also tell you when we will find good cause, under section 416.732, for a failure or delay in reporting a change in employer.

(1) If we have your authorization to obtain wage and employment information from a payroll data provider as described in paragraph (a) of this section, and we receive your wage and employment information from your employer(s) through a participating payroll data provider, you will not have to report changes in your wages paid in cash, as defined in § 416.1110(a), from that employer(s). Also, you will not have to report an increase in the amount of work from that employer or an increase in earnings from that employer, as described in § 416.988(a)(4) and (a)(5). All other reporting requirements still apply.

(2) If we have your authorization to obtain wage and employment information from a payroll data provider as described in paragraph (a) of this section, but we do not receive your wage and employment information from your employer(s) through a participating payroll data provider, we will not reduce your reporting responsibilities.

(3) If we have your authorization to obtain wage and employment

information from a payroll data provider as described in paragraph (a) of this section, and you have more than one employer,

(i) you do not need to report wages paid in cash for an employer if we receive your wage and employment information for that employer through a participating payroll data provider, and

(ii) you must still report wages paid in cash for an employer if we do not receive your wage and employment information for that employer through a participating payroll data provider.

(4) You may revoke your authorization at any time, but you must do so in writing. We will apply the revocation to all pending or approved claims under this title as well as all pending or approved disability claims under title II from the time we process your revocation. If you revoke your authorization, all your reporting responsibilities will resume; you will again be subject to all related penalties; and we may not find good cause, under § 416.732, for a failure to report timely a change in employer. We will notify you in writing of these changes.

Subpart I—Determining Disability and Blindness

■ 11. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: 42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383, and 1383b; secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 12. Revise § 416.988 to read as follows:

§ 416.988 Your responsibility to tell us of events that may change your disability or blindness status.

(a) If you are entitled to payments because you are disabled or blind, you should promptly tell us if—

- (1) Your condition improves;
- (2) You return to work;
- (3) You have a new employer;
- (4) You increase the amount of your work; or
- (5) Your earnings increase.

(b) If we have your authorization to obtain wage and employment information (see § 416.709(a)) from a payroll data provider (see § 416.702), and we receive your wage and employment information from your employer(s) through a participating payroll data provider, your reporting requirements under paragraphs (a)(4) and (a)(5) will be reduced as described in § 416.709(c).

PART 422—ORGANIZATION AND FUNCTIONS OF THE SOCIAL SECURITY ADMINISTRATION

Subpart B—General Procedures

■ 13. The authority citation for subpart B of part 422 is revised to read as follows:

Authority: 42 U.S.C. 405, 432, 902(a)(5), 1320b–1, 1320b–13, and 1320e–3, and sec. 7213(a)(1)(A) of Pub. L. 108–458.

■ 14. Add § 422.150 to read as follows:

§ 422.150 Guidelines for Establishing and Maintaining an Information Exchange with Payroll Data Providers

(a) *Guidelines for Establishing an Information Exchange with Payroll Data Providers.* In establishing an information exchange under section 1184 of the Social Security Act, we will do the following:

(1) Identify the payroll data providers (as defined in §§ 404.702 and 416.702 of this chapter) that may be interested in participating in an information exchange with us.

(2) Review the payroll data providers and consider factors such as: whether a payroll data provider is able and willing to engage in an information exchange; what data the payroll data provider could provide; whether the data from the payroll data provider is sufficiently accurate, complete, and up-to-date; and any conditions and limitations associated with our receipt of the data.

(3) Consistent with applicable law and regulations, establish an information exchange with the selected payroll data provider. The arrangement between us and the selected payroll data provider will describe:

- (i) the records that will be matched;
- (ii) the procedures for the match;
- (iii) any requirements established related to accuracy, completeness, and up-to-date records;
- (iv) the procedures for ensuring the administrative, technical, and physical security of the records matched; and
- (v) such other provisions as are necessary.

(4) Prior to receiving payroll data provider information, publish a notice in the **Federal Register** that describes the information exchange and the extent to which the information received through such exchange is:

(i) relevant and necessary to: (A) accurately determine initial and ongoing entitlement to, and the amount of, disability benefits under title II of the Social Security Act; (B) accurately determine eligibility for, and the amount of, benefits under the Supplemental Security Income program under title XVI of the Social Security

Act; and (C) prevent improper payments of such benefits; and

(ii) sufficiently accurate, up-to-date, and complete.

(b) *Guidelines for Maintaining an Information Exchange with Payroll Data Providers.* We will perform the following activities while we maintain an established information exchange with a payroll data provider described in paragraph (a):

(1) Periodically assess whether the data we receive under the information exchange continues to be accurate, complete, and up-to-date; and

(2) Monitor compliance with the requirements of the information exchange described in paragraph (a)(3).

[FR Doc. 2024–02961 Filed 2–14–24; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

[Docket No. ETA–2023–0006]

RIN 1205–AC16

Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A To Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Request for information; extension of public comment period.

SUMMARY: On December 21, 2023, ETA published a Request for Information (RFI), titled “Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A To Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations.” The period for submitting public comments is being extended to May 13, 2024, to allow stakeholders additional time to comment.

DATES: The comment period for the RFI published in the **Federal Register** on December 21, 2023 (88 FR 88290), is extended. Submit comments to the RFI and other information by May 13, 2024.

ADDRESSES: You may submit written comments electronically by the following method:

• *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the

instructions on the website for submitting comments.

• *Instructions:* Include the docket number ETA–2023–0006 in your comments. All comments received will be posted without change to <https://www.regulations.gov>. Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT:

Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, N–5311, Washington, DC 20210; Telephone (202) 513–7350 (this is not a toll-free number). For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: On December 21, 2023, ETA published an RFI titled, “Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A To Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations.” 88 FR 88290. In the RFI, ETA invited public comment on “evaluating the utility of expanding Schedule A to include STEM occupations, the Department invites the public to provide input on the appropriate data sources and methods for determining whether labor shortages exist, whether Schedule A should be used to alleviate any labor shortages in STEM occupations should it be determined from these data sources and methods that such shortages exist, and if so, how the Department could establish a reliable, objective, and transparent methodology for identifying STEM occupations that are experiencing labor shortages.” The RFI further invited the public to answer a number of questions in their responses that would assist ETA in making this evaluation.

The public comment period for this RFI was to conclude on February 20, 2024, 60 days after publication of the RFI. To date, ETA has received a very limited number of comments, many of which do not provide the information requested or address the questions raised in the RFI. In addition, ETA received a request from a stakeholder for an extension of the public comment period (Document ID ETA–2023–0006–0035). ETA agrees to an extension of the public comment period and believes that an extension until May 13, 2024, is sufficient and appropriate to balance the