

§ 221.283 The filing of tariffs and amendments to tariffs.

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(c) * * *

(8) Rule text.

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Issued in Washington DC, on this 15th day of April, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

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SOCIAL SECURITY ADMINISTRATION**20 CFR Parts 404 and 422**

RIN 0960-AD74

Statement of Earnings and Benefit Estimates

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are amending our rules on sending statements of earnings and benefit information to individuals. Under our current rules, which implement section 1143(a) of the Social Security Act (the Act), we are required to send a statement to an eligible individual who requests it. Under these final rules, we will provide the statement without a request to an eligible individual, as required by section 1143(c) of the Act.

EFFECTIVE DATE: These rules are effective April 24, 1996.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-8471. For information on eligibility or claiming benefits, call our national toll-free number 1-800-772-1213.

SUPPLEMENTARY INFORMATION: Section 1143 of the Act requires the Commissioner of Social Security (the Commissioner) to provide to eligible individuals "a social security account statement" (statement). We must fulfill this requirement in three phases. In the first phase, we were required, by October 1, 1990, to provide, upon the request of an "eligible individual," a statement that contains certain information described below. Section 1143 defines an "eligible individual" as one who has a social security account number, has attained age 25 or over, and has wages or net earnings from self-employment.

The statement we provide under section 1143 of the Act must contain the

following information as of the date of the request:

1. The amount of wages paid to and self-employment income derived by the individual;

2. An estimate of the aggregate of the employee and self-employment contributions of the individual for old-age, survivors', and disability insurance benefits;

3. A separate estimate of the aggregate of the employee and self-employment contributions of the individual for medicare hospital insurance coverage; and

4. An estimate of the potential monthly retirement (old-age), disability, dependents', and survivors' insurance benefits payable on the individual's earnings record and a description of medicare hospital insurance coverage.

We are carrying out this first phase, which is required by section 1143(a) of the Act and which we explained in the final rules published November 23, 1992, in the Federal Register (57 FR 54917). In these final rules, we explain how we will fulfill our obligations in the second and third phases of section 1143.

The second phase of providing statements, as stated in section 1143(c)(1) of the Act, requires that by not later than September 30, 1995, we must furnish this statement to each "eligible individual" who has attained age 60 by October 1, 1994 (i.e., by the beginning of fiscal year 1995), is not receiving benefits under title II of the Act, and for whom we can determine a current mailing address by methods we consider appropriate. We must also send this statement to each "eligible individual" who attains age 60 in fiscal years 1995 through 1999, i.e., October 1, 1994 through September 30, 1999, if the individual is not receiving benefits under title II of the Act, and if we can determine a current mailing address by methods we consider appropriate. In the case of an individual who attains age 60 in fiscal years 1995 through 1999, we will mail a statement to the individual either in the fiscal year in which he or she attains age 60 or in an earlier fiscal year, as resources allow. We will mail the statement without requiring a request from the individual. We will also advise individuals receiving these statements that the information in our records will be updated annually and is available upon request. In February 1995, we began mailing the statements to individuals who attained age 60 by October 1, 1994.

The third phase of providing statements, as stated in section 1143(c)(2) of the Act, requires that beginning not later than October 1,

1999, we must provide this statement on an annual basis to each "eligible individual" who is not receiving benefits under title II and for whom we can determine a current mailing address by methods we consider appropriate. We must provide a statement without a request from the eligible individual and, unlike the second phase, regardless of whether the eligible individual has attained age 60.

To implement the second and third phases of section 1143, we are using our records of assigned social security account numbers to identify eligible individuals who are not receiving benefits under title II of the Act. We have decided that the appropriate method now for determining an individual's current mailing address is to obtain it from the individual taxpayer files of the Internal Revenue Service (IRS). The IRS is authorized by section 6103(m)(7) of the Internal Revenue Code (26 U.S.C. 6103(m)(7)), as added by section 5111 of Public Law 101-508 (the Omnibus Budget Reconciliation Act of 1990), to disclose this information to us for our use in mailing the statements required by section 1143 of the Act. This source of address information is readily available to us, i.e., electronically accessible, using social security numbers as identifiers, and was clearly contemplated by Congress in the enactment of section 6103(m)(7) of the Internal Revenue Code.

Because individuals who live in Puerto Rico, the Virgin Islands, and Guam generally are not required to pay Federal income taxes, the IRS does not have their addresses. We have arranged to use the addresses from their local taxpayer records, which the tax agencies in these three entities will provide to us.

In these final regulations, we state the circumstances under which we will not send an unrequested statement. Those circumstances, stated in the new § 404.812(b), are based on our judgment that sending, or attempting to send, a statement to specified categories of individuals is not reasonably required under section 1143 of the Act.

We will mail the statements on a flow basis throughout the fiscal year, rather than in one mass mailing. This is an administratively effective and cost-efficient method of handling the more than 6 million statements we mailed in fiscal year 1995 and the 10 to 120 million we expect to mail annually beginning in 1996. As resources allow, we may mail statements to some eligible individuals, who attain age 60 in fiscal years 1996 through 1999, even before the fiscal year in which they attain age 60.

In the final rules we published on November 23, 1992, (57 FR 54917), we revised § 404.810 to describe an individual's right to obtain a statement of earnings and benefit estimates, how to request it, and the information we need to comply with the request. In a new § 404.811, we listed the information that we will furnish in the statement of earnings and benefit estimates. Further, we revised § 422.125 so that most of the rules on statements of earnings and benefit estimates are now located in subpart I of part 404.

In these final regulations, we are revising § 404.811 for consistency with the new § 404.812, which explains the statement we will send without a request, as required by section 1143(c) of the Act. We will also indicate whether the individual has the required credits (quarters of coverage) to be eligible for each type of benefit, and the ages at which various retirement amounts are potentially payable.

When individuals request statements, they are asked for information about when they expect to retire, i.e., stop working, how much they earned last year, and how much they expect to earn this year and in future years up to retirement. In § 404.811, we explain that if the individual does not already have the required credits (quarters of coverage) to be eligible to receive benefits, we may include up to eight additional estimated credits (four per year maximum) based on the requester's information about earnings for last year and this year that are not yet on our records. In addition, we state that the benefit estimates will be based partly on the information the requester provided about his or her planned retirement age and current and future earnings.

For the unrequested statements, we will not have information from the individual. Instead, we will estimate the individual's recent and future earnings based on his or her current social security record. In § 404.812, we explain that if there are earnings recorded in either of the two years before the year in which the individual is selected to get a statement, we will use the same earnings amount as that recorded in the later of these two years to project earnings for the current year and future years when we estimate the benefits. In addition, if the individual does not already have the required credits (quarters of coverage) to be eligible to receive benefits, we will use that last recorded earnings amount to estimate up to eight additional credits (four per year) for the last year and the current year. If there are no earnings recorded in either of the two years preceding the year of selection, we will not estimate

any current and future earnings or additional credits (quarters of coverage) for the individual.

In summary, both §§ 404.811 and 404.812 list the information that we will include in the revised statement format. In addition, § 404.812 explains who will be sent an unrequested statement, who will not be sent an unrequested statement, and the selection and mailing process we will use. We are also amending § 422.125 to conform it to the changes we have described for subpart I of part 404.

On January 19, 1995, we published proposed rules in the Federal Register at 60 FR 3787. We received no comments. However, as explained previously, we have revised these final rules to provide that we may mail statements to some individuals even before the year in which they attain age 60. These revisions will be advantageous to eligible individuals and are consistent with the Act.

Regulatory Procedures

Since these rules interpret the statute, and provide statements of policy, the 30-day delay in effectuating rules, as provided in 5 U.S.C. 553(d), does not apply.

Executive Order 12866

The Office of Management and Budget has reviewed these rules and determined that they meet the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities since these regulations affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(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; 93.773 Medicare-Hospital Insurance)

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 422

Administrative practice and procedure; Freedom of information; Organization and functions (Government agencies); Social Security.

Dated: December 20, 1995.

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subpart I of part 404 and subpart B of part 422 of 20 CFR chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart I—[Amended]

1. The authority citation for subpart I of part 404 continues to read as follows:

Authority: Secs. 205(a), (c)(1), (c)(2)(A), (c)(4), (c)(5), (c)(6), and (p), 702(a)(5), and 1143 of the Social Security Act (42 U.S.C. 405(a), (c)(1), (c)(2)(A), (c)(4), (c)(5), (c)(6), and (p), 902(a)(5), and 1320b-13).

2. Section 404.811 is revised to read as follows:

§ 404.811 The statement of earnings and benefit estimates you requested.

(a) *General.* After receiving a request for a statement of earnings and the information we need to comply with the request, we will provide you or your authorized representative a statement of the earnings we have credited to your record at the time of your request. With the statement of earnings, we will include estimates of the benefits potentially payable on your record, unless you do not have the required credits (quarters of coverage) for any kind of benefit(s). (However, see paragraph (b)(3) of this section regarding the possibility of our estimating up to eight additional credits on your record.) If we do not provide a statement of earnings and an estimate of all the benefits potentially payable, or any other information you requested, we will explain why.

(b) *Contents of statement of earnings and benefit estimates.* The statement of your earnings and benefit estimates will contain the following information:

(1) Your social security taxed earnings as shown by our records as of the date of your request;

(2) An estimate of the social security and medicare hospital insurance taxes paid on your earnings (although we do not maintain such tax information);

(3) The number of credits, i.e., quarters of coverage, not exceeding 40, you have for both social security and medicare hospital insurance purposes, and the number you need to be eligible

for social security and also for medicare hospital insurance coverage. If you do not already have the required credits (quarters of coverage) to be eligible to receive social security benefits and medicare hospital insurance coverage, we may include up to eight additional estimated credits (four per year) based on the earnings you told us you had for last year and this year that we have not yet entered on your record;

(4) A statement as to whether you meet the credits (quarters of coverage) requirements, as described in subpart B of this part, for each type of social security benefit when we prepare the benefit estimates, and also whether you are eligible for medicare hospital insurance coverage;

(5) Estimates of the monthly retirement (old-age), disability, dependents' and survivors' insurance benefits potentially payable on your record if you meet the credits (quarters of coverage) requirements. The benefit estimates we send you will be based partly on your stated earnings for last year (if not yet on your record), your estimate of your earnings for the current year and for future years before you plan to retire, and on the age at which you plan to retire. The estimate will include the retirement (old-age) insurance benefits you could receive at age 62 (or your current age if you are already over age 62), at full retirement age (currently age 65 to 67, depending on your year of birth) or at your current age if you are already over full retirement age, and at age 70;

(6) A description of the coverage under the medicare program;

(7) A reminder of your right to request a correction of your earnings record; and

(8) A remark that an annually updated statement is available on request.

3. Section 404.812 is added to read as follows:

§ 404.812 Statement of earnings and benefit estimates sent without request.

(a) Who will be sent a statement. Unless one of the conditions in paragraph (b) of this section applies to you, we will send you, without request, a statement of earnings and benefit estimates if:

(1) You have a social security account number;

(2) You have wages or net earnings from self-employment on your social security record;

(3) You have attained age 25 or older, as explained in paragraph (c)(3) of this section; and

(4) We can determine your current mailing address.

(b) *Who will not be sent a statement.* We will not send you an unrequested

statement if any of the following conditions apply:

(1) You do not meet one or more of the conditions of paragraph (a) of this section;

(2) Our records contain a notation of your death;

(3) You are entitled to benefits under title II of the Act;

(4) We have already sent you a statement, based on your request, in the fiscal year we selected you to receive an unrequested statement;

(5) We cannot obtain your address (see paragraph (c)(2) of this section); or

(6) We are correcting your social security earnings record when we select you to receive a statement of earnings and benefit estimates.

(c) *The selection and mailing process.* Subject to the provisions of paragraphs (a) and (b) of this section, we will use the following process for sending statements without requests:

(1) *Selection.* We will use our records of assigned social security account numbers to identify individuals to whom we will send statements.

(2) *Addresses.* If you are living in one of the 50 States or the District of Columbia, our current procedure is to get your address from individual taxpayer files of the Internal Revenue Service, as authorized by section 6103(m)(7) of the Internal Revenue Code (26 U.S.C. 6103(m)(7)). If you live in Puerto Rico, the Virgin Islands, or Guam, we will get your address from the taxpayer records of the place in which you live.

(3) *Age.* If you have attained age 60 on or before September 30, 1995, we will send you a statement by that date. If you attain age 60 on or after October 1, 1995 but no later than September 30, 1999, we will send you a statement in the fiscal year in which you attain age 60, or in an earlier year as resources allow. Also, we will inform you that an annually updated statement is available on request. Beginning October 1, 1999, we will send you a statement each year in which you are age 25 or older.

(4) *Ineligible.* If we do not send you a statement because one or more conditions in paragraph (b) of this section apply when you are selected, we will send a statement in the first appropriate fiscal year thereafter in which you do qualify.

(5) *Undeliverable.* If the statement we send you is returned by the Post Office as undeliverable, we will not remail it.

(d) *Contents of statement of earnings and benefit estimates.* To prepare your statement and estimate your benefits, we will use the earnings in our records. If there are earnings recorded for you in either of the two years before the year

in which you are selected to get a statement, we will use the later of these earnings as your earnings for the current year and future years when we estimate your benefits. In addition, if you do not already have the required credits (quarters of coverage) to be eligible to receive benefits, we will use that last recorded earnings amount to estimate up to eight additional credits (four per year) for last year and the current year if they are not yet entered on your record. If there are no earnings entered on your record in either of the two years preceding the year of selection, we will not estimate current and future earnings or additional credits for you. Your earnings and benefit estimates statement will contain the following information:

(1) Your social security taxed earnings as shown by our records as of the date we select you to receive a statement;

(2) An estimate of the social security and medicare hospital insurance taxes paid on your earnings (although we do not maintain such tax information);

(3) The number of credits, i.e., quarters of coverage, not exceeding 40 (as described in paragraph (d) of this section), that you have for both social security and medicare hospital insurance purposes, and the number you need to be eligible for social security benefits and also for medicare hospital insurance coverage;

(4) A statement as to whether you meet the credit (quarters of coverage) requirements, as described in subpart B of this part, for each type of social security benefit when we prepare the benefit estimates, and also whether you are eligible for medicare hospital insurance coverage;

(5) Estimates of the monthly retirement (old-age), disability, dependents' and survivors' insurance benefits potentially payable on your record if you meet the credits (quarters of coverage) requirements. If you are age 50 or older, the estimates will include the retirement (old-age) insurance benefits you could receive at age 62 (or your current age if you are already over age 62), at full retirement age (currently age 65 to 67, depending on your year of birth) or at your current age if you are already over full retirement age, and at age 70. If you are under age 50, instead of estimates, we may provide a general description of the benefits (including auxiliary benefits) that are available upon retirement;

(6) A description of the coverage provided under the medicare program;

(7) A reminder of your right to request a correction of your earnings record; and

(8) A remark that an annually updated statement is available on request.

PART 422—ORGANIZATION AND PROCEDURES**Subpart B—[Amended]**

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b-1 and 1320b-13.)

2. Section 422.125 is amended by revising paragraphs (a) and (b) to read as follows:

§ 422.125 Statements of earnings; resolving earnings discrepancies.

(a) *Obtaining a statement of earnings and estimated benefits.* An individual may obtain a statement of the earnings on his earnings record and an estimate of social security benefits potentially payable on his record either by writing, calling, or visiting any social security office, or by waiting until we send him one under the procedure described in § 404.812 of this chapter. An individual may request this statement by completing the proper form or by otherwise providing the information the Social Security Administration requires, as explained in § 404.810(b) of this chapter.

(b) *Statement of earnings and estimated benefits.* Upon receipt of such a request or as required by section 1143(c) of the Social Security Act, the Social Security Administration will provide the individual, without charge, a statement of earnings and benefit estimates or an earnings statement. See §§ 404.811 through 404.812 of this chapter concerning the information contained in these statements.

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BILLING CODE 4190-29-P

20 CFR Part 498

RIN 0960-AE23

Civil Monetary Penalties, Assessments and Recommended Exclusions

AGENCY: Office of the Inspector General (OIG), SSA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures to impose civil monetary penalties and assessments against certain Old-Age, Survivors, and Disability Insurance beneficiaries, Supplemental Security Income recipients, third parties, physicians, medical providers, and other individuals and entities who make false statements or representations for use in

determining any right to or amount of title II or title XVI benefits under the Social Security Act. This final rule implements the civil monetary penalty provisions of section 206(b) of the Social Security Independence and Program Improvements Act of 1994.

EFFECTIVE DATE: This final rule is effective May 24, 1996.

FOR FURTHER INFORMATION CONTACT : Judith A. Kidwell, Office of the Inspector General, (410) 965-9750.

SUPPLEMENTARY INFORMATION:**Background**

We published a notice of proposed rulemaking (NPRM) in the Federal Register on November 27, 1995, (60 FR 58305) which proposed to establish procedures to implement the civil monetary penalty (CMP) provisions of section 206(b) of the Social Security Independence and Program Improvements Act of 1994, Public Law 103-296, which added section 1129 of the Social Security Act (the Act), effective October 1, 1994. Section 108 of Public Law 103-296 made additional conforming amendments to section 1129, effective March 31, 1995, to reflect the Social Security Administration's (SSA) new status as an independent agency.

The 60-day public comment period closed on January 26, 1996. We received comments on the NPRM from only one commenter, a disability law center. The comments, our responses, and the final rule, with several technical changes we have made, are discussed below.

Since we have made only technical changes, we are adopting the regulations as proposed.

Public Comments on the Proposed Regulations

The commenter was concerned that the regulations were overly broad and that there were unaddressed problems at the SSA which would increase the likelihood of an overbroad application of these rules to claimants and their representatives. The substantive comments made by the commenter and our responses are summarized below.

Comment: The commenter raised concerns that the proposed regulations were overbroad in defining when a person has made or caused to be made a statement, representation, or omission of material fact, inasmuch as the basis and purpose statement in § 498.100 does not include an intent requirement.

Response: Section 498.100 has been developed to briefly catalog the general types of penalty and assessment authorities that will be in part 498. This section is not intended to include the

legally operative language to impose a penalty or assessment. Such language can be found in §§ 498.101 through 498.132.

Comment: The commenter expressed a concern that the definition of material fact at § 498.101 is not limited to facts that might have made a difference in the eligibility decision.

Response: The definition of "material fact" which appears in the NPRM is taken verbatim from section 1129(a)(2) of the Act.

Comment: Although the commenter acknowledged that § 498.102 contains elements of intent, it raised a concern that the basis for imposition of CMPs does not adequately link misstatements and omissions to an intent to fraudulently obtain benefits.

Response: Section 498.102 carefully tracks the language of section 1129(a)(1) of the Act. In order to impose a penalty or assessment under § 498.102, the OIG must determine that an individual knew or should have known that his or her statement or representation was false or misleading or omitted a material fact, or that the individual made the false or misleading statement with knowing disregard for the truth.

Comment: The commenter recited an example of an experience to illustrate problems it perceived with this rule. The commenter also expressed concerns that: (1) The vast majority of claimants do not understand eligibility and reporting requirements; (2) because of staff reductions, access to SSA staff for information is limited; (3) the ability of SSA staff to completely and accurately relate program requirements varies widely; (4) SSA pamphlets are difficult for persons with learning disabilities and limited education or English skills; and (5) SSA record keeping is such that it is not unusual for records to be lost.

Response: Many of these comments are more appropriately directed to the administration of SSA programs and are not within the scope of this rule. However, we would like to point out that section 1129 of the Act is directed toward those persons who defraud the SSA's programs or receive benefits or payments to which they are not entitled, and that steps have been taken to address due process concerns and ensure that innocent persons are not penalized.

As required by section 1129 of the Act, the respondent will be notified of a proposed penalty in a manner authorized by Rule 4 of the Federal Rules of Civil Procedure. Additionally, except with respect to affirmative defenses and mitigating circumstances, the burden of persuasion is on the Government in CMP cases. Finally, the