

to review the Department's actions and documents subject to the Office of Information and Regulatory Affairs review under E.O. 12866. These reviews include policy and guidance documents that OMB determines are significant.

Classification

This final rule is a rule of agency organization, procedure, or practice, codifying in the CFR the Department's existing procedures. Therefore, pursuant to 5 U.S.C. 553(b)(3)(A), notice and public comment are not required. Because a notice and public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This rule does not have any collection of information requirements under the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 29

Administrative practice and procedure, Guidance documents.

PART 29—[REMOVED AND RESERVED]

■ For the reasons stated in the preamble and under the authority of 15 U.S.C. 1512, the Department of Commerce amends subtitle A in title 15 of the Code of Federal Regulations by removing and reserving part 29.

Dated: December 12, 2024.

Nell Abernathy,

Director, Office of Policy and Strategic Planning, U.S. Department of Commerce.

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BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 402

[Docket No. SSA-2021-0049]

RIN 0960-A107

Availability of Information and Records to the Public

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) is finalizing revisions to our Freedom of Information Act (FOIA) regulations to conform with the requirements of the FOIA Improvement Act of 2016. The FOIA

Improvement Act of 2016 requires Federal agencies to issue regulations on procedures for disclosure of records consistent with the amendments to the FOIA by such Act. We are also finalizing the reorganization of our FOIA regulation to make our FOIA procedures easier for the public to understand and use.

DATES: This rule is effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Sarah Reagan, Office of Privacy and Disclosure, Social Security Administration, WHR G401, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-5855.

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.ssa.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

The FOIA is a Federal statute that allows the public to request records from the Federal government. The FOIA provides that any person has a right, enforceable in court, to obtain access to federal agency records subject to the FOIA, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions. Under the FOIA, agencies must make records specified in 5 U.S.C. 552(a)(2) (*e.g.*, instructional manuals issued to our employees, general statements of policy, other materials used in processing claims, etc.) available for public inspection in an electronic format. The FOIA also statutorily requires Federal agencies to annually report on numerous and various metrics to the Department of Justice (DOJ).

Since the time the SSA became an agency independent of the Department of Health and Human Services, Congress enacted two significant laws. These laws, the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act of 2007)¹ and the FOIA Improvement Act of 2016,² guide how agencies implement the requirements of the FOIA. We are finalizing our proposed updates and revisions to our regulation at 20 CFR part 402 to conform with these laws, as well as the FOIA Improvement Act of 2016's requirement to issue regulations on

procedures for disclosure of records in accordance with its amendments.

On June 6, 2023, we published a notice of proposed rulemaking (NPRM) to update, reorganize, and clarify our FOIA processes for the public.³ In the NPRM, we proposed comprehensive revisions to the entirety of 20 CFR part 402. This reorganization starts with our FOIA policies and procedures for processing FOIA requests and concludes with information on records available for public inspection. Our revisions, finalized here with some modifications from the NPRM, streamline our FOIA regulations at part 402 by creating new sections, consolidating sections based on content, and revising section headings to more clearly capture the information contained therein. We also proposed updates to reflect office name changes, as well as general text changes consistent with the plain language initiative.⁴

Our proposed revisions to our FOIA regulation at 20 CFR part 402, which we are finalizing with minor revisions, are supported by the requirements of the OPEN Government Act of 2007 and the FOIA Improvement Act of 2016.

These changes also correlate with the guidelines on the FOIA that Attorney General Merrick Garland issued within his March 2022 *Memorandum for Heads of Executive Departments and Agencies*. As summarized by DOJ's Office of Information Policy, Attorney General Garland's memorandum "direct[s] the heads of all executive branch departments and agencies to apply a presumption of openness in administering the FOIA and make clear that the Justice Department will not defend nondisclosure decisions that fail to do so." Attorney General Garland stated that proactive disclosures are "fundamental to the faithful application of FOIA," and advised agencies of the need "to remove barriers to access and to help requesters understand the FOIA process and the nature and scope of the records the agency maintains."

In the NPRM, and in this final rule, we explained and justified the rulemaking on the requirements of the

³ 88 FR 36980.

⁴ The Plain Writing Act of 2010 requires Federal agencies to use clear communication that the public can understand and use. Federal agencies are required to follow plain language principles; <https://centerforplainlanguage.org/learning-training/five-steps-plain-language/>. In fiscal year 2021, the Center for Plain Language graded Federal agencies' Coronavirus Update pages and main FOIA web pages. SSA received an overall grade of B+ and received positive reviews on our FOIA main web page.

¹ Public Law 110-175; <https://www.congress.gov/bill/110th-congress/senate-bill/2488/text>.

² Public Law 114-185; <https://www.congress.gov/bill/114th-congress/senate-bill/337/text>.

OPEN Government Act of 2007⁵ and the FOIA Improvement Act of 2016.⁶

The changes we are finalizing in this final rule to conform with the requirements of the OPEN Government Act of 2007 are as follows:

- Within revised § 402.60, we are updating and clarifying the following business practices: our acknowledgement of FOIA requests, when a request is considered perfected, our multi-tracking procedures, unusual circumstances, and tolling of the 20 business day statutory time period;
- Within revised §§ 402.70 through 402.80, we are clarifying our rules concerning fees;
- Within revised §§ 402.05 and 402.100, we are introducing and providing information on the services of the FOIA Public Liaison and the Office of Government Information Services (OGIS); and
- Within revised § 402.10, we are defining “representative of the news media,” amending the definition of “record,” and defining new terms (such as the FOIA Public Liaison, OGIS, and Chief FOIA Officer).

The changes we are finalizing in this final rule to conform with the requirements of the FOIA Improvement Act of 2016 are as follows:

- Within revised §§ 402.15(a) and 402.60(k), we are adding the foreseeable harm standard;
- Within revised § 402.105, we are updating the appeal timeframe to 90 days (from 30 days);
- Within revised §§ 402.05 and 402.100, discussed earlier, we are addressing the FOIA Public Liaison and OGIS;
- Within revised §§ 402.70 through 402.80, we are clarifying our fee charging rules, including when unusual circumstances apply;
- Within revised § 402.135(a), we are revising the deliberative process privilege to provide that this privilege cannot be applied to records that are 25 years or older at the time of the FOIA request; and,
- Within revised § 402.155(a), we are addressing our public posting of records requested three or more times.

Changes We Made From the NPRM to the Final Rule

- In § 402.10, we clarified the definition of “commercial interest” in response to public comment.
- In § 402.10, we added the definition of “commercial use” to differentiate “Commercial interest” from “commercial use.” “Commercial use” is

terminology used in our fee waiver provisions and is not intended to impact the “commercial use” FOIA fee category.

- In § 402.10, we clarified the definition of “educational institution.” While we did not receive public comment on this definition, the language we added aligns with DOJ FOIA guidance and case law. The added language specifies that we may seek verification from the requester that the request is in furtherance of scholarly research.

- In § 402.10, we clarified the definition of “fee category.” While we did not receive public comment on this definition, we removed “noncommercial” so the language now states: “The categories are: commercial use requests; scientific or educational institutions and news media requests; and all other requests.” “Commercial use” is its own fee category; therefore, the term “noncommercial” is redundant.

- In § 402.10, we changed the term “reading room” to “FOIA library” to align with DOJ FOIA guidance. We also added the following sentence to further explain what may be maintained in a FOIA library: “Posted records may include those provided under agency discretion and not required pursuant to FOIA.” We changed the term “reading room” to “FOIA library” throughout the regulation.

- In § 402.10, we modified the definition of “representative of the news media.” While we did not receive public comment on this definition, we removed the phrase “based on the requester’s intended use of the requested records” to align with the FOIA statute.

- In § 402.10, we clarified the definition of “Trade secrets and commercial or financial information.” While we did not receive public comment on this definition, we adjusted the terminology of the definition to make it easier to understand. The term now reads: “Trade secrets and confidential commercial or financial information.”

- In § 402.20(b), we changed the language from stating the agency “will handle” your request under the Privacy Act to the agency “may handle” your request under the Privacy Act. This change clarifies that not all individuals requesting their own records that are maintained in a system of records, or parents or legal guardians authorized to act under § 401.75 of this chapter who are seeking the records about a minor or individual who has been declared incompetent, would be entitled to access records under the Privacy Act.

For instance, SSA maintains systems of records that are exempt from access under § 401.85 and third-party information within a subject’s systems of records may not be accessible under the Privacy Act. Further, requesters must verify their identity to make a Privacy Act request. In cases where a requester who filed a FOIA would not be entitled to records under the Privacy Act, we will handle their request under FOIA. We further clarified that “Privacy Act requests are also processed under the FOIA, when appropriate, to give you the benefit of both statutes. You must verify your identity in accordance with our regulations.” Given our central processing of FOIA, it is not feasible for Privacy Act initial denials to be processed under FOIA prior to denial of administrative appeal because OPD, the sole decisionmaker under FOIA, does not process initial denials but does process administrative appeal denials.

- In § 402.25, we modified the language to align more with the FOIA statute by changing “member of the public” to “person.”

- In § 402.30(a)(4), we consolidated two separate sentences into one for clarity and readability. The sentence now reads: “The request must clearly state and reasonably describe what SSA records are being requested in sufficient detail to enable OPD to locate them with a reasonable amount of effort.” We also changed the word “should” to “may” in the following sentence to clarify that providing the information specified therein is not a requirement: “If the request is for electronic communications, such as email records, the request may identify the names, position titles, or other identifying information about the agency employees involved, as well as the applicable timeframe.”

- In § 402.35, we added the National FOIA Portal as an additional resource through which requesters can submit FOIA requests to SSA, and we removed the agency’s fax number. This section, however, continues to provide requesters codified directions to our website at <https://www.ssa.gov/foia> for additional contact information, as well as an email address for inquiries and a physical mailing address.

- In § 402.45, we changed the name of the section heading and revised the content to more clearly describe how we handle certain requests. The “Requests not processed under the FOIA” is now *Requests handled outside of the FOIA process*. We added a clarifying sentence, “When records (a) through (d) below are requested from OPD, OPD will respond to the requester and provide information for requesting the records sought,” to

⁵ 88 FR at 36981.

⁶ 88 FR at 36982.

articulate how we respond outside of the FOIA process.

- In § 402.55, we edited the language to further clarify how we handle consultations and referrals, *e.g.*, we added language to explain referrals of requests in whole or in part. Our practices as described in this section align with DOJ's FOIA guidance and how other agencies similarly handle consults and referrals. While we did not receive public comment on this section, we clarified the language in § 402.55(a) to state that “[w]hen reviewing records located by SSA in response to a request, SSA will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA.” We further clarify that we may refer records, in whole or in part to an outside agency. Within modified § 402.55(a)(1), finalized in this rule, we now state: “We will notify the requester in writing when we opt to refer records in whole or in part to another agency for direct response from that agency, including the name(s) or the agency(s) to which the record was referred and that agency’s FOIA contact information, unless notification would cause harm to an interest protected under the FOIA. In such instances, in order to avoid harm to an interest protected by an applicable exemption, we coordinate to seek the view of the originating agency.”

- We moved § 402.55(b) *Referral of requester to another agency*, to § 402.60(k) and edited the language to more clearly describe SSA’s actions. The sub-heading now reads: *Directing a requester to another agency*. This subsection describes our practices that are not technically referrals as defined in the FOIA statute. This move provides more clarity on our FOIA process.

- In § 402.60(a)(1), we revised the first sentence concerning our acknowledgement of FOIA requests for consistency with the FOIA statute. The language now reads: “If we receive a FOIA request that will take longer than 10 working days to process, we will provide an acknowledgment.”

- In § 402.60(b) and elsewhere throughout the regulation, we changed the term “business days” to “working days” for consistency with the FOIA statute.

- In § 402.60, we reorganized *Expedited processing* within 402.60(c) *Multi-tracking procedures*. Section 402.60(c), clarifies that there are three multi-track types: “FOIA requests are categorized simple, complex, or expedited. Unless granted expedited processing, we process FOIA requests in each track according to a first-in, first-out basis.” We further clarify in

§ 402.60(c)(2) how long it takes the agency to process requests placed in the complex multi-track: “We will place into a complex processing queue any request that cannot be completed within 20 working days due to the complex nature of the request, including consultation with components that may maintain records subject to the request.”

- In § 402.60(d), we clarify that “[w]hen unusual circumstances exist, we will process the request under the complex track.” We received a public comment concerning SSA’s “unusual circumstances” practice. As explained within the “Comments and Responses” portion of this final rule, we modified our final regulation to reflect that “unusual circumstances” exist “[w]hen unusual circumstances exist, we will process the request under the complex track.” This change is a clarifying statement but not a change in practice. We currently use multi-tracks under § 402.140(c) and similarly define longer tracks to include situations where there is a need to consult with other SSA offices and the FOIA defines unusual circumstances under 5 U.S.C. 552(a)(6)(B)(iii) to exist when there is a need to search for and collect the requested records from offices separate from the office processing the FOIA request. Thus, the change to § 402.60(d) is merely a clarifying statement of how our tracks align with the unusual circumstance requirements in FOIA.

- In § 402.60(d)(2), we added language about our “unusual circumstances” notification for consistency with the FOIA statute. We added the following sentence: “We will notify the requester of the date by which we estimate completing the request.”

- In § 402.60(f), we clarified our fees by adding “duplication” among the items subject to a fee. The language now reads: “FOIA requesters are issued a fee notice that informs them of the estimated search, review, and duplication time associated with processing their FOIA request.”

- In § 402.60(g)(2), we clarified language regarding our administrative closing of requests. The language now reads: “The processing time will resume upon our receipt of the requester’s response. There may be instances when we require multiple clarifications on a FOIA request. After the first request for clarification, any additional clarifications are performed without tolling the clock. If we do not receive a response to our clarification attempts within 30 calendar days from the date of our first contact to the requester, we will close the FOIA request.”

- In 402.60(i), we renamed the title of the subsection to reflect the content

more clearly. The subsection’s title changed from “Unproductive searches” to *No records determinations*.

- In § 402.60(j), we removed the word “only” from the first sentence, so it now reads as follows: “We will furnish copies of records in whole or in-part, unless we reasonably foresee that disclosure would harm an interest protected by a FOIA exemption or if disclosure is prohibited by law.”

- In § 402.65, we modified (a), (a)(2), and (b). Under § 402.65(a), we removed the phrase “such as” before we list the criteria for expedited processing. For § 402.65(a)(2), for clarity and plain language usage, we changed the language from “the request is from the media, or other” to “the requester is.” In response to public comment, we also removed the word “immediate” in describing the urgency to inform the public necessary for expedited processing. Under § 402.65(b), we added language to clarify and more closely align with the FOIA statute⁷ to reflect the requester’s requirements when submitting a request for expedited processing. Our regulation now clearly states what information the requester must provide when submitting a request for expedited processing, *i.e.*, “A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. We will notify the requester within 10 calendar days of receipt of the request for expedited processing of our decision to grant or deny expedited processing.” We added one more sentence, clarifying our processing of requests for expedited processing: “Requests granted expedited processing will be given priority and processed as soon as practicable.”

- In § 402.85, in response to public comment, we modified the language by further clarifying the public interest criteria and what a requester should provide when submitting a request for a fee waiver citing public interest. We expand on this change within the “Comments and Responses” portion of this final rule.

- In § 402.90(c)(3), to align more with the electronic age and requesters’ use of credit card payment forms, we added language clarifying that we will dispose of payment information or return it. For example, if a requester faxed us their credit card payment information and the credit card payment information is no longer needed, rather than returning the completed credit card payment form via postal mail, we may dispose of the payment information.

⁷ 5 U.S.C. 552(a)(6)(E)(vi).

- In § 402.105(a)(2) and (a)(3), we added language further clarifying the timeframe to submit an appeal and what information a requester should provide when submitting an appeal. While we did not receive public comment on this section, we added the phrase “or in the case of electronic submissions, transmitted” and the word “calendar” to § 402.105(a)(2), so it now reads: “Be received, or in the case of electronic submissions, transmitted within 90 calendar days from the date of the determination the requester is appealing.” Under § 402.105(a)(3), we expand on what the appeal should include by adding two more sentences, so it now reads: “Explain what the requester is appealing and include additional information to support the appeal. The appeal should clearly identify the agency determination that is being appealed and the assigned request’s tracking number. To facilitate handling when submitted via mail or fax, the requester should mark the appeal letter, or subject line of the electronic transmission, ‘Freedom of Information Act Appeal.’”
- In § 402.105(b), we revised the first sentence concerning our

- acknowledgement of FOIA appeals for consistency with the FOIA statute. The language now reads: “If we receive an appeal that will take longer than 10 working days to process, we will provide an acknowledgment.”
- In § 402.105(c)(2), we clarify how long it takes the agency to process appeals placed in the complex multi-track: “Appeals of complex requests cannot be completed within 20 working days.”
 - In § 402.115 through § 402.145, we revised some of the introductions within the FOIA Exemptions to account that there may be considerations beyond the Exemption itself.
 - In § 402.130, we clarified Exemption 4 regarding the Submitter’s Notice to make clear how we may handle transmission of submitter notices in cases involving many submitters. We also clarified some of the language to make it consistent throughout the regulation.
 - In § 402.135, Exemption 5, we added “may” to the following sentence to clarify that these records are examples: “Such internal government communications may include an agency’s communications with an outside consultant or other outside

- person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications.”
- In § 402.145(e), we modified the language to mirror the FOIA statute concerning Exemption 7(E).
 - In § 402.155, we added the phrase, “SSA’s public” in front of “Hearings, Appeals, and Litigation Law Manual.” We received public comment regarding the agency’s proactive disclosures; therefore, our addition of the phrase “SSA’s public” clarifies that the agency posts a public version of the Hearings, Appeals, and Litigation Law Manual.
 - In § 402.160(a), we added “(a)(5) By posting in the FOIA Library,” to the list of places where the agency publishes records.
- To visualize our reorganization of part 402, we provided a table that identifies the old (existing) regulatory sections, the sections to which the content moved, and the names of the new sections, which we are also including for ease-of-use and transparency in this final rule.⁸
- Section-by-Section Changes*

20 CFR PART 402 REORGANIZATION OF SECTIONS

Reorganization of 20 CFR part 402

Existing section	Existing → New	New section
402.5. Scope and purpose	402.5 → 402.05	402.05. Scope and purpose of this part.
402.10. Policy	402.10 → 402.15	402.10. Definitions.
402.15. Relationship between the FOIA and the Privacy Act of 1974.	402.15 → 402.20	402.15. SSA’s FOIA policy.
402.20. Requests not handled under the FOIA	402.20 → 402.45	402.20. Relationship between the FOIA and the Privacy Act of 1974.
402.25. Referral of requests outside of SSA	402.25 → 402.55	402.25. Who can file a FOIA request?
402.30. Definitions	402.30 → 402.10	402.30. Requirements of a FOIA request.
402.35. Publication	402.35 → 402.160	402.35. Where to submit a FOIA request.
402.40. Publications for sale	402.40 → 402.165	402.40. Requests for deceased individual’s records.
402.45. Availability of records	402.45(a) → 402.05	402.45. Requests handled outside of the FOIA process.
402.50. Availability of administrative staff manuals	402.50 removed	402.50. FOIA Officer’s authority.
402.55. Materials available at district offices and branch offices.	402.55 → 402.155	402.55. Referrals and consultations.
402.60. Materials in field offices of the Office of Hearings and Appeals.	402.60 → 402.155	402.60. How does SSA process FOIA requests?
402.65. Health care information	402.65 removed	402.65. Expedited processing.
402.70. Reasons for withholding some records	402.70 → 402.95(b)	402.70. Fees associated with processing FOIA requests.
402.75. Exemption one for withholding records: National defense and foreign policy.	402.75 → 402.115	402.75. FOIA fee schedule.
402.80. Exemption two for withholding records: Internal personnel rules and practices.	402.80 → 402.120	402.80. Charging under section 1106(c) of the Social Security Act.
402.85. Exemption three for withholding records: Records exempted by other statutes.	402.85 → 402.125	402.85. Waiver of fees in the public interest.
402.90. Exemption four for withholding records: Trade secrets and confidential commercial or financial information.	402.90 → 402.130	402.90. Notification of fees and prepayment requirements.
402.95. Exemption five for withholding records: Internal memoranda.	402.95 → 402.135	402.95. Release of records.

⁸ 88 FR at 36983.

20 CFR PART 402 REORGANIZATION OF SECTIONS—Continued

Reorganization of 20 CFR part 402

Existing section	Existing → New	New section
402.100. Exemption six: Clearly unwarranted invasion of personal privacy.	402.100 → 402.140	402.100. FOIA Public Liaison and the Office of Government Information Services.
402.105. Exemption seven for withholding records: Law enforcement.	402.105 → 402.145	402.105. Appeals of the FOIA Officer's determination.
402.110. Exemption eight and nine for withholding records: Records on financial institutions; records on wells.	402.110 → 402.150	402.110. U.S. District Court action.
402.115. Reserved	Reserved → New section 402.115.	402.115. The FOIA Exemption 1: National defense and foreign policy.
402.120. Reserved	Reserved → New section 402.120.	402.120. The FOIA Exemption 2: Internal personnel rules and policies.
402.125. Who may release a record	402.125 → 402.50	402.125. The FOIA Exemption 3: Records exempted under other statutes.
402.130. How to request a record	402.130 → 402.35	402.130. The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.
402.135. Where to send a request	402.130 → 402.30 and 402.35	402.135. The FOIA Exemption 5: Internal documents.
402.140. How a request for a record is processed	402.140(a)–(c) → 402.60	402.140. The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.
	402.140(d) → 402.65	
402.145. Responding to your request	402.145(d) → 402.15(a)(2)	402.145. The FOIA Exemption 7: Law enforcement.
	402.145(a)–(c) → 402.60	
402.150. Release of records	402.150 → 402.95	402.150. The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.
402.155. Fees to be charged—categories of requests	402.155 → 402.70–402.75	402.155. Records available for public inspection.
402.160. Fees to be charged—general provisions	402.160 → 402.70–402.75	402.160. Where records are published.
402.165. Fee schedule	402.165 → 402.75	402.165. Publications for sale through the Government Publishing Office.
402.170. Fees for providing records and related services for program purposes pursuant to section 1106 of the Social Security Act.	402.170 → 402.80	Transferred as Shown, and Unused in Revised part 402.
	402.170(b) → 402.85(d)	
402.175. Fees for providing information and related services for non-program purposes.	402.175 → 402.80	Transferred as Shown, and Unused in Revised part 402.
402.180. Procedure on assessing and collecting fees for providing records.	402.180 → 402.90	Transferred as Shown, and Unused in Revised part 402.
402.185. Waiver or reduction of fees in the public interest.	402.185 → 402.85	Transferred as Shown, and Unused in Revised part 402.
402.190. Officials who may deny a request for records under FOIA.	402.190 → 402.50	Transferred as Shown, and Unused in Revised part 402.
402.195. How a request is denied	402.195 → 402.60	Transferred as Shown, and Unused in Revised part 402.
402.200. How to appeal a decision denying all or part of a request.	402.200 → 402.105	Transferred as Shown, and Unused in Revised part 402.
402.205. U.S. District Court Action	402.205 → 402.110	Transferred as Shown, and Unused in Revised part 402.

Comments Summary

We received five public comments on our NPRM from June 6 through August 7, 2023. All the comments are available for public viewing at <https://www.regulations.gov/document/SSA-2021-0049-0001>. These comments were from:

- Two individuals; and
- Three advocacy groups, Public Citizen, Community Legal Services of Philadelphia, and Justice in Aging.

We carefully considered the public comments we received. Comments from individuals and advocacy provided a mix of support for the revisions and reorganization as well as recommended revisions.

We received some comments that were outside the scope of this rulemaking because they did not relate

to our proposals. Even though outside the scope, we address some of these other comments where they related to the FOIA more generally because a response might help the public understand our program better.

The next section summarizes and responds to the public comments.

Comments and Responses

Comment: Two commenters requested that we ensure the application of the fee waiver provision is consistent with the FOIA statute within the introductory language of 20 CFR 402.85. The commenters urged us to ensure that our application of the new fee waiver regulation is “more consistent with the FOIA statute.” The commenters explained that we deny fee waiver requests made in the public interest.

Response: We understand the commenters’ concern; however, we consistently follow the statutory and our regulatory requirements to disclose records at no fee or a reduced fee. Because SSA charges fees when the request is not directly related to the administration of the Social Security Act based on our authority in section 1106(c) of the Social Security Act, which applies notwithstanding the FOIA provisions in 5 U.S.C. 552 and 552a, the FOIA statutory fee provisions would not apply.⁹ When a public interest fee waiver is sought, we will approve waiver when the criteria in our regulation at 20 CFR 402.85 (formerly 20 CFR 402.185) have been met; this aspect of our fee charging and waiver procedures has not changed in this final

⁹ See 42 U.S.C. 1306(c).

rule from our current regulations. In seeking waiver requests, the requester should explain with reasonable specificity why their request meets the “public interest” criteria for a fee waiver under 20 CFR 402.85. Our regulation at § 402.85, explains the factors we consider when determining whether a request meets the “public interest” criteria necessary to reduce or waive the fee. The modifications we made to this section of our final regulation further clarify what a requester should provide when submitting a request for a fee waiver citing public interest. Under § 402.85(b)(1), we added the phrase “in writing” to the following sentence: “A requester must make the request for a fee waiver or reduction in writing at the same time they make their request for records.” In describing the public interest criteria under § 402.85(b)(2), we modified § 402.85(b)(2)(iii) and added § 402.85(b)(2)(iv). Within § 402.85(b)(2)(iii), we added the phrase “of those operations or activities” so the sentence now reads: “Whether the contribution to public understanding of those operations or activities would be significant.” Newly added § 402.85(b)(2)(iv) further clarifies that specificity is necessary when requesting a fee waiver in the public interest, *i.e.*: the requester “must be reasonably specific in your waiver request as to the specific Government operation or activity and provide direct, clear (not remote or attenuated) connections to the meaningful information you seek. Generalized interest in government programs is not reasonably specific to grant waiver.”

Comment: Several commenters requested that we change our proposed definition of “commercial interest” in 20 CFR 402.10. They asserted that our proposed definition of “commercial interest” suggests that interests related to non-profit corporations, such as the work performed by claimant advocacy entities, are commercial. These commenters suggested that our proposed definition does not accurately reflect the standard for a finding of a noncommercial use in the FOIA statute.

Response: We disagree that our proposed definition, finalized here, is inconsistent with the FOIA statute. Similar to our response regarding “public interest” above, commercial interests could be present regardless of the identity of the requester (individual, non-profit corporation, for-profit corporation). In response to the comment, we revised the definition of “commercial interest” to clarify that the interests could exist regardless of the requester’s identity. We also added the

definition of “commercial use” to address the FOIA fee category.

Comment: Several commenters agreed with our proposed revisions to 20 CFR 402.155 to provide responsive FOIA records in electronic format, particularly those documents related to statements of policy and interpretation, consistent with 5 U.S.C. 552(a)(2)(B). The commenters further advocated that our Program Operations Manual System (POMS) be proactively disclosed in its entirety and indexed, as well as all Emergency Messages (EM) and Administrative Messages (AM).

Response: POMS and EMs are not categorically subject to the proactive disclosure requirements of the FOIA. Nonetheless, in the interest of transparency, SSA now publishes indexes of POMS and EM titles, which are updated quarterly, on our public-facing website.¹⁰ SSA has a longstanding practice of making agency non-sensitive POMS and EMs public, even when the policies are not subject to the FOIA’s proactive disclosure requirements. Our current policy publication process directs authoring components to flag sensitive POMS and EMs that should be proactively disclosed under FOIA.¹¹ Any such flagged policies then undergo a FOIA review and are published with appropriate redactions if they contain non-exempt content.

AMs, which are informational or staff reminders and do not contain new instructions or policy, are also not categorically subject to proactive disclosure requirements. Our regulations and policy publication practices reflect these distinctions.

Comment: Commenters requested that when requesting electronic communications, they do not need to provide identifying information about the agency employees involved and that a request can be reasonably described even if it seeks a large number of documents. They requested that we revise the scope of proposed § 402.30, which described the requirements of a FOIA request, without necessarily providing detailed information regarding the individual(s) from whom the records are sought.

Response: SSA processes the FOIA centrally within the Office of Privacy and Disclosure (OPD); therefore, we need the requester to clearly state and reasonably describe what SSA records are being requested so that we can

properly determine the scope of the FOIA request. When seeking emailed communications, we understand that requesters may not know the name of specific employees whose records they want to be searched; therefore, we do not require such information. As stated in our proposed regulation, “When known, requests should identify the records sought by providing the name/ title of the record, applicable date range, subject matter, offices or employees involved, and record type. If the request is for electronic communications, such as email records, the request may identify the names, position titles, or other identifying information about the agency employees involved, as well as the applicable timeframe.”¹² While we are clarifying the above examples are not required, technology limitations may prevent the agency from conducting searches without this information. Absent sufficient details, the agency may be unable to search for or locate the records sought.

Comment: One commenter requested that we modify the final rule to specify that the agency will respond to initial requests within 20 working days, unless we provide written notice to the requester “setting forth the unusual circumstances for [an] extension and the date on which a determination is expected to be dispatched,” as articulated in the FOIA statute at 5 U.S.C. 552(a)(6)(B)(i). The commenter acknowledged, however, that the agency may extend its response time beyond 20 business days only if it provides written notice to the requester. Further, the commenter stated that the proposed rule, in contrast, makes no mention of notifying the requester if the agency is going to take more than 20 working days to respond to an appeal.

Response: SSA processes the FOIA centrally within the Office of Privacy and Disclosure (OPD) and we frequently search, collect, and consult with components outside of OPD to process complex requests and appeals. We place requests and appeals in the complex multitask type because they will generally take more than 20 working days to process due to the complex nature of the request, including consultation with components that may maintain records subject to the request. We modified our final regulation to reflect that “[w]hen unusual circumstances exist, we will process the request under the complex track.” This change is merely a clarifying statement of how our complex multi-track aligns with the unusual circumstances requirements in FOIA. “Unusual

¹⁰ See link at, <https://secure.ssa.gov/apps10/reference.nsf/instructiontypecode!openview&restricttocategory=INSTTTLES>.

¹¹ See instructions at, <https://secure.ssa.gov/apps10/reference.nsf/links/12202023010304PM>.

¹² 20 CFR 402.30(a)(4).

circumstances” exist when requests or appeals require OPD to: search for and collect records from SSA components or field locations that are separate from OPD; search for, collect, and review a voluminous number of records that are part of a single request; or consult with two or more SSA components or another agency having substantial interest in the request before releasing the records. We acknowledge the FOIA’s requirements at 5 U.S.C. 552(a)(6)(B) to provide notice to the requester when unusual circumstances exist. Within the agency’s acknowledgement letters and emails, we advise requesters that requests and appeals placed in a complex processing track meet unusual circumstances.

Comment: One commenter requested that we modify the final rule by deleting language in proposed *tolling* § 402.60(h)(2) stating that the agency reserves the right to administratively close a request within 10 business days if we do not receive a response to our request for clarification from the FOIA requester.

Response: The agency makes every reasonable effort to secure clarification from requesters before we administratively close a request. We contact requesters via email, phone, and or postal mail in our attempt to gain the clarification necessary to process FOIA requests. To avoid confusion, we clarified the language in § 402.60(g)(2) by removing the 10-business day language. The language now reads: “The processing time will resume upon our receipt of the requester’s response. There may be instances when we require multiple clarifications on a FOIA request. After the first request for clarification, any additional clarifications are performed without tolling the clock. If we do not receive a response to our clarification attempts within 30 calendar days from the date of our first contact to the requester, we will close the FOIA request.” Our authority, finalized in § 402.60(g)(2) is an administrative discretion that we will use in instances where a FOIA requester never responds to our requests for clarification. If our only course of communication with a requester is postal mail, we understand that delays may occur, and are mindful to allow additional time to accommodate postal mail delivery. We cannot process requests that are not reasonably described; therefore, when a requester does not respond to any correspondence wherein we request clarification, or should the correspondence be returned as undeliverable, we reserve the right to administratively close the FOIA request.

Comment: One commenter requested that we modify the proposed rule in § 402.65(a) to remove the word “immediate” in describing the urgency to inform the public necessary for expedited processing. The commenter stated that our proposed language closely aligns with the statutory language in 5 U.S.C. 552(a)(6)(E)(v)(II) of the FOIA statute, but the word “immediate” before “urgency” is not in the statute.

Response: We agreed with the commenters’ suggestion and adopted this change in order to more closely align with the statute.

Regulatory Procedures

Executive Order (E.O.) 12866, as Supplemented by E.O. 13563

We consulted with the Office of Management and Budget (OMB) and they determined that this rule does not meet the criteria for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563. Therefore, OMB did not formally review it.

Anticipated Costs to Our Program

The Office of the Chief Actuary estimates that there are no direct effects on scheduled Old-Age, Survivors, and Disability Insurance benefit payments and Federal Supplemental Security Income payments.

Anticipated Administrative Benefits to the Social Security Administration

The Office of Budget, Finance, and Management estimates an administrative effect of less than 15 work years and \$2 million annually.

Anticipated Qualitative Benefits

We anticipate qualitative benefits from the revisions to the FOIA regulation from streamlined and clarified FOIA policies and procedures. We expect the clarified regulations will benefit both SSA and the public because the administration of the FOIA for SSA and our public customers would be better organized and easier to follow. The purpose of the FOIA is to provide the public with access to government records, and administrative transparency is paramount to a successful FOIA program. Since the FOIA is processed centrally at SSA, our regulation must be easy for agency employees to understand so components outside of OPD understand the importance of the FOIA and their roles in the agency’s administration of the FOIA. When our policies are clear for agency employees, we are able to process FOIA requests in a more efficient manner, which benefits both the agency and the public.

Our revised regulation at part 402 provides information in a cascading fashion that is easier to follow than our existing regulation, and accurately reflects amendments implemented by the FOIA Improvement Act of 2016. Our revisions account for the roles of the FOIA Public Liaison and OGIS, which is useful for correct points of contact internally and for the public, increasing efficiency and lowering confusion. The revisions also update inaccurate information, such as the timeframe for the public to appeal adverse decisions, which presently state 30 days, but is 90 days under the FOIA Improvement Act of 2016.

The FOIA is designed to build trust between the public and Federal agencies. SSA’s revised regulation at 20 CFR part 402 strengthens this trust with transparency by explaining in plain language how SSA processes FOIA requests and appeals, and further describes our proactive posting of agency records. Clear communication with the public is paramount to our administration of the FOIA. Updating and revising our FOIA regulation serves to enhance our communication with the public, making it easier for the public to know how to submit FOIA requests and where to review proactively posted records.

E.O. 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by E.O. 13132 and determined that the rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this 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 this rule will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

While this final rule mentions the public reporting requirements for the public to submit FOIA requests to the agency, we already obtained OMB approval for these public reporting requirements under the current OMB approved information collections for 0960–0566 (SSA 3288) and 0960–0665 (SSA–711 and Online FOIA Request). As we already cover these requirements under OMB-approved information

collections, and these revised rules merely move those requirements to new CFR citations but do not change them, these revised rules will not require Office of Management and Budget approval under the Paperwork Reduction Act. Rather, upon publication of the final rule, we will submit Change Requests to update the CFR citations for OMB No. 0960–0566 and 0960–0665.

List of Subjects in 20 CFR Part 402

Administrative practice and procedure, Freedom of information.

The Acting Commissioner of Social Security, Carolyn W. Colvin, having reviewed and approved this document, is delegating the authority to electronically sign this document to Erik Hansen, a Federal Register Liaison for the Social Security Administration, for purposes of publication in the **Federal Register**.

Erik Hansen,

Associate Commissioner, for Legislative Development and Operations, Social Security Administration.

■ For the reasons set forth in the preamble, the Social Security Administration revises 20 CFR part 402 to read as follows:

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Sec.

- 402.05 Scope and purpose of this part.
- 402.10 Definitions.
- 402.15 SSA's FOIA policy.
- 402.20 Relationship between the FOIA and the Privacy Act of 1974.
- 402.25 Who can file a FOIA request?
- 402.30 Requirements of a FOIA request.
- 402.35 Where to submit a FOIA request.
- 402.40 Requests for deceased individual's records.
- 402.45 Requests handled outside of the FOIA process.
- 402.50 FOIA Officer's authority.
- 402.55 Referrals and consultations.
- 402.60 How does SSA process FOIA requests?
- 402.65 Expedited processing.
- 402.70 Fees associated with processing FOIA requests.
- 402.75 FOIA fee schedule.
- 402.80 Charging under section 1106(c) of the Social Security Act.
- 402.85 Waiver of fees in the public interest.
- 402.90 Notification of fees and prepayment requirements.
- 402.95 Release of records.
- 402.100 FOIA Public Liaison and the Office of Government Information Services.
- 402.105 Appeals of the FOIA Officer's determination.
- 402.110 U.S. District Court action.
- 402.115 The FOIA Exemption 1: National defense and foreign policy.
- 402.120 The FOIA Exemption 2: Internal personnel rules and practices.

- 402.125 The FOIA Exemption 3: Records exempted by other statutes.
- 402.130 The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.
- 402.135 The FOIA Exemption 5: Internal documents.
- 402.140 The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.
- 402.145 The FOIA Exemption 7: Law enforcement.
- 402.150 The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.
- 402.155 Records available for public inspection.
- 402.160 Where records are published.
- 402.165 Publications for sale through the Government Publishing Office.

Authority: 42 U.S.C. 405, 902(a)(5), and 1306; 5 U.S.C. 552 and 552a; 18 U.S.C. 1905; 26 U.S.C. 6103; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 402.05 Scope and purpose of this part.

(a) The purpose of this part is to describe the Social Security Administration's (SSA) policies and procedures for implementing the requirements of the Freedom of Information Act (FOIA) 5 U.S.C. 552. The FOIA mandates disclosure to the public of Federal agency records unless specific exemptions apply. The FOIA also requires an agency to proactively disclose records and make certain records available for public inspection.

(b) The rules in this part describe how SSA makes records available to the public, including:

- (1) What constitutes a proper request for records;
- (2) How to make a FOIA request;
- (3) Who has the authority to release and withhold records;
- (4) What fees may be charged to process a request for records;
- (5) The timing of determinations regarding release;
- (6) The exemptions that permit the withholding of records;
- (7) Requesters' right to seek assistance from the FOIA Public Liaison;
- (8) Requesters' right to appeal the agency's FOIA determination;
- (9) Requesters' right to seek assistance from the Office of Government Information Services and then go to court if they still disagree with our release determination; and
- (10) The records available for public inspection.

(c) The rules in this part do not revoke, modify, or supersede SSA's regulations relating to disclosure of information in part 401 or 403 of this chapter.

§ 402.10 Definitions.

As used in this part:

Agency means the Social Security Administration (SSA). Agency may also refer to any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance.

Chief FOIA Officer means a senior official of SSA who has an agency-wide responsibility for ensuring efficient and appropriate compliance with the FOIA, monitoring implementation of the FOIA throughout the agency, and making recommendations to the head of the agency to improve the agency's implementation of the FOIA. The Commissioner of SSA designated the General Counsel as the Chief FOIA Officer for SSA. The Chief FOIA Officer or the Chief FOIA Officer's designee is authorized to make final decisions in response to appeals of the FOIA Officer's determinations.

Commercial interest includes interests relating to business, trade, and profit. These interests could be present regardless of the identity of the requester (e.g., individual, non-profit corporation, for-profit corporation). The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

Commercial use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. An agency's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. Agencies will notify requesters of their placement in this category.

Component means each separate office, division, commission, service, center, or administration within SSA that may maintain agency records subject to a request under the FOIA.

Duplication means the process of reproducing a copy of a record, or of the information contained in it, to the extent necessary to respond to a request. Copies include paper, electronic records, audiovisual materials, and other formats of agency records.

Educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with their role at the educational institution. To qualify for

this category, a requester must show that the FOIA request is authorized by, and is made under the auspices of or in connection with the requester's role at a qualifying institution and that the records are sought to further a scholarly research goal of the institution, and not for a commercial use or purpose, or for individual use or benefit. SSA may seek verification from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

Exemption means one of the nine exemptions to the mandatory disclosure of records permitted under section 552(b) of the FOIA.

Expedited processing means the process set forth in the FOIA that allows requesters to request faster processing of their FOIA request, if they meet specific criteria noted in § 402.65.

Fee category means one of the three categories established by the FOIA to determine whether a requester will be charged fees under FOIA for search, review, and duplication. The categories are: commercial use requests; scientific or educational institutions and news media requests; and all other requests.

Fee waiver means the waiver or reduction of fees if a requester is able to demonstrate the requirements set forth in § 402.85.

FOIA Library means an electronic location(s) that SSA uses to post records that are made available to the public without a specific request. SSA makes FOIA library records electronically available to the public through our website, www.ssa.gov, including at www.ssa.gov/foia. Posted records may include those provided under agency discretion and not required pursuant to FOIA.

FOIA Officer means an SSA official whom the Commissioner of Social Security delegated the authority to release or withhold records; to assess, waive, or reduce fees in response to FOIA requests; and to make all other determinations regarding the processing of a FOIA request. In this capacity, the FOIA Officer is authorized to request and receive responsive records that may be maintained by other agency components. Except for records subject to proactive disclosure pursuant to subsection (a)(2) of the FOIA, only the FOIA Officer has the authority to release or withhold records or to waive fees in response to a FOIA request.

FOIA Public Liaison means an agency official who reports to the agency Chief FOIA Officer and serves as a supervisory official to whom a requester can raise concerns about the service the requester received concerning the processing of the FOIA request. This

individual is responsible for increasing transparency in the agency's FOIA business process, helping requesters understand the status of requests, and assisting in the resolution of disputes. The FOIA Public Liaison may be contacted via email to FOIA.Public.Liaison@ssa.gov.

FOIA request means a written request that meets the criteria in § 402.30.

Freedom of Information Act or FOIA means the law codified at 5 U.S.C. 552 that provides the public with the right to request agency records from the Federal executive branch agencies.

Non-commercial scientific institution means an institution that does not further the commercial, trade, or profit interests of any person or entity and is operated for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

Numident refers to the "Numerical Identification System," the SSA system that contains information available on an Application for a Social Security Card (Form SS-5). The Numident record contains the name of the applicant, place of birth, and other information.

OGC means the Office of the General Counsel.

Online FOIA portal means the electronic application that SSA uses to process FOIA requests. The public may also submit requests directly to SSA via the online FOIA portal.

OPD means the Office of Privacy and Disclosure.

Other requester means any individual or organization whose FOIA request does not qualify as a commercial-use request, representative of the news media request (including a request made by a freelance journalist), or an educational or non-commercial scientific institution request.

Production means the process of preparing the records for duplication, including the time spent in preparing the records for duplication (*i.e.*, materials used, records/database retrieval, employee and contractor time, as well as systems processing time).

Record(s) means any information maintained by an agency, regardless of format, that is made or received in connection with official agency business that is under the agency's control at the time of the FOIA request. Record(s) includes any information maintained for an agency by a third party.

(1) Record(s) does not include personal records of an employee, or other information in formally organized and officially designated SSA libraries and FOIA library, where such materials are available under the rules of the particular library.

(2) Record(s) includes information maintained by the State Disability Determination Services related to performing the disability determination function and medical source information pertaining to consultative examinations performed for the Social Security program when obtained by, created on behalf of, or otherwise, in the control of SSA.

Redact means delete or mark over.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals, including print and online publications that disseminate news and make their products available through a variety of means to the general public. We do not consider FOIA requests for records that support the news-dissemination function of the requester to be a commercial use. We consider "freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity as working for that entity. A publishing contract provides the clearest evidence that a journalist expects publication; however, we also consider a requester's past publication record. We decide whether to grant a requester media status on a case-by-case basis.

Request means asking for records, whether or not the requester refers specifically to the FOIA. Requests from Federal agencies, subpoenas, and court orders for documents are not included within this definition.

Review, unless otherwise specifically defined in this part, means examining records responsive to a request to determine whether any portions are exempt from disclosure. Review time includes processing a record for disclosure (*i.e.*, doing all that is necessary to prepare the record for disclosure), including redacting the record and marking the appropriate FOIA exemptions. It does not include the process of resolving general legal or policy issues regarding exemptions.

Search means the process of identifying, locating, and retrieving records responsive to a request, whether in hard copy or in electronic form or format, or by manual or automated/electronic means.

Special services means performing additional services outside of that

required under the FOIA to respond to a request. Examples include using an overnight mail service to send the agency's response to a FOIA request.

SS-5 means an Application for a Social Security Card. It is used to request an original, different, or replacement Social Security Card.

SSA means the Social Security Administration.

Submitter means any person or entity that provides trade secrets or commercial or financial information to the agency, and includes individuals, corporations, other organizational entities, and state and foreign governments.

Tolling means temporarily stopping the running of a time limit. We may toll a FOIA request to seek clarification from the requester or to address fee issues, as further described in § 402.60(h).

Trade secrets and confidential commercial or financial information means trade secrets and confidential commercial or financial information that is obtained by the agency from a submitter, such that it may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

§ 402.15 SSA's FOIA policy.

(a) *Presumption of openness.* SSA will withhold information only if we reasonably foresee that disclosure would harm an interest protected by a FOIA exemption or if disclosure is prohibited by law.

(b) *Authority to release and withhold records.* As described in § 402.50, the agency's FOIA Officer, or the FOIA Officer's designee, has the authority to:

- (1) Release or withhold records in response to initial requests;
- (2) Grant or deny expedited processing; and
- (3) Reduce or waive fees.

(c) *Records publicly available.* We make available for public inspection in an electronic format records that are final and have been requested and released three or more times and other specified records described in § 402.155. We do not make available for public inspection records that are not static, such as the Open Access Death Master File.

(d) *Required record production.* The FOIA does not require an agency to give opinions, conduct research, answer questions, or create records.

§ 402.20 Relationship between the FOIA and the Privacy Act of 1974.

(a) *Coverage.* The FOIA and the rules in this part apply to all SSA records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records.

(b) *Requesting your own records.* If you have filed a FOIA request and are an individual requesting your own records that are maintained in a system of records, or if you are a parent or legal guardian authorized to act under § 401.75 of this chapter who is seeking the records about a minor or individual who has been declared incompetent, your request may be handled under the Privacy Act. See § 401.40 of this chapter. If we handle your request under the Privacy Act, we will provide you with written notification with further processing instructions. Privacy Act requests are also processed under the FOIA, when appropriate, to give you the benefit of both statutes. You must verify your identity in accordance with our regulations. See § 401.45 of this chapter.

§ 402.25 Who can file a FOIA request?

Any person may submit a FOIA request to SSA. Under the FOIA, "any person" includes requests from individuals, corporations, State and local agencies, as well as foreign entities. Requests from Federal agencies and Federal or State courts are not covered by the FOIA.

§ 402.30 Requirements of a FOIA request.

(a) To be considered a FOIA request under this part, the following must occur:

- (1) The request must be written (either by hand or electronically);
- (2) The request must be submitted in accordance with § 402.35;
- (3) The requester must provide the following required contact information: Requester's name, U.S. or foreign postal address, description of records sought, and fee willing to pay. While not required, we encourage requesters to provide us with their email address and phone number; and
- (4) The request must clearly state and reasonably describe what SSA records are being requested in sufficient detail to enable OPD to locate them with a reasonable amount of effort. Broad, sweeping requests and vague requests are not reasonably described. When known, requests should identify the records sought by providing the name/title of the record, applicable date range, subject matter, offices or employees involved, and record type. If the request is for electronic communications, such as email records, the request may identify the names, position titles, or other identifying information about the agency employees involved, as well as the applicable timeframe. Absent sufficient details, the agency may be unable to search for or locate the records sought. The greater the date range, the

longer it may take to process the request and the greater amount of fees that may be charged.

(b) Requests that do not meet the required criteria in paragraph (a) of this section are not considered proper FOIA requests.

§ 402.35 Where to submit a FOIA request.

(a) *Submission of requests.* Except as specified in paragraph (b) of this section, requesters must submit FOIA requests in writing to OPD through the following options:

(1) *Online FOIA portal:* Link available from the agency's www.ssa.gov/foia website or the National FOIA Portal at www.FOIA.gov.

(2) *Email:* FOIA.Public.Liaison@ssa.gov.

(3) *Mail:* SSA Office of Privacy and Disclosure, ATTN: Freedom of Information Officer, 6401 Security Boulevard, Baltimore, MD 21235.

(b) *Requests for copies of Deceased Individual's Application for a Social Security Card (SS-5) or Numident record.* Requesters may use the Form SSA-711, *Request for a Deceased Individual's Social Security Record*, to request a copy of a deceased individual's original SS-5 or Numident record. When the Form SSA-711 is used, it may be submitted to the office listed on the form or as directed in paragraph (a) of this section.

§ 402.40 Requests for deceased individual's records.

(a) The agency will disclose the records concerning a deceased individual when we have acceptable proof of death unless Federal law or regulations prohibits the disclosure.

(b) Proof of death includes:

- (1) A copy of a public record of death of the number holder;
- (2) A statement of death by the funeral home director;
- (3) A statement of death by the attending physician or the superintendent, physician, or intern of the institution where the person died;
- (4) A copy of the coroner's report of death or the verdict of the coroner's jury;
- (5) An obituary that we determine has sufficient identifying information; or
- (6) Other certified record of death that we determine within our discretion is acceptable.

(c) If upon review of the provided proof of death, we cannot determine that the individual is deceased or we have questions about the authenticity of the proof, then the proof is not acceptable. When we do not have acceptable proof of death, we will treat the request in accordance with

§ 402.20(b), requests for information about a living person.

§ 402.45 Requests handled outside of the FOIA process.

When records outlined in paragraphs (a) through (d) of this section are requested from OPD, OPD will respond to the requester and provide information for requesting the records sought:

(a) To the extent a request asks for records that are currently publicly available, either from SSA or from another part of the Federal Government. See § 402.155.

(b) If the records sought are distributed by SSA as part of its regular program activity, for example, public information leaflets distributed by SSA. See §§ 402.155 through 402.165.

(c) If the records sought are earnings records covered by § 422.125 of this chapter.

(d) If a request does not meet the requirements of a FOIA request as defined in § 402.30. We will send written correspondence to the requester:

- (1) Providing instructions for how to submit a proper FOIA request; or
- (2) Asking for additional information to make the request a proper FOIA request.

§ 402.50 FOIA Officer's authority.

(a) *Release determination.* Only the Deputy Executive Director for OPD or their designee is authorized to make determinations about:

- (1) Release or withholding of records;
- (2) Expedited processing;
- (3) Charging or waiver of fees; and
- (4) Other matters relating to processing a request for records under this part.

(b) *Determination provided in writing.* The FOIA Officer's determination is provided in writing to the requester via emailed communication or, in the absence of the requester's email address, via U.S. postal mail. If the requester disagrees with the FOIA Officer's determination in response to items identified in paragraph (a) of this section, the requester may appeal the determination to the Executive Director for OPD, as described in § 402.105.

§ 402.55 Referrals and consultations.

(a) *Consultation and referral.* When reviewing records located by SSA in response to a request, SSA will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, SSA will proceed in one of the following ways:

(1) *Referral of FOIA records in whole or in part to an outside agency.* We will

notify the requester in writing when we opt to refer records in whole or in part to another agency for direct response from that agency, including the name(s) or the agency(s) to which the record was referred and that agency's FOIA contact information, unless notification would cause harm to an interest protected under the FOIA. In such instances, in order to avoid harm to an interest protected by an applicable exemption, we coordinate to seek the view of the originating agency.

(2) *Agency consultation.* If a request is for records that were created by, or provided to us by, another agency that is not subject to the FOIA, we may consult with that agency, as described in paragraph (b) of this section.

(b) *Consultation with another agency or entity.* If a request is for records that originated with SSA but contain information of interest to another agency or entity, we may consult with the other agency or entity prior to issuing our release determination to the requester.

§ 402.60 How does SSA process FOIA requests?

(a) *Acknowledgement.* (1) If we receive a FOIA request that will take longer than 10 working days to process, we will provide an acknowledgment. The acknowledgement email or letter restates the FOIA request and provides the requester with the request's tracking number.

(2) If we require clarification to process the FOIA request, we will contact the requester either via email, U.S. postal mail, or phone call. We attempt to contact requesters twice. If we do not receive a response to our clarification attempts within 30 calendar days from the date of our first contact to the requester, we will close the FOIA request due to insufficient information.

(b) *Perfected requests.* FOIA requests are considered "perfected," *i.e.*, the 20-working day statutory time begins, when the request meets the requirements of the proper FOIA request listed in § 402.30. There may be times that we require more information from the requester after perfecting a request. The 20-working day period may be extended in unusual circumstances by written notice to the requester. See paragraph (d) of this section.

(c) *Multi-tracking procedures.* FOIA requests are categorized simple, complex, or expedited. Unless granted expedited processing, we process FOIA requests in each track according to a first-in, first-out basis.

(1) *Simple.* For most non-expedited requests, we make a determination

about release of the record(s) requested within 20-working days.

(2) *Complex.* We will place into a complex processing queue any request that cannot be completed within 20-working days due to the complex nature of the request, including consultation with components that may maintain records subject to the request. We make good faith efforts to notify requesters in writing if it is necessary for us to take additional time to process a request and of the requester's right to seek dispute resolution services with the Office of Government Information Services. See § 402.100.

(3) *Expedited processing.* Unless granted expedited processing, we process FOIA requests according to a first-in, first-out basis. See § 402.65 for information on expedited processing.

(d) *Unusual circumstances.* (1) Unusual circumstances exist when there is a need to:

(i) Search for and collect records from SSA components or field locations that are separate from OPD;

(ii) Search for, collect, and review a voluminous number of records that are part of a single request; or

(iii) Consult with two or more SSA components or another agency having substantial interest in the request before releasing the records.

(2) Within the unusual circumstances letter to the requester, we will provide an estimated date that we will contact the requester with the applicable fee notice and/or further correspondence. We will notify the requester of the date by which we estimate completing the request. We will also advise the requester that they may modify or narrow the scope of their request.

(3) When unusual circumstances exist, we will process the request under the complex track.

(e) *Aggregating requests.* We may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request, involving clearly related matters, which would otherwise involve unusual circumstances. In the event requests are aggregated, they will be treated as one request for estimating response time and calculating fees.

(f) *Fee notice.* FOIA requesters are issued a fee notice that informs them of the estimated search, review, and duplication time associated with processing their FOIA request. For more information on fees, see §§ 402.70 through 402.80.

(g) *Tolling.* (1) We may stop or toll the 20 working days in two circumstances:

(i) We may stop the clock once if we require additional information regarding the specifics of the request; and

(ii) We may stop the clock as many times as needed regarding fee assessments.

(2) The processing time will resume upon our receipt of the requester's response. There may be instances when we require multiple clarifications on a FOIA request. After the first request for clarification, any additional clarifications are performed without tolling the clock. If we do not receive a response to our clarification attempts within 30 calendar days from the date of our first contact to the requester, we will close the FOIA request.

(h) *Retrieving records.* We are required to furnish copies of records only when they are in our possession or we can retrieve them from storage. We will make reasonable efforts to search for records except when such efforts would significantly interfere with the operation of our automated information system(s). The Federal Government follows National Archives and Records Administration rules on record retention. Records are retained or destroyed under the guidelines of the Federal Records Act.

(i) *No records determinations.* We will search for records to satisfy a request using methods that can be reasonably expected to produce the requested records. Nevertheless, we may not be able to always find the records requested using the information provided by the requester, or they may not exist. If we advise that we have been unable to find the records despite a diligent search, the requester may appeal the no records determination to the Executive Director for OPD, as described in § 402.105.

(j) *Furnishing records.* We will furnish copies of records in whole or in-part, unless we reasonably foresee that disclosure would harm an interest protected by a FOIA exemption or if disclosure is prohibited by law. When information within a responsive record(s) is exempt from disclosure, the information is redacted and the applicable FOIA exemption(s) are noted within the redacted cell. We will make reasonable efforts to provide the records in the form or format requested if the record is readily reproducible in that form or format. We may provide individual records as we process them on a rolling basis, or we may release all responsive records once the request is completed. See § 402.95 for more information on SSA's release of records.

(k) *Directing a requester to another agency.* If a request is for records that are not SSA records for purposes of the

FOIA, and we believe the records may be maintained by another agency, we may advise the requester to submit their request to that other agency. In such cases, we will provide the requester with the other agency's name in our response letter. Our recommendation that the requester submit their request to the other agency is not a guarantee the other agency will have or disclose the records requested.

(l) *Burdensome requests.* The FOIA requires an agency to provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. We will not search or produce records in response to a FOIA request that we determine would be unduly burdensome to process. FOIA requests are determined to be unreasonably burdensome when processing the FOIA request would significantly interfere with the ongoing operation of the agency's programs.

§ 402.65 Expedited processing.

(a) Expedited processing must be requested at the same time as the FOIA request. We provide expedited processing when the requester can demonstrate a "compelling need" for the requested information:

(1) When there is an imminent threat to the life or safety of a person;

(2) When the requester is primarily engaged in disseminating information, and shows an urgency to inform the public about actual or alleged government activities; or

(3) When the requester can show, in detail and to our satisfaction, that a prompt response is needed because the requester may be denied a legal right, benefit, or remedy without the requested information, and that it cannot be obtained elsewhere in a reasonable amount of time.

(b) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. We will notify the requester within 10 calendar days of receipt of the request for expedited processing of our decision to grant or deny expedited processing. Only the FOIA Officer may make the decision to grant or deny expedited processing. Requests granted expedited processing will be given priority and processed as soon as practicable.

Requests that do not meet the "compelling need" criteria, will be processed normally. If we do not grant the request for expedited processing, the requester may appeal the denial to the Executive Director for OPD. In the appeal letter, the requester should

explain why they believe their request demonstrates a "compelling need," such as describing how the request meets the criteria in paragraphs (a)(1) through (3) of this section. The process described in § 402.105 will also apply to these appeals.

§ 402.70 Fees associated with processing FOIA requests.

(a) *Charging authorities*—(1) *Section 1106(c).* Section 1106(c) of the Social Security Act (42 U.S.C. 1306(c)) allows the agency to charge for FOIA requests that are not directly related to SSA's administration of the Social Security Act. See § 402.80 for information on the agency's authorization under section 1106(c) to charge requesters. Requesters may request a fee waiver, as described in § 402.85.

(2) *FOIA fee categories.* The FOIA establishes three fee categories of requesters, *i.e.*, commercial use, non-commercial scientific or educational institutions and representatives of the news media; and other requesters. The category of the requester determines the fees that may be charged; see § 402.75 for the FOIA fee schedule. Requesters may request a fee waiver, as described in § 402.85.

(b) *Hourly rate when charging under section 1106(c) and the FOIA fee categories.* (1) When we search for and review records, we charge an hourly rate, based in 15-minute increments, depending on the grade(s) of the employee(s) and/or contractors performing the search and review. The hourly rate is the same when charging under the FOIA fee provisions or section 1106(c) of the Social Security Act. SSA uses the current General Schedule (GS) salary table for the locality pay area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA. We use the following criteria to compute our hourly rates for search or review:

(i) When performed by employees at grade GS-1 through GS-8, SSA will charge an hourly rate based on the salary of a GS-5, step 7, employee;

(ii) When performed by a GS-9 through GS-14, SSA will charge an hourly rate based on the salary of a GS-12, step 4, employee; and

(iii) When performed by a GS-15 or above, SSA will charge an hourly rate based on the salary of a GS-15, step 7, employee.

(2) When work is performed by a contractor, we will charge an hourly rate based on the GS equivalent of the contractor's hourly pay rate. We compute the hourly rate by taking the current hourly rate for the specified grade and adding 16 percent of that rate

to cover benefits and rounding to the nearest whole dollar. These rates are adjusted as Federal salaries change. Federal salary rates are available from the Office of Personnel Management. When a search and review involves employees at more than one of these GS levels, we will charge the rate appropriate for each. We may charge a fee for search time even if we are unable to locate any responsive records or the records are exempt from disclosure.

§ 402.75 FOIA fee schedule.

(a) *Fee schedule category.* Requesters whom SSA charges under the FOIA fee schedule are subject to the following fees dependent upon their fee category:

(1) *Commercial.* Commercial use requesters are charged for search, review, and duplication.

(2) *Non-commercial educational or scientific institutions and representative of the news media.* Requesters that fit this category are charged for the duplication of documents. We will not charge requesters the copying costs for the first 100 pages of duplication.

(3) *Other.* If the FOIA request does not fall within a category described in paragraph (a)(1) or (2) of this section, we will charge for search and duplication; however, we will not charge for the first two hours of search time or for the duplication costs of the first 100 pages.

(b) *Certification.* If a requester asks for certification of the record(s) responsive to their FOIA request and OPD agrees to provide it, we will notify the requester of the appropriate certification fee via written correspondence.

(c) *Record(s) production and duplication—(1) Electronic records.* We will charge the actual costs for producing and duplicating the record and the time spent by the employees or contractors in production, duplication, or otherwise processing the FOIA request, at the rates given in § 402.70(c).

(2) *Photocopying standard size pages.* For noncommercial requesters, we will charge \$0.10 per page after the first 100 pages, which are free. The FOIA Officer may charge lower fees for particular documents where:

(i) The document has already been printed in large numbers;

(ii) The program office determines that using existing stock to answer this request, and any other anticipated FOIA requests, will not interfere with program requirements; and

(iii) The FOIA Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(3) *Photocopying odd-size documents.* For photocopying documents, such as punch cards or blueprints, or

duplicating other records, such as tapes, we will charge the actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in § 402.70(c).

(d) *Cost of service less than cost of issuing a bill.* We will not charge a fee when the cost of the service is less than the cost of sending the requester a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and bill the requester for the services rendered.

(e) *Fee waiver.* We may waive or reduce the fee if we find that waiver is in the public interest. See § 402.85 for fee waiver information.

§ 402.80 Charging under section 1106(c) of the Social Security Act.

Section 1106(c) of the Social Security Act permits the agency to charge the full cost to process requests for information for purposes not directly related to the administration of program(s) under the Social Security Act. This may be done notwithstanding the fee provisions in FOIA, the Privacy Act, or any other provision of law. In responding to FOIA requests for non-program purposes, we will charge the full cost (both direct and indirect costs) of our services, regardless of the requester's fee categorization, unless the cost of the service is less than the cost of issuing a bill as stated in paragraph (b) of this section.

(a) *Full costs.* The agency may charge full costs for processing records or information requests, including but not limited to:

(1) *Search.* We may charge for search time even if we are unable to locate any responsive records or the records are exempt from disclosure. We will notify the requester in writing if the records estimated as responsive are determined unreasonably burdensome for the agency to process and/or the search would cause significant interference with the operation of SSA's automated information systems.

(2) *Review.* Review includes the reviews performed at any level (staff through executive), including but not limited to review by multiple people and offices.

(3) *Production and duplication of record(s).* We may charge the full cost of the systems' processing (e.g., computer search time, computer processing database retrieval), materials used to produce and duplicate the requested record(s), and time spent by agency employee(s) and/or contractor(s) in production, duplication, or otherwise processing the FOIA request.

(4) *Certification.* We will charge the full costs for certification.

(5) *Employee's time.* The full cost of an employee's time includes fringe benefits and overhead costs, such as rent and utilities.

(6) *Forwarding/delivering materials.* If special arrangements for forwarding material are requested, we will charge the requester the full cost of this service (e.g., if express mail or a commercial delivery service is requested). If no special forwarding arrangements are requested, we will charge the requester the full cost of the service, including the U.S. Postal Service cost.

(7) *Performing other special services.* If we agree to provide any special services requested, we will charge the full cost of the time of the employee(s) or contractor(s) who perform the service, plus the full cost of any systems processing time and materials that the employee or contractor uses.

(b) *Cost of service less than cost of issuing a bill.* We will not charge a fee when the cost of the service is less than the cost of sending the requester a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and bill the requester for the services rendered.

(c) *Standard administrative fees for non-program information.* The information in this part does not revoke, modify, or supersede the schedule of standard administrative fees the agency charges for specified non-program information requests.

(d) *Non-program purpose.* Non-program purposes constitute any purpose that is not program related.

(1) We consider a request to be program related if:

(i) The information must be disclosed under the Social Security Act (Act); or

(ii) The information will be used for a purpose which is directly related to the administration of a program under the Act for which SSA has responsibility. In deciding whether this paragraph (d)(1)(ii) applies, the major criteria SSA considers is whether the information is:

(A) Needed to pursue a benefit under a program that SSA administers under the Act.

(B) Needed solely to verify the accuracy of information obtained in connection with a program that SSA administers under the Act.

(C) Needed in connection with an activity under SSA's purview which is authorized under the Act.

(D) Needed by an employer to carry out taxpaying responsibilities under the Federal Insurance Contributions Act or section 218 of the Act.

(2) We will consider each request on a case-by-case basis when the criteria in this paragraph (d) are not met but the requester claims a request is for a program-related purpose for another reason. We will not conclude a request is program-related solely because the records sought are about programs administered by SSA or are claimed to be of public interest.

(e) *Disagreement with program or non-program determination.* Only the FOIA Officer has the authority to make the program/non-program decision. If a requester disagrees with the FOIA Officer's non-program determination, they may appeal the decision to the Executive Director for OPD. In the appeal letter, the requester should explain why they believe the request meets the requirements in paragraph (c) of this section. The process described in § 402.105 will also apply to these appeals.

§ 402.85 Waiver of fees in the public interest.

A requester may request waiver or reduction of fees, whether charged under § 402.75 or § 402.80, if the release of the requested records is in the public interest. We will waive or reduce the fees we would otherwise charge if disclosure of the requested information:

(a) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(b) Is not primarily in the commercial interest of the requester.

(1) *Procedure for requesting a waiver or reduction.* A requester must make the request for a fee waiver or reduction in writing at the same time they make their request for records. The requester should explain with reasonable specificity why they believe a waiver or reduction is proper under the analysis in paragraphs (b)(2) and (3) of this section. Only the FOIA Officer may make the decision whether to waive, or reduce, the fees. If we do not completely grant the request for a waiver or reduction, the requester may appeal the denial to the Executive Director for OPD. In the appeal letter, the requester should explain why they believe the request meets the requirements in paragraphs (b)(2) and (3) of this section. The process prescribed in § 402.105 will also apply to these appeals.

(2) *Public interest.* We consider the factors below when analyzing whether disclosure is in the public interest:

(i) How the records pertain to the Federal Government's operations or activities;

(ii) Whether disclosure would reveal any meaningful information about

Government operations or activities not already known to the public; and

(iii) Whether the contribution to public understanding of those operations or activities would be significant.

(iv) Regarding the above criteria, you must be reasonably specific in your waiver request as to the specific Government operation or activity and provide direct, clear (not remote or attenuated) connections to the meaningful information you seek. Generalized interest in government programs is not reasonably specific to grant waiver.

(3) *Not primarily in requester's commercial interest.* If the disclosure is determined to be in the public interest as described in paragraph (b)(2) of this section, we will then determine whether it also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. We consider the following factors when analyzing whether disclosure is not primarily in the requester's commercial interest:

(i) Would the disclosure further a commercial interest of the requester, or of someone on whose behalf the requester is acting?

(ii) If disclosure would further a commercial interest of the requester, would that effect outweigh the advancement of the public interest defined in paragraph (b)(2) of this section? Which effect is primary?

(4) *Burden on SSA to produce the record(s).* If the disclosure meets the requirements in paragraphs (b)(2) and (3) of this section, we reserve the right to charge a fee if special services are needed to provide the records.

(5) *Deciding between waiver and reduction.* If the disclosure meets the requirements in paragraphs (b)(2) and (3) of this section, we will normally waive fees. However, in some cases we may decide only to reduce the fees. For example, we may do this when disclosure of some but not all of the requested records meet the fee waiver criteria.

§ 402.90 Notification of fees and prepayment requirements.

Requesters must agree to pay the fee, whether charged under § 402.75 or § 402.80, before we will begin the search for record(s).

(a) *Cost estimate.* OPD will issue a fee notice to the requester for the processing of their request for records that includes an estimated fee based on the time we estimate it will take to process the record(s) requested. We issue fee notices via email or, when the requester does

not provide an email address, via U.S. postal mail.

(b) *Advanced payment information required.* The requester must agree to pay the estimated fee provided within the fee notice and provide the agency with payment information within 30 calendar days from the date of our fee notice. Payment information is required before OPD will begin the search for the requested record(s). Unless otherwise specified in the schedule of standard administrative fees the agency charges for specified non-program information requests, OPD will process payment when the request is closed, *i.e.*, when the FOIA Officer issues a decision on records release. If the payment information provided by the requester expires during the course of OPD's processing of the FOIA request, the requester must provide updated payment information. If updated payment information is not provided within 30 calendar days of our written request for the payment information, we reserve the right to administratively close the request.

(c) *Changes in estimated fee.* (1) If the time spent to search for records is more or less than the time estimated in the fee notice, OPD will issue the requester a revised fee notice after the responsive component(s) performs the records search and retrieval.

(2) If the record(s) provided to OPD for review are more or less than those from which OPD estimated search and review time, OPD will issue the requester a revised fee notice after the responsive component(s) perform the records search and retrieval.

(3) OPD will either dispose of the payment information or return the payment information to the requester when OPD issues the revised fee notice.

(4) The requester must agree to pay the revised fee before we will continue processing the request. If the requester disagrees with the revised fee, the requester may appeal to the Executive Director for OPD. Appeals will be processed as described in § 402.105.

(d) *Prompt payment.* We will administratively close the FOIA request if we do not receive a response or appeal within 30 calendar days from the date of the fee notice. "Response" includes:

(1) Requesting to narrow the scope of the request; or

(2) Providing payment in response to the fee notice. Appeals will be processed as described in § 402.105.

(e) *Methods of payment.* We accept payment by check or money order made payable to the Social Security Administration (SSA), as well as by

credit card (MasterCard, Visa, Discover, American Express, or Diner's Club).

§ 402.95 Release of records.

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to the requester, as well. However, we will not release it to a requester if a statute forbids this disclosure; an exemption applies that was not previously applicable; or if the previous release was unauthorized.

(b) *Withholding records.* Section 552(b) of the FOIA explains the nine exemptions under which we may withhold records requested under the FOIA. Within §§ 402.115 through 402.150, we describe the FOIA exemptions and explain how we apply them to disclosure determinations. In some cases, more than one exemption may apply to the same document. Section 552(b) of the FOIA, while providing nine exemptions from mandatory disclosure, does not itself provide any assurance of confidentiality by the agency.

(c) *FOIA library.* If the record(s) requested are already publicly available, either in our electronic FOIA library or elsewhere online, such as at www.ssa.gov, we will direct the requester to the publicly available record(s).

(d) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

§ 402.100 FOIA Public Liaison and the Office of Government Information Services.

We notify requesters of their right to seek dispute resolution from the FOIA Public Liaison or the Office of Government Information Services (OGIS) within our fee notices, responses to determinations identified in § 402.50(a), and responses to appeals.

(a) *FOIA Public Liaison.* If requesters have questions about the response to their request or wish to seek dispute resolutions services within SSA, the requester may contact the FOIA Public Liaison via email to FOIA.Public.Liaison@ssa.gov.

(b) *OGIS.* OGIS is an entity outside of SSA that offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. OGIS' contact information will be provided in any decision letter issued by the FOIA Officer and Executive Director for OPD.

§ 402.105 Appeals of the FOIA Officer's determination.

(a) *Appeal requirements.* If a requester disagrees with the FOIA Officer's determination in response to items specified in § 402.50(a), the requester may appeal the decision. The appeal must meet the following requirements:

(1) Be submitted in writing via the avenues identified in § 402.35(a);

(2) Be received, or in the case of electronic submissions, transmitted within 90 calendar days from the date of the determination the requester is appealing; and

(3) Explain what the requester is appealing and include additional information to support the appeal. The appeal should clearly identify the agency determination that is being appealed and the assigned request's tracking number. To facilitate handling when submitted via mail or fax, the requester should mark the appeal letter, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Acknowledgement.* If we receive an appeal that will take longer than 10 working days to process, we will provide an acknowledgment. The acknowledgement is provided via email or, when the requester does not provide an email address, via U.S. postal mail. The acknowledgement email or letter restates the FOIA appeal and provides the requester with the appeal's tracking number.

(c) *Processing timeframe.* FOIA appeals are categorized as either simple or complex, based on the designation of the initial request.

(1) *Simple.* Generally, we make a determination about release of the requested record(s) within 20-working days.

(2) *Complex.* Appeals of complex requests cannot be completed within 20-working days. During OPD's processing of the appeal, OPD will need to consult with appropriate SSA component(s), including legal counsel; therefore, we generally require more than 20-working days to issue a final decision on the appeal.

(d) *Final decision.* The Chief FOIA Officer delegated to the Executive Director for OPD the authority to make decisions on appeals of the FOIA Officer's determinations.

(1) The final decision is provided in writing to the requester via email or, in the absence of the requester's email address, via U.S. postal mail.

(2) The final decision letter will explain the basis of the decision (for example, the reasons why an exemption applies).

(e) *Disagreement with final decision.* If a requester disagrees with the final decision issued by the Executive Director for OPD, they may seek assistance from OGIS, as described in § 402.100. Requesters may also ask a U.S. District Court to review our final decision. See 5 U.S.C. 552(a)(4)(B).

§ 402.110 U.S. District Court action.

If the Executive Director for OPD or the Executive Director for OPD's designee, upon review, affirms the denial of the FOIA Officer's determination of items specified in § 402.50(a), requesters may ask a U.S. District Court to review that denial. See 5 U.S.C. 552(a)(4)(B).

§ 402.115 The FOIA Exemption 1: National defense and foreign policy.

Exemption 1 protects from disclosure information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

§ 402.120 The FOIA Exemption 2: Internal personnel rules and practices.

Exemption 2 authorizes our agency to withhold records that are related solely to the internal personnel rules and practices of an agency. For example, we may withhold personnel rules and practices dealing with employee relations or human resources.

§ 402.125 The FOIA Exemption 3: Records exempted by other statutes.

(a) *Required record release.* Exemption 3 authorizes our agency to withhold records if another statute specifically allows or requires us to withhold them. We may use another statute to justify withholding only if it prohibits disclosure or if it sets forth criteria to guide our decision on releasing or identifies particular types of material to be withheld.

(b) *Examples.* (1) We often use this exemption to withhold information regarding a worker's earnings which is tax return information under section 6103 of the Internal Revenue Code.

(2) We also use this exemption to withhold death information about decedents:

(i) When the date of death is within three calendar years from the current date, the requested information about the decedent is protected under section 203 of the Bipartisan Budget Act of 2013 (Pub. L. 113-67).

(ii) When the agency's source of death is the state, the requested information is protected under section 205(r) of the Social Security Act.

§ 402.130 The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.

Submitters may designate information as trade secrets and confidential commercial or financial information at the time of submission or within a reasonable time thereafter. Submitters must use good faith efforts to designate, by appropriate markings, any portion of its submission that it considers to be protected from disclosure under the FOIA exemptions. These designations expire ten years after the due date of the submission unless the submitter requests a longer designation period.

(a) *Steps of submitters notice*—(1) *The submitter's notice.* When trade secrets or confidential commercial or financial information is requested under the FOIA, SSA will provide written submitter's notice if we have a reason to believe that information in the records could reasonably be disclosed under the FOIA. The submitter's notice will describe and include a copy of the trade secret or commercial or financial information requested or portions of records containing the information. In cases involving many submitters, SSA may post or publish a submitter's notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure instead of sending individual notifications. The submitter's notice requirements of this section do not apply if:

(i) SSA determines the information is fully exempt under the FOIA, and therefore will not be disclosed;

(ii) The information has been previously published or made generally available; or

(iii) Disclosure of the information is required by statute other than the FOIA.

(2) *Submitter's opportunity to object to disclosure.* (i) Unless SSA grants an extension, the submitter must respond to the notice within five working days of SSA issuing the submitter's notice or the information may be released in accordance with these regulations and the FOIA. A submitter who fails to respond within five working days will be considered to have no objection to the disclosure of the information. SSA is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(ii) If a submitter objects to disclosure, the submitter should provide SSA with a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for non-

disclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

(iii) SSA will consider a submitter's timely made objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(3) *Notice of intent to disclose.* Whenever SSA decides to disclose information over the objection of a submitter, SSA provides the following to the submitter:

(i) A Release Over Objection letter explaining the reasons why each of the submitter's disclosure objections did not meet the requirements for withholding under the FOIA.

(ii) A copy of the information as SSA intends to release it.

(iii) A statement of our intent to disclose the information five working days from the date on the Release Over Objection letter unless the submitter files an action in a U.S. District Court to prevent the release.

(b) *Notice of FOIA lawsuit.* When a submitter's notice is issued for a request that is the subject of a lawsuit, SSA notifies the submitter of the lawsuit within the notice.

(c) *Requester notification.* To the extent SSA expects substantial delays in the processing of FOIA requests due to the agency's communications with the submitter, we will notify the requester in writing via email, or when the requester's email is not provided, via U.S. postal mail.

§ 402.135 The FOIA Exemption 5: Internal documents.

This exemption covers inter-agency or intra-agency government documents that fall within an evidentiary privilege recognized in civil discovery. Such internal government communications may include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most-commonly applicable privileges are described in the following paragraphs:

(a) *Deliberative process privilege.* This privilege protects the decision-making processes of government agencies. Information is protected under this privilege if it is predecisional and deliberative. The purpose of the privilege is to prevent injury to the quality of the agency decision-making process by encouraging open and frank internal discussions, by avoiding premature disclosure of decisions not

yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decision-making process. We will release purely factual material in a deliberative document unless that material is otherwise exempt. The privilege continues to protect predecisional documents even after a decision is made; however, we will release predecisional deliberative communications that were created 25 years or more before the date on which the records are requested.

(b) *Attorney work product privilege.* This privilege protects records prepared by or for an attorney in anticipation of or for litigation. It includes documents prepared for purposes of administrative and court proceedings. This privilege extends to information directly prepared by an attorney, as well as materials prepared by non-attorneys working for an attorney.

(c) *Attorney-client communication privilege.* This privilege protects confidential communications between an attorney and the attorney's client where legal advice is sought or provided.

§ 402.140 The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.

We may withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.

(a) *Balancing test.* When we decide whether to release records that contain personal or private information about someone else, we weigh the foreseeable harm of invading a person's privacy against the public interest in disclosure. When we determine whether disclosure would be in the public interest, we will consider whether disclosure of the requested information would shed light on how a Government agency performs its statutory duties.

(b) *Agency employees.* To protect the safety of agency employees, we will not disclose information when the information sought is contact information and/or duty stations of one or more Federal employees if the disclosure would place employee(s) at risk of injury or other harm.

(c) *Examples.* We generally withhold the personally identifiable information

of individuals if we do not have the consent (consistent with § 401.100 of this chapter) of the number holder, including but not limited to the number holder's home address, age, Social Security number, claims file, and other personal information. If the information requested concerns agency employees, we will determine disclosure on a case-by-case basis. For example, our redaction of management officials' information may be treated differently depending on how the balancing test applies in a given circumstance.

§ 402.145 The FOIA Exemption 7: Law enforcement.

Exemption 7 authorizes our agency to withhold certain records that the government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(a) *Enforcement proceedings.* Pursuant to the FOIA Exemption 7(A) (5 U.S.C. 552(b)(7)(a)), we may withhold information whose release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases—such as when a fraud investigation is likely—we may refuse to confirm or deny the existence of records that relate to the violations in order not to disclose that an investigation is in progress, or may be conducted.

(b) *Fair trial or impartial adjudication.* Under the FOIA Exemption 7(B) (5 U.S.C. 552(b)(7)(b)), we may withhold records whose release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(c) *Personal privacy.* Under the FOIA Exemption 7(C) (5 U.S.C. 552(b)(7)(c)), we may withhold the personally identifiable information of individuals when the disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, and retaliation.

(d) *Confidential sources and information.* Pursuant to the FOIA Exemption 7(D) (5 U.S.C. 552(b)(7)(d)), we may withhold the identity of confidential sources, as well as the records obtained from the confidential sources in criminal investigations or by an agency conducting a lawful national

security investigation. A confidential source may be an individual; a State, local, or foreign government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred; however, inferred confidentiality is determined in a case-by-case analysis. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(e) *Techniques and procedures.* Under the FOIA Exemption 7(E) (5 U.S.C. 552(b)(7)(e)), we may withhold records that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld.

(f) *Life and physical safety.* Under the FOIA Exemption 7(F) (5 U.S.C. 552(b)(7)(f)), we may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment, as well as to physical violence.

§ 402.150 The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.

Exemption 8 permits us to withhold records about regulation or supervision of financial institutions. Exemption 9 permits the withholding of geological and geophysical information and data, including maps, concerning wells.

§ 402.155 Records available for public inspection.

(a) Under the FOIA, SSA is required to make available for public inspection in an electronic format:

- (1) Final opinions made in the adjudication of cases;
- (2) An agency's statements and interpretations of policy that have been adopted but are not published in the **Federal Register**;
- (3) Administrative staff manuals and instructions that affect the public; and
- (4) Copies of records, regardless of form or format, that an agency determines will likely become the subject of subsequent requests, as well as records that have been requested and

released three or more times, unless said materials are published and copies are offered to sale.

(b) SSA will not use or cite instructional manuals issued to our employees, general statements of policy, and other materials which are used in processing claims as a precedent for an action against a person unless we have indexed the record and published it or made it available, or unless the person has timely notice of the record.

(c) Records that SSA makes available for public inspection in an electronic format may be accessed through www.ssa.gov free of charge. Such records include:

- (1) Compilation of Social Security Laws and Regulations;
- (2) SSA regulations under the retirement, survivors, disability, and supplemental security income programs, *i.e.*, 20 CFR parts 401, 402, 404, 416, and 422;
- (3) Social Security Handbook;
- (4) Social Security Rulings and Acquiescence Rulings;
- (5) SSA's Public Programs Operations Manual System;
- (6) SSA's Organizational Structure;
- (7) State and Local Coverage Handbook for State Social Security Administrators; and
- (8) SSA's Public Hearings, Appeals, and Litigation Law Manual.

§ 402.160 Where records are published.

(a) *Methods of publication.* Materials we are required to publish pursuant to the provisions of 5 U.S.C. 552(a)(1) and (a)(2), we publish in one of the following ways:

- (1) By publication in the **Federal Register** of Social Security Administration regulations, and by their subsequent inclusion in the Code of Federal Regulations;
 - (2) By publication in the **Federal Register** of appropriate general notices;
 - (3) By other forms of publication, when incorporated by reference in the Code of Federal Regulations with the approval of the Director of the Federal Register;
 - (4) By publication in the "Social Security Rulings" of indexes of precedential social security orders and opinions issued in the adjudication of claims, statements of policy and interpretations that have been adopted but have not been published in the **Federal Register**; and
 - (5) By posting in the FOIA library.
- (b) *Publication of rulings.* Although not required pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we publish the following rulings in the **Federal Register** and by other forms of publication:

(1) We publish Social Security Rulings in the **Federal Register** under the authority of the Commissioner of Social Security. They are binding on all components of SSA. These rulings represent precedent final opinions and orders and statements of policy and interpretations that we have adopted.

(2) We publish Social Security Acquiescence Rulings in the **Federal Register** under the authority of the Commissioner of Social Security. They are binding on all components of SSA, except with respect to claims subject to the relitigation procedures established in 20 CFR 404.985(c) and 416.1485(c). For a description of Social Security Acquiescence Rulings, see 20 CFR 404.985(b) and 416.1485(b).

§ 402.165 Publications for sale through the Government Publishing Office.

The public may purchase publications containing information pertaining to the program, organization, functions, and procedures of SSA from the electronic U.S. Government Bookstore maintained by the Government Publishing Office. The publications for sale include but are not limited to:

- (a) Title 20, parts 400 through 499, of the Code of Federal Regulations;
- (b) **Federal Register** issues; and
- (c) Compilation of the Social Security Laws.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10019]

RIN 1545–BR31

Definition of the Term “Coverage Month” for Computing the Premium Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the definition of “coverage month” and amend certain other rules in existing income tax regulations regarding the computation of an individual taxpayer’s premium tax credit. The coverage month amendment generally provides that, in computing a premium tax credit, a month may be a coverage month for an individual if the amount of the premium paid, including by advance payments of the premium tax credit, for the month for the

individual’s coverage is sufficient to avoid termination of the individual’s coverage for that month. The final regulations also amend the existing regulations relating to the amount of enrollment premiums used in computing the taxpayer’s monthly premium tax credit if a portion of the monthly enrollment premium for a coverage month is unpaid. Finally, the final regulations clarify when an individual is considered to be not eligible for coverage under a State’s Basic Health Program. The final regulations affect taxpayers who enroll themselves, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange and may be allowed a premium tax credit for the coverage.

DATES:

Effective date: These final regulations are effective on December 18, 2024.

Applicability date: These final regulations apply to taxable years beginning on or after January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Clara Raymond at (202) 317–4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 36B of the Internal Revenue Code (Code).¹ Section 36B(h) provides an express delegation of authority for the Secretary of the Treasury or her delegate (Secretary) to prescribe such regulations as may be necessary to carry out section 36B, including regulations that provide for the coordination of the premium tax credit (PTC) allowed under 36B with the program for advance payments of the PTC (APTC) under section 1412 of the Affordable Care Act.² The final regulations are also issued under the express delegation of authority under section 7805(a), which authorizes the Secretary to “prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.”

¹ Unless otherwise indicated, references to “section” or “§” are to sections of the Code or the Treasury regulations issued thereunder.

² The Affordable Care Act (or ACA) refers to the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010).

Background

I. Section 36B Rules Relating to Coverage Months and Monthly PTC Amount

Section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that a member of the taxpayer’s family enrolls in a qualified health plan (QHP) through a Health Insurance Exchange (Exchange) for one or more “coverage months.”

Section 1.36B–3(c)(1) provides that a month is a coverage month for an individual if (i) as of the first day of the month, the individual is enrolled in a QHP through an Exchange; (ii) the taxpayer pays the taxpayer’s share of the premium for the individual’s coverage under the plan for the month by the unextended due date for filing the taxpayer’s income tax return for that taxable year, or the full premium for the month is paid by APTC; and (iii) the individual is not eligible for the full calendar month for minimum essential coverage (within the meaning of § 1.36B–2(c)) other than coverage described in section 5000A(f)(1)(C) of the Code (relating to coverage in the individual market).

Section 1.36B–3(d)(1) provides that the PTC (also called the premium assistance amount) for a coverage month is the lesser of (i) the premiums for the month, reduced by any amounts that were refunded, for one or more QHPs in which a taxpayer or a member of the taxpayer’s family enrolls (enrollment premiums); or (ii) the excess of the adjusted monthly premium for the applicable benchmark plan over $\frac{1}{12}$ of the product of a taxpayer’s household income and the applicable percentage for the taxable year. The term “family” is defined in § 1.36B–1(d), and the applicable percentage is defined in § 1.36B–3(g).

Section 1.36B–2(c)(2)(i) provides that, for purposes of determining whether a given month is a coverage month for an individual, an individual generally is considered eligible for government-sponsored minimum essential coverage if the individual meets the criteria for coverage under a government-sponsored program described in section 5000A(f)(1)(A) as of the first day of the first full month the individual may receive benefits under the program.

Section 1.36B–2(c)(2)(v) provides that an individual is treated as not eligible for Medicaid, CHIP, or a similar program for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange determines or considers (within the meaning of 45 CFR 155.302(b)) the individual to be not eligible for Medicaid or CHIP.