

1983—Pub. L. 98-21 designated existing provisions as subsec. (a) and added subsec. (b).

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of former section 408 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-21, title III, §335(c), Apr. 20, 1983, 97 Stat. 130, provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [42 U.S.C. 301 et seq.] on or after the date of the enactment of this Act [Apr. 20, 1983]."

EFFECTIVE DATE OF 1939 AMENDMENT

Act Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 408. Penalties

(a) In general

Whoever—

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this subchapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this subchapter; or

(3) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than five years, or both.

(b) Restitution

(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

(2) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforce-

ment of orders of restitution to victims of such offense under this subsection.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) of this section are the following:

(A) Any individual who suffers a financial loss as a result of the defendant's violation of subsection (a) of this section.

(B) The Commissioner of Social Security, to the extent that the defendant's violation of subsection (a) of this section results in—

(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

(ii) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 405(j) of this title.

(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter by the individual.

(c) Violations by certified payees

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under title 18 or imprisoned for not more than five years, or both.

(d) Effect upon certification as payee; definitions

Any individual or entity convicted of a felony under this section or under section 1383a(b)¹ of this title may not be certified as a payee under section 405(j) of this title. For the purpose of subsection (a)(7) of this section, the terms "social security number" and "social security account number" mean such numbers as are assigned by the Commissioner of Social Security under section 405(c)(2) of this title whether or

not, in actual use, such numbers are called social security numbers.

(e) Application of subsection (a)(6) and (7) to certain aliens

(1) Except as provided in paragraph (2), an alien—

(A) whose status is adjusted to that of lawful temporary resident under section 1160 or 1255a of title 8 or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident—

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 1259 of title 8, or

(C) who is granted special immigrant status under section 1101(a)(27)(I) of title 8,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) of this section if such conduct is alleged to have occurred prior to 60 days after November 5, 1990.

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C) of this section) consisting of—

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) of this section to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) of this section were not committed.

(Aug. 14, 1935, ch. 531, title II, §208, 49 Stat. 625; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1372; Aug. 28, 1950, ch. 809, title I, §109(c), 64 Stat. 523; Sept. 1, 1954, ch. 1206, title I, §111(b), 68 Stat. 1085; Pub. L. 85-840, title III, §310, Aug. 28, 1958, 72 Stat. 1034; Pub. L. 86-778, title II, §211(m), Sept. 13, 1960, 74 Stat. 958; Pub. L. 92-603, title I, §130(a), Oct. 30, 1972, 86 Stat. 1359; Pub. L. 94-455, title XII, §1211(a), (d), Oct. 4, 1976, 90 Stat. 1711, 1712; Pub. L. 97-123, §4(a), (b), Dec. 29, 1981, 95 Stat. 1663, 1664; Pub. L. 98-369, div. B, title VI, §2663(a)(5), July 18, 1984, 98 Stat. 1162; Pub. L. 98-460, §16(c)(2), Oct. 9, 1984, 98 Stat. 1811; Pub. L. 100-690, title VII, §7088, Nov. 18, 1988, 102 Stat. 4409; Pub. L. 101-508, title V, §§5121, 5130(a)(1), Nov. 5, 1990, 104 Stat. 1388-283, 1388-289; Pub. L. 103-296, title I, §107(a)(4), title III, §321(a)(12), Aug. 15, 1994, 108 Stat. 1478, 1536; Pub. L. 106-553, §1(a)(2) [title VI, §635(c)(2)(1), (2)], Dec. 21, 2000, 114 Stat. 2762, 2762A-117; Pub. L. 106-554, §1(a)(4) [div. A, §213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-180; Pub. L. 108-203, title II, §209(a), Mar. 2, 2004, 118 Stat. 513.)

REFERENCES IN TEXT

Subchapter E of chapter 1 and subchapters A and E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), were comprised of sections 480-482,

¹ See References in Text note below.

1400-1432, and 1630-1636, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1954, referred to in subsec. (a)(1), were redesignated chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, and are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26.

Section 1383a(b) of this title, referred to in subsec. (d), was redesignated section 1383a(c) of this title and amended by Pub. L. 108-203, title II, § 209(c), Mar. 2, 2004, 118 Stat. 515.

Section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (e)(1)(A), is section 902 of Pub. L. 100-204, which is set out as a note under section 1255a of Title 8, Aliens and Nationality.

Section 202 of the Immigration Reform and Control Act of 1986, referred to in subsec. (e)(1)(B)(i), is section 202 of Pub. L. 99-603, which is set out as a note under section 1255a of Title 8.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-203, § 209(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108-203, § 209(a)(1), (3), redesignated subsec. (b) as (c) and struck out at end: “In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.” Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 108-203, § 209(a)(1), redesignated subsecs. (c) and (d) as (d) and (e), respectively.

2000—Subsec. (a)(8) to (10). Pub. L. 106-553, which inserted “or” at end of par. (8) and added pars. (9) and (10), was repealed by Pub. L. 106-554, effective as if included in Pub. L. 106-553 on Dec. 21, 2000. Pars. (9) and (10) read as follows:

“(9) except as provided in section 1320b-23(d) of this title, knowingly and willfully displays or sells to the general public (as defined in section 1320b-23(g) of this title) any individual’s social security number, or any identifiable derivative of such number, without the affirmatively expressed consent (as defined in section 1320b-23(c) of this title), electronically or in writing, of such individual; or

“(10) obtains any individual’s social security number, or any identifiable derivative of such number, for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for illegal purposes;”.

1994—Subsec. (a)(6), (7). Pub. L. 103-296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “the Commissioner’s authority” for “his authority” in par. (7)(A).

Subsec. (c). Pub. L. 103-296, § 321(a)(12), substituted “subsection (a)(7)” for “subsection (g)”.

Pub. L. 103-296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.

Subsec. (d)(2)(A). Pub. L. 103-296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.

1990—Pub. L. 101-508, § 5121, inserted “(a)” before “Whoever—”, redesignated former subsecs. (a) to (h) as pars. (1) to (8), respectively, of subsec. (a), in pars. (1)

and (7) redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, inserted “(b)” before “Any person or other entity who is convicted”, inserted “(c)” before “Any individual or entity convicted of a felony”, and added subsec. (d).

Pub. L. 101-508, § 5130(a)(1), in the last undesignated paragraph substituted “section 405(c)(2) of this title” for “section 605(c)(2) of this title”.

1988—Pub. L. 100-690 substituted “under title 18” for “not more than \$5,000” in first undesignated par., substituted “under title 18” for “not more than \$25,000” in second undesignated par., and inserted provisions at end defining for purposes of subsec. (g) “social security number” and “social security account number”.

1984—Pub. L. 98-460 inserted provisions imposing a penalty of \$25,000 or imprisonment for not more than five years, or both, on any person or other entity convicted for a second or subsequent violation of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title, and also granting the court discretion, in any case, including a first offense, involving a willful misuse of funds, to require full or partial restitution, and prohibiting the certification of any individual or entity convicted of a felony under this section or under section 1383a(b) of this title.

Subsecs. (f) to (h). Pub. L. 98-369 realigned margins of subsecs. (f) to (h).

1981—Pub. L. 97-123 substituted provisions making violation of section a felony for provisions making it a misdemeanor, increased the punishment from one to five years and penalty from \$1,000 to \$5,000, and in subsec. (g), in opening paragraph, substituted “or for the purpose of obtaining anything of value from any person, or for any other purpose” for “or for any other purpose”, and added par. (3).

1976—Subsec. (g). Pub. L. 94-455, § 1211(a), inserted “, or for any other purpose” after “entitled” in provisions preceding cl. (1).

Subsec. (h). Pub. L. 94-455, § 1211(d)(1), added subsec. (h).

1972—Subsecs. (f), (g). Pub. L. 92-603 added subsecs. (f) and (g).

1960—Subsec. (a)(3). Pub. L. 86-778 substituted “section 403(f) of this title” for “section 403(e) of this title”.

1958—Pub. L. 85-840 amended section generally, by, among other changes, inserting references to the Internal Revenue Code of 1954, and making penalty provisions applicable to cases (1) where false statements or representations as to whether wages were paid or received for employment, or whether net earnings from self-employment were derived, or whether a person entitled to benefits under this subchapter had earnings in or for a particular period, or as to the amount thereof, are made for the purpose of obtaining or increasing benefits; (2) where false statements or representations are made in any application for disability determination; (3) where a person intentionally conceals or fails to disclose knowledge of any event affecting his or another’s initial or continued right to payment, and (4) where a person converts a payment that he received for the use and benefit of another.

1954—Act Sept. 1, 1954, made it clear that the penalty provisions of the section extend to cases of false statements or representations as to the amount of net earnings from self-employment derived or the period during which derived.

1950—Act Aug. 28, 1950, substituted “subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939” for “the Federal Insurance Contributions Act”.

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of section 409 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-203, title II, § 209(d), Mar. 2, 2004, 118 Stat. 516, provided that: “The amendments made by subsecs. (a), (b), and (c) [amending this section and sections 1011 and 1383a of this title] shall apply with re-

spect to violations occurring on or after the date of enactment of this Act [Mar. 2, 2004].”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(4) [div. A, §213(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-180, provided that: “The amendments made by this section [amending this section, section 10601 of this title, and section 2709 of Title 22, Foreign Relations and Intercourse, repealing section 1320b-23 of this title, amending provisions set out as notes under sections 4001 and 4013 of Title 18, Crimes and Criminal Procedure, and section 524 of Title 28, Judiciary and Judicial Procedure, and repealing provisions set out as notes under this section and sections 1305 and 1320b-23 of this title] shall take effect as if included in H.R. 4942 of the 106th Congress [Pub. L. 106-553] on the date of its enactment [Dec. 21, 2000].”

Pub. L. 106-553, §1(a)(2) [title VI, §635(c)(2)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A-117, which provided that the amendments made by §1(a)(2) [title VI, §635(c)] of Pub. L. 106-553, enacting section 1320b-23 of this title and amending this section, would apply with respect to violations occurring on and after the date that is 2 years after Dec. 21, 2000, was repealed by Pub. L. 106-554, §1(a)(4) [div. A, §213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-180, see above.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5130(a)(1) of Pub. L. 101-508 effective as if included in the enactment of Pub. L. 100-690, §7088, see section 5130(b) of Pub. L. 101-508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-123, §4(c), Dec. 29, 1981, 95 Stat. 1664, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall be effective with respect to violations committed after the date of the enactment of this Act [Dec. 29, 1981].”

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-603, title I, §130(b), Oct. 30, 1972, 86 Stat. 1360, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to information furnished to the Secretary after the date of the enactment of this Act [Oct. 30, 1972].”

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-778 effective in the manner provided in section 211(p), (q) of Pub. L. 86-778, section 211(s) of Pub. L. 86-778, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Act Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 409. “Wages” defined

(a) In general

For the purposes of this subchapter, the term “wages” means remuneration paid prior to 1951

which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(1)(A) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(B) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(C) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$4,800 with respect to employment has been paid to an individual during any calendar year after 1958 and prior to 1966, is paid to such individual during such calendar year;

(D) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(E) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$7,800 with respect to employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(F) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973, is paid to such individual during any such calendar year;

(G) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(H) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$13,200 with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;