

**§ 405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering State and local employees; effective date**

Notwithstanding any other provision of law, no regulation and no modification of any regulation, promulgated by the Secretary of Health and Human Services, after January 2, 1976, shall become effective prior to the end of the eighteen-month period which begins with the first day of the first calendar month which begins after the date on which such regulation or modification of a regulation is published in the Federal Register, if and insofar as such regulation or modification of a regulation pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 418(e)<sup>1</sup> of this title.

(Pub. L. 94-202, § 7, Jan. 2, 1976, 89 Stat. 1137; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Subsec. (e) of section 418 of this title, referred to in text, which related to payments and reports by States, was repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99-509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

CODIFICATION

Section was not enacted as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in text pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

TIME FOR MAKING SOCIAL SECURITY CONTRIBUTIONS WITH RESPECT TO COVERED STATE AND LOCAL EMPLOYEES

Pub. L. 96-265, title V, § 503(c), June 9, 1980, 94 Stat. 471, provided that: “The provisions of section 7 of Public Law 94-202 [42 U.S.C. 405a] shall not be applicable to any regulation which becomes effective on or after July 1, 1980, and which is designed to carry out the purposes of subsection (a) of this section [amending section 418 of this title].”

**§ 405b. Reducing identity fraud**

**(a) Purpose**

The purpose of this section is to reduce the prevalence of synthetic identity fraud, which disproportionately affects vulnerable populations, such as minors and recent immigrants, by facilitating the validation by permitted entities of fraud protection data, pursuant to electronically received consumer consent, through use of a database maintained by the Commissioner.

**(b) Definitions**

In this section:

**(1) Commissioner**

The term “Commissioner” means the Commissioner of the Social Security Administration.

**(2) Financial institution**

The term “financial institution” has the meaning given the term in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809).

**(3) Fraud protection data**

The term “fraud protection data” means a combination of the following information with respect to an individual:

(A) The name of the individual (including the first name and any family forename or surname of the individual).

(B) The social security number of the individual.

(C) The date of birth (including the month, day, and year) of the individual.

**(4) Permitted entity**

The term “permitted entity” means a financial institution or a service provider, subsidiary, affiliate, agent, subcontractor, or assignee of a financial institution.

**(c) Efficiency**

**(1) Reliance on existing methods**

The Commissioner shall evaluate the feasibility of making modifications to any database that is in existence as of May 24, 2018, or a similar resource such that the database or resource—

(A) is reasonably designed to effectuate the purpose of this section; and

(B) meets the requirements of subsection (d).

**(2) Execution**

The Commissioner shall make the modifications necessary to any database that is in existence as of May 24, 2018, or similar resource, or develop a database or similar resource, to effectuate the requirements described in paragraph (1).

**(d) Protection of vulnerable consumers**

The database or similar resource described in subsection (c) shall—

(1) compare fraud protection data provided in an inquiry by a permitted entity against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided;

(2) be scalable and accommodate reasonably anticipated volumes of verification requests from permitted entities with commercially reasonable uptime and availability; and

(3) allow permitted entities to submit—

(A) 1 or more individual requests electronically for real-time machine-to-machine (or similar functionality) accurate responses; and

(B) multiple requests electronically, such as those provided in a batch format, for accurate electronic responses within a reasonable period of time from submission, not to exceed 24 hours.

**(e) Certification required**

Before providing confirmation of fraud protection data to a permitted entity, the Commissioner shall ensure that the Commissioner has a certification from the permitted entity that is dated not more than 2 years before the date on

<sup>1</sup> See References in Text note below.

which that confirmation is provided that includes the following declarations:

(1) The entity is a permitted entity.

(2) The entity is in compliance with this section.

(3) The entity is, and will remain, in compliance with its privacy and data security requirements, as described in title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.), with respect to information the entity receives from the Commissioner pursuant to this section.

(4) The entity will retain sufficient records to demonstrate its compliance with its certification and this section for a period of not less than 2 years.

**(f) Consumer consent**

**(1) In general**

Notwithstanding any other provision of law or regulation, a permitted entity may submit a request to the database or similar resource described in subsection (c) only—

(A) pursuant to the written, including electronic, consent received by a permitted entity from the individual who is the subject of the request; and

(B) in connection with a credit transaction or any circumstance described in section 1681b of title 15.

**(2) Electronic consent requirements**

For a permitted entity to use the consent of an individual received electronically pursuant to paragraph (1)(A), the permitted entity must obtain the individual's electronic signature, as defined in section 7006 of title 15.

**(3) Effectuating electronic consent**

No provision of law or requirement, including section 552a of title 5, shall prevent the use of electronic consent for purposes of this subsection or for use in any other consent based verification under the discretion of the Commissioner.

**(g) Compliance and enforcement**

**(1) Audits and monitoring**

The Commissioner may—

(A) conduct audits and monitoring to—

(i) ensure proper use by permitted entities of the database or similar resource described in subsection (c); and

(ii) deter fraud and misuse by permitted entities with respect to the database or similar resource described in subsection (c); and

(B) terminate services for any permitted entity that prevents or refuses to allow the Commissioner to carry out the activities described in subparagraph (A).

**(2) Enforcement**

**(A) In general**

Notwithstanding any other provision of law, including the matter preceding paragraph (1) of section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)), any violation of this section and any certification made under this section shall be enforced in accordance with paragraphs (1) through (7)

of such section 505(a) by the agencies described in those paragraphs.

**(B) Relevant information**

Upon discovery by the Commissioner, pursuant to an audit described in paragraph (1), of any violation of this section or any certification made under this section, the Commissioner shall forward any relevant information pertaining to that violation to the appropriate agency described in subparagraph (A) for evaluation by the agency for purposes of enforcing this section.

**(h) Recovery of costs**

**(1) In general**

**(A) In general**

Amounts obligated to carry out this section shall be fully recovered from the users of the database or verification system by way of advances, reimbursements, user fees, or other recoveries as determined by the Commissioner. The funds recovered under this paragraph shall be deposited as an offsetting collection to the account providing appropriations for the Social Security Administration, to be used for the administration of this section without fiscal year limitation.

**(B) Prices fixed by Commissioner**

The Commissioner shall establish the amount to be paid by the users under this paragraph, including the costs of any services or work performed, such as any appropriate upgrades, maintenance, and associated direct and indirect administrative costs, in support of carrying out the purposes described in this section, by reimbursement or in advance as determined by the Commissioner. The amount of such prices shall be periodically adjusted by the Commissioner to ensure that amounts collected are sufficient to fully offset the cost of the administration of this section.

**(2) Initial development**

The Commissioner shall not begin development of a verification system to carry out this section until the Commissioner determines that amounts equal to at least 50 percent of program start-up costs have been collected under paragraph (1).

**(3) Existing resources**

The Commissioner may use funds designated for information technology modernization to carry out this section.

**(4) Annual report**

The Commissioner shall annually submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the amount of indirect costs to the Social Security Administration arising as a result of the implementation of this section.

(Pub. L. 115-174, title II, §215, May 24, 2018, 132 Stat. 1323.)

REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in subsec. (e)(3), is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338.

Title V of the Act is classified principally to chapter 94 (§6801 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

CODIFICATION

Section was enacted as part of the Economic Growth, Regulatory Relief, and Consumer Protection Act, and not as part of the Social Security Act which comprises this chapter.

**§ 406. Representation of claimants before Commissioner**

**(a) Recognition of representatives; fees for representation before Commissioner**

(1) The Commissioner of Social Security may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security. Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe. The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Commissioner of Social Security may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any

claim before the Commissioner of Social Security under this subchapter, and any agreement in violation of such rules and regulations shall be void. Except as provided in paragraph (2)(A), whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this subchapter, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.

(2)(A) In the case of a claim of entitlement to past-due benefits under this subchapter, if—

(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Commissioner of Social Security prior to the time of the Commissioner's determination regarding the claim,

(ii) the fee specified in the agreement does not exceed the lesser of—

(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1320a-6(a) of this title), or

(II) \$4,000, and

(iii) the determination is favorable to the claimant,

then the Commissioner of Social Security shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Commissioner of Social Security may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 415(i) of this title since such date. The Commissioner of Social Security shall publish any such increased amount in the Federal Register.

(B) For purposes of this subsection, the term "past-due benefits" excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title.

(C) In any case involving—

(i) an agreement described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this subchapter and a claim of entitlement to past-due benefits under subchapter XVI, and

(ii) a favorable determination made by the Commissioner of Social Security with respect to both such claims,

the Commissioner of Social Security may approve such agreement only if the total fee or fees specified in such agreement does not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).

(D) In the case of a claim with respect to which the Commissioner of Social Security has approved an agreement pursuant to subparagraph (A), the Commissioner of Social Security