SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 416, and 422

[Docket No. SSA–2016–0039]

RIN 0960–AH88

Use of Electronic Payroll Data To Improve Program Administration

AGENCY: Social Security Administration.

ACTION: Final rule.

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

DATES: This final rule is effective March 3, 2025.

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

SUPPLEMENTARY INFORMATION: On February 15, 2024, we published a Notice of Proposed Rulemaking (NPRM), *Use of Electronic Payroll Data To Improve Program Administration.*[1] In the NPRM, we explained that we expect that receiving monthly wage and employment information automatically through an information exchange with a participating payroll data provider[2] will improve payment accuracy, reduce improper payments, and reduce reporting burdens on participating individuals when we receive their wage and employment information through the exchange. We also explained that the implementation of an information exchange is expected to result in more efficient use of our limited administrative resources because our technicians would reduce the amount of time they spend—

- Manually requesting this information from payroll data providers and employers;
- Manually entering data into our systems from an individual's pay records;
- Contacting individuals; and
- Assisting individuals with the results of incomplete or untimely reporting.

Additionally, we will not subject individuals who provide authorization to certain penalties under section 1129A of the Social Security Act[3] for any omission or error with respect to wages reported by a participating payroll data provider.[4] When we learn of an inaccurate report causing an underpayment, we will follow our usual procedures for remitting an underpayment.

Background

We administer the OASDI disability and SSI programs under titles II and XVI of the Act, respectively. The OASDI program pays benefits to individuals who meet certain requirements, such as those who are disabled and insured for disability benefits.[5] OASDI also pays benefits to certain members of disabled individuals' families.[6] The SSI program provides financial support to: (1) adults and children with a disability or blindness; and (2) adults aged 65 and older. These individuals must meet all program eligibility requirements, including having resources and income below specified amounts.[7]

We take seriously our responsibilities to ensure eligible individuals receive the benefits to which they are entitled and to safeguard the integrity of benefit programs to better serve our customers. We use wage and employment information to help decide who can receive OASDI disability benefits and SSI payments, and to determine SSI payment amounts. Receiving complete, accurate, and timely wage and employment information allows us to administer our programs efficiently and to avoid improper payments that can occur when we do not have such information.[8] Therefore, we seek to have accurate wage and employment information as quickly as feasible to make correct payments, and thereby avoid overpayments before they occur, or to correct them as soon as possible after they occur.

To obtain this necessary wage and employment information, we largely depend on individuals to report it directly to us. Though we strive to make reporting as easy as possible, it can be burdensome for some individuals to track their wage and employment information and report it to us accurately and timely.[9] In addition, we do not always receive complete or timely reports, and even when we do, we may still need to verify the reports with independent or collateral sources when we do not have proper wage evidence.

Section 824 of the BBA[10] authorizes the Commissioner of Social Security to enter into information exchanges with

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[1] 89 FR 11773.

[2] We define a participating payroll data provider as a payroll data provider that has an information exchange arrangement with us to provide wage and employment information.

[3] 42 U.S.C. 1320a–8a. *See also* 20 CFR 404.459 and 416.1340.

[4] Under section 1129A of the Act, individuals are subject to certain penalties for making false or misleading statements: the penalty is nonpayment of benefits under Title II and ineligibility for payments under Title XVI. When an individual's wages are reported by a payroll data provider through the exchange and there is an error or omission in the wage report, the individual has (presumedly) not made a false or misleading statement and is expressly not subject to such penalties.

[5] *See* 20 CFR 404.315 for a full list of the OASDI disability eligibility requirements.

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

[7] *See* 20 CFR 416.202 for a full list of the SSI eligibility requirements.

[8] Individuals who are entitled to OASDI disability must report to us when their condition improves, when they return to work, when they increase the amount they work, and when their earnings increase. *See* 20 CFR 404.1588(a). Individuals who are eligible for SSI based on disability or blindness must make similar reports. *See* 20 CFR 416.988. All SSI recipients and deemors must also report to us any change in income as soon as a reportable event happens. (A deemor is any person whose income or resources are material to determining the eligibility of someone filing for or receiving SSI, such as a parent or spouse. 20 CFR 416.1160; SI 01310.127.) *See* 20 CFR 416.708(c).

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

[10] Public Law 114–74, 129 Stat. 584, 607.

payroll data providers [11] to obtain wage and employment information. It authorizes these information exchanges [12] for the purposes of efficient program administration and to prevent improper OASDI disability and SSI payments without the need for verification by independent or collateral sources. Further, the BBA requires us to prescribe procedures for implementing the access and use of the information held by payroll data providers. We refer to an exchange as the Payroll Information Exchange (PIE).

The NPRM proposed policies and procedures for implementing the access to and use of the information held by payroll data providers, including: (1) guidelines for establishing and maintaining information exchanges with payroll data providers (see § 422.150 in this final rule); (2) beneficiary authorizations (see §§ 404.703(b) and 416.709(a)–(b) in this final rule); (3) reduced wage reporting responsibilities for individuals (see §§ 404.708(c), 404.1588(b), 416.709, and 416.988(b) of this final rule); and (4) procedures for notifying individuals in writing when they become subject to changes in wage reporting requirements (see §§ 404.1588(b)(2) and 416.709(c) in this final rule).[13] This final rule adopts these policies and procedures, with minor changes. As discussed in the NPRM, when we receive wage and employment information from an employer through a participating payroll data provider, an individual no longer has to report an increase in the amount of their work for that employer; an increase in earnings from that employer; or changes to wages paid in cash from that employer.[14]

We made changes to the proposed language in 20 CFR 404.1588(b)(3) and 20 CFR 416.709(c)(3) to better track these reduced reporting requirements as they were described in the NPRM. We revised 20 CFR 404.1588(b)(3) to state clearly that when reduced reporting applies, an individual does not need to report an increase in the amount of work or an increase in earnings (the proposed rule inadvertently referenced only an increase in earnings). We revised 20 CFR 416.709(c)(3) to clarify that if someone has multiple employers, they do not have to report an increase in the amount of work or earnings from any employer we receive their wages from; but, if we do not get their wages from an employer, they must continue reporting. While we expect this is clear from the explanation provided in paragraph (c)(1), we also anticipate this minor change will more clearly explain reporting requirements to individuals with more than one employer and also capture the relevant information in one place. We also revised § 404.1588(b) and § 416.709(c) to make it explicitly clear that we are not imposing penalties because of information we receive from PIE.

Comments Summary

We received 132 public comments on the NPRM from February 15, 2024 through April 15, 2024, 52 of which were relevant, comprehensible comments submitted by actual commenters. Of the total comments, 52 are available for public viewing at *https://www.regulations.gov/document/SSA-2016-0039-0007/comment.*[15]

These comments were from:

- Individuals;
- Members of Congress; and
- Advocacy groups for claimant representatives and other advocacy groups.

We carefully considered the public comments we received. Most commenters supported the general principles of the payroll information exchange, but many recommended amendments or questioned some aspects of the proposed rule.

We received some comments that were outside the scope of this rule because they did not relate to the questions we included in the NPRM or to the rules we proposed for implementing the access to and use of the information held by payroll data providers. We addressed some of these out-of-scope comments generally when they relate to wage and employment information or relate to the questions we proposed in the NPRM and we anticipate these responses may help the public understand our programs better.

We summarize and respond to the public comments below.

Reduced Burden

Comment: Multiple commenters expressed support for the regulation, stating it would make reporting easier and reduce burden. Some commenters shared current challenges of reporting wages (*e.g.,* difficulty obtaining needed information and submitting it on time to the right place), opining that these would be alleviated when our regulation was implemented. One commenter said they see how burdensome the wage reporting process can be and ''despite SSA offering a number of ways by which recipients and deemors can report wages, all are time consuming.'' Another commenter expressed that many individuals experience ''frustration'' when they get overpayments as a result of wages they reported (or tried to report) but somehow did not get registered by our systems. A separate commenter stated that many individuals ''struggle'' with communication and technology and rely for assistance on others who do not always understand the importance of reporting wages.

Additional commenters said PIE will help avoid barriers to reporting, like limited office hours, phone delays, and non-functioning technology. One commenter said relieving the burden on individuals to update wage and employment information decreases the potential for unintentional errors and lessens the need for additional contact with us to resolve technical or other difficulty with our systems. Several commenters expressed that PIE will reduce the burdens on our staff, to include reducing manual workloads and processing time.

Response: We appreciate these comments, and we agree that PIE will reduce the burden on participating individuals and make program administration easier for our staff.

More Accurate Info

Comment: Commenters also were favorable toward PIE because they said it would provide us with more accurate information to administer our programs. One commenter said that using The Work Number (TWN) ensures that we issue monthly benefits based on the most accurate data available, and that this also meets multiple program goals by ensuring recipients have vital income from our programs. The commenter stated that access to TWN will ''greatly improve'' our ability to serve the public. One commenter said, by leveraging wage and employment information from TWN, PIE will help support our program integrity goal of getting the ''right payment amount to the right person at the right time.'' The commenter stated that PIE data supplied by TWN will provide us with an ''expansive and current view of the beneficiary's wage and employment status.'' According to the commenter, TWN can also help identify when wages

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

[12] 42 U.S.C. 1320e–3(a). ''Information exchanges'' are the automated comparison of our system(s) of records with information of payroll data providers. 42 U.S.C. 1320e–3(c)(2).

[13] See the NPRM for additional explanation of these procedures. 89 FR 11776–11779 (Feb. 15, 2024).

[14] 89 FR 11778, 11781–82.

[15] We excluded comments that were unrelated to the proposal, were duplicates submitted by the same commenter, or used submitter-identifying information (such as an email address) that did not belong to the commenter.

or employment statuses change or hours worked are reduced.

Response: We appreciate these comments, and we agree that PIE will provide us with more accurate information.

Reduction in Improper Payments

Comment: Many commenters stated that a benefit of the regulation would be its help in reducing improper payments, because we would receive more timely and accurate information regarding income and employment. Some commenters said even if overpayments occur, we could more quickly identify changes and notify individuals of such overpayments. According to commenters, faster identification and notice would reduce the dollar amount of improper payments, making repayment ''more achievable and with less financial harm.'' One commenter stated that this will be ''particularly beneficial for [t]itle II recipients who are at risk for huge overpayments and retroactive cessation when they work too much.'' Another commenter stated that PIE would ''greatly reduce frustrations and confusion'' about overpayments.

According to one commenter, PIE would allow us to be more responsive to real-time data and avoid overpayments that occur when we ''take too long to act'' on wage information. Another commenter said that PIE may identify potential overpayments from new employment or additional wages sooner, which may result in changes to eligibility. Finally, one commenter noted that the BBA specified that the purpose of the automated exchange includes ''preventing improper payments of such benefits without the need for verification by independent or collateral sources.''

Response: We appreciate these comments, and we agree that the use of PIE data can help reduce improper payments.

Better Customer Experience

Comment: One commenter expressed that PIE would improve our customers' experience because it would reduce the time and energy they spend providing us with documentation each month, and also would decrease the need for individuals to call us to follow up on any issues. According to the commenter, PIE's automated and streamlined process aligns with President Biden's 2021 Executive Order, (E.O.), *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.*[16]

[16] E.O. 14058, 86 FR 71357 (Dec. 16, 2021).

Response: We appreciate this comment and agree that the use of PIE data may improve the customer experience for participating individuals.

Phased Implementation

Comment: Some commenters recommended phased implementation of PIE. One commenter stated that ''limiting implementation will allow SSA to evaluate implementation by identifying problems, taking corrective actions, assessing its impact on SSA operations and staff, and considering best practices'' before fully implementing PIE. Another commenter said that the ''system can be rigorously tested prior to deployment and deployed in stages to identify problems before all recipients who opt in become subject to it.'' Commenters stated that we could perform ongoing evaluation during the phased implementation.

Response: We agree with the commenters' suggestions about implementing PIE in phases. Although we will work toward fully implementing PIE expeditiously because full implementation would most benefit the public, commenters raised multiple concerns (described in more detail further in this document) that may be mitigated, at least in part, by implementing PIE in phases. We currently plan to implement PIE first in a controlled number of cases, scaling up towards full implementation once we see the initial effects of PIE on a smaller scale, analyze and evaluate these effects, and make adjustments, if needed.

Authorizations

Comment: For individuals to participate in PIE, they must authorize us to obtain wage and employment information from a participating payroll data provider. Several commenters expressed support for an opt-in authorization process, which requires individuals to communicate their authorization to us in order to participate in PIE. One commenter said that an opt-in model would allow individuals ''to maintain control and a sense of autonomy over their finances.''

Several other commenters expressed that we should change our proposal to require individuals to ''opt-out'' of authorization, which would assume individuals want to participate in PIE unless they communicate to us otherwise. For example, one commenter said an opt-out authorization seems consistent with the requirements of the law and it would quickly lead to high rates of enrollment. Another commenter asked why we decided not to require automatic participation by individuals.

Response: Allowing individuals the choice to provide authorization offers individuals maximum control over their personal information and participation in PIE. While we anticipate the benefits of PIE (reducing burdens, increasing the accuracy of wage and employment information we receive, and reducing improper payments) will far outweigh any potentially negative considerations, we understand that some individuals may weigh this differently. Thus, allowing individuals to ''opt in'' enables them to positively affirm their decision. We further note that the agency has experienced a high rate of opt-ins (over 97% when presented the opportunity).

Comment: Several commenters stated that we should consider additional electronic and verbal opportunities for individuals to authorize us to obtain their wage and employment information from a payroll data provider. Commenters suggested, for example, using mySocialSecurity accounts, blog posts, other notices, field office visits, or call center interactions as vehicles to prompt PIE authorizations. Commenters expressed that expanding outreach and education about PIE will speed up the collection of authorizations and increase the benefits of participation.

Response: We instruct our technicians to request authorizations from individuals during OASDI disability and SSI initial claims; during expedited reinstatements; work continuing disability reviews; and SSI redeterminations. Our technicians may also request authorization during other post-entitlement interactions. We already accept verbal authorizations using attestation.[17] And we are exploring ways to receive authorizations electronically, with plans to add the authorization form to our Upload Documents application, allowing both electronic submission and electronic signature of the authorization. In addition, we will work with our Office of Communications to determine the best approaches to reach others who may benefit from participating in PIE. These approaches may include some commenter suggestions.

Comment: Multiple commenters expressed that we should provide standardized, plain-language explanations that identify the benefits and risks of opting into PIE, notify people that they can opt out, and inform people how to opt out. One commenter asserted that ''the success and integrity of this effort will depend on where and

[17] Our pre-established attestation policies allow us to accept oral attestation as a form of alternative signature *See* Social Security Ruling 04–1p, *Attestation as an Alternative Signature.*

when these options are explained to individuals, and how the individual's decision is documented.'' Similarly, another commenter said we should employ a clearly worded, well-explained, signed document, and maintain it electronically throughout the period of entitlement, even if superseded by a later election. The commenter said we should train our staff to clearly explain choices, default positions, benefits, and potential downsides of each choice.

Response: We agree that we should provide individuals with clear, thorough explanations as they consider providing authorization to participate in PIE. Our written authorization form provides clear information and our technicians are trained to explain the authorization. We require a signature on the written form, or attestation when the authorization is obtained verbally.[18] In addition, we are required by law to inform individuals of the duration and scope of their authorization.[19] We provide this information on the receipt that we issue to individuals when they provide their authorization. The receipt also instructs the individual to continue to report until they receive a subsequent notification from us about any reduced reporting responsibilities that may come with this authorization, if their employer participates. Furthermore, we will communicate with individuals through notices, telephone contacts, and in-person contacts to ensure that individuals understand the benefits and risks of PIE, how PIE affects their reporting responsibilities, and other relevant information.

Regarding training, we have already issued instructions to our staff and published training videos that address collecting the authorization because the agency began collecting authorizations in 2017. This training includes information about reduced reporting responsibilities and when they apply so staff are able to clearly explain this information to affected individuals.

Additionally, as we explained above, a beneficiary is not automatically opted-in to PIE, so there is no need to explain how to opt-out. Rather, we explain to the beneficiary that if they give us their authorization, we may be able to obtain their wage and employment information so they will no longer have to report that information to us. We also explain that they can revoke their authorization at any time.

[18] We have used attestation as an alternative signature method since 2004. *See* Social Security Ruling 04–1p, *Attestation as an Alternative Signature.*

[19] *See* 42 U.S.C. 425(c)(4), 1383(e)(1)(B)(iii)(IV).

Comment: One commenter alleged that we fail to notify individuals that their benefits will not be adversely impacted if they decline to provide authorization. The commenter said that we should revise our authorization form and 20 CFR 404.703(b) to state that the individual is not required to provide authorization and that benefits will not be ''jeopardized'' if they withhold authorization. According to the commenter, we should stop using reports based on our current ''inadequate'' authorizations until we resend requests for authorization that provide additional information. The commenter stated that, in order for ongoing consent to be valid under ''basic consumer protection principles,'' we must inform individuals that they have the right to revoke the authorization at any time and the initial authorization letter should explain how to revoke that authorization. Additionally, the commenter asserted that we should revise the regulation and form to explain how to revoke permission at a future date. Further, the commenter stated that omission of critical information can be considered a ''deceptive practice.'' [20] The commenter asserted that, without clear and accurate information about the implications of authorizing the use of the TWN reports, the authorization we are obtaining is not a sufficient grant of permission.

Response: We agree that the authorization should provide clear and accurate information. We disagree that our authorization does not provide such information. The authorization explains what a payroll data provider is; how we will use any information obtained from a payroll data provider; how long the authorization will remain in effect; that by providing the authorization, the individual is protected from certain penalties; that the authorization may be revoked (ending that protection); and that the individual might still need to report wage and employment information to us. Further, the authorization Privacy Act statement says that the authorization is voluntary and explains the effects of not providing the authorization. As we explained in the NPRM, and in the regulations, individuals may revoke their authorization in writing at any time, and if they revoke their authorization, we will apply the revocation to all pending or approved claims under the OASDI disability and SSI programs from the time we process the revocation, including claims involving deemors.[21] We will continue to look for opportunities to engage customers and obtain feedback on various aspects of the PIE process, including the authorization process and form.

[20] The commenter referenced the Federal Trade Commission Act and state analogs, and cited the ''Federal Trade Commission, 40 Years of Experience with the Fair Credit Reporting Act; An FTC Staff Report with Summary of Interpretations,'' at p 43, § 604(a)(2) item 1 (July 2011). The commenter stated that we have a ''separate permissible purpose to obtain TWN reports (15 U.S.C. 1681b(a)(3)(D), *i.e.,* in connection with a determination of the individual's eligibility for a government benefit).'' However, according to the commenter, to the extent we rely on the permissible purpose of written authorization, we need to ensure the authorization is not misleading.

Comment: One commenter asked whom individuals can speak to for assistance related to PIE, such as with the enrollment process, the opt-out (revoke authorization) process, and other related processes.

Response: Our employees, such as technicians at our national 800 number or field offices, can assist individuals. Because our technicians are instructed to request authorization during initial claims and various other interactions, they are usually actively involved in the enrollment process. In addition, we designed a straightforward process for providing and revoking authorizations.

Payroll Data Provider Vendor

Comment: One commenter alleged that, because we would be making a fundamental change to program administration that depends entirely on one company, we are setting up a ''vendor lock'' situation. The commenter said that ''vendor lock'' would enhance our current payroll data provider's leverage for any future contract consideration, and that it would subject individuals to the ''performance of a private entity with opportunities for predatory behavior and little chance of meaningful accountability.'' The commenter stated that we could consider ways to encourage other vendors to participate. According to the commenter, we could, for example, invite all potential vendors to understand our current technology, technology-staff interfaces, the specific technology we use to interface with our current payroll data provider's reporting system, and other information necessary to build baseline knowledge to reduce future barriers to submitting bids.

In addition, the commenter stated that we should consider ways to perform the same functions in house, either by building the needed infrastructure or using existing or available data sources. The commenter said, for example, that we currently have access to some wage reporting data. They asked if it is sufficient, or could be made sufficient,

[21] 89 FR 11777 (Feb. 15, 2024).

without turning to outside data sources. Further, the commenter stated we could consider working with other agencies to lessen dependence on external vendors.

Response: While we are currently in a contract with one payroll data provider, nothing about the legislation, regulations, processes, or procedures mandates that we use the same vendor in perpetuity. For instance, the contracting process allows entities to bid on the contract near the conclusion of the current contract's performance period. Recompetition efforts begin, generally, by issuing a Request for Information (RFI) to *www.sam.gov*. The RFI may include a draft copy of the Statement of Work for PIE and request any interested vendors to submit capability statements to us for consideration. We would review capability statements received from all interested vendors. Any proposals for payroll data providers would use full and open competition in accordance with Federal Acquisition Regulations (FAR) Part 15.

Regarding the commenter's other suggestions, we are unaware of a Federal agency that could provide the information we need to implement PIE, and, while we use the resources available to us, we do not have access to the necessary information internally.

Comment: One commenter asserted that, because the accuracy study [22] used Equifax's TWN platform only, we ignored other payroll data solutions on the market, which reflected an ''inherent bias'' towards TWN. Further, the commenter alleged that the reference to Equifax in our actuarial estimates indicated that we ''will not consider other income and employment information providers or methodologies, and erroneously assumes that only Equifax can perform such work.'' [23]

Response: The accuracy study relied on the selected data because we are currently under contract with Equifax Workforce Solutions (Equifax). We are unable to analyze match rates from companies who have not made their data available to us. We disagree that we ''unfairly excluded'' alternative payroll data solutions. As noted in our NPRM, we solicited proposals for payroll data providers using full and open competition in accordance with FAR Part 15, and based our award decision on a trade-off process (best value), considering both price and non-price factors.[24] Equifax was the only payroll data provider to respond to our solicitation. We evaluated the proposal against the evaluation criteria listed above, which consisted of technical approach, corporate experience, past performance, and price. The Technical Evaluation Committee [25] determined the Non-Price Proposal to be acceptable and assigned favorable ratings for the three non-price factors. The Contracting Officer evaluated the Business Proposal (*i.e.,* price proposal) and determined the proposed prices were fair and reasonable according to FAR 15.404–1(b) and the terms of the solicitation. In September 2019, the agency awarded the PIE contract to Equifax, as we determined they offered the best value to the government, all factors considered.[26] As explained above as an example, future contracting processes would follow our standard recompetition efforts for a new PIE contract.

Finally, our reference to our current payroll data provider in our actuarial estimates was not an indication that we are committed to a single payroll data provider. Actuarial estimates must make assumptions based on current facts to develop reasonable projections. Assumptions and estimates are subject to change based on new facts, as they become available. Because Equifax was the only partner we could engage with and ultimately the entity we contracted with, we based our actuarial estimates on aspects of data from Equifax. This has no effect on the scope of the past, present, or future solicitations, nor does it limit consideration of other payroll data providers or methodologies. Further, it does not assume that only Equifax can perform such work.

Payroll Data Provider Data Coverage

Comment: One commenter said that we did not analyze the costs to serve individuals who are not covered by TWN and similar platforms. The commenter stated that we should perform a cost analysis to estimate the true cost to the public, including the costs of missed benefits, the costs for us to manually obtain and verify data, and the overall economic impact of no or delayed benefit payments to these individuals. According to one commenter, TWN and similar platforms are ''overly reliant upon large-scale payroll databases for traditional W–2 employees and fail to adequately capture gig economy and 1099 employees.'' The commenter asserted that this coverage gap could lead to processing delays. One commenter said that, by choosing a payroll exchange model that excludes workers who are not on traditional payrolls, the study presents ''equity and access concerns,'' and will hinder our mission and the inclusivity of our programs. In addition, the commenter said other payroll data solutions options exist that ''flexibly and effectively'' capture data on traditional W–2, gig economy, and 1099 employees, and we should explore them to avoid ''unfairly excluding'' alternative payroll data solutions.

In contrast, another commenter stated that TWN is the ''industry-leading centralized commercial repository of wage and employment information which can be used for verification services in the U.S.'' According to the commenter, the volume and availability of records, especially current employment, matters when it comes to automating the efficient and effective verification of wage and employment information of OASDI disability beneficiaries and SSI recipients. The commenter said that Equifax offers credentialed verifiers access to nearly 168 million records with active employment status and 657 million total records through the TWN database.

Other commenters asked questions about the data we will use. For example, commenters asked: (1) Were studies conducted to estimate how many employers of disabled individuals are included in the database? (2) Does the database capture only employers who use electronic wage reporting? (3) Would wages for self-employed individuals be captured? (4) Could we expand a data exchange with the Internal Revenue Service (IRS) to include relevant 1099 data?

Response: We acknowledge that our current payroll data provider will not provide wage and employment information for all individuals, which means that standard reporting requirements will continue to apply for some. We have not analyzed the costs associated with continuing standard reporting requirements for such

[22] The study, ''Evaluation of Payroll Information Exchange (PIE) Wage Data Accuracy,'' is available in the rulemaking record at *www.regulations.gov* as a supporting document for Docket SSA–2016–0039.

[23] 89 FR 11783 (Feb. 15, 2024).

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

[25] The Technical Evaluation Committee supports the source selection for the acquisition. It is typically comprised of at least three individuals with the appropriate technical expertise to evaluate proposals in accordance with the solicited evaluation factors.

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

individuals because we do not have enough information about who will not be covered or their earnings amount to formulate that estimate. To the extent that ''gig economy'' workers in particular might need to use standard reporting, we note that most ''gig economy'' workers are independent contractors and therefore considered self-employed. This means that, for SSI, we count net earnings from self-employment on a taxable year basis, divided equally across the year.[27] We are not aware of any payroll data provider that can provide net earnings from self-employment. However, we remain committed to exploring possibilities to improve program administration, which could include finding ways to expand the pool of individuals covered by PIE in the future.

Regarding other questions from commenters, we note that our current payroll data provider reports that TWN covers over two-thirds of non-farm payroll data. However, as stated in the NPRM, neither we nor our current payroll data provider fully analyzed whether working disability benefit recipients or deemors are proportionately represented in the database. Also, we do not have information on the means employers use to provide information to TWN (*e.g.,* electronic wage reporting or other means). In addition, we confirm that PIE data we receive does not include earnings data for self-employed individuals, but we receive net earnings from self-employment information through a data exchange with the IRS. Expanding a data exchange with the IRS to include 1099 data would not be useful because 1099 data alone is not adequate to determine net earnings from self-employment.

Comment: One commenter suggested that we could get a ''more specific sense of the match rate'' from the TWN database to disability beneficiaries by comparing the industry, firm size, and geographic location with like characteristics of disability beneficiaries from our records based on past and current employers or population surveys of the disabled. The commenter also asked if the extent of labor force coverage in TWN is expected to increase in the future.

Response: We appreciate the suggestion for better understanding how the payroll data received through PIE relates to the disability beneficiary population. We will continue to evaluate information as we implement PIE. Labor force coverage in TWN may increase in the future, but we are unable to project when and by how much.

Data Security

Comment: Many commenters stated that we should take steps to assure the privacy and security of personally identifiable information and provide assurances about how information will be kept safe. Some commenters said, because data exchange providers are private companies, there is potential for data breaches with regard to collection, storage, and use of payroll data. One commenter referred to a data breach experienced by our current payroll data provider and asked us to consider how to mitigate the security risks of using this vendor and of technical infrastructure built to import or export data between us and a payroll data provider. Another commenter stated that payroll privacy laws are in place to protect the release of payroll records. A separate commenter asserted that this is ''invasive,'' and we should not have access to this data.

One commenter expressed that, because recipients' data may already be contained within both entities (our records and the payroll data provider's records), this would present ''minimal additional risk.'' According to the commenter, a plain-language explanation of these risks may help alleviate concerns from recipients who are wary of the new approach but want to opt in.

Response: We take seriously the security of personal information, including the information we receive from outside sources. We will continue to protect personal information by implementing and evolving the robust protections we use to safeguard that information. To the extent these comments expressed concerns with our access to wage and employment data in general, we note that we already obtain wage and employment information, when we have individual consent to do so, to make decisions in our programs.[28] That use is limited to manual, one-off transactions, however, and PIE will allow for increased efficiency over current practices. In addition, individuals are already required to report this information to us. The BBA allows us to increase efficiency and reduce public reporting burdens by obtaining this same information using a broad-based matching process to address multiple requests and claims simultaneously. To the extent these comments raise concerns about disclosing information to payroll data providers, we clarify that we will disclose the minimum information necessary to match our records to the payroll data provider's records. We follow federally compliant protections to ensure the administrative, technical, and physical security of the records match.

Accuracy Study

Comment: Multiple commenters asserted that the accuracy study[29] included in the NPRM was ''flawed'' and may underestimate errors. For example, one commenter observed that the study examined only a subset of individuals who may participate in PIE—SSI recipients who use our mobile wage reporting application to scan their pay stubs—and pointed out that we did not evaluate accuracy for SSI recipients who report wages in other ways, Social Security Disability Insurance (SSDI) beneficiaries, or for working family members of SSI recipients. In addition, the commenter said that the study did not seek to examine mismatches, where a wage report is associated with the wrong worker (*e.g.,* if Equifax reports payroll information on an individual who was not working during a pay period). According to the commenter, such an error would lower the true accuracy of using the Equifax database but would not be identified in this study. Furthermore, according to the commenter, the study did not review the specific payroll information that we need to correctly adjust benefits, such as whether a paycheck includes sick pay or vacation pay. The commenter urged us to ''conduct further review of the PIE data to better understand all potential errors—for all categories of our beneficiaries—and to take steps to mitigate such errors, prior to implementation.''

A separate commenter said that it is important to note that the percentage provided in the study is the match rate for gross earnings when comparing PIE to SSA Mobile Wage Reporting (SSAMWR) data, and that this approach does not represent an assessment of the data accuracy in either database. The commenter asserted that ''Equifax maintains numerous procedures to assure maximum possible accuracy and is committed to industry-leading data privacy and security principles.'' Another commenter said we could gain a rough estimate on the extent of disability reporting by comparing TWN

[27] 20 CFR 416.1111(b); POMS SI 00820.210, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820210*.

[28] POMS SI 00820.147, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820147*.

[29] The study, ''Evaluation of Payroll Information Exchange (PIE) Wage Data Accuracy,'' is available in the rulemaking record at *www.regulations.gov* as a supporting document for Docket SSA–2016–0039.

data with our internal databases in the few months before National Directory of New Hires (NDNH) [30] and Master Earnings File data is entered.

Response: We disagree that reviewing only SSI recipients who report via the SSAMWR application represents a flaw in the study. We consider reports received via the SSAMWR application like we consider reports received by any other means. The study used a statistically significant sample of over 40,000 reports to determine the accuracy rate. The study examined mandatory paystub elements (*e.g.,* pay period end date, pay date, and gross earnings) when determining accuracy. The study did not account for specific payroll information such as sick pay or vacation pay, as the commentor suggests, because these are optional data elements that our current payroll data provider submits to us only if they have the information. Because those additional data elements are not always present in a PIE wage response, the accuracy study did not include them in its determination of PIE's overall data accuracy. We remain committed to continued data analysis upon implementation of PIE.

Further, pay elements like sick and vacation pay are only relevant in the context of making determinations of substantial gainful activity (SGA) for OASDI disability (for SSI, gross wages are counted). If we do not receive sick and vacation pay data through PIE, individuals can provide it to us before we make a final SGA determination.

We agree with the commenter that the study did not evaluate ''mismatches'' (where a wage report is associated with the wrong worker) because we designed the study to focus on cases where wage earners self-reported and uploaded wages. Thus, when the Social Security number (SSN) and name matched on the SSAMWR and PIE data, we presumed the PIE data was for the correct individual. However, we recognize that mismatches may exist outside of the study and acknowledged this in the NPRM.[31] We have established procedures that we follow when we suspect, or when an individual informs us, that a wage report is associated with the wrong individual.[32] We are updating those procedures to include PIE-specific examples. In addition, as explained in the NPRM, we will notify individuals in writing whenever we start receiving wage and employment information from a payroll data provider. Because that notice will identify the employer(s) from which we are receiving wages, an individual can tell us if they suspect a mismatch. We plan to add language to this notice telling individuals to contact us right away if the employer shown is incorrect.[33]

Data Accuracy

Comment: Some commenters expressed concerns about the ability to correct errors. One commenter provided an example of an individual whose employer reimbursed her for out-of-pocket travel costs that were incorrectly categorized as earnings in the payroll provider's database. According to the commenter, the individual's attempt to correct the erroneous wage information resulted in weeks of being ''bounced between Equifax, their employer, and SSA.'' As another example, a commenter referred to a class action lawsuit that asserted that when an individual tried to correct the errors with Equifax, they faced significant hurdles, including a ''burdensome 'proof of address' submission'' required to receive her record.[34] One commenter said we should consider ways to reduce the burdens associated with correcting records by, for example, accepting simple attestations from recipients. The commenter stated that, if an inaccuracy comes from the payroll data provider, a single report by the individual to us could be considered sufficient, and we could report the inaccuracy to the payroll data provider, to be fixed within their database.

Response: If an individual disputes any wage information we received, they can directly report the dispute to us and provide available evidence about their wages.[35] We will review and develop that evidence and correct our own records, when appropriate, in accordance with a priority list of the evidence we might consider,[36] potentially including direct contact with employers. If an individual disputes the data, and there is no other evidence that corroborates the information the payroll data provider supplied, we would not use the report from the payroll data provider.

However, we do not manage the records of the payroll data provider or the employers that report to the payroll data provider. It is up to the individual to correct their personal records with entities outside of SSA. Our Notice of Planned Action (NOPA) and Notice of Proposed Decision will provide contact information for individuals to directly dispute the information with the payroll data provider and request that the payroll data provider flag the data as disputed. If the payroll data provider has flagged data because it is being disputed, we will not post the data to our claims records.

When an individual tells us that PIE data is incorrect, we will remind them that the payroll data provider has its own dispute process separate from our process, and we encourage the individual to follow that process. Although the individual is not obligated to contact the payroll data provider to make the correction, that is the only way the record can be fixed; we do not have the ability to change a payroll data provider's records on behalf of anyone. We will also work with the individual to revoke their authorization, if they choose. Once authorization is revoked, we will no longer request the individual's information from the payroll data provider, which will ensure that we receive no additional PIE data. We will also work with the individual to develop other evidence to corroborate the individual's report or the PIE data. If an individual chooses to do so, they may again provide authorization once their dispute is resolved and receive protection from certain penalties and reduced reporting responsibilities.

Comment: Commenters expressed concerns about the accuracy and

[30] The Office of Child Support Enforcement (OCSE) and SSA have a Memorandum of Agreement (MOA) that allows authorized SSA employees query-only access to the National Directory of New Hires (NDNH). This database contains quarterly new hire, wage and unemployment information reported by the States and the District of Columbia to OCSE. SSA employees utilize the database when investigating potential earnings.

[31] 89 FR 11775 Footnote 28 (Feb. 15, 2024).

[32] *See, e.g.,* POMS RM 03870.001, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0103870001,* POMS RM 03870.060, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0103870060,* POMS RM 03870.045, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0103870045.*

[33] Whenever an individual is overpaid, we assess an overpayment. However, if inaccurate data from the payroll data provider results in an overpayment and the overpaid individual asks us to waive recovery, then our normal waiver procedures apply. Under our existing regulations, we will usually find the individual is ''without fault'' in causing the overpayment. Determining that an individual is ''without fault'' is one of the requirements for waiver of recovery. See 42 U.S.C. 404(b), 1631(b)(1)(B); 20 CFR 404.506(a), 404.507, 416.550, 416.552.

[34] The commenter referred to *Vanessa Muniz Gerena* v. *Equifax,* Case No. 3:24–cv–00098 (E.D. Va. Feb. 9, 2024).

[35] If inaccurate data from the payroll data provider results in an overpayment, all of our existing overpayment policies apply. The overpaid individual may request waiver of recovery, and we will usually find the individual was without fault in causing the overpayment (one of the requirements for waiver of recovery).

[36] POMS DI 10505.005, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0410505005,* SI 00820.130, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820130.*

reliability of payroll provider data, particularly because the information that will be automated is provided by a third party. One commenter said that the discrepancies in the reports leave ''substantial room'' for erroneous improper payments based on PIE data, and we should work to reduce these discrepancies as much as possible. A commenter said we should ensure that the PIE system alerts us to employer corrections that occur after we receive the monthly batch data so we can notify individuals and take the corrections into account when determining benefit adjustments. Another commenter suggested that we institute our own internal quality review procedures to proactively look for and resolve potential errors in the PIE data.[37] Another commenter said we should direct staff to consider potential accuracy issues. One commenter asked, for example: (1) What accuracy standards will we require of our payroll data provider? (2) How often will we measure the accuracy? (3) Does the contract require changes from Equifax to promptly improve accuracy and correct other deficiencies? (4) Will we maintain a way to return—in a way that minimizes burdens on recipients—to other reporting mechanisms if the payroll data provider does not meet sufficient accuracy standards?

Response: Based on our review, we expect that PIE data will be more accurate, timely, and complete than the information we receive through other means. We remain committed to continued analysis of PIE data to ensure information we receive is accurate, complete, and up to date as we discussed in the NPRM, though we cannot yet speak to the specific methodology and frequency that we will use to assess the information we receive from a payroll data provider.[38] Our payroll data provider must maintain reasonable procedures that ensure the maximum possible accuracy, completeness, relevance and timeliness of wage and employment information. Also, if an employer makes a correction to wage information we received through PIE, that correction should be reflected in W–2 information we receive directly from the employer; we already have a process that uses automation to identify such discrepancies and alert us of the need to investigate and make corrections if appropriate—including releasing underpayments or establishing overpayments. Finally, if the individual has concerns about whether the payroll data provider is giving us accurate information, they may revoke their authorization and self-report their wage and employment information to us. All current self-reporting methods will remain available, and individuals will continue to be able to report using the method that serves them best.

Comment: Several commenters expressed concerns that identity theft has the potential to cause problems for individuals whose data is matched erroneously. Some commenters provided detailed examples of identity theft and expressed that it is ''very common.'' Commenters said that we must have procedures in place to ensure that individuals who are subject to identity theft do not receive repeated erroneous matches, which has the potential to cause a ''never-ending headache of repeated adverse actions.'' The commenter stated that we should create an identity theft flag on an individual's account when we receive an allegation of identity theft, and we should check for this flag before taking an adverse action on any payroll data match. One commenter said mismatches are a ''vital concern for victims of identity theft.'' [39]

Response: We understand that identity theft is a significant concern. We have established procedures to assist customers when identity theft is suspected. Generally, we learn of suspected identity theft when an individual identifies an inaccuracy on their earnings record while filing a claim or when reviewing their Social Security Statement. With PIE, we expect to learn of suspected identity theft even earlier. Further, where an individual suspects identity theft and has already filed a dispute with the payroll data provider that is unresolved, that data will be flagged and will not be posted to our claims records.

We will update our established earnings correction procedures [40] to account for potential identity theft discovered through PIE. We expect those procedures to be similar to those we currently follow when an individual disclaims earnings [41] or when we must resolve ''scrambled earnings'' (when wages belong to one individual are posted to another individual's record).[42] In general, these procedures outline how we will investigate and when we will accept an individual's statement that earnings are not correct. If our investigation shows that no evidence exists to corroborate a payroll data provider report that the individual told us was erroneous, we will not use the report from the payroll data provider.

In addition to correcting earnings information, we also offer general guidance and assistance when someone tells us about suspected identity theft. This may involve general advice, or referral to other agencies or law enforcement, or issuing a new Social Security number where appropriate.

Comment: One commenter said that we have a ''known history of problematic data matching,'' for example, attributing real property of a different person in a different State to an individual with the same name, which could affect SSI eligibility. The commenter asserted that basic data-matching errors continue to persist, which does not ''engender confidence that an automated data-matching scheme for wage reporting will work.''

Response: We understand that some commenters may be cautious about data matching agreements. We have a number of safeguards in place, as explained in our NPRM and elsewhere in this final rule. We expect that these safeguards will address commenters' concerns. Moreover, current administrative procedures provide an opportunity for individuals to appeal decisions we make based on information from the payroll data provider. Before we take action on a decision that affects someone's SSI payment, that individual will receive a NOPA. The NOPA explains that they can appeal and continue to receive SSI during their appeal. Still, if individuals are hesitant to participate in PIE, they may choose not to provide authorization or they may revoke authorization in writing at any time.

Comment: According to one commenter, certain duties are imposed on TWN (and us) because TWN's data is considered a ''consumer report.'' The commenter stated that, under the Fair Credit Reporting Act (FCRA), the consumer has a right to dispute errors

[37] The commenter cited a policy (POMS SI 00820.143 (Monthly Wage Reporting), available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820143*) where we flag when an SSI recipient's self-reported wages are more than the wages reflected on their W–2 and we investigate to resolve the discrepancy.

[38] The accuracy study we cited in the NPRM allowed us to compare data received in the SSAMWR to that received through PIE. Once PIE is implemented, if we obtain information for a beneficiary, we will no longer have self-reported wage and employment information from that beneficiary to compare to the PIE data we receive. Therefore, we anticipate developing new methods to analyze PIE accuracy.

[39] The commenter provided, as an example, a citation to *Vanessa Muniz Gerena* v. *Equifax,* No. 3:24–cv–00098 (E.D. Va. Feb. 9, 2024).

[40] POMS RM 03870.001, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0103870001.*

[41] POMS RM 03870.060, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0103870060.*

[42] POMS RM 03870.045, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0103870045.*

in their consumer report,[43] and that when the consumer lodges a dispute, the Consumer Reporting Agency (CRA) must conduct a ''reasonable investigation.'' According to commenters, we should not reduce or suspend benefits during the FCRA investigation period. Commenters said, if the consumer continues to dispute information after the investigation, we should conduct our own independent review. One commenter said that we should include these protections in proposed 20 CFR 422.150 or our guidelines. Another commenter said TWN must meet obligations under FCRA to notify individuals of their rights, including specific, detailed information about where and how to file a FCRA dispute of TWN data. One commenter said this information should be sent in advance of the NOPA so that the recipient has the ability to review a copy of the TWN report and dispute any errors.

Further, some commenters said that TWN has failed to adopt required procedures for when ''logical inconsistencies'' arise.[44] For example, one commenter said TWN employs ''no substantive procedures to filter or parse data to prevent reporting of simultaneous employment that would be impossible'' because of geographic distance between employment or residence location or time constraints. Another commenter said that we must require human review when we flag these types of potential errors or an individual disputes information. According to the commenter, a review by a human is ''the least that is required by the due process principles of the Matching Act.'' [45]

Another commenter expressed that our current payroll data provider already complies with FCRA requirements and its data furnishers have contractual obligations for the provision of accurate data. Further, they said, if there are concerns that a report may be incomplete or inaccurate, the individual can dispute it and Equifax will conduct an investigation under the parameters established by FCRA.

[43] The commenter cited 15 U.S.C. 1681i(a).

[44] For example, according to one commenter, the Consumer Financial Protection Bureau (CFPB) stated that a Consumer Reporting Agency must have procedures to identify logical inconsistencies in consumer information, such that, if included in a consumer report, some of the information would necessarily be inaccurate. Commenters cited 15 U.S.C. 1681e(b).

[45] The commenter acknowledged that the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, applies only to a government database, but asserted that the Office of Management and Budget advised agencies to consider applying its principles when a commercial database is involved.

Response: We will send FCRA-compliant adverse action notices to individuals when we receive data from a payroll data provider. The current payroll data provider is required by contract to maintain reasonable procedures that ensure the maximum possible accuracy, completeness, relevance and timeliness of wage and employment information. Further, if the payroll data provider has a dispute annotated and unresolved, the wage information will be flagged by the payroll data provider and not sent to our claims records. We disagree that protections that may be afforded by other Federal laws need to be restated in our regulations. To the extent another Federal law, like FCRA, is deemed applicable to a payroll data provider exchange, those laws would continue to apply independent of our regulations; we chose not to specifically reference such other laws because those laws and their applicability to PIE could change over time.

We note again that we plan to add language to the notice we send to inform an individual that we are receiving wage information for a particular employer, which will instruct individuals to tell us right away if they do not work for the employer shown. When an individual tells us the information we received from PIE is incorrect, either in response to that notice or when appealing the NOPA, we will follow procedures to investigate and, if appropriate, correct the individual's record. If there is no evidence to corroborate the disputed report from the payroll data provider, we will not use that report. Further, our procedures for investigating and correcting our own records are separate and apart from the payroll data provider's dispute process under FCRA; we may correct our own records without waiting for the payroll data provider to resolve the dispute using FCRA procedures.

Comment: Some commenters expressed concerns about the use of PIE data as anything other than a ''third-party report.'' Some commenters said we should establish a procedure similar to that found in our Program Operations Manual System (POMS) at section SI 01140.100, Non-Home Real Property, for when individuals disagree with the information found in a commercial database used to identify non-home real property owned by SSI recipients. Commenters expressed that the PIE data could be used as a ''lead'' for further investigation, and not as a basis for adverse action. Another commenter said we could undertake our own validation of the payroll data through a combination of staff review and the use of technology. The commenter asserted that accepting payroll data from third parties without any collateral validation has the potential to significantly harm individuals.

Response: The BBA specifically grants us the authority to use an information exchange with a payroll data provider ''without the need for verification by independent or collateral sources.'' Being able to proceed based on the information provided by the payroll data provider, as authorized by Congress, is crucial to our ability to better serve the public through more timely and accurate benefit adjustments. Using data as a lead, or requiring investigation or further validation of information from PIE, would result in the delayed adjustments and improper payments that the BBA was intended to prevent. As discussed in more detail in response to other comments, we have a number of safeguards in place to prevent harm to individuals, including: when we start receiving wage information for a new employer, our notice will tell individuals to contact us right away if the listed employer is incorrect; we will send a NOPA and apply payment continuation if an appeal is filed; and we will investigate disputed wages and correct records where appropriate. Further, an individual can revoke their authorization if they are dissatisfied with the information the payroll data provider sends us.

Comment: One commenter said we must require TWN to ensure the accuracy of its reports by mandating certain measures, such as use of all nine digits of an SSN. The commenter said that we should mandate such matching criteria in 20 CFR 422.150 or our guidelines. According to the commenter, matching based on a partial SSN or no SSN is ''unacceptable,'' as it causes mismatches in which the wrong consumer gets tagged with information. They expressed that we should not use an ''alternative ID search option'' that permits agencies to obtain a TWN report without an SSN, which could yield results for someone with similar information to that of the participant.

Response: As explained in the NPRM, we will specify the records that will be matched and the procedures for the match when developing an information exchange with a payroll data provider. In the case of the current exchange, we already require matching the full nine-digit SSN.

Comment: Several commenters expressed that the proposal gives ''too much discretion'' to our employees to decide when to assist with obtaining additional evidence. Further,

commenters said that the burden to ''prove a negative'' (*e.g.,* to prove that reported wages do not belong to them) should not fall on an individual. Commenters asserted that, if an individual disagrees with the allegation that the wages reflected in TWN data are theirs, our technicians must establish additional, acceptable evidence documenting that TWN data is correct before it can be relied upon to deny a claim for benefits or adjust an individual's benefits. Another commenter said that we must accept signed attestations from individuals that the payroll data does not belong to them and we should not require proof beyond an individual's attestation that the data match is incorrect.

Response: The policies we develop for implementing PIE will not require individuals to prove a negative. We already have robust policies for developing wages in the context of the SSI and OASDI disability programs and we can learn of potential wages and new employment from a number of sources, such as computer matching agreements and employer reports. When we learn of discrepancies in wage evidence, our current procedures require that we develop other sources of wage evidence according to a priority order.[46] As noted above, we also have established procedures for correcting earnings and resolving scrambled earnings. We will update these procedures to ensure they are appropriate for resolving alleged inaccuracies in PIE reports.[47] If no other wage evidence exists to corroborate a payroll data provider report that the individual told us was erroneous, we would not use the report from the payroll data provider.

Due Process

Comment: Multiple commenters said we should strengthen our due process protections from PIE reporting errors. For example, one commenter recommended we collaborate with our payroll data provider to develop stronger data validation measures. Another commenter expressed that the final rule should feature stronger protections for individuals, prevent unintended consequences, and emphasize transparency. Other commenters stated the most important procedural safeguards are: (1) a timely and adequate notice detailing the reasons for a proposed reduction or suspension of benefits; (2) an evidentiary hearing to dispute the reduction or suspension of SSI benefits; and (3) ensuring SSI benefits continue to be paid at the protected payment level pending a decision on the appeal.[48]

Several commenters referred to the Fifth Amendment of the Constitution, which states that no person shall be deprived of ''life, liberty, or property, without due process of law.'' Commenters also referred to *Goldberg* v. *Kelly,*[49] a case in which the Supreme Court held that recipients of means-tested public assistance benefits must be afforded advance notice and the ''opportunity to be heard'' before their benefits can be terminated. Some commenters correctly asserted that SSI benefits, as a means-tested program for extremely low-income recipients, are subject to the Constitutional due process protections set forth in *Goldberg* v. *Kelly* and subsequent court decisions.[50] According to commenters, the government should not ''deprive a recipient of the means to survive'' while they are pursuing their appeal. They expressed that an erroneous, automated determination to reduce, suspend, or potentially terminate a benefit could impact an individual's ability to pay their rent or mortgage, feed themselves, or pay for other necessities. Another commenter said the process for disputing discrepancies should be ''clearly delineated and available to access verbally and electronically.''

Multiple commenters suggested that we extend the amount of time between the NOPA (or other notice) and the reduction or suspension. Some commenters asserted that the proposal does not provide enough time for: (1) SSI recipients to respond to the NOPA; and (2) for us to process responses before we reduce or suspend benefits. For example, one commenter stated that it is ''unrealistic'' to expect that everything that needs to happen—*e.g.,* notifying the individual; gathering and submitting proof; staff processing; filing a reconsideration request; and processing benefits continuation—can be accomplished under the proposed timeline. Several commenters expressed that we must account for field office delays in processing information and inputting appeals. Multiple comments suggested due process procedures specific to PIE.

Some commenters asserted that existing SSI regulations conform to the requirements of constitutional due process on paper, but not in practice. Commenters referred to the example used in the NPRM where we assumed we would receive PIE data on, for example, November 7 (of any given year). A commenter opined this could result in a situation where an individual receives a NOPA on November 12, the individual files a request for appeal on November 22 (within the 10-day appeal period), and it would still be too late for the individual to have their December benefits paid at the protected payment level because the December benefit data will have already been transmitted to the U.S. Treasury Department.

Response: We agree that adequate due process protections are vitally important for any adverse action, and especially important for those stemming from unverified reports. The law allows us to use PIE data without verification; we will follow current due process procedures when making decisions using this data, including protections we currently afford pursuant to *Goldberg* v. *Kelly* (GK).[51] We understand that many people, including individuals belonging to vulnerable groups, rely on the benefits from our programs to meet their daily needs. Accordingly, individuals will be afforded full due process protections. A PIE-specific appeal process is not needed to afford full due process; moreover, such a process would be difficult and burdensome to implement; would likely cause confusion for beneficiaries and

[46] POMS DI 10505.005, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0410505005,* SI 00820.130 available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820130.*

[47] For example, our current wage evidence policy indicates that pay stubs are the primary (highest priority) source of wage evidence. But if we receive a payroll data provider report indicating that an individual is working, and the individual alleges they are not working, they presumably have no paystubs. We might look to see if PIE data is corroborated by other sources of wage information we have received or contact employers where appropriate.

[48] Some commenters suggested through the hearing level of appeal.

[49] *Goldberg* v. *Kelly,* 397 U.S. 254 (1970).

[50] The commenter referred to *Cardinale* v. *Mathews,* 399 F. Supp. 1163 (D.D.C. 1975).

[51] Based on the Supreme Court decision in *Goldberg* v. *Kelly* and principles of due process under the Constitution, we provide SSI recipients advance notice of an adverse action before we take the action. *See* 20 CFR 416.1336(a). We provide SSI recipients a Notice of Planned Action (NOPA), also known as the GK notice. The GK notice explains the planned adverse action, the right to appeal the adverse action, and the right to continued or reinstated payment at the protected payment level (PPL)—what we refer to as ''GK payment continuation''—if the recipient appeals the adverse action within 10 days of receipt of the GK notice. 20 CFR 416.1336(b). Under our rules, we presume that the recipient receives the GK notice within five days after the date on the GK notice. *Id.* SSI recipients who file a Request for Reconsideration within 15 days after the date on the NOPA should have no interruption in their payment until the appeal is decided. SSI recipients who file a Request for Reconsideration more than 15 days after the date on the NOPA, but within 65 days after the date on the NOPA, also receive GK payment continuation, but this may involve reinstating their payment until the appeal is decided. *See* POMS SI 02301.313, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0502301313.*

recipients; and could negate the increased efficiency we expect to receive from PIE.

As we explained in the NPRM, we will send advance notice providing sufficient time for individuals to decide whether to appeal the action. SSI recipients will have their payments continued during their appeal unless they waive this right in writing.[52] The appeal alone will allow payments to continue; we do not require documents or proofs for payment continuation, and provide a reasonable amount of time to supply documentation in support of the appeal. The appeal process includes the opportunity to meet face-to-face with SSA personnel,[53] who will follow the policy and procedures we develop for assisting with development or investigation of disputed wage information.

Since 2021, we have strengthened due process protections related to GK payment continuation, and we continue to work to protect the rights of SSI recipients by improving our processes. In order to reduce administrative burdens for both SSI recipients and the agency, we have extended GK payment continuation to SSI recipients who file a reconsideration more than 15 days after, but within 65 days of receiving the NOPA.[54] We updated the NOPA to clearly explain the time frames to appeal and receive payment continuation or reinstatement and to make clear that benefits will change or stop if no appeal is filed. We added SSA's Office Locator website address (URL) to make it easier for recipients to look for and find one of our offices, including the office fax number. We also updated the SSI Overpayment Notice to include SSA's Office Locator URL. Most importantly, we have taken steps to improve our internal business processes and oversight related to receiving, tracking, and entering SSI reconsideration requests so that we provide payment continuation to all those who timely appeal in response to a NOPA. The agency mandated the use of an application which assists with the inputs required for payment continuation. Additionally, we now monitor the accuracy of the workload through a dashboard and completed agency-wide training on these cases to improve accuracy. All of these protections will continue to be available to individuals wishing to appeal decisions based on information from PIE. And we have plans to further enhance our business process through increased automation in the payment continuation process.

We do not agree with commenters who opined that receiving PIE data on the 7th day of the month does not permit adequate time to generate a NOPA, receive an appeal, and have the next month's benefits paid at the protected payment level. Although the process for ensuring payments remain at protected levels may differ depending on the time of the month the appeal is received, we will follow current policy to ensure payments are made correctly.[55] In the hypothetical scenario discussed in public comments, which involves an appeal filed on November 22, protected payments would continue based on agency systems and policies.

Comment: One commenter stated that to ensure the PIE data is used in a timely manner, we should create explicit safeguards ''prohibiting adverse action more than two years after SSA's receipt of the report.''

Response: We will receive the PIE wage and employment information from payroll data providers monthly. At this time, the exchange is built to request the prior month's wage data only, and the system is designed to use the data in a timely manner. Our administrative finality rules will apply to determinations made using PIE wage data, as they also apply to determinations using any other past wage and employment information we receive. If we assess an overpayment, our usual overpayment policies would apply, including our waiver policies.

Notices and Communication

Comment: Multiple commenters suggested ways to improve our notices and communication with individuals, and stressed the importance of using clear, easy to understand language. For example, one commenter suggested we use different formatting and language to explain the information we used to make a decision. In fact, a commenter provided potential sample language for our consideration. Others expressed that we need to provide ''adequate notice'' that includes enough information for the individual to understand the payroll information being reported to us (such as a copy of the payroll data provided by third parties) and steps the individual can take to dispute or appeal payroll data. A different commenter suggested that we consult with the CFPB about the adequacy of the adverse action notice we develop. Commenters also remarked on a sample adverse action notice, stating, for example, that (1) the notice should unequivocally state when we base a decision on the TWN report (not state that we ''may'' have used the information in making a decision); (2) the notice includes an incorrect web address to request a file disclosure; (3) The formatting of the notice is ''dense and difficult to read'' and we should use a ''tabular'' format; (4) we should include the name of the person at Social Security to contact for additional information; (5) we should note the ability to submit information about any applicable work incentives to the Social Security contact; and (6) we should provide the name and phone number of a local Work Incentives Planning and Assistance (WIPA) project or a local credentialed benefits counselor.

Another commenter expressed that when payroll data would cause an unfavorable determination, we should send a notice recommending that individuals call the Ticket to Work Help Line to be referred to a WIPA counselor or that they consult with a benefits planner through a different agency. According to the commenter, a benefits planner can assist the individual to use any work incentives for which they may be eligible to reduce the impact of earnings on their benefits.

Response: We appreciate the suggestions from the commenters regarding ways to potentially improve our notices, and we agree that well-formatted, complete, clear and accurate notices are important. We will continue to evaluate our notices and potential improvements to them, including through customer experience feedback. Regarding one of the commenters' specific suggestions, we clarify that our notices cannot unequivocally state that we based a decision on the payroll data provider report received through PIE because other factors contribute to a payment determination besides an individual's wages.

Considering this, we will inform the individual that we may have used PIE information as part of a decision, but we cannot specify that it is the sole reason behind the decision. In addition, we have a standard paragraph in our notices informing recipients how we received our information and how to contact us if something appears incorrect. Further, we do not provide the name and phone number of the local WIPA or benefit counselor in our notices because of the burden involved. However, our Ticket to Work Helpline,[56] can be used to refer the

[52] *See* 20 CFR 416.1336(b).

[53] *See* 20 CFR 416.1413(b) and (c).

[54] *See* POMS SI 02301.313, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0502301313.*

[55] *See* POMS SI 02301.320 available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0502301320.*

[56] For more information about the Ticket to Work Help Line, visit *https://choosework.ssa.gov/contact,*

individual to these services. We make the Ticket to Work Helpline information available to individuals in multiple ways.[57] Our notices also advise members of the public that they can also contact us through our 800 number with additional questions or requests for guidance.

Lastly, we clarify that the sample notices that the commenter cited were uploaded to an OMB website in August 2020.[58] These do not reflect the current versions of these notices. We confirm that the updated notices contain current information.

Comment: According to one commenter, the language used in the sample NOPA does not explain that we used a ''specialized'' type of payroll data provider report. The commenter stated that recipients may see the name ''Equifax'' and assume that we used a traditional credit report in our decision.

Response: The NOPA language explains that ''We may receive wage and employment information from Equifax that is part of a consumer report.'' This language adequately explains the nature of the information we are using.

Comment: Commenters asserted that, under the NPRM, we will treat OASDI disability beneficiaries and SSI recipients differently and we did not explain why. Specifically, under our proposal, SSDI beneficiaries will receive an advanced notice without any accompanying change in benefit amount (allowing individuals 35 days to respond with information showing that the benefit amount calculation should not be changed). If the OASDI disability beneficiary does not respond, then it would trigger another notice that the beneficiary can appeal. In contrast, under our proposal, commenters stated that SSI recipients will be subject to an adverse action and benefit reduction ''immediately'' without the ''advanced opportunity to cure.'' Commenters stated that SSI recipients would benefit from an advanced notice like the one OASDI disability recipients will receive. Some commenters recommended that SSI recipients should receive an adverse action notice at least 30 days before a NOPA is generated. According to commenters, ''given the complexity of the rules and equity considerations for people with disabilities, recipients would benefit from every opportunity'' to correct incorrect information before facing benefit reduction.

Response: PIE data prompts us to take different actions in SSA's programs, and the notice process depends on the action we take. For SSI, we use wage information to determine the recipient's monthly eligibility and payment amount and generally consider only gross wages for this purpose. Because SSI guarantees a minimum level of income for aged, blind, or disabled individuals who have limited income and resources, a change in a recipient's countable monthly income, such as wages, can have a direct effect on non-medical SSI eligibility and payment amount. This necessarily requires a month-by-month determination that is immediately appealable whenever the benefit amount may change to ensure due process protections. This allows SSI recipients to quickly make corrections to inaccurate wage information and prevents significant overpayments or underpayments of benefits. As discussed, though, we provide advanced notice and an opportunity for payment continuation while an appeal is pending.

In contrast, information about a disabled individual's wages may require us to investigate whether the person has engaged in SGA, the primary question for OASDI disability post-entitlement determinations. A determination that someone has engaged in SGA after their trial work period is a determination that they no longer meet the requirements for disability due to work, and we say that benefits ''ceased.'' When this happens, we pay benefits for the month benefits ceased and the following two months. After this period, we suspend cash benefits for any month in which the individual engages in SGA during their 36-month extended period of eligibility. This determination is more complex because we must decide whether work involves significant physical or mental activities, which requires considerations beyond just gross earnings. For example, we consider whether an individual's earnings include sick or vacation pay, or if their work is subsidized or performed under special conditions or in a sheltered environment.[59]

In the table below, we summarize some key points about the notices we send for SSI and OASDI disability:

	SSI	OASDI disability	Concurrent SSI and OASDI disability
Point at Which We Send Notice to Individuals[60].	• We send a NOPA when an individual's earnings increase and their SSI payments will be reduced in an upcoming month. • We send a Notice of Change in Payment when an individual's earnings decrease and their SSI payments will be increased.	• We send a due process notice when an individual is performing SGA in the Extended Period of Eligibility. • We send a final SGA notice explaining our decision and documenting which months the individual is over SGA.	• Individuals would receive both the SSI and OASDI disability notifications.
Reason We Send Notice	• The NOPA explains the change to the payment and what information we used to determine the new amount. It provides appeal rights and other important information. • The Notice of Change in Payment explains the new payment amount and how we computed it. It provides appeal rights and other important information.	• The due process notice explains our proposed decision and presents an opportunity to provide additional evidence. It provides contact information and other important information. • The final SGA notice will explain our decision. It provides appeal rights and other important information.	• The reason is issue specific and applies to whichever notice they receive, since they may receive more than one notice depending on their circumstances as they relate to the specific program.

email *support@choosework.ssa.gov,* or call 1–866–968–7842/1–866–833–2967 (TTY).

[57] For example: (1) When SSI and OASDI disability beneficiaries report a return to work, we give them a receipt of the report that contains information about the Ticket to Work Program and the Help Line contact information; (2) The SSI Database Analysis (DABA) Work Incentive Notice includes information about work incentives and the Ticket to Work Program and the Help Line contact information; and (3) title II and title XVI Cost of Living Adjustments (COLA) Notices are sent annually to beneficiaries and recipients about COLA changes to their benefits. These notices include general Ticket to Work and work incentive language that includes Help Line contact information.

[58] The examples the commenter cited are available at: *https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202008-0960-020&icID=8980.*

[59] 20 CFR 404.1574.

Comment: One commenter stated the use of payroll provider data to automatically generate NOPAs reflecting even small changes in payment amounts could result in many SSI recipients receiving a new NOPA every month due to a fluctuating number of hours worked from month to month. The commenter expressed concern that, rather than increasing the efficiency of program administration, this ''flood of notices'' would result in more calls to our national 800 number and field offices with questions and concerns. Some commenters said that our proposed rule may result in very frequent (even monthly) NOPAs for some. They stated that these frequent notices may cause ''confusion and distress.'' Another commenter said we should examine the potential for an increase in calls to our national 800 number and an increase in visits to our field offices due to the new rule, and we should plan accordingly. The commenter stated that individuals will ''undoubtedly reach out'' to us if they have questions about the ''many new notices'' that will be mailed out under the final rule, such as those to dispute an error in payroll data or to appeal a benefit reduction. According to the commenter, individuals may also contact us if they are confused about their wage reporting obligations. The commenter asserted, that if calls and office visits increase significantly due to PIE, it could become more difficult for all of our customers to get help from us. Some commenters expressed concerns about our staffing levels and the effect staffing levels may have on the ability to get help with PIE-related concerns or questions.

Response: We anticipate that the PIE implementation may result in more notices. However, this is mostly because, with PIE in place, we will be able to capture and process more accurate and timely wage and employment information than before. Timely receipt of this information through PIE allows us to send correct and appropriate notices more quickly to ensure payment accuracy. Under PIE, the only additional notices are those that would generate when we receive wages from a new employer or stop receiving wages from an employer. While this may result in an increase in notice frequency, as well as related calls to our 800 number, we expect that PIE will also bring about decreased burdens in the form of reduced of routine reporting for hundreds of thousands of beneficiaries and recipients—if someone allows us to access their wage and employment information from a payroll data provider, and we receive that information, the individual will not have to report information about that employer for as long as we continue to receive it. And while some additional notices will go out, we anticipate that, because of the efficiencies gained from PIE, our staff will spend less time on wage reporting workloads because they will spend less time investigating wage information. Thus, staff would have more time to assist beneficiaries and recipients should questions arise from receipt of these notices. We expect to gather preliminary data on these issues as we implement PIE in phases and study its effects. As always, we remain committed to assisting individuals with any potential issues as soon as possible.

Comment: One commenter said we should reevaluate the information we provide to individuals who do not opt into PIE. Specifically, they asked us to examine the information we provide about reporting requirements, including the literacy level, accessibility, timing, and frequency. The commenter asserted that some individuals are unaware of the importance of reporting earnings and we should ensure they understand the projected amount of their monthly payments. According to the commenter, we should emphasize the importance of regularly checking their payment amounts to prevent overpayments.

Response: We appreciate the commenter's suggestion to improve our current notices. While we commit to continually improving our communication, including the notices relating to PIE, this rulemaking seeks to address factors specific to PIE.

Comment: A commenter asserted that we are subject to Executive Order (E.O.) 13166, *Improving Access to Services for Persons With Limited English Proficiency,*[61] and that we have obligations to individuals with limited English proficiency (LEP) to provide meaningful language access. Specifically, the commenter said we should provide a translated NOPA whenever an individual requested language translation services in the past. According to the commenter, we should translate our NOPAs into additional languages commonly spoken by individuals with LEP in the United States and add more languages over time. Some commenters said that these notices should be fully accessible, in multiple formats including braille, large print and audio.

Another commenter alleged that field offices often fail to provide timely, accurate language services to people who primarily speak a language other than English, and the introduction of automated wage reporting will add a new element. The commenter stated that it is imperative that all related information—written or oral—be provided in the recipient's preferred language. The commenter said we should consider improving language service capabilities, especially the availability of interpreters and adoption of standardized scripts for explaining the automated wage reporting system.

Response: PIE notices are supported in English and Spanish and are made available based on the selected Special Notice Option, which are: standard print notice by certified mail, standard print notice by first class mail and a follow-up phone call to read the notice within five business days, braille notice and standard print notice by first-class mail, data compact disc (CD) in Microsoft Word format and a standard print notice by first-class mail, large print notice (18 point font) and a standard print notice by first-class mail, or audio CD and a standard print notice by first-class mail. Individuals with LEP may also bring a speaker of a given language into the office to translate for them.

Comment: One commenter asserted that we should clarify that, because TWN is receiving Federal funds as a Federal contractor, it is subject to E.O. 13166 and should provide language access for LEP individuals. According to the commenter, we should assess, under our contract, whether TWN is providing quality LEP services and has sufficient resources for translation and interpreter services. The commenter asserted, to meet its obligations, TWN should provide meaningful access for LEP individuals to their wage and employment information reports by translating them into the top languages spoken by LEP SSI recipients.

Response: E.O. 13166 places an obligation on the agency, not third parties. As we state on *ssa.gov*, ''we provide free interpretive services to help you conduct your Social Security business. These interpreter services are available whether you talk to us by phone or in the Social Security office.'' [62] TWN is a database belonging

[60] As noted earlier, we will also send individuals a notice: (1) any time we start receiving wages from a new employer (the notice will explain they no longer have to report wages from that employer); and (2) any time we stop receiving wages from that employer (the notice will explain that they must again report wages from that employer). These notices give individuals the opportunity to dispute the information and they explain how to reach out to us.

[61] 65 FR 50121 (Aug. 16, 2000).

[62] *https://www.ssa.gov/ssi/spotlights/spot-interpreter.htm.*

to Equifax, who is a third-party contractor.

Consistent with the above, our contract with Equifax does not put any LEP obligations on Equifax, a third-party contractor.

Accessing Report Used To Make Adverse Action

Comment: Commenters stated that we must ensure that individuals can easily obtain file disclosures from TWN or we must provide recipients with the copy that we obtained to make an adverse action. According to one commenter, FCRA provides that consumers can obtain a copy of their own consumer report, and they are entitled to free file disclosure annually and when an adverse action has been taken against them.[63] Commenters asserted that these free disclosures are ''critical'' because they enable consumers to identify and dispute errors in their reports. Other commenters stated that access to their own information is a ''basic principle of fair information practices.'' Some commenters alleged payroll data providers do not always meet their file disclosure requirements under FCRA. For example, one commenter said, ''TWN's systems appear to impose barriers or an outright inability for consumers to obtain a copy of their own TWN report.'' The commenter expressed that we should mandate performance standards for accessing reports in 20 CFR 422.150, our guidelines, or our contract with TWN. The commenter cited an example of a consumer who had significant difficulty accessing these reports. Another commenter stated that ''consumers have a right to review their wage and employment information contained within TWN by requesting their Employment Data Report at any time.''

Response: Under the Privacy Act of 1974, individuals have a right to access records about themselves that are retrievable by a personal identifier from our (SSA) non-exempt systems of records. Accordingly, individuals would have a right to access the wage reporting records stored in our files and used to make a determination, including any adverse action.[64] For wages we receive from our current payroll data provider, when sending an adverse action notice, we will provide individuals notice of their right to a free copy of their consumer report and how to contact our current payroll data provider.

[63] The commenter cited 15 U.S.C. 1681g(a), 15 U.S.C. 1681j(a)(1)(C) and 15 U.S.C. 1681j(b).

[64] *See* 20 CFR 401.40.

Reporting

Comment: One commenter said we should clarify why we will require individuals to report a new employer and explain the consequences of reporting or not reporting a new employer. In addition, the commenter asked several questions: (1) If an individual does not report a new employer, will we still be able to match payroll data? (2) Is the affirmative report of a new employer necessary to allow us to manually input the new employer information in the system so that any later payroll data has a ''place'' to go? (3) When an individual reports their new employer, what happens to payroll data provided by PIE for the new employer? (4) Will we tell an individual whether the new employer's data is accessible via matching or manual reporting is needed? If so, how and when will this information be provided?

Response: We will continue to require individuals to report new employers to us because, as noted, our payroll data provider will not be able to provide us with wage information from every employer. We will inform the individual of their reporting obligations each time we receive a report that they began work with a new employer. Thus, if we receive wage information from the payroll data provider for the new employer, we will notify the individual they no longer are required to report wage information for that employer to us. If an individual begins to work for a new employer and we have not notified them that we are receiving wage and employment information through our payroll data provider, the individual will still need to report wages to us for that employer.

Regarding the commenter's questions, we clarify that even if an individual does not tell us about the new employer, we will generally be able to match payroll data if an individual has provided us with authorization to obtain their wage and employment information through PIE and the new employer reports their wages to our payroll data provider. We nonetheless require individuals to report new employers because there is no way for us to know whether a new employer's wage information will be available through PIE or not. Thus, reporting the new employer will help us make more accurate and timely payments.

Finally, as mentioned earlier, we instruct individuals to continue reporting their wages until they receive notice from us to stop. We will send a notice to individuals whenever their wage reporting responsibilities change, as discussed in the NPRM.

Comment: Several commenters asked how we will clearly communicate when individuals need to continue reporting wages to us. One commenter said that individuals may misunderstand the new rules to mean that they no longer need to track their wage information. According to the commenter, this could lead to significantly delayed or inaccurate wage reporting and the ''mixed messages'' we will send to individuals will confuse them, particularly those with cognitive difficulties, and potentially lead to noncompliance with our rules, frustration, and overpayment or a loss of benefits.

One commenter stated that, when we learn that an individual's employer does not use TWN, we should inform them to continue wage reporting using the existing methods. According to the commenter, this communication would prevent individuals from incorrectly assuming that they no longer need to report because they authorized us to use PIE. Another commenter said that individuals often work multiple jobs for short periods and their disabilities may hinder their ability to maintain consistent employment. According to the commenter, if wage reporting responsibilities change from one employer to the next, some recipients will be unable to keep up with their reporting obligations. The commenter said recipients should be clearly and promptly advised that payroll data providers may not receive information from every employer, so the individual may need to report earnings from some employers, even if we automatically receive payroll data from other employers.

An additional commenter asked how the individual will know, once they've opted in, that the data has or has not been received from the payroll data provider, and, if the payroll data provider fails to transmit data to us, transmits incorrect data, or delays transmitting data—if the individual will continue to be exempt from certain penalties.

Response: We will tell individuals to continue reporting their wages using existing methods until they receive notice from us telling them otherwise, and our notices will communicate any other changes to reporting requirements. This information is provided through a receipt they receive after providing authorization. We understand that individuals may work for multiple employers, change employers frequently, or not be aware initially whether their employer reports wages to us. Accordingly, as explained in the NPRM, we will notify individuals in

writing of changes to their reporting responsibilities, including whenever we start or stop receiving their wage and employment information from an employer through a payroll data provider. The notices for changes in reporting responsibilities will list the employer(s) we receive wages from and the employer(s) we stop receiving wages from. Since the notices list specific employer(s), and also explain the need to continue reporting for any other employer(s), we expect to minimize confusion. Finally, as noted in the NPRM, individuals who authorize us to obtain wage and employment information from a payroll data provider will not be subject to penalties under section 1129A of the Act for omissions or errors in the data we receive from a participating payroll data provider. We will provide notice of this penalty relief, including the identity of the relevant employer(s).[65]

Comment: One commenter asserted that starting or stopping a job is a major event that can disrupt people's lives and offering an extended grace period, especially for those who experience unexpected job losses, would benefit people who are likely in the process of applying for other programs to take care of their immediate needs.[66] The commenter asked if there are exceptions to the reporting timeline for major life event experiences and, if an individual knows a change in their earnings is coming (*e.g.,* a raise), how far in advance are they able to notify us of these changes.

Response: While we appreciate that starting or stopping a job may be a big change, the suggestion to offer an ''extended grace period'' is not within the scope of this current rulemaking. Further, we cannot consider changing the time periods allowed for making required reports. We anticipate that the changes we are making with these new rules will significantly reduce reporting responsibilities for most individuals. Timely reporting, however, is still necessary to ensure we have enough time to adjust benefits, so we pay individuals the correct amount at the correct time. In the SSI program, individuals should continue to report to us as soon as an event listed in § 416.708 happens.[67] If they do not report within 10 days after the close of the month in which the event happens, the report will be late.[68] For disability, individuals should report changes ''promptly.'' [69]

When an individual knows that a change in their earnings will happen in the future (such as a raise), they can report the future event to us in advance and we will use that report to estimate their future wages.

Internal Quality Review

Comment: One commenter said we should conduct rigorous evaluations of our implementation to ensure that the PIE authority is operating as intended by Congress. In addition, the commenter stated that we should publish annual reports so that the public and Congress can understand the impact. For example, according to the commenter, we should publish information on the number of individuals: (1) who have authorized us to access their commercial payroll data; (2) whose benefits have been reduced or stopped due to PIE wage reports; (3) who have reported errors in their PIE wage data and the outcomes of those reports; and (4) who have appealed and the outcome of those appeals. Further the commenter said we should report: (1) our actions to prevent, identify, and correct wage report errors; (2) the impact of the PIE on overpayments; and (3) the impact of the PIE on our customer service. Another commenter asked what the quality control process for PIE entails.

Response: We understand and share the commenter's desire for public transparency. We intend to conduct PIE rollout in phases, so that we can study its effects before full implementation and ensure our program complies with all applicable authorities. We will continue to evaluate these questions and information as we implement PIE. We currently publish a number of reports. However, we do not anticipate that a new, dedicated PIE report will be necessary. The most salient information is contained in reports that we already issue. For example, we include information related to wage and earnings overpayments in the Agency Financial Report.[70] We anticipate that the reports we issue will be sufficient to publicly track the most important issues.

Overpayments

Comment: Many commenters said that the agency should revise overpayment waiver policies and recommended options like finding individuals ''without fault'' for overpayments created by inaccurate or incomplete reporting from employers or the payroll data provider, and that these ''without fault'' overpayments should always be waived. One commenter stated policy changes such as these ensure that the efficiency gained from PIE does not result in ''harm'' to individuals who rely on our programs for their basic needs.

Several commenters said we should take waivers a step further. One commenter said if, at the time the overpayment is posted, the individual meets the ''deemed to defeat the purpose'' provision, then we should consider waiving the overpayment without requiring any action by the beneficiary. According to the commenter, this would ''lower the burden on individuals, promote equity and fairness, and improve administrative efficiency.'' Another commenter said we should incorporate into the final rule a provision allowing for automatic waiver of any overpayments caused by third-party reporting errors to eliminate the burden on the individual to request a waiver of the overpayment and staff time to process the waiver. Similarly, other commenters also said we should adopt a ''liberal interpretation'' of both ''defeat the purpose of the act'' and the ''against equity and good conscious'' provisions, and asserted that if an individual is overpaid because of reliance on the data exchange program, even after we advised them that reporting is no longer required, then ''equity is not served and some aspects of the purpose of the act are defeated.'' Another commenter said that any time an individual questions an overpayment caused by inaccurate reporting from a third party, we should initiate an administrative waiver review, without requiring the individual to complete SSA Form 632 (Request for Waiver of Overpayment Recovery) or to undergo any similar administrative burden.

In contrast, a separate commenter stated that, because a ''without fault'' determination results in ''writing off of

[65] 42 U.S.C. 1320a–8a. *See* 20 CFR 404.459, 416.1340. The relevant penalty under section 1129A of the Act and 20 CFR 404.459, 416.1340 is the non-payment of OASDI disability benefits and ineligibility for SSI cash benefits. Other penalties under section 1129A of the Act may apply in situations involving false or misleading statements, including statements regarding wages and employment.

[66] The commenter referred to our requirement to report starting or stopping work or a change in earnings no later than the 10th day of the month after the month of change.

[67] 20 CFR 416.714.

[68] We may impose a penalty deduction from your benefits for a late report (*see* §§ 416.722 through 416.732).

[69] 20 CFR 404.1588, 416.988.

[70] *https://www.ssa.gov/finance/.* Examples of other reports that may contain relevant information include the Report on Supplemental Security Income Non-medical Redeterminations (*https://www.ssa.gov/legislation/FY2014SSINon-MedicalRedeterminationReport.pdf*) and the Annual Report on Work-Related Continuing Disability Reviews (*https://www.ssa.gov/legislation/WorkCDRFY2021Final.pdf*).

the beneficiary's obligation to repay mistakenly received funds,'' it is contrary to our stewardship responsibilities. The commenter also stated that it is an unnecessary incentive considering the high authorization rates that we are experiencing without that rule. The commenter asserted that it might be ''fair'' to presume ''without fault'' if the overpayment is discovered after a long period, for example, five or seven years.

Response: We appreciate the feedback from commenters on the ''without fault'' provisions in our overpayment recovery waiver policy. As stated previously, we take our program stewardship responsibilities seriously, and we strive to pay the right person the right amount at the right time. As explained in the NPRM, we sought these comments to help inform our consideration of possible clarifications to this aspect of our overpayment policy for individuals who participate in PIE. We agree with the commenter who stated that, if inaccurate data from the payroll data provider results in an overpayment and the overpaid individual asks us to waive recovery of their overpayment, we should usually find the individual to be ''without fault'' in causing the overpayment under our existing regulations, and would therefore assess whether we can waive the overpayment based on our existing overpayment procedures.[71] However, there is no legal basis for simply dismissing repayment of the overpayment in all circumstances as the commenter further suggests. We are also considering the commenters' other suggested changes as part of a comprehensive review of overpayment policies.

Earnings Considerations, Including Work Incentives and Sick, Vacation, and Bonus Compensation

Comment: Some commenters questioned how payroll data will distinguish between paid hours that count toward SGA and those that do not. Specifically, commenters asked if the payroll data system will distinguish pay that represents bonus, sick, vacation, and holiday pay. They said that, without this differentiation, it is not clear how we will accurately determine SGA.

Multiple commenters stated concerns about addressing work incentives in the context of PIE and asked how we will integrate work incentives into the process. Commenters said individuals will continue to be burdened with reporting work incentives and our staff will continue to be burdened with processing them. Some commenters suggested potential improvements, such as using mySocialSecurity as a platform for reporting both wages and work incentives. Another commenter stated that we should provide easy-to-understand information about impairment-related work expenses and subsidized work and this rulemaking could allow us to increase outreach to large employers about what subsidized work is and how it impacts individuals with disabilities who receive benefits from us. One commenter said, for SSI, we should analyze how to best integrate third-party payroll data reporting and individual reporting of work incentives, prior to making determinations resulting in an adverse action. For OASDI disability, the commenter stated that we should consider notifying individuals about trial work period (TWP) progress and when they enter the extended period of eligibility.

Response: We do not expect PIE to meaningfully improve our access to the type of detailed information sometimes needed to make accurate SGA determinations (such as distinguishing pay for actual work versus holiday or sick pay or providing details about subsidized work, accommodations, or impairment related work expenses). Prior to making an SGA decision, we will continue to request information about special pay (sick, vacation, etc.) and any work incentives (including subsidy) from the beneficiary on form SSA–821 (Work Activity Report).[72] If the information impacts the SGA decision, we will request proof of the information before effectuating a decision. In addition, we send the beneficiary a Notice of Proposed Decision, which includes a chart of the monthly earnings amounts that we used in our review and offers the individual a chance to supply any additional evidence before we finalize the decision.

Likewise, PIE will not affect how individuals report impairment-related work expenses that we exclude from earned income under SSI. Individuals should still report to us if their earnings are used for impairment-related work expenses, or if the amount of impairment-related work expenses changes. If an individual has reported impairment-related work expenses that occur on a regular and continuing basis, the appropriate deduction from earnings will be included in payment calculations when we receive wage information through PIE.

We will continue to explore ways for individuals to report work incentive information to us, potentially through mySocialSecurity or other channels.

Various notices and publications contain information about our work incentives such as Working While Disabled: How We Can Help[73] and The Redbook.[74] In addition, we are currently revising forms SSA–821 (Work Activity Report) and SSA–3033 (Work Activity Questionnaire)[75] for clarity about our work incentives. The planned revisions to form SSA–821 include descriptions of the various work incentives (like Impairment-Related Work Expenses), explain that we can deduct these items when making the SGA decisions, and provide examples of the work incentives. Form SSA–3033, The Employee Work Activity Questionnaire (OMB No. 0960–0483) collects information from the employer about subsidized work and special conditions given to the employee. We are updating this form so it explains how providing the information is beneficial to the employee, gives clear examples, and provides easier ways to calculate the information.

For OASDI, the Notice of Proposed Decision explains where an individual is in their TWP[76] and Extended Period of Eligibility (EPE).[77] It includes a chart and labels the earnings as month one through nine of the TWP and indicates which earnings are SGA in the EPE.

Comment: One commenter expressed concerns about the ''complexity and variance of data application.'' A few commenters noted that, there are two different earnings considerations in using payroll data: (1) title II entitlement (OASDI disability), based on when wages are earned, and (2) title XVI payment amount (SSI), based on when wages are paid. The commenter said we should clearly explain how the two separate computations will be approached and asked if the data we receive will show both the date earned and the date paid.

Response: How we consider earnings depends on which program a person receives benefits from. For SSI determinations, we consider when wages are paid. The exchange will always provide the pay date and gross earnings for this determination. For OASDI disability, we consider when wages are earned. Section 825 of the BBA[78] simplifies post-entitlement SGA

[71] *See* 20 CFR 404.507, 416.442.

[72] *https://www.ssa.gov/agency/plain-language/Examples/Forms/Form%20SSA-821%20-%20BEFORE.pdf.*

[73] *https://www.ssa.gov/pubs/EN-05-10095.pdf.*

[74] *https://www.ssa.gov/redbook/.*

[75] *https://www.ssa.gov/forms/ssa-3033.pdf.*

[76] *See* 20 CFR 404.1592.

[77] *See* 20 CFR 404.1592a.

[78] Public Law 114–74, 129 Stat. 584, 610.

determinations by allowing us to presume earnings were earned in the month they were paid if more precise information is not available. Prior to applying this paid-versus-earned assumption, we evaluate any readily available evidence to determine when earnings were earned. Thus, we primarily use the pay period end date, and sometimes the pay period start date, to determine when wages were earned. The exchange will always provide a pay period end date; when the exchange does not include a pay period start date, our systems have incorporated logic to calculate one.

Comment: One commenter noted that the proposal states that the ''pay period start date would have no discernible impact on benefit determinations'' and will not be collected. The commenter stated that it is unclear if this statement includes post-entitlement determinations, and if it does, it is in direct conflict with POMS DI 10505.005, which states, ''The Bipartisan Budget Act of 2015 simplifies post entitlement SGA determinations by allowing us to presume earnings were earned in the month they were paid. However, prior to applying this paid versus earned assumption, evaluate any readily available earnings verification sources and determine when earnings were earned.'' [79] The commenter expressed concerns about the impact on title II beneficiaries if pay period start dates are ignored. Further, the commenter stated that documenting exactly when work is performed, along with any utilization of work incentives, is crucial for title II beneficiaries to accurately demonstrate whether they are engaging in SGA.

Response: For OASDI disability, we have the ability to use the pay period end date or start date to determine when wages were earned. However, we primarily use the pay period end date because we generally expect to receive more information about the end date. As a clarification, we collect the pay period start date when the payroll data provider supplies that information. When the exchange does not include the pay period start date, our systems have incorporated logic to calculate one. In addition, we will send form SSA–821 to the individual to develop more detailed information about the individual's work, including information relevant to work incentives. Also, we will send the individual a Notice of Proposed Decision which includes a monthly table of earnings that were used in making the decision and allows the individual to provide any additional information.

Internally Inconsistent Information

Comment: One commenter said that we made an error because our transfer estimates for implementation begin on October 7, 2023, but we published the NPRM on February 15, 2024.

Response: The actuarial estimates provided in the NPRM projected reductions in program costs as if PIE would have been implemented in October 2023. Actuarial estimates must make assumptions based on current facts to develop reasonable projections. While the effective date, as the commenter noted, could not actually occur in 2023, the estimates still provided a reasonable reference for individuals interested in the effects of PIE on our future costs and savings. We updated the projected effective date of the estimates in this final rule.

Comment: One commenter pointed to sections of the NPRM where we reported: (1) that SGA-related overpayments in the OASDI disability program, occurring predominately because individuals fail to report earnings in a timely manner, averaged $500 million a year; and (2) that individuals in this category were overpaid $1,163 million a year. The commenter asked which is correct and, in particular, which we used to estimate the savings to taxpayers. The commenter requested a more complete explanation and documentation of the savings estimate.

Response: The average of $500 million per year came from the FY2023 Agency Financial Report and relates to OASDI SGA errors.[80] The average of $1,163 million per year comes from an internal study of SSI wage errors. We inadvertently mischaracterized this figure in the NPRM, and the NPRM should have referred to this as SSI wage-related overpayments. We regret any confusion.

Reconsideration Requests

Comment: Many commenters said we should allow individuals to request reconsideration orally. Commenters stated that obstacles such as insufficient internet access, field office delays, telephone delays, travel challenges, and communication barriers are reasons to accept reconsideration orally. Commenters asserted that language challenges further complicate the burden of making written requests, and accepting oral requests would allow us to comply with Federal laws requiring language access and disability accommodations.

Some commenters said we should ensure ''adequate staffing'' if we accept reconsiderations by phone and that our staff would need training to ensure that they would easily recognize stated requests for reconsideration. Other commenters suggested that we could find ways to automate the process. Commenters also expressed concerns about the documentation and processing of oral appeals. Some proposed that we provide a confirmation number (or similar proof) any time an individual requests an oral reconsideration request. Several commenters said that, if we allow such requests orally, we should accept a later attestation by the individual that they made an oral reconsideration request, without requiring further proof.

In contrast, one commenter asserted that, to ensure individuals' rights are protected, we should continue to require reconsideration requests in writing.

Response: We appreciate the feedback from commenters on accepting oral reconsideration requests. Commenters noted they find our current requirement for a written reconsideration request to be burdensome for some claimants and their representatives. As an agency that values customer experience and considers administrative burden reduction on the public to be an important priority, we appreciate the feedback and plan to seriously consider this proposal. Our ultimate goal is to achieve a balance between reducing burden to the extent possible, while ensuring the consistency and integrity of our processes. Further exploration of this proposal requires a review of multiple agency processes in which an appeal is involved, and would also entail seeking more fulsome feedback from the public on this issue specifically. At the present time as noted in the NPRM, we are not making any changes to the appeals filing process. Our regulations for both title II and title XVI require that the party seeking reconsideration file a written request.[81] Whether we should amend these regulations to accept oral reconsideration requests requires consideration of all the contexts in which they arise, not just the sub-set of reconsideration requests that appeal an initial determination of income based

[79] DI 10505.005, available at *https://secure.ssa.gov/apps10/poms.nsf/lnx/0410505005*.

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

[81] 20 CFR 404.909(a) and 416.1409(a).

on PIE data. Accordingly, we did not intend this rulemaking to decide the complex issue of accepting oral reconsideration requests.[82]

Comment: Several commenters said we should eliminate the reconsideration step for initial disability cases. One commenter said we never published an analysis of the efficacy of the reconsideration step, ''despite a promise years ago to do so when evaluating the ten-state disability adjudication prototype experiment.''

Another commenter stated that requiring reconsideration after an initial denial ''depletes SSA resources and significantly burdens claimants without improving the accuracy of disability determinations.'' The commenter said the agency could expand existing sub-regulatory guidance on informal remands, which already permits additional review from Disability Determination Services staff in cases where new evidence or certain other circumstances warrant an additional level of review before a hearing.

Response: We appreciate the comments received but they are outside the scope of this final rule.

Systems Questions

Comment: One commenter asked what system would support the data exchange to upload the monthly verification.

Response: We first verify that the data are complete and in the right format. The data are then stored in a centralized repository before they are moved to the appropriate title II and title XVI systems where the data are automated to beneficiary and recipient records or flagged for technician review.

Comment: A commenter asked how employees will handle the new workload for exceptions and failed submissions.

Response: Our OASDI work review system will send wage alerts when incoming PIE data is incomplete, due to such issues as missing pay period start date information. When this happens, the alert will guide our technicians to manually query sources of earnings (including PIE) to determine if the individual has substantial earnings. All work reviews require manual review of earnings prior to effectuating a determination. Similarly, our SSI systems will create a diary to be worked by a technician when we do not have an Employer Identification Number (EIN) match for an individual who has already reported an employer/EIN to us. Once the technician confirms the incoming employment, future PIE wages will automate to the recipient's record for that employer. Any name mismatch cases (where the name and SSN do not match) will not go downstream to any application.

Comment: A commenter asked what percentage of liability the representative payee, deemor, essential person, and claimant have regarding wages.

Response: When the representative payee, beneficiary, recipient, or claimant receives a PIE reporting responsibilities notice, they would not have to report wages monthly, and they would not be considered ''at fault'' for any inaccuracies. All SSI recipients (or their representative payees) are responsible for reporting their wages as well as the wages of any deemors or essential persons.[83] In any event, we are not changing who is responsible for making required reports.

Comment: A commenter asked if individuals have to report initial work to update the Consolidated Claims Experience (CCE).[84]

Response: Yes, we continue to require individuals to report a change in employment, including new employment.

Comment: A commenter asked if the Retrospective Monthly Accounting (RMA) cycle will remain in effect.[85]

Response: Yes, normal RMA accounting rules will still apply.

Comment: A commenter asked if employers report wages monthly or quarterly.

Response: We will receive wages that are readily available to the payroll data provider at the time of our monthly information exchange regardless of how often the employer provides that data to them.

Comment: A commenter asked if the report will be delayed.

Response: We are not certain what the commenter means by ''the report.'' We expect to receive the information through PIE prior to the GK payment continuation cutoff date in a given month to ensure we receive the data in time to determine an individual's eligibility or payment amount.

Comment: A commenter asked if there will be an overpayment if this program works.

Response: While we anticipate PIE will lead to more accurate and timely payments, it cannot eliminate overpayments and underpayments altogether for a variety of reasons, some of which may be that not everyone will opt in, not all employers are covered, and there will still be cases where manual actions are necessary.

Comment: A commenter asked if the system will understand pre-tax deductions.

Response: PIE data only includes employer wage data. Calculations are based on gross wages, not on net pay.

Comment: A commenter asked if counting the net and removing the wage exclusion provision would ''change the game'' as more individuals become eligible for benefits.

Response: Laws and regulations govern how we count earned income and what we can exclude from income counting. Changes to income counting are outside of the scope of this rule.

Comment: One commenter asked how we will rectify duplicate reporting, particularly with the EIN or corporate name reported in the data exchange and the ''doing business as'' (DBA) name on paystubs with an individual continuing to manually report.

Response: We will receive the DBA name on the incoming wage and employment information from the payroll data provider through PIE and will prioritize PIE information over other reporting methods, unless manually adjusted by one of our technicians.

Comment: A commenter asked if there is a plan to address benefits received under a cross referenced number (*e.g.,* a parent).

Response: Yes, PIE data is based on the individual's own SSN, so their wages for SSI or OASDI disability will be posted to their record with any cross-referenced SSNs.

Other Public Comments

Comment: One commenter requested information about how PIE implementation will increase efficiency. The commenter asked: (1) Is there data showing how much time is saved or how much greater accuracy is achieved by this process? (2) If time is saved, how much and in which components? (3) What benefits might be realized by redirecting this saved time toward other workloads? (4) Are there any critical workloads that would be addressed because of such savings? and (5) How might this benefit individuals in general?

Response: PIE will increase efficiency by allowing our systems to receive and automate wage and employment information timely. Timely receipt of this information allows us to administer

[82] 89 FR 11781 (Feb. 15, 2024).

[83] Deeming also applies to any individual who lives with an essential person (a concept carried over from the former State assistances plans.) As of February 2024, there were only 4 cases with an essential person remaining.

[84] The commenter used the acronym ''CCE.'' We assumed they referred to the ''Consolidated Claim Experience.''

[85] The commenter used the acronym ''RMA.'' We assumed they referred to ''Retrospective Monthly Accounting.''

the OASDI disability and SSI programs more efficiently, as well as reduce improper payments, because we will receive the information sooner and will process it quicker when the information automates for SSI and when the information alerts us to wages sooner for OASDI disability. This also creates administrative efficiencies because it reduces the time our technicians would otherwise use to verify wages.[86] In our NPRM, we anticipated some administrative savings from a shorter wage development process in affected cases during SSI pre-effectuation reviews, redeterminations, post-eligibility actions, and overpayments, as well as during OASDI disability work continuing disability reviews. However, we do not attempt to quantify these time savings. As we explained in the NPRM, under our current process, we sometimes conduct a manual query to request records from payroll data providers or employers. We estimate we would save approximately 20 minutes of our staff's time each time we no longer need to complete this query.[87]

We expect that our Operations components would realize these time savings and could redirect this time toward other critical workloads. In addition to the benefits identified elsewhere in this rule (*e.g.,* reduced burden on individuals), we anticipate others may benefit if we are able to initiate work on their cases sooner because of the time savings PIE will afford staff.

Comment: One commenter said the public must have the ''maximal ability'' to understand the technology we will use to implement PIE before we implement it, including how it works, potential problem points, plans to work through such problem points, plans to identify and fix unanticipated and anticipated problems, and ways to revert to ''non-automated'' means in the event that the system produces widespread inaccuracies or other problems. The commenter said this information should be posted publicly, and we should consider engaging individuals and their advocates in system design, and we should support individuals to enable them to meaningfully participate.

Response: While we are unable to share sensitive information for security reasons, we will publish procedures describing the process for requesting and receiving wage and employment information from a payroll data provider through an information exchange. In the unlikely event the system produces ''unanticipated problems,'' we can, as always, accept alternative wage evidence (*e.g.,* pay stubs) from the wage reporter.

Comment: One commenter asserted that adding the penalty of ineligibility will create a potentially ''insurmountable barrier to employment'' for individuals. The commenter said that individuals consistently report that ''fear of prematurely losing their benefits is a primary reason they are reluctant to try working,'' and work incentives planners spend ''countless hours'' reassuring them that they will not lose their benefits just because they return to work. The commenter stated we must remove the language about the penalty of ineligibility related to wage reporting mistakes because these rules create ''new and extreme penalties.''

Response: Neither the BBA nor the NPRM propose new penalties of any kind. Nor does this final rule. Rather, the BBA and this final rule create protections from some existing penalties for individuals. As we explained in the NPRM, we may not subject individuals to certain penalties related to reporting if they authorize us to obtain information from a payroll data provider.[88] For example, when an individual is reporting wages to us currently, and they omit material facts related to the wage data they report, we can, under 1129A of the Act, stop their benefits. However, if we are receiving wage data from a payroll data provider under the PIE program, we will not stop the individual's benefits because of any errors made in reporting by the payroll data provider. This will alleviate some of the ''fear'' the commentator described currently associated with having to report wage data to us directly.

However, in reviewing the CFR text we understand that as written in the NPRM it might not clearly reflect the explanation provided in the preamble. Accordingly, we have rewritten the CFR text.

Comment: One commenter asserted that our proposal would impose a financial burden on payroll companies, particularly small businesses. The commenter said that payroll reporting to us and IRS is already ''more difficult and time-consuming than it needs to be.'' According to the commenter, small businesses are ''drowning in federal, state and local government regulations,'' and if we require reporting, we should reimburse payroll companies for the cost.

Response: This rule and the implementation of PIE will not impose burdens on payroll companies, including small businesses, because we are not requiring, nor requesting, they change reporting or any other aspects of their business processes. Rather, we are working with a payroll data provider that already receives information from employers, and that payroll data provider (that is under a contract with us) will provide that information to us directly.

Comment: One commenter said we should not obtain information without working with the employer to request information. They stated this proposal is an overreach that should not be pursued. According to the commenter, irregularities can present an ''opportunity to interact with an employer to request additional information.'' Further, the commenter said every employer has the right to oversee their own payroll service, without having them ''work for the government.''

Response: We are not mandating any employers to ''work for the government,'' nor do we have the authority to do so. Rather, we have exercised the authority in the BBA to enter into an information exchange arrangement with a payroll data provider. We will work directly with our contracted payroll data provider who has willingly entered into an information exchange with us.

To the extent this comment applies to individual employees, anyone who does not want us to obtain their information from our payroll data provider may decide not to provide authorization or may revoke their authorization at any time. We will not obtain payroll data provider information without authorization and the individual can continue to submit their information to us directly.

Comment: One commenter referred to our policy that extends the time period for individuals to request benefit continuation from 10 to 60 days pursuant to the settlement agreement in *Amin* v. *Kijakazi.*[89] The commenter

[86] As noted elsewhere, information received through PIE is already considered ''verified.''

[87] These savings are for our staff. They do not represent public reporting burden savings.

[88] Individuals who authorize us to obtain wage and employment information from a payroll data provider will not be subject to penalties under section 1129A of the Act for omissions or errors in the data we receive from a participating payroll data provider. 42 U.S.C. 1320a–8a. *See* 20 CFR 404.459, 416.1340. The relevant penalty under section 1129A of the Act and 20 CFR 404.459, 416.1340 is the non-payment of OASDI disability benefits and ineligibility for SSI cash benefits. Other penalties under section 1129A of the Act may apply in situations involving false or misleading statements, including statements regarding wages and employment.

[89] *Amin* v. *Kijakazi,* Case 1:15–cv–07429 (E.D.N.Y.).

stated that we should formalize this policy through rulemaking, updating POMS, and communicating the modified policy to our staff prior to finalizing the payroll data rule.

Response: We would like to emphasize that, in accordance with the settlement agreement in the referenced litigation, we already use this policy in practice. Codifying the policy into regulations is out of the scope of this final rule.

Comment: One commenter said SSI or SSDI ''navigators'' or case managers could help streamline the current wage reporting process and reduce the administrative burden on individuals. According to the commenter, the use of navigators can also improve the accessibility of current reporting options. Further, the commenter said, if multiple individuals request assistance for a recurring accessibility issue, navigators or case managers can review these reporting methods and bring accessibility concerns to the appropriate person or team at the SSA.

Response: While we are unsure precisely who the commenter intended when referencing ''navigators'' and ''case managers'' in the SSA context, we clarify that our technicians will be available to help individuals with their PIE-related questions and we will publish policy describing the process for requesting and receiving wage and employment information from a payroll data provider through an information exchange. For any concerns or questions about accessibility, please visit *https://www.ssa.gov/accessibility/504_overview.html*. Our notices also advise members of the public that they can contact us through our 800 number with additional questions or requests for guidance.

Comment: One commenter expressed that individuals would benefit from ''well-considered policy and implementation choices that guarantee full access and do not discriminate.'' The commenter said, among other ideas, we can consider implementing a ''clear process that informs people that reasonable accommodations are available, recognizes requests, and acts on them quickly and appropriately.''

Response: We comply with relevant and applicable anti-discrimination policies and laws, including section 504 of the Rehabilitation Act and its reasonable accommodation requirements. As part of this final rule, we are not revising our obligations under section 504, including our reasonable accommodation process, or our language support for the public. For more information about those policies, please visit *https://www.ssa.gov/accessibility/504_overview.html* and *https://www.ssa.gov/site/languages/en/*.

Comment: One commenter said, to ensure that the ''automated wage reporting does not simply replace monthly income reports required of recipients with monthly notices that prompt them to call,'' we could consider building in ''tolerances'' for income fluctuations so small changes in benefit amounts do not trigger notices for a certain period of time. The commenter suggested that we could consider couching these as small overpayments and use existing waiver authority to waive them.

Relatedly, the commenter also suggested that we could average wage income over a set span of time (*e.g.,* three or six months), make one determination about benefit amounts for the next span, send one notice for that span, and allow recipients to present evidence if they believe we should adjust their benefit amount. The commenter asserted that recipients would benefit most from simplified benefit calculations and fewer notices.

Response: This suggestion is not within the scope of this final rule. Nevertheless, we will continue to evaluate our processes on an ongoing basis, looking for opportunities to provide enhancements and improvements that reduce burdens for our customers or increase agency efficiency and that provide effective program stewardship.

Comment: One commenter proposed that we eliminate the complex rules and make the program simpler for recipients to navigate.

Response: We appreciate this comment and always look for ways to simplify our programs. We anticipate that implementation of PIE will make one part of the SSI and OASDI disability process (wage reporting) simpler for most individuals who provide authorization for us to receive their wages through PIE.

Comment: Commenters brought up a variety of other issues not directly related to the proposal. For example, one commenter asserted that people cannot live on SSI alone and they deserve at least $2,500 a month to survive. Another commenter questioned whether the States should have a bigger role in managing Social Security. Other commenters raised issues about personal loans or changes in qualifying for disability. An additional commenter expressed that we may be able to use PIE data to establish insured status for applicants.

Response: While we appreciate these suggestions, they are outside the scope of this rulemaking.

Rulemaking Analyses and Notices

Regulatory Procedures

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

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

Assumptions

We estimate that, by 2034, 98 percent of SSI recipients will have provided an active authorization as of that time allowing us to obtain this information from payroll data providers through information exchanges, and about 87 percent of disabled OASDI beneficiaries will have also provided this authorization.[90] We base this estimate on current rates of adoption as we have sought authorization from beneficiaries during both new enrollment and disability review processes since late 2017. Since 2017, about 98 percent of OASDI disability beneficiaries and SSI recipients who have been asked have provided authorization—this corresponds to about 35 percent of all current OASDI disability beneficiaries as of the end of fiscal year 2024. As of July 2024, 64 percent of all current SSI recipients and 72 percent of SSI deemors have provided an active authorization as of that time.[91]

We estimate that there are about 1,100,000 OASDI disability beneficiaries, between 200,000 and 300,000 SSI recipients, and another 500,000 to 600,000 deemors of SSI recipients who work in a given year. Because employers representing approximately two-thirds of the non-farm workforce provide payroll data to Equifax, and we will be able to receive payroll data from Equifax for anyone who has authorized us to do so, we expect individuals will submit fewer wage reports to us.[92]

[90] The projected period in the NPRM extended through 2033. The revised projected period in this final rule extends through 2034.

[91] We have not conducted any analysis to investigate why a higher share of all SSI deemors have provided authorization compared to all SSI recipients. It is possible this is a result of the non-medical redetermination process. If a redetermination is initiated, and a recipient or deemor has not previously provided authorization, we request authorization. SSI recipients with deemors are relatively more likely to have a redetermination initiated.

[92] As stated in the preamble, neither SSA nor Equifax has analyzed whether working disability benefit recipients are represented in a similar

Continued

Additionally, we estimate that there are about 100,000 OASDI disability beneficiaries who are overpaid due to working at or above the SGA level. Based on the most recent data available, over FYs 2019 through 2023, these individuals were overpaid an annual average of $729 million. We estimate that, through the information exchange, we will be able to identify both wages we otherwise would not have known about, as well as wages that will be identified timelier than under current processes. Additionally, we estimate that we will identify and assess approximately an additional 10 percent of overpayments due to working at or above SGA (OASDI) or having wages from employment (SSI) which we would likely not have assessed through our current processes.[93]

Anticipated Costs to the Public

As discussed in the NPRM, there are minor costs to the public associated with this rulemaking.[94] For example, individuals who apply for or are receiving OASDI disability, individuals who apply for or are receiving SSI, and SSI deemors, will need to spend a minimal amount of time to complete the authorization to allow us to obtain wage and employment information from payroll data providers through an information exchange. As another example, there is a potential burden on the public to correct any inaccurate data reported to us from a payroll data provider if an individual identifies an error in the information we receive through an information exchange. See the NPRM for more explanation.[95]

Anticipated Benefit to the Public

As discussed in the NPRM,[96] an information exchange has many benefits. For example, it will reduce wage reporting responsibilities for some individuals. PIE would also help us obtain timelier wage and employment information, which we anticipate will also help us reduce improper payments, which is a potential source of confusion for the public and may cause individuals to spend time addressing errors associated with improper payments or filing appeals or waiver requests. See the NPRM for more explanation.[97]

Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this proposed rule would result in a total net reduction in OASDI benefit payments of $1.1 billion [98] and a total net reduction in Federal SSI payments of $1.8 billion over fiscal years 2025 through 2034. The estimates assume implementation of this rule on March 11, 2025, and that SSA will not, during the estimate period, contract with any other payroll data provider beyond Equifax. We note that the increase in the amount of overpayments identified or prevented in this period would be larger than the reduction in actual benefits paid in this period. First, regarding overpayments newly identified, as discussed in our Assumptions section, these estimates assume that 50 percent of work-related overpayments identified for OASDI beneficiaries and 80 percent of earned-income related overpayments for SSI recipients will be recovered within 10 years after they are identified. Thus, much of the overpayments newly identified, especially those identified late in this 10-year period, will be only partially recovered with subsequent reductions in payments through fiscal year 2034. Second, while potential overpayments that would be prevented due to implementation of this rule will immediately reduce benefit payments, such early identification of earnings will also avoid subsequent potential overpayments through fiscal year 2034 and beyond.

Anticipated Administrative Costs to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this proposal will result in a net administrative cost of $846 million for the 10-year period from FY 2025 to FY 2034. The net administrative cost is mainly a result of the contract and IT costs to administer the information exchange. The total costs are offset by some administrative savings from a shorter wage development process in affected cases during Title XVI pre-effectuation reviews, redeterminations, post-eligibility actions, and overpayments, as well as during Title II work continuing disability reviews.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as meeting the criteria in 5 U.S.C. 804(2).

Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this final 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 final rule will not have a significant economic impact on a substantial number of small entities because it primarily affects individuals. In some instances, this final rule may reduce the burden on employers because we may need to contact employers for information less frequently when we receive wage and employment information from payroll data providers through an information exchange. Because our contact with employers for this reason is limited now, we do not expect a significant difference. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended. We discuss the time burden savings for employers stemming from this final rule in the Paperwork Reduction Act section of the preamble.

Paperwork Reduction Act Statement

SSA already has existing OMB approved information collection tools relating to this proposed rule: the Letter to Employer Requesting Information About Wages Earned by Beneficiary

proportion in the database, but we assume it for the purposes of this analysis.

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

[94] 89 FR 11783.

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] We note that in the NPRM, we estimated this figure would be $1.8 billion. The new estimated amount of $1.1 billion reflects updated information that is used to develop our actuarial estimates.

(SSA–L725, OMB Control No. 0960–0034); Letter to Employer Requesting Wage Information (SSA–L4201, OMB Control No. 0960–0138); Monthly SSI Wage Reporting (SSA's Mobile Wage Reporting, Telephone Wage Reporting, and internet myWage Report application, OMB Control No. 0960–0715); the Authorization for the Social Security Administration to Obtain Wage and Employment Information from Payroll Data Providers (Form SSA–8240, OMB Control No. 0960–0807); and the Notice to Electronic Information Exchange Partners to Provide Contractor List (SSA–731, OMB Control No. 0960–0820). While we previously obtained OMB approval for the new form (under OMB Control No. 0960–0807) to collect the authorization for the wage and employment information from payroll providers, SSA has not utilized this information through an automated exchange, because those exchanges have not, yet gone live. The final rule provides additional information on OASDI and SSI reduced reporting requirements, as well as the effects of beneficiaries, recipients, and deemors authorizing us to obtain records from payroll data providers. In addition, the final rule describes the establishment of the requirements to enter into an information exchange with payroll data providers. SSA established the information collection for the Authorization for the Social Security Administration to Obtain Wage and Employment Information from Payroll Data Providers (0960–0807) prior to the creation of this new rule. We will include the appropriate CFR citations under that OMB approved information collection upon publication of the final rule. In addition, we will obtain OMB approval for revisions to the collection instruments as needed 30 days after publication of the final rule. Finally, the implementation of this final rule will decrease the time burden for the public, as it removes the need for individuals or employers to submit wages to SSA when we receive them through payroll data providers through an information exchange instead. While we acknowledge that there is a burden on the public for 20 CFR 422.150(a)(3), we did not include it in the chart below because fewer than 10 providers submit this information to SSA. The following chart shows the anticipated burden reduction due to the other regulatory requirements from this rule:

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

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

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

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

OMB #; Form #; CFR citations	Anticipated new number of respondents	Estimated burden per response from chart above (minutes)	Anticipated estimated total burden under regulation (hours)	Average theoretical hourly cost amount (dollars)*	Average combined wait time in field office and/or teleservice centers (minutes)**	Anticipated annual opportunity cost (dollars)***
0960–0034—SSA–L725	170,000	40	113,333	*$26.29	0	***$2,979,525
0960–0138—SSA–L4201	133,000	30	66,500	*26.29	0	***1,784,285
0960–0715—Mobile Wage reporting, 404.703(a), 416.708(c), 416.709 (new)	36,237	6	43,484	*22.39	0	***973,607
0960–0715—Telephone Wage reporting, 404.703(a), 416.708(c), 416.709 (new)	6,700	5	6,700	*22.39	0	***150,013
0960–0715—myWage Report, 404.703(a), 416.708(c), 416.709 (new)	1,458	7	2,041	*22.39	0	***45,698
0960–0807—SSA–8240, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	150,000	8	20,000	*22.39	**24	***1,791,200
0960–0807—MCS/SSI Claim System, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	697,580	3	34,879	*22.39	**21	***6,247,526

OMB #; Form #; CFR citations	Anticipated new number of respondents	Estimated burden per response from chart above (minutes)	Anticipated estimated total burden under regulation (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office and/or teleservice centers (minutes) **	Anticipated annual opportunity cost (dollars) ***
0960–0807—Internet, 404.703(b), 404.1588(a), 404.1588(b)(3)(iii), 404.1588(b)(4), 416.988(a)	147,820	3	7,391	* 22.39	** 21	*** 1,323,876
Totals	1,342,795		294,328			*** 15,295,730

* We based this figure on the average Payroll and Timekeeping Clerks hourly salary, as reported by the Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes433051.htm*); as well as the averaging of DI payments based on SSA's current FY 2024 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*) and the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2024 wait times for field offices and hearings office, as well as by averaging both the average FY 2024 wait times for field offices and teleservice centers, based on SSA's current management information data.

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

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

Office of Management and Budget, Attn: Desk Officer for SSA, Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAmain* [99] by clicking on Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items. Please reference Docket ID Number SSA–2016–0039 in your submitted response.

You can submit comments until January 30, 2025, which is 30 days after the publication of this rule. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

List of Subjects

20 CFR Part 404

Administrative practice and procedure. Blind; Disability benefits, Old-age, survivors, and disability insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

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

20 CFR Part 422

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

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

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

Subpart H—Evidence

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

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

■ 2. In § 404.702, add in alphabetical order definitions for ''Participating payroll data provider'' and ''Payroll data provider'' to read as follows:

§ 404.702 Definitions.

* * * * *

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

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

* * * * *

■ 3. Revise § 404.703 to read as follows:

§ 404.703 When evidence is needed

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

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

[99] Please note that the link to the specific ICR connected to this regulation will only become active the day after the final rule publishes in the **Federal Register**.

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

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

(ii) We will also inform you that your authorization will remain effective until the earliest of one of the following occurrences:

(A) You revoke your authorization in writing (see § 404.1588(b)(4));

(B) We have terminated all entitlement for benefits, you have no other claims or appeals pending under this title, and the period for appealing the determination or decision terminating entitlement has lapsed; or

(C) There has been an adverse determination or decision on your claim, you have no other claims or appeals pending under this title, and the period for appealing the adverse determination or decision has lapsed.

Subpart P—Determining Disability and Blindness

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

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

■ 5. Revise § 404.1588 to read as follows:

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

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

(1) Your condition improves;

(2) You return to work;

(3) You have a new employer;

(4) You increase the amount of your work; or

(5) Your earnings increase.

(b) *Effect of authorizing us to obtain your information from payroll data providers.* (1) We will reduce your reporting responsibilities as described in paragraphs (a)(4) and (5) of this section if we have your authorization to obtain wage and employment information from a payroll data provider (see § 404.703), and we receive your wage and employment information from your employer(s) through a participating payroll data provider (see § 404.702). You will not be subject to a penalty described in § 404.459 related to any wage and employment information we receive from a payroll data provider.

(2) We will notify you in writing whenever there is a change in your reporting responsibilities relating to the authorization described in § 404.703. You are always required to submit any changes described in paragraphs (a)(1) through (3) of this section.

(3) When your reporting requirements will change—

(i) If we have your authorization to obtain wage and employment information from a payroll data provider (see § 404.703), and we receive your wage and employment information from your employer through a participating payroll data provider, you will not have to report an increase in the amount of work for that employer or an increase in earnings from that employer.

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

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

(A) You do not need to report an increase in the amount of work or an increase in earnings for an employer if we receive your wage and employment information for that employer through a participating payroll data provider; and

(B) You must still report an increase in the amount of work or an increase in earnings for an employer if we do not receive your wage and employment information for that employer through a participating payroll data provider.

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

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

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

Subpart G—Reports Required

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

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

■ 7. In § 416.701, revise the third sentence of paragraph (a) to read as follows:

§ 416.701 Scope of subpart.

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

* * *

* * * * *

■ 8. In § 416.702, add in alphabetical order definitions for ''Participating payroll data provider'' and ''Payroll data provider'' to read as follows:

§ 416.702 Definitions.

* * * * *

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

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

* * * * *

■ 9. In § 416.708, revise paragraph (c) to read as follows:

§ 416.708 What you must report.

* * * * *

(c) *A change in income.* (1) Unless the circumstances in § 416.709(a) and (c) apply, you must report to us any

increase or decrease in your income and any increase or decrease in the income of—

(i) Your ineligible spouse who lives with you;

(ii) Your essential person;

(iii) Your parent, if you are an eligible child and your parent lives with you; or

(iv) An ineligible child who lives with you.

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

* * * * *

■ 10. Add § 416.709 to read as follows:

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

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

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

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

(2) We will also inform you that your authorization will remain effective until the earliest of one of the following occurrences:

(i) You revoke your authorization in writing (see paragraph (c)(4) of this section);

(ii) We have terminated all eligibility for benefits and you have no other claims or appeals pending under this title, and the period for appealing the determination or decision terminating entitlement has lapsed;

(iii) There has been an adverse determination or decision on your claim, you have no other claims or appeals pending under this title, and the period for appealing the determination or decision terminating eligibility has lapsed; or

(iv) Your deeming relationship ends.

(c) *When reporting requirements will change.* We will notify you in writing whenever there is a change in your reporting responsibilities relating to the authorization described in paragraph (a) of this section. Whenever we are getting your wage and employment information from a payroll data provider, we will tell you that you are not subject to a penalty of ineligibility for cash benefits described in § 416.1340 related to any wage and employment information we get from a payroll data provider. We will also tell you when we will find good cause, under § 416.732, for a failure or delay in reporting a change in employer.

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

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

(3) If we have your authorization to obtain wage and employment information from a payroll data provider as described in paragraph (a) of this section, and you have more than one employer,

(i) You do not need to report wages paid in cash, or an increase in the amount of work or earnings, for an employer if we receive your wage and employment information for that employer through a participating payroll data provider, and

(ii) You must still report wages paid in cash, or an increase in the amount of work or earnings, for an employer if we do not receive your wage and employment information for that employer through a participating payroll data provider.

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

Subpart I—Determining Disability and Blindness

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

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

■ 12. Revise § 416.988 to read as follows:

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

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

(1) Your condition improves;

(2) You return to work;

(3) You have a new employer;

(4) You increase the amount of your work; or

(5) Your earnings increase.

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

PART 422—ORGANIZATION AND FUNCTIONS OF THE SOCIAL SECURITY ADMINISTRATION

Subpart B—General Procedures

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

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

■ 14. Add § 422.150 to read as follows:

§ 422.150 Guidelines for establishing and maintaining an information exchange with payroll data providers.

(a) *Guidelines for establishing an information exchange with payroll data providers.* In establishing an information exchange under section 1184 of the Social Security Act, we will do the following:

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

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

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

(i) The records that will be matched;

(ii) The procedures for the match;

(iii) Any requirements established related to accuracy, completeness, and up-to-date records;

(iv) The procedures for ensuring the administrative, technical, and physical security of the records matched; and

(v) Such other provisions as are necessary.

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

(i) Relevant and necessary to:

(A) Accurately determine initial and ongoing entitlement to, and the amount of, disability benefits under title II of the Social Security Act;

(B) Accurately determine eligibility for, and the amount of, benefits under the Supplemental Security Income program under title XVI of the Social Security Act; and

(C) Prevent improper payments of such benefits; and

(ii) Sufficiently accurate, up to date, and complete.

(b) *Guidelines for maintaining an information exchange with payroll data providers.* We will perform the following activities while we maintain an established information exchange with a payroll data provider described in paragraph (a) of this section:

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

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

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