

reprogram or purchase software for their equipment, or replace their current equipment.

The Commission weighs the burden on industry against the reasons for implementing the amended Rule provisions. Evidence on the record establishes that abandoned calls “frighten consumers, invade their privacy, cause some of them to struggle to answer the phone only to be hung up on, and waste the time and resources of consumers working from home.” 68 FR 4580, 4642 (Jan. 29, 2003) (footnotes omitted). The Commission therefore determined that the abandoned call provisions of the amended TSR are necessary to remedy the abusive practice of call abandonment that can result from the use of predictive dialers.

Given the information on the record, however, the Commission concludes that the economic harm to industry that is likely to occur narrowly outweighs the harm to consumers of a brief delay in implementing the abandoned call provision. Therefore, the Commission has determined to extend the date by which it will require full compliance with §§ 310.4(b)(1)(iv) and § 310.4(b)(4) until October 1, 2003.<sup>3</sup>

Given the impact on consumers of abandoned calls, the Commission encourages the industry to use its best efforts to come into full compliance with the abandoned call provisions as soon as possible. After six months (*i.e.*, October 1, 2003), the Commission believes that the balance of equities weighs in favor of preventing further consumer harm by requiring compliance with the abandoned call provisions; and, therefore, it is unlikely that the Commission will provide a further stay of their implementation. The additional

six months should give industry ample time to make the changes in their operations necessary to comply with the recording requirement of the call abandonment safe harbor.

The Commission has now announced that it will require full compliance on October 1, 2003 with: (1) § 310.4(b)(1)(iv) (the prohibition on abandoned calls); (2) § 310.4(b)(4) (the safe harbor for call abandonment) as well as any record keeping requirements associated with the safe harbor; and (3) § 310.4(b)(1)(iii)(B) (the national “do-not-call” registry provisions of the amended Rule). The Commission will require full compliance on January 29, 2004 with § 310.4(a)(7) (the caller identification provisions). Full compliance with all other provisions of the amended TSR will be required by the date on which the amended Rule is effective, March 31, 2003.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 03-8233 Filed 4-3-03; 8:45 am]

**BILLING CODE 6750-01-P**

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 408

[Regulation No. 8]

RIN 0960-AF61

### Special Benefits for Certain World War II Veterans

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rules.

**SUMMARY:** We are adding to our regulations a new part 408 that sets forth our rules applicable to claims for special veterans benefits (SVB) under title VIII of the Social Security Act (the Act). The title VIII program was effective in May 2000 and provides monthly benefits to certain World War II (WWII) veterans who were previously eligible for supplemental security income (SSI) payments under title XVI of the Act and reside outside the United States. These final rules include five new subparts that describe: what the new part is about, how we determine whether you qualify for and are entitled to SVB, how you file for SVB, how we evaluate evidence under the SVB program, and how we compute and pay SVB.

In addition to these subparts, we are developing additional proposed subparts describing other aspects of the

title VIII program that we will publish at a later date.

**EFFECTIVE DATES:** These regulations are effective May 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Augustine, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-0020 or TTY (410) 966-5609. 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 <http://www.ssa.gov>.

### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the internet site for the Government Printing Office: <http://www.access.gpo.gov/sudocs/aces/aces140.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://www.ssa.gov/regulations>.

### SUPPLEMENTARY INFORMATION:

#### Statutory Provisions

Section 251 of the Foster Care Independence Act of 1999 (Pub. L. 106-169), enacted on December 14, 1999, added a new title VIII to the Act (Special Benefits for Certain World War II Veterans). Title VIII authorizes SSA to pay special veterans benefits (SVB) to certain WWII veterans who reside outside the United States. Establishing SVB entitlement is a two-step process: first, you need to show that you meet certain qualifying requirements; once we determine that you qualify for SVB, you will be entitled to SVB payments after you begin residing outside the United States.

#### How to Qualify for SVB

Section 802 of the Act provides that, in order to be entitled to SVB, you must first establish that you are a “qualified individual.” You qualify for SVB if you file an application for SVB and are:

- Age 65 on or before December 14, 1999 (the date the title VIII program was enacted);
- A WWII veteran;
- Eligible for SSI for both December 1999 (the month of enactment) and the month you file your application for SVB; and
- Receiving total monthly benefit income from other sources that is less than 75 percent of the Federal benefit rate (FBR) under SSI (title XVI of the Act).

However, even if you meet all the above requirements, section 804 of the

<sup>3</sup> The decision to stay the requirement of full compliance with two key components of the safe harbor provision (§§ 310.4(b)(4)(i) & (iii)) as well as the record keeping component of the safe harbor insofar as it would require records of compliance with the two stayed components, compels that full compliance with the prohibition on call abandonment, § 310.4(b)(1)(iv) also be stayed. Otherwise, industry members would be liable for a rule violation if they abandoned any calls and would have no safe harbor enabling them to continue use of predictive dialers. As noted in the Statement of Basis and Purpose, “a total ban on abandoned calls, which would amount to a ban on predictive dialers, would not strike the proper balance between addressing an abusive practice and allowing for the use of a technology that provides substantially reduced costs for telemarketers.” 68 FR 4643 (Jan. 29, 2003). Further, having stayed the requirement of full compliance with the prohibition on call abandonment, the final element of the safe harbor, § 310.4(b)(4)(ii) (requiring that the seller or telemarketer allow the telephone to ring for at least fifteen seconds or four rings before disconnecting an unanswered call) would have no application. The requirement of full compliance with the entire safe harbor provision, § 310.4(b)(4), is therefore stayed until October 1, 2003.

Act specifies certain conditions that will still prevent you from qualifying for SVB or, if you have already qualified for SVB, will prevent us from paying you benefits. Specifically, the following events will prevent you from qualifying for or receiving SVB:

- Removal (including deportation) from the United States under section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.

- Flight to avoid prosecution, or custody or confinement after conviction, for a crime or an attempt to commit a crime that is a felony under the laws of the United States or the jurisdiction of the United States from which you fled or, in the case of the State of New Jersey, is a high misdemeanor.

- Violation of a condition of probation or parole imposed under Federal or State law.

- Residence in a country to which payments are withheld by the Treasury Department under 31 U.S.C. 3329.

#### WWII Veteran Status

As explained above, section 802 of the Act specifies that you must be a WWII veteran to qualify for SVB. Section 812(1) of the Act defines a WWII veteran as a person who served during WWII in:

- The active military, naval, or air service of the United States during the period beginning on September 16, 1940 and ending on July 24, 1947; or

- The organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the U.S. Armed Services under the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed by the Commander in Chief, Southwest Pacific Area, or other competent authority in the U.S. Army. This service must have been rendered at any time during the period beginning July 26, 1941 and ending on December 30, 1946.

In addition to meeting either of these requirements, you must have been discharged or released from this service under conditions other than dishonorable after serving at least 90 days or, if your service was less than 90 days, because of a disability or injury incurred or aggravated in the line of active duty.

#### How We Evaluate Evidence

Sections 806 and 810 of the Act authorize us to establish rules about the kinds of information you must give us to show that you qualify for SVB and that you are entitled to receive benefits. Section 806 also specifies that we cannot pay you SVB based only on your statements about whether you qualify

for benefits. Instead, you must give us documents or other evidence that we will verify with independent sources.

#### How We Calculate and Pay SVB

Section 805 of the Act specifies that your monthly SVB payment is equal to 75 percent of the Federal benefit rate (FBR) under title XVI of the Act, reduced by the amount of any other benefit income you receive for that month. As used in title VIII, "other benefit income" means any recurring payments you receive such as an annuity, pension, retirement, or disability benefit, but only if you received a similar payment from the same (or a related) source during the 12-month period before the month you file an application for SVB.

#### Applying for SVB

As indicated above, section 802 of the Act requires you to file an application in order to establish that you qualify for SVB. Section 806 of the Act authorizes SSA to prescribe the requirements for filing such an application. In order to maintain consistency throughout the benefit programs we administer, we have attempted, where possible, to use the same requirements we use for filing applications under the titles II and XVI programs. These rules were established in order to ensure that individuals have every reasonable opportunity to file a claim for benefits at the earliest possible time without loss of benefits, and we believe those same considerations apply to claims for title VIII benefits.

#### Explanation of New Part 408

New part 408 will initially consist of 5 subparts. (As indicated above, we will propose additional subparts in a subsequent notice of proposed rulemaking (NPRM).) Following is a list of each subpart that includes a brief description of the contents of each section in the subpart.

#### Subpart A (Introduction, General Provision and Definitions)

- Section 408.101 introduces the title VIII program and contains a list of each subpart in part 408, and gives a brief description of the topics covered in those subparts.

- Section 408.105 briefly explains the purpose of the title VIII program and that the program is administered by SSA.

- Section 408.110 defines certain terms that are used throughout part 408.

- Section 408.120 explains how we calculate time periods in which you must take a required action under the SVB program when they end on a day, any part of which is a nonworkday for

Federal employees. This is the same as the rule we use under both the title II and title XVI programs.

#### Subpart B (SVB Qualification and Entitlement)

As explained above, you must meet certain requirements to qualify for SVB (*i.e.*, you must be age 65 on or before December 14, 1999, a WWII veteran, SSI eligible for December 1999 and the month in which you file for SVB, not receiving other benefit income that is 75% or more of the SSI FBR, and you must file an application for SVB). In addition, even if you meet these requirements, certain other conditions will prevent you from qualifying for SVB or, if you are already qualified, will prevent us from making SVB payments to you. Subpart B discusses these qualifying and entitlement requirements. Specifically:

- Section 408.201 describes what subpart B is about and gives a general explanation of how you qualify for and establish entitlement to SVB payments.

- Section 408.202 gives a list of the specific requirements you must meet to qualify for SVB.

- Section 408.204 describes the conditions that will prevent you from qualifying for SVB or prevent you from being entitled to receive SVB payments even if you meet the requirements in § 408.202.

- Section 408.206 explains that when you apply for SVB, we will first determine if you qualify for benefits. If you do not qualify, we will deny your claim. If you do qualify, we will send you a written notice of qualification that explains you have 4 calendar months after the date of the notice in which to begin residing outside the U.S. or we will deny your claim. If you begin residing outside the U.S. within that 4-month period, your SVB payments will begin with the first full month in which you resided outside the U.S. on the first day of the month.

- Section 408.208 explains that, if you begin residing outside the U.S. within 4 calendar months after the date of the written notice of SVB qualification, we will send you a notice of SVB entitlement, including the date your entitlement begins, the amount of your monthly SVB payment, and the amount of any reduction in your payment because you are receiving other benefit income.

- Section 408.210 explains that if you do not begin residing outside the U.S. within 4 calendar months after the date of the written notice of SVB qualification, we will deny your SVB claim.

- Section 408.212 explains what happens if you are residing outside the U.S. at the time you file for SVB. If you meet all the requirements for qualification and none of the SVB disqualifying events applies to you, we will ask you for evidence of your residence outside the U.S. After your foreign residence is established, we will send you a notice of SVB entitlement, including the date your entitlement begins, the amount of your monthly SVB payment, and the amount of any reduction in your payment because you are receiving other benefit income.

- Section 408.214 explains that, in order to qualify for SVB, you must have been age 65 on or before December 14, 1999.

- Section 408.216 explains the service and discharge requirements you must meet to be considered to be a WWII veteran.

- Section 408.218 explains what we mean by eligible for SSI. Under this section, anyone whose SSI eligibility has not been terminated or whose SSI benefits are not subject to a penalty under § 416.1340 of our SSI regulations will be considered to be eligible for SSI, whether or not the person is actually receiving SSI payments.

- Section 408.220 explains what we mean by "other benefit income" and includes examples of payments we consider to be "other benefit income." It also explains that your other benefit income will only affect your entitlement to SVB if you received a similar payment from the same or a related source at any time during the 12-month period before you file for SVB.

- Section 408.222 explains how your other benefit income affects SVB qualification and the amount of your SVB payment. If you are receiving other benefit payments when you file for SVB, we will deny your claim if these payments equal or exceed 75 percent of the FBR payable to individual SSI recipients with no income; otherwise we will reduce your monthly SVB payment by the amount of the other benefit income you receive in that month.

- Section 408.224 explains how we determine the monthly payment of your other benefit income if the payments are not made on a monthly basis.

- Section 408.226 explains that, once you begin receiving SVB, we will reduce your SVB payments if you begin receiving additional other benefit income, but only if you received similar benefits from the same or a related source during the 12-month period before you applied for SVB.

- Section 408.228 explains when we will consider you to be residing outside

the U.S. It also explains that, for SVB purposes, you can be a resident of only one country at a time.

- Section 408.230 explains when you must establish residence outside the U.S. Under the rulemaking authority provided by the law, we propose to establish a 4-month time limit within which you need to establish residence outside the U.S. Generally, the 4-month period would begin with the month after the month in which the notice that you qualify for SVB is dated. However, this section also explains that we will extend the 4-month period if you are in the U.S. to appeal a decision on your title VIII claim or on a title II and/or a title XVI claim that affects your SVB qualification. We believe this 4-month time period takes into account the fact that you generally need to be residing in the U.S. in order to be SSI eligible (and therefore are residing in the U.S. when you apply for SVB) but still gives you sufficient time in which to make arrangements to leave the U.S. and to begin residing outside the U.S.

- Section 408.232 explains that you lose your foreign resident status and we will stop paying you SVB if you enter the U.S. and stay here for more than 1 full calendar month. We will not resume your SVB payments until you establish that you are again residing outside the U.S. In recognition of the fact that many individuals receiving SVB benefits may wish to return to the U.S. for short periods (e.g., to visit friends or relatives), we propose to permit them to continue receiving SVB while in the U.S. provided they do not stay in the U.S. for more than 1 full calendar month.

- Section 408.234 explains that you may continue to receive SVB payments even if you are in the U.S. for more than 1 full calendar month if you are prevented from returning to your home abroad by circumstances beyond your control or you are in the U.S. to appeal an SSA decision on a claim filed under title II, VIII, or XVI of the Act.

#### Subpart C (Filing Applications)

This subpart contains our rules on filing applications under the SVB program. Specifically:

- Section 408.301 explains what subpart C is about.

- Section 408.305 explains that you must file an application to receive SVB.

- Section 408.310 explains what makes an application a claim for SVB.

- Section 408.315 explains that you must file your own application for SVB unless you are mentally incompetent or physically unable to sign your own application. In that case, certain other

individuals may sign the application on your behalf.

- Section 408.320 explains the kinds of evidence an individual must give us to show that he or she has authority to sign an application on your behalf.

- Section 408.325 explains when we consider you to have filed your application.

- Section 408.330 explains how long your application for SVB will remain in effect.

- Section 408.340 explains when we will use the date of a written statement as your application filing date.

- Section 408.345 explains the circumstances under which we will establish your filing date based on an oral inquiry about qualifying for SVB.

- Section 408.351 explains the circumstances under which we will establish your filing date if we give you misinformation about qualifying for SVB.

- Section 408.355 explains what happens if you request to withdraw your application for SVB.

- Section 408.360 explains how you can cancel your request to withdraw your application for SVB.

#### Subpart D (Evidence Requirements)

Subpart D sets forth the rules we will use to evaluate evidence under the title VIII program. Specifically:

- Section 408.401 explains that, in addition to your statements, we may need documentary evidence to confirm that you meet all the SVB qualification requirements and ensure that we pay you the correct amount of benefits.

- Section 408.402 explains when you need to give us evidence.

- Section 408.403 explains where you should give us the evidence we need to process your SVB claim.

- Section 408.404 explains if you fail to give us evidence we need in connection with your claim by a specified date, we may decide you do not qualify for SVB or, if you are already receiving SVB, we may stop or reduce your payments until we receive the necessary evidence. This section also explains when we will give you more time to give us the evidence.

- Section 408.405 explains that when you need to give us evidence to establish that you qualify for SVB or may continue receiving SVB payments, the evidence must be an original document or record or a certified copy of the original document or record. In the case of certified copies, this section also includes a list of the people who may certify the document or record to be a true and exact copy of the original. The section also explains that when you give us an original record, we will

photocopy it and return the original record to you.

- Section 408.406 explains how we evaluate the evidence you give us.
- Section 408.410 explains that you must submit evidence of your age to qualify for SVB unless we have already established your age in connection with a claim for benefits under title II or title XVI of the Act.
- Section 408.412 explains what kinds of documents you need to give us to show that you were born on or before December 15, 1934.

- Section 408.413 explains how we evaluate the evidence of age you give us.

- Section 408.420 explains that your evidence of WWII service must show your name, your branch of service, the dates of your service, your military service number, the character of your discharge and, if you were in the organized military forces (including organized guerrilla forces) of the Government of the Commonwealth of the Philippines, that your service is considered to have been in the service of the U.S. Armed Forces. This section also explains the kind of evidence you can give us to show you are a WWII veteran.

- Section 408.425 explains that we will use our data records to determine your SSI eligibility.

- Section 408.430 explains that we need evidence of your other benefit income if the income is less than 75 percent of the FBR.

- Section 408.432 explains what is evidence of your other benefit income.

- Section 408.435 explains the evidence you need to give us to show that you are residing outside the U.S.

- Section 408.437 explains the evidence you need to give us to show that you had good cause for remaining in the U.S. for more than one full month after you begin receiving SVB. It includes a description of the kinds of evidence you can give to show both that you made a good faith effort to return to your home abroad and the circumstances that prevented you from doing so.

#### **Subpart E (Amount and Payment of Benefits)**

Subpart E explains how we determine the amount of and pay SVB. Specifically:

- Section 408.501 explains what subpart E is about.

- Section 408.505 explains that the maximum SVB payment is equal to 75 percent of the SSI FBR for an individual with no income. It explains that whenever there is a cost-of-living allowance (COLA) increase in the FBR, we will increase your SVB to reflect the

COLA increase. It also explains that we will reduce the maximum SVB payable by the amount of your other benefit income.

- Section 408.510 explains that, when you are receiving other benefit income, we do not round the amount of your SVB payment. This section also explains that the minimum SVB payable is \$1.00.

- Section 408.515 explains that we make SVB payments on the first day of the month for which they are due. We also explain that when the first day of the month is a Saturday, Sunday, or Federal legal holiday, we will make your payment on the first preceding day that is not a Saturday, Sunday or Federal legal holiday.

#### **Public Comments**

On August 30, 2002, we published an NPRM in the **Federal Register** at 67 FR 55744 and provided a 60-day period for interested individuals and organizations to comment on the proposed rules. We received only the following comment from an individual.

*Comment:* The commenter recommends that we revise § 408.420, which deals with evidence of military service, to specify that we will accept only such evidence from a United States Government source.

*Response:* We are adopting this comment. In order to qualify for benefits, the applicant must be a World War II (WWII) veteran as described in § 408.216. That section provides, in part, that a WWII veteran is someone who served in the U.S. Armed Forces or in the military forces of the Commonwealth of the Philippines, while those forces were in the service of the U.S. Armed Forces. Since the requirement is service in the U.S. Armed Forces or Philippine forces that were in service to the U.S. Armed Forces, it is appropriate that evidence of such service is acceptable only if it is issued by a U.S. Government agency. We have revised § 408.420 accordingly.

We have also made some editorial changes for purposes of clarification. We have not made any additional substantive changes to the NPRM.

#### **Regulatory Procedures**

##### *Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

#### *Regulatory Flexibility Act*

We certify that these final rules will not have a significant impact on a substantial number of small entities because they affect only individuals filing for benefits under title VIII of the Act. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

#### *Paperwork Reduction Act*

These final rules contain information collection requirements in subparts B, C, and D of part 408 that require clearance from OMB. These requirements were approved by OMB under OMB No. 0960-0658, which expires on November 30, 2005.

(Catalog of Federal Domestic Assistance Program No. 96.020, Special Benefits for Certain World War II Veterans)

#### **List of Subjects in 20 CFR Part 408**

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Special veterans benefits, Veterans.

Dated: March 27, 2003.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are adding a new part 408 to chapter III of title 20 of the Code of Federal Regulations as follows:

#### **PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS**

##### **Subpart A—Introduction, General Provision and Definitions**

Sec.

408.101 What is this part about?

408.105 Purpose and administration of the program.

408.110 General definitions and use of terms.

408.120 Periods of limitations ending on Federal nonworkdays.

##### **Subpart B—SVB Qualification and Entitlement**

408.201 What is this subpart about?

408.202 How do you qualify for SVB?

408.204 What conditions will prevent you from qualifying for SVB or being entitled to receive SVB payments?

408.206 What happens when you apply for SVB?

408.208 What happens if you establish residence outside the United States within 4 calendar months?

408.210 What happens if you do not establish residence outside the United States within 4 calendar months?

408.212 What happens if you are a qualified individual already residing outside the United States?

**Age**

408.214 Are you age 65?

**Military Service**

408.216 Are you a World War II veteran?

**SSI Eligibility**

408.218 Do you meet the SSI eligibility requirements?

**Other Benefit Income**

408.220 Do you have other benefit income?

408.222 How does your other benefit income affect your SVB?

408.224 How do we determine the monthly amount of your other benefit income?

408.226 What happens if you begin receiving other benefit income after you become entitled to SVB?

**Residence Outside the United States**

408.228 When do we consider you to be residing outside the United States?

408.230 When must you begin residing outside the United States?

408.232 When do you lose your foreign resident status?

408.234 Can you continue to receive SVB payments if you stay in the United States for more than 1 full calendar month?

**Subpart C—Filing Applications****Filing Your Application**

408.301 What is this subpart about?

408.305 Why do you need to file an application to receive benefits?

408.310 What makes an application a claim for SVB?

408.315 Who may sign your application?

408.320 What evidence shows that a person has authority to sign an application for you?

408.325 When is your application considered filed?

408.330 How long will your application remain in effect?

**Filing Date Based on Written Statement or Oral Inquiry**

408.340 When will we use a written statement as your filing date?

408.345 When will we use the date of an oral inquiry as your application filing date?

**Deemed Filing Date Based on Misinformation**

408.351 What happens if we give you misinformation about filing an application?

**Withdrawal of Application**

408.355 Can you withdraw your application?

408.360 Can you cancel your request to withdraw your application?

**Subpart D—Evidence Requirements****General Information**

408.401 What is this subpart about?

408.402 When do you need to give us evidence?

408.403 Where should you give us your evidence?

408.404 What happens if you fail to give us the evidence we ask for?

408.405 When do we require original records or copies as evidence?

408.406 How do we evaluate the evidence you give us?

**Age**

408.410 When do you need to give us evidence of your age?

408.412 What kinds of evidence of age do you need to give us?

408.413 How do we evaluate the evidence of age you give us?

**Military Service 408.420 What evidence of World War II military service do you need to give us?****SSI Eligibility**

408.425 How do we establish your eligibility for SSI?

**Other Benefit Income**

408.430 When do you need to give us evidence of your other benefit income?

408.432 What kind of evidence of your other benefit income do you need to give us?

**Residence**

408.435 How do you prove that you are residing outside the United States?

408.437 How do you prove that you had good cause for staying in the United States for more than 1 full calendar month?

**Subpart E—Amount and Payment of Benefits**

408.501 What is this subpart about?

408.505 How do we determine the amount of your SVB payment?

408.510 How do we reduce your SVB when you receive other benefit income?

408.515 When do we make SVB payments?

**Subpart A—Introduction, General Provision and Definitions**

**Authority:** Secs. 702(a)(5) and 801–813 of the Social Security Act (42 U.S.C. 902(a)(5) and 1001–1013).

**§ 408.101 What is this part about?**

The regulations in this part 408 (Regulation No. 8 of the Social Security Administration) relate to the provisions of title VIII of the Social Security Act as added by Pub. L. 106–169 enacted December 14, 1999. Title VIII (Special Benefits for Certain World War II Veterans) established a program for the payment of benefits to certain World War II veterans. The regulations in this part are divided into the following subparts according to subject content.

(a) Subpart A contains this introductory section, a statement of the general purpose underlying the payment of special benefits to World War II veterans, general provisions applicable to the program and its administration, and defines certain terms that we use throughout part 408.

(b) Subpart B contains the requirements for qualification and entitlement to monthly title VIII benefits.

(c) Subpart C contains the provisions relating to the filing and withdrawal of applications.

(d) Subpart D contains the provisions relating to the evidence required for establishing qualification for and entitlement to monthly title VIII benefits.

(e) Subpart E contains the provisions about the amount and payment of monthly benefits.

**§ 408.105 Purpose and administration of the program.**

The purpose of the title VIII program is to assure a basic income level for certain veterans who are entitled to supplemental security income (SSI) and who want to leave the United States to live abroad. The title VIII program is administered by the Social Security Administration.

**§ 408.110 General definitions and use of terms.**

(a) *Terms relating to the Act and regulations.* (1) *The Act* means the Social Security Act as amended (42 U.S.C. Chap.7).

(2) *Title* means the title of the Act.

(3) *Section or §* means a section of the regulations in part 408 of this chapter unless the context indicates otherwise.

(b) *Commissioner; Appeals Council; Administrative Law Judge defined.* (1) *Commissioner* means the Commissioner of Social Security.

(2) *Appeals Council* means the Appeals Council of the Office of Hearings and Appeals of the Social Security Administration or a member or members of the Council designated by the Chairman.

(3) *Administrative Law Judge* means an Administrative Law Judge in the Office of Hearings and Appeals in the Social Security Administration.

(c) *Miscellaneous.* (1) *A calendar month.* The period including all of 24 hours of each day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) *Federal benefit rate (FBR).* The amount of the cash benefit payable under title XVI for the month to an eligible individual who has no income. The FBR does not include any State supplementary payment that is paid by the Commissioner pursuant to an agreement with a State under section 1616(a) of the Act or section 212(b) of Public Law 93–66.

(3) *Qualified individual.* An individual who meets all the requirements for qualification for SVB in § 408.202 and does not meet any of the conditions that prevent qualification in § 408.204.

(4) *Special veterans benefits (SVB)*. The benefits payable to certain veterans of World War II under title VIII of the Act.

(5) *State*. Unless otherwise indicated, this means:

- (i) A State of the United States
- (ii) The District of Columbia; or
- (iii) The Northern Mariana Islands.

(6) *Supplemental Security Income (SSI)*. SSI is the national program for providing a minimum level of income to aged, blind, and disabled individuals under title XVI of the Act.

(7) *United States*. When used in the geographical sense, this is:

- (i) The 50 States;
- (ii) The District of Columbia; and
- (iii) The Northern Mariana Islands.

(8) *We, us or our* means the Social Security Administration (SSA).

(9) *World War II*. The period beginning September 16, 1940 and ending on July 24, 1947.

(10) *You or your* means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who is considering applying for benefits.

#### **§ 408.120 Periods of limitations ending on Federal nonworkdays.**

Title VIII of the Act and the regulations in this part require you to take certain actions within specified time periods or you may lose your right to a portion or all of your benefits. If any such period ends on a Saturday, Sunday, Federal legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, you will have until the next Federal workday to take the prescribed action.

#### **Subpart B—SVB Qualification and Entitlement**

**Authority:** Secs. 702(a)(5), 801, 802, 803, 804, 806, 810 and 1129A of the Social Security Act (42 U.S.C. 902(a)(5), 1001, 1002, 1003, 1004, 1006, 1010 and 1320a–8a); Sec. 251, Pub. L. 106–169, 113 Stat. 1844.

#### **§ 408.201 What is this subpart about?**

You are qualified for SVB if you meet the requirements listed in § 408.202 and if none of the conditions listed in § 408.204 exist. However, you cannot be entitled to receive benefits for any month before the first month in which you reside outside the United States on the first day of the month and meet all the qualification requirements. You must give us any information we request and evidence to prove that you meet these requirements. You continue to be qualified for SVB unless we determine that you no longer meet the

requirements for qualification in § 408.202 or we determine that you are not qualified because one of the conditions listed in § 404.204 of this chapter exists. You continue to be entitled to receive benefits unless we determine you are no longer residing outside the United States.

#### **§ 408.202 How do you qualify for SVB?**

You qualify for SVB if you meet all of the following requirements.

(a) *Age*. You were age 65 or older on December 14, 1999 (the date on which Pub. L. 106–169 was enacted into law).

(b) *World War II veteran*. You are a World War II veteran as explained in § 408.216.

(c) *SSI eligible*. You were eligible for SSI, as explained in § 408.218, for both December 1999 (the month in which Pub. L. 106–169 was enacted into law) and for the month in which you file your application for SVB.

(d) *Application*. You file an application for SVB as explained in subpart C of this part.

(e) *Other benefit income*. You do not have other benefit income, as explained in § 408.220, which is equal to, or more than, 75 percent of the current FBR.

#### **§ 408.204 What conditions will prevent you from qualifying for SVB or being entitled to receive SVB payments?**

(a) *General rule*. Even if you meet all the qualification requirements in § 408.202, you will not be qualified for SVB for or entitled to receive SVB payments for any of the following months.

(1) *Removal from the United States*. Any month that begins after the month in which we are advised by the Attorney General that you have been removed (including deported) from the United States pursuant to section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act and before the month in which you are subsequently lawfully admitted to the United States for permanent residence.

(2) *Fleeing felon*. Any month during any part of which you are fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction in the United States from which you fled, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which you fled, or in the case of the State of New Jersey, is a high misdemeanor.

(3) *Parole violation*. Any month during any part of which you violate a condition of probation or parole imposed under Federal or State law.

(4) *Residence in certain countries*. Any month during which you are not a

citizen or national of the United States and reside in a country to which payments to residents of that country are withheld by the Treasury Department under section 3329 of title 31, United States Code.

(b) *Condition occurs before we determine that you are qualified*. If one of the conditions in paragraph (a) of this section occurs before we determine that you are qualified, we will deny your claim for SVB.

(c) *Condition occurs after we determine that you are qualified*. If one of the conditions in paragraph (a) of this section occurs after we determine that you are qualified for SVB, you cannot receive SVB payments for any month in which the condition exists.

#### **§ 408.206 What happens when you apply for SVB?**

(a) *General rule*. When you apply for SVB, we will ask you for documents and other information that we need to determine if you meet all the requirements for qualification. You must give us complete information (see subpart D of this part for our rules on evidence). If you do not meet all of the requirements for qualification listed in § 408.202, or if one of the conditions listed in § 408.204 exists, we will deny your claim.

(b) *If you are a qualified individual residing in the United States*. If you meet all the requirements for qualification listed in § 408.202 and if none of the conditions listed in § 408.204 exist, we will send you a letter telling you the following:

(1) You are qualified for SVB;

(2) In order to become entitled to SVB, you will have to begin residing outside the United States by the end of the fourth calendar month after the month in which your notice of qualification is dated. For example, if our letter is dated May 15, you must establish residence outside the United States before October 1 of that year; and

(3) What documents and information you must give us to establish that you are residing outside the United States.

#### **§ 408.208 What happens if you establish residence outside the United States within 4 calendar months?**

If you begin residing outside the United States within 4 calendar months after the month in which your SVB qualification notice is dated, we will send you a letter telling you that you are entitled to SVB and the first month for which SVB payments can be made to you. The letter will also tell you the amount of your monthly benefit payments, whether your payments are reduced because of your other benefit

income, and what rights you have to a reconsideration of our determination.

**§ 408.210 What happens if you do not establish residence outside the United States within 4 calendar months?**

If you do not establish residence outside the United States within 4 calendar months after the month in which your SVB qualification notice is dated, we will deny your SVB claim. We will send you a notice explaining what rights you have to a reconsideration of our determination. You will have to file a new application and meet all the requirements for qualification and entitlement based on the new application to become entitled to SVB.

**§ 408.212 What happens if you are a qualified individual already residing outside the United States?**

If you meet all the requirements for qualification listed in § 408.202 and if none of the conditions listed in § 408.204 exist, we will ask you for documents and information to establish your residence outside the United States. If you establish that you are residing outside the United States, we will send you a letter telling you that you are entitled to SVB and the first month for which SVB payments can be made to you. The letter will also tell you the amount of your monthly benefit payments, whether your payments are reduced because of your other benefit income, and what rights you have to a reconsideration of our determination.

**Age**

**§ 408.214 Are you age 65?**

You become age 65 on the first moment of the day before the anniversary of your birth corresponding to age 65. Thus, you must have been born on or before December 15, 1934 to be at least age 65 on December 14, 1999 and to qualify for SVB.

**Military Service**

**§ 408.216 Are you a World War II veteran?**

(a) Service requirements. For SVB purposes, you are a World War II veteran if you:

(1) Served in the active military, naval or air service of the United States during World War II at any time during the period beginning on September 16, 1940 and ending on July 24, 1947; or

(2) Served in the organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the U.S. Armed Forces pursuant to the military order of the President dated July 26, 1941, including among the military forces organized guerrilla forces under commanders appointed,

designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the U.S. Army. This service must have been rendered at any time during the period beginning July 26, 1941 and ending on December 30, 1946.

(b) *Discharge requirements.* You must have been discharged or released from this service under conditions other than dishonorable after service of 90 days or more or, if your service was less than 90 days, because of a disability or injury incurred or aggravated in the line of active duty.

**SSI Eligibility**

**§ 408.218 Do you meet the SSI eligibility requirements?**

For SVB purposes, you are eligible for SSI for a given month if all of the following are met:

(a) You have been determined to be eligible for SSI (except as noted in paragraph (c) of this section); you do not have to actually receive a payment for that month;

(b) Your SSI eligibility has not been terminated for that month; and

(c) Your SSI benefits are not subject to a penalty under § 416.1340 of this chapter. This includes months in which a penalty has been imposed, as well as months in which a penalty cannot be imposed because you are in SSI nonpay status for some other reason.

**Other Benefit Income**

**§ 408.220 Do you have other benefit income?**

(a) *Description of other benefit income.* Other benefit income is any regular periodic payment (such as an annuity, pension, retirement or disability benefit) that you receive. For other benefit income to affect your SVB eligibility, you must have been receiving the other benefit income in any part of the 12-month period before the month in which you filed your application for SVB. Payments received after you become entitled to SVB can be included as other benefit income only if you received a similar payment from the same or a related source during any part of the 12-month period before the month in which you filed your application for SVB.

(b) *When other benefit payments are considered to be similar payments from the same or a related source.* Payments are similar payments from the same or a related source if they are received from sources substantially related to the sources of income received before you became entitled to SVB. For example, if you received U.S. Social Security spouse's benefits in the 12-month

period before you filed your application for SVB and these were changed to widower's benefits after you became entitled to SVB, we would consider this to be from the same or a related source.

(c) *Examples of other benefit income.* Other benefit income can come from a source inside or outside the United States. It includes, but is not limited to, any of the following:

(1) Veterans' compensation or pension,

(2) Workers' compensation,

(3) U.S. or foreign Social Security benefits (not including SSI payments from the U.S.),

(4) Railroad retirement annuity or pension,

(5) Retirement or disability pension,

(6) Individual Retirement Account (IRA) payments, and

(7) Unemployment insurance benefit.

(d) *If you receive a lump-sum payment.* Regular periodic payments can also include lump-sum payments made at your request or as an administrative convenience or practice in place of more frequent payments. See § 408.224(e) for an explanation of how we determine the monthly amount of your benefit income if you receive a lump-sum payment.

**§ 408.222 How does your other benefit income affect your SVB?**

(a) *Income began before you qualify for SVB.* If, at the time you file your application for SVB, your other benefit income is equal to, or more than, the maximum SVB payment possible (see § 408.505), we will deny your SVB claim. If it is less, we will reduce any monthly SVB payments you become entitled to by the amount of your other benefit income (see § 408.510 for a description of how we make the reduction).

(b) *Income begins after you qualify for SVB.* If you have been determined to be qualified for SVB, we will reduce any monthly SVB payments you become entitled to by the amount of your other benefit income (see § 408.510 for a description of how we make the reduction).

**§ 408.224 How do we determine the monthly amount of your other benefit income?**

If your other benefit income is paid in other than monthly amounts, we will compute the equivalent monthly amount as follows:

(a) *Weekly payments.* We multiply the amount of the weekly payment by 52 and divide by 12 to determine the equivalent monthly payment amount.

(b) *Bi-weekly payments.* We multiply the amount of the bi-weekly payment by

26 and divide by 12 to determine the equivalent monthly payment amount.

(c) *Quarterly payments.* We multiply the amount of the quarterly payment by 4 and divide by 12 to determine the equivalent monthly payment amount.

(d) *Semi-annual payments.* We multiply the amount of the semi-annual payment by 2 and divide by 12 to determine the equivalent monthly payment amount.

(e) *Lump sum payment.* If the paying agency will not prorate the lump sum to determine the monthly amount, we will compute the amount as follows:

(1) *If the payment is for a specific period.* We divide the lump sum by the number of months in the period for which the payment was made to determine the equivalent monthly payment amount.

(2) *If the payment is for a lifetime or for an unspecified period.* We divide the lump sum amount by your life expectancy in months at the time the lump sum is paid.

**§ 408.226 What happens if you begin receiving other benefit income after you become entitled to SVB?**

If you begin receiving other benefit income after you become entitled to SVB, we will reduce your SVB by the amount of those payments only if you were receiving similar benefits from the same or a related source during the 12-month period before you filed for SVB. (See § 408.220(b) for a description of when we consider other benefit income to be from the same or a related source.)

**Residence Outside the United States**

**§ 408.228 When do we consider you to be residing outside the United States?**

(a) *Effect of residency on SVB eligibility.* You can be paid SVB only for those months in which you are residing outside the United States but you can not be paid for a month that is earlier than the month in which you filed your application for SVB. You are residing outside the United States in a month only if you reside outside the United States on the first day of that month. For SVB purposes, you can be a resident of only one country at a time. You cannot, for example, maintain a residence in the United States and a residence outside the United States at the same time.

(b) *Definition of residing outside the United States.* We consider you to be residing outside the United States if you:

(1) Have established an actual dwelling place outside the United States; and

(2) Intend to continue to live outside the United States.

(c) *When we will assume you intend to continue living outside the United States.* If you tell us, or the evidence shows, that you intend to reside outside the United States for at least 6 months, we will assume you meet the intent requirement in paragraph (b)(2) of this section. Otherwise we will assume, absent convincing evidence to the contrary, that your stay is temporary and that you are not residing outside the United States.

**§ 408.230 When must you begin residing outside the United States?**

(a) *4-month rule.* Except as provided in paragraph (b) of this section, you must begin residing outside the United States by the end of the fourth calendar month after the month in which the notice explaining that you are qualified for SVB is dated, as explained in § 408.206. If you do not establish residence outside the United States within this 4-month period, we will deny your claim for SVB. You will have to file a new application and meet all the requirements for qualification and entitlement based on the new application to become entitled to SVB.

(b) *When we will extend the 4-month period.* We will extend the 4-month period for establishing residence outside the United States if you are in the United States and are appealing either:

(1) A determination that we made on your SVB claim, or

(2) A determination that we made on a title II and/or a title XVI claim but only if the determination affects your SVB qualification.

(c) *How we extend the 4-month period.* If the requirements in paragraph (b) of this section are met, the 4-month period begins with the month after the month in which your notice of our decision on your appeal is dated or the month in which your appeal rights have expired.

**§ 408.232 When do you lose your foreign resident status?**

(a) *General rule.* We consider you to have lost or abandoned your residence outside the United States if you:

(1) Enter the United States and stay for more than 1 full calendar month (see § 408.234 for exceptions to this rule);

(2) Tell us that you no longer consider yourself to be residing outside the United States; or

(3) Become eligible (as defined by title XVI) for SSI benefits.

(b) *Resumption of SVB following a period of U.S. residence.* Once you lose or abandon your residence outside the United States, you cannot receive SVB again until you meet all the requirements for SVB qualification and

reestablish your residence outside the United States.

*Example:* You leave your home outside the United States on June 15 to visit your son in the United States and return to your home abroad on August 15. Your SVB payments will continue for the months of June and July. However, because you were in the United States for the entire calendar month of July (*i.e.*, all of the first day through all of the last day of July), you are not entitled to an SVB payment for the month of August. Your SVB payments resume with September, the month you reestablished your residence outside the United States.

**§ 408.234 Can you continue to receive SVB payments if you stay in the United States for more than 1 full calendar month?**

(a) *When we will consider your foreign residence to continue.* We will continue to consider you to be a foreign resident and will continue to pay you SVB payments even if you have been in the United States for more than 1 full calendar month if you—

(1) Made a good faith effort to return to your home abroad within that 1-month period but were prevented from doing so by circumstances beyond your control (*e.g.*, sickness, a death in the family, a transportation strike, etc.); or

(2) Are exercising your option to be personally present in the United States to present testimony and other evidence in the appeal of an SSA decision on a claim filed under any SSA-administered program. This extension applies only as long as you are participating in activities where you are providing testimony and other evidence in connection with a determination or decision at a specific level of the appeals process (*e.g.*, a hearing before an administrative law judge).

(b) *When you must return to your home abroad.* When the circumstance/event that was the basis for the continuation of your SVB payments ceases to exist, you must return to your home abroad within 1 full calendar month. If you do not return to your home abroad within this 1-calendar-month period, we will consider you to have lost or abandoned your foreign resident status for SVB purposes and we will stop your SVB payments with the first day of the month following the first full calendar month you remain in the United States.

**Subpart C—Filing Applications**

**Authority:** Secs. 702(a)(5), 802, 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1102, 1106 and 1110); Sec. 251, Pub. L. 106–169, 113 Stat. 1844.

## Filing Your Application

### § 408.301 What is this subpart about?

This subpart contains our rules about filing applications for SVB. It explains what an application is, who may sign it, where and when it must be signed and filed, the period of time it is in effect, and how it may be withdrawn. This subpart also explains when a written statement or an oral inquiry may be considered to establish your application filing date.

### § 408.305 Why do you need to file an application to receive benefits?

In addition to meeting other requirements, you must file an application to become entitled to SVB. If you believe you may be entitled to SVB, you should file an application. Filing an application will—

- (a) Permit us to make a formal decision on whether you qualify for SVB;
- (b) Assure that you receive SVB for any months you are entitled to receive payments; and
- (c) Give you the right to appeal if you are dissatisfied with our determination.

### § 408.310 What makes an application a claim for SVB?

To be considered a claim for SVB, an application must generally meet all of the following conditions:

- (a) It must be on the prescribed SVB application form (SSA-2000-F6, Application for Special Benefits for World War II Veterans).
- (b) It must be completed and filed with SSA as described in § 408.325.
- (c) It must be signed by you or by someone who may sign an application for you as described in § 408.315.
- (d) You must be alive at the time it is filed.

### § 408.315 Who may sign your application?

(a) *When you must sign.* If you are mentally competent, and physically able to do so, you must sign your own application.

(b) *When someone else may sign for you.* (1) If you are mentally incompetent, or physically unable to sign, your application may be signed by a court-appointed representative or a person who is responsible for your care, including a relative. If you are in the care of an institution, the manager or principal officer of the institution may sign your application.

(2) If it is necessary to protect you from losing benefits and there is good cause why you could not sign the application, we may accept an application signed by someone other than you or a person described in paragraph (b)(1) of this section.

*Example:* Mr. Smith comes to a Social Security office a few days before the end of a month to file an application for SVB for his neighbor, Mr. Jones. Mr. Jones, a 68-year-old widower, just suffered a heart attack and is in the hospital. He asked Mr. Smith to file the application for him. We will accept an application signed by Mr. Smith because it would not be possible to have Mr. Jones sign and file the application until the next calendar month and a loss of one month's benefits would result.

### § 408.320 What evidence shows that a person has authority to sign an application for you?

(a) A person who signs an application for you will be required to give us evidence of his or her authority to sign the application for you under the following rules:

(1) If the person who signs is a court-appointed representative, he or she must give us a certificate issued by the court showing authority to act for you.

(2) If the person who signs is not a court-appointed representative, he or she must give us a statement describing his or her relationship to you. The statement must also describe the extent to which the person is responsible for your care.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for your care, he or she must give us a statement indicating the person's position of responsibility at the institution.

(b) We may, at any time, require additional evidence to establish the authority of a person to sign an application for you.

### § 408.325 When is your application considered filed?

(a) *General rule.* We consider an application for SVB filed on the day it is received by an SSA employee at one of our offices, by an SSA employee who is authorized to receive it at a place other than one of our offices, or by any office of the U.S. Foreign Service or by the Veterans Affairs Regional Office in the Philippines.

(b) *Exceptions.* (1) When we receive an application that is mailed, we will use the date shown by the United States postmark as the filing date if using the date we receive it would result in your entitlement to additional benefits. If the postmark is unreadable, or there is no United States postmark, we will use the date the application is signed (if dated) or 5 days before the day we receive the signed application, whichever date is later.

(2) We consider an application to be filed on the date of the filing of a written statement or the making of an oral inquiry under the conditions in §§ 408.340 and 408.345.

(3) We will establish a deemed filing date of an application in a case of misinformation under the conditions described in § 408.351. The filing date of the application will be a date determined under § 408.351(b).

### § 408.330 How long will your application remain in effect?

Your application for SVB will remain in effect from the date it is filed until we make a final determination on it, unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

### Filing Date Based on Written Statement or Oral Inquiry

#### § 408.340 When will we use a written statement as your filing date?

If you file with us under the rules stated in § 408.325 a written statement, such as a letter, indicating your intent to claim SVB, we will use the filing date of the written statement as the filing date of your application. If the written statement is mailed, we will use the date the statement was mailed to us as shown by the United States postmark. If the postmark is unreadable or there is no United States postmark, we will use the date the statement is signed (if dated) or 5 days before the day we receive the written statement, whichever date is later, as the filing date. In order for us to use your written statement to protect your filing date, the following requirements must be met:

(a) The statement indicates your intent to file for benefits.

(b) The statement is signed by you, your spouse, or a person described in § 408.315.

(c) You file an application with us on an application form as described in § 408.310(a), or one is filed for you by a person described in § 408.315, within 60 days after the date of a notice we will send advising of the need to file an application. The notice will say that we will make an initial determination of your qualification if an application form is filed within 60 days after the date of the notice. We will send the notice to you. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who submitted the written statement.

(d) You are alive when the application is filed.

#### § 408.345 When will we use the date of an oral inquiry as your application filing date?

We will use the date of an oral inquiry about SVB as the filing date of your

application for SVB if the following requirements are met:

(a) The inquiry asks about your entitlement to SVB.

(b) The inquiry is made by you, your spouse, or a person who may sign an application on your behalf as described in § 408.315.

(c) The inquiry, whether in person or by telephone, is directed to an office or an official described in § 408.325(a).

(d) You, or a person on your behalf as described in § 408.315, file an application on a prescribed form within 60 days after the date of the notice we will send telling of the need to file an application. The notice will say that we will make an initial determination on whether you qualify for SVB if an application form is filed within 60 days after the date of the notice. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who made the inquiry.

(e) You are alive when the prescribed application is filed.

#### Deemed Filing Date Based on Misinformation

##### § 408.351 What happens if we give you misinformation about filing an application?

(a) *General rule.* You may have considered applying for SVB, for yourself or another person and you may have contacted us in writing, by telephone or in person to inquire about filing an application for SVB. It is possible that in responding to your inquiry, we may have given you misinformation about qualification for such benefits that caused you not to file an application at that time. If this happened and use of that date will result in entitlement to additional benefits, and you later file an application for SVB with us, we may establish an earlier filing date as explained in paragraphs (b) through (f) of this section.

(b) *Deemed filing date of an application based on misinformation.* Subject to the requirements and conditions in paragraphs (c) through (f) of this section, we may establish a deemed filing date of an application for SVB under the following provisions.

(1) If we determine that you failed to apply for SVB because we gave you misinformation about qualification for or entitlement to such benefits, we will deem an application for such benefits to have been filed with us on the later of—

(i) The date on which we gave you the misinformation; or

(ii) The date on which all of the requirements for qualification to SVB were met, other than the requirement of filing an application.

(2) Before we may establish a deemed filing date of an application for SVB under paragraph (b)(1) of this section, you or a person described in § 408.315 must file an application for such benefits.

(c) *Requirements concerning the misinformation.* We apply the following requirements for purposes of paragraph (b) of this section.

(1) The misinformation must have been provided to you by one of our employees while he or she was acting in his or her official capacity as our employee. For purposes of this section, an employee includes an officer of SSA, an employee of a U.S. Foreign Service office, and an employee of the SSA Division of the Veterans Affairs Regional Office in the Philippines who is authorized to take and develop Social Security claims.

(2) Misinformation is information which we consider to be incorrect, misleading, or incomplete in view of the facts which you gave to the employee, or of which the employee was aware or should have been aware, regarding your particular circumstances. In addition, for us to find that the information you were given was incomplete, the employee must have failed to provide you with the appropriate, additional information which he or she would be required to provide in carrying out his or her official duties.

(3) The misinformation may have been provided to you orally or in writing.

(4) The misinformation must have been provided to you in response to a specific request by you to us for information about your qualification for SVB.

(d) *Evidence that misinformation was provided.* We will consider the following evidence in making a determination under paragraph (b) of this section.

(1) *Preferred evidence.* Preferred evidence is written evidence which relates directly to your inquiry about your qualification for SVB and which shows that we gave you misinformation which caused you not to file an application. Preferred evidence includes, but is not limited to, the following—

(i) A notice, letter or other document which was issued by us and addressed to you; or

(ii) Our record of your telephone call, letter or in-person contact.

(2) *Other evidence.* In the absence of preferred evidence, we will consider other evidence, including your statements about the alleged misinformation, to determine whether we gave you misinformation, which

caused you not to file an application. We will not find that we gave you misinformation, however, based solely on your statements. Other evidence which you provide or which we obtain must support your statements. Evidence which we will consider includes, but is not limited to, the following—

(i) Your statements about the alleged misinformation, including statements about—

(A) The date and time of the alleged contact(s);

(B) How the contact was made, e.g., by telephone or in person;

(C) The reason(s) the contact was made;

(D) Who gave the misinformation; and

(E) The questions you asked and the facts you gave us, and the questions we asked and the information we gave you, at the time of the contact;

(ii) Statements from others who were present when you were given the alleged misinformation, e.g., a neighbor who accompanied you to our office;

(iii) If you can identify the employee or the employee can recall your inquiry about benefits—

(A) Statements from the employee concerning the alleged contact, including statements about the questions you asked, the facts you gave, the questions the employee asked, and the information provided to you at the time of the alleged contact; and

(B) Our assessment of the likelihood that the employee provided the alleged misinformation;

(iv) An evaluation of the credibility and the validity of your allegations in conjunction with other relevant information; and

(v) Any other information regarding your alleged contact.

(e) *Information which does not constitute satisfactory proof that misinformation was given.* Certain kinds of information will not be considered satisfactory proof that we gave you misinformation which caused you not to file an application. Examples of such information include—

(1) General informational pamphlets that we issue to provide basic program information;

(2) General information which we review or prepare but which is disseminated by the media, e.g., radio, television, magazines, and newspapers; and

(3) Information provided by other governmental agencies, e.g., the Department of Veterans Affairs (except for certain employees of the SSA Division of the Veterans Affairs Regional Office in the Philippines as provided in paragraph (c)(1) of this section), the Department of Defense,

State unemployment agencies, and State and local governments.

(f) *Claim for benefits based on misinformation.* You may make a claim for SVB based on misinformation at any time. Your claim must contain information that will enable us to determine if we did provide misinformation to you about qualification for SVB which caused you not to file an application. Specifically, your claim must be in writing and it must explain what information was provided, how, when and where it was provided and by whom, and why the information caused you not to file an application. If you give us this information, we will make a determination on such a claim for benefits if all of the following conditions are also met.

(1) An application for SVB is filed with us by you or someone described in § 408.315 who may file. The application must be filed after the alleged misinformation was provided. This application may be—

(i) An application on which we have made a previous final determination or decision awarding SVB, but only if the claimant continues to be entitled to benefits based on that application;

(ii) An application on which we have made a previous final determination or decision denying the benefits, but only if such determination or decision is reopened; or

(iii) A new application on which we have not made a final determination or decision.

(2) The establishment of a deemed filing date of an application for benefits based on misinformation could result in entitlement to benefits or payment of additional benefits.

(3) We have not made a previous final determination or decision to which you were a party on a claim for benefits based on alleged misinformation involving the same facts and issues. This provision does not apply, however, if the final determination or decision may be reopened.

### Withdrawal of Application

#### § 408.355 Can you withdraw your application?

(a) Request for withdrawal filed before a determination is made. You may withdraw your application for SVB before we make a determination on it if—

(1) You, or a person who may sign an application for you under § 408.315, file a written request for withdrawal at a place described in § 408.325; and

(2) You are alive at the time the request is filed.

(b) *Request for withdrawal filed after a determination is made.* An application may be withdrawn after we make a determination on it if you repay all benefits already paid based on the application being withdrawn or we are satisfied that the benefits will be repaid.

(c) *Effect of withdrawal.* If we approve your request to withdraw your application, we consider that the application was never filed. If we disapprove your request for withdrawal, we treat your application as though you did not file a request for withdrawal.

#### § 408.360 Can you cancel your request to withdraw your application?

You may request to cancel your request to withdraw your application and have your application reinstated if all of the following requirements are met:

(a) You, or someone who may sign an application for you under § 408.315, file a written request for cancellation at a place described in § 408.325;

(b) You are alive at the time you file your request for cancellation; and

(c) A cancellation request received after we have approved your withdrawal must be filed no later than 60 days after the date of the notice of approval.

### Subpart D—Evidence Requirements

**Authority:** Secs. 702(a)(5), 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1006, and 1010); sec. 251, Pub. L. 106-169, 113 Stat. 1844.

#### General Information

##### § 408.401 What is this subpart about?

We cannot determine your entitlement to SVB based solely on your statements about your qualification for benefits or other facts concerning payments to you. We will ask you for specific evidence or additional information. We may verify the evidence you give us with other sources to ensure that it is correct. This subpart contains our rules about the evidence you need to give us when you claim SVB.

##### § 408.402 When do you need to give us evidence?

When you apply for SVB, we will ask you for any evidence we need to make sure that you meet the SVB qualification and entitlement requirements. After you begin receiving SVB, we may ask you for evidence showing whether your SVB payments should be reduced or stopped. We will help you get any documents you need but do not have. If your evidence is a foreign-language record or document, we can have it translated for you. The evidence you give us will be

kept confidential and not disclosed to anyone but you except under the rules set out in part 401 of this chapter. You should also be aware that section 811 of the Act provides criminal penalties for misrepresenting the facts or for making false statements to obtain SVB payments for yourself or someone else, or to continue entitlement to benefits.

##### § 408.403 Where should you give us your evidence?

You should give your evidence to the people at a Social Security Administration office. In the Philippines, you should give your evidence to the people at the Veterans Affairs Regional Office. Elsewhere outside the United States, you should give your evidence to the people at the nearest U.S. Social Security office or a United States Foreign Service Office.

##### § 408.404 What happens if you fail to give us the evidence we ask for?

(a) *You have not yet qualified for SVB.* Generally, we will ask you to give us specific evidence or information by a certain date to prove that you qualify for SVB or to prove your foreign residence. If we do not receive the evidence or information by that date, we may decide that you do not qualify for SVB or may not receive SVB and deny your claim.

(b) *You have qualified for or become entitled to SVB.* If you have already qualified for or become entitled to SVB, we may ask you to give us information by a specific date to decide whether you should receive benefits or, if you are already receiving benefits, whether your benefits should be stopped or reduced. If you do not give us the requested evidence or information by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be stopped or reduced.

(c) *If you need more time.* You should let us know if you are unable to give us the evidence or information within the specified time and explain why there will be a delay. If this delay is due to illness, failure to receive timely evidence you have asked for from another source, or a similar circumstance, we will give you additional time to give us the evidence.

##### § 408.405 When do we require original records or copies as evidence?

(a) *General rule.* To prove your qualification for or continuing entitlement to SVB, you may be asked to show us an original document or record. These original documents or records will be returned to you after we have photocopied them. We will also accept copies of original records that are properly certified and some uncertified birth certifications. These types of

records are described in paragraphs (b) and (c) of this section.

(b) *Certified copies of original records.* You may give us copies of original records or extracts from records if they are certified as true and exact copies by:

- (1) The official custodian of the record;
- (2) A Social Security Administration employee authorized to certify copies;
- (3) A Veterans Affairs employee if the evidence was given to that agency to obtain veteran's benefits;
- (4) An employee of the Veterans Affairs Regional Office, Manila, Philippines who is authorized to certify copies; or

(5) A U.S. Consular Officer or employee of the Department of State authorized to certify evidence received outside the United States.

(c) *Uncertified copies of original birth records.* You may give us an uncertified photocopy of a birth registration notification as evidence of age where it is the practice of the local birth registrar to issue them in this way.

**§ 408.406 How do we evaluate the evidence you give us?**

When you give us evidence, we examine it to see if it is convincing evidence. This means that unless we have information in our records that raises a doubt about the evidence, other evidence of the same fact will not be needed. If the evidence you give us is not convincing by itself, we may ask you for additional evidence. In evaluating whether the evidence you give us is convincing, we consider such things as whether:

- (a) The information contained in the evidence was given by a person in a position to know the facts;
- (b) There was any reason to give false information when the evidence was created;
- (c) The information in the evidence was given under oath, or with witnesses present, or with the knowledge that there was a penalty for giving false information;
- (d) The evidence was created at the time the event took place or shortly thereafter;
- (e) The evidence has been altered or has any erasures on it; and
- (f) The information contained in the evidence agrees with other available evidence including our records.

**Age**

**§ 408.410 When do you need to give us evidence of your age?**

To qualify for SVB you must establish that you were age 65 or older on December 14, 1999, the date on which Public Law 106–169 was enacted into

law. If we have already established your age or date of birth in connection with your claim for other benefit programs that we administer, you will not have to give us evidence of your age for your SVB claim. If we have not established your age or date of birth, you must give us evidence of your age or date of birth. In the absence of information to the contrary, we generally will not ask for additional evidence of your age or date of birth if you state that you are at least age 68, and you submit documentary evidence that is at least 3 years old when the application is filed and supports your statement.

**§ 408.412 What kinds of evidence of age do you need to give us?**

For a description of the kinds of evidence of age you may need to give us, see § 416.802 of this chapter.

**§ 408.413 How do we evaluate the evidence of age you give us?**

In evaluating the evidence of age you give us, we use the rules in § 416.803 of this chapter.

**Military Service**

**§ 408.420 What evidence of World War II military service do you need to give us?**

(a) *Kinds of evidence you can give us.* To show that you are a World War II veteran as defined in § 408.216, you can give us any of the documents listed in § 404.1370(b)(1) through (5) of this chapter that were issued by a U.S. Government agency. However, depending on the type of document you give us and what the document shows, we may verify your military service, or the dates of your service, with the National Personnel Records Center (NPRC) in St. Louis, Missouri. If we do, we will use the information in NPRC's records to determine whether you meet the military service requirements for SVB.

(b) *What the evidence must show.* When you file an application for SVB, you must give us evidence of your World War II military service. The evidence you give us must show:

- (1) Your name;
- (2) The branch of service in which you served;
- (3) The dates of your military service;
- (4) Your military service serial number;
- (5) The character of your discharge; and
- (6) If your service was in the organized military forces of the Government of the Commonwealth of the Philippines (including the organized guerrilla forces), the period of your service that was under the control of U.S. Armed Forces.

**SSI Eligibility**

**§ 408.425 How do we establish your eligibility for SSI?**

To qualify for SVB, you must have been eligible for SSI for the month of December 1999, the month in which Public Law 106–169 was enacted, and for the month in which you filed your application for SVB. You do not have to submit evidence of this. We will use our SSI record of your eligibility to determine if you meet these requirements.

**Other Benefit Income**

**§ 408.430 When do you need to give us evidence of your other benefit income?**

If you tell us or if we have information indicating that you are receiving other benefit income that could affect your qualification for or the amount of your SVB payments, we will ask you to give us evidence of that income as explained in § 408.432.

**§ 408.432 What kind of evidence of your other benefit income do you need to give us?**

As evidence of your other benefit income, we may require a document such as an award notice or other letter from the paying agency or written notification from the former employer, insurance company, etc. The evidence should show the benefit payable, the current amount of the payment, and the date the payment began.

**Residence**

**§ 408.435 How do you prove that you are residing outside the United States?**

(a) *General rule.* To establish that you are residing outside the United States for SVB purposes, you must give us all of the following:

- (1) Evidence of the date on which you arrived in the country in which you are residing;
- (2) A statement signed by you showing the address at which you are living and that you intend to continue living there; and
- (3) Evidence that you are actually living at the address given in your signed statement.

(b) *Evidence of the date you entered the foreign country.* To establish the date you arrived in the country in which you are residing, you can give us evidence such as:

- (1) A visa or passport showing the date you entered that country;
- (2) Your plane ticket showing the date you arrived in that country; or
- (3) An entry permit showing the date you entered that country.

(c) *Evidence of your actual place of residence.* To establish your actual place

of residence, you can give us evidence such as:

- (1) A lease agreement showing where you live;
- (2) Rental or mortgage receipts;
- (3) Utility or other bills addressed to you at the address where you live;
- (4) A signed statement from a local official showing that he or she knows where you live, when you began living there and how he or she knows this information; or
- (5) A Standard Form 1199A, Direct Deposit Sign-Up Form, showing your address abroad and signed by an official of the financial institution after the date you arrived in the country in which you will be residing.

**§ 408.437 How do you prove that you had good cause for staying in the United States for more than 1 full calendar month?**

(a) *General rule.* If you believe that you meet the requirements in § 408.234 and that you should continue to receive SVB payments even though you have been in the United States for more than 1 full calendar month, you must give us evidence that you had good cause for staying in the United States.

(b) *Circumstances prevent you from returning to your home abroad.* To prove that you had good cause for staying in the United States for more than 1 full calendar month, you must give us evidence of your good faith effort to return to your home abroad before the 1-month period had elapsed and of the circumstances/event which prevented your return to your home abroad.

(1) *Evidence of your good faith effort to return to your home abroad.* Evidence of your plans to return to your home abroad can include, but is not limited to:

(i) A plane ticket showing that you intended to return to your home abroad before the expiration of 1 full calendar month; or

(ii) Notice from a travel agency or airline confirming the cancellation of your reservation to return to your home abroad on a date within 1 full calendar month.

(2) *Evidence of the circumstances preventing your return to your home abroad.* The evidence we will accept from you to support the circumstance or event that prevented you from returning to your home abroad will depend on the reason you are staying in the United States. It can include, but is not limited to, a:

(i) Newspaper article or other publication describing the event or natural disaster which prevented your return; or

(ii) Doctor's statement, etc. showing that you are unable to travel; or

(iii) Death certificate or notice if you are staying in the United States to attend the funeral of a member of your family.

(c) *You are appealing a decision we made.* To establish that you had good cause to stay in the United States for more than 1 full calendar month because you want to appear in person at the appeal of a decision on a claim filed under a program administered by the Social Security Administration, you must submit evidence of this. The evidence must identify the appeal proceeding and the dates you are scheduled to attend.

(d) *When we may ask for more evidence.* If you stay in the United States for several months, we may ask you to give us more evidence to prove that you are still unable to return to your home abroad.

**Subpart E—Amount and Payment of Benefits**

**Authority:** Secs. 702(a)(5), 801, 805, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1001, 1005, and 1010); Sec. 251, Pub. L. 106-169, 113 Stat. 1844.

**§ 408.501 What is this subpart about?**

This subpart explains how we compute the amount of your monthly SVB payment, including how we reduce your payments if you receive other benefit income. It also explains how we pay benefits under the SVB program.

**§ 408.505 How do we determine the amount of your SVB payment?**

(a) *Maximum SVB payment.* The maximum monthly SVB payment is equal to 75% of the FBR for an individual under title XVI of the Act. See § 416.410 of this chapter.

(b) *Cost-of-living adjustments in the FBR.* The maximum SVB amount will increase whenever there is a cost-of-living increase in the SSI FBR under the provisions of § 416.405 of this chapter. The basic SVB amount following such an increase is equal to 75 percent of the increased FBR.

(c) *When we will reduce the amount of your basic benefit.* We will reduce your basic benefit by the amount of the other benefit income you receive in that month, as explained in § 408.510.

**§ 408.510 How do we reduce your SVB when you receive other benefit income?**

(a) *Amount of the reduction.* If you receive other benefit income as defined in § 408.220, we will reduce your SVB payment by the amount of the other benefit income you receive in that month. The reduction is on a dollar-for-dollar and cents-for-cents basis. We do not round SVB payment amounts except

as described in paragraph (b) of this section.

(b) *Minimum benefit amount.* If the reduction described in paragraph (a) of this section results in a benefit amount that is greater than zero but less than \$1.00, we will pay you a benefit of \$1.00 for that month.

**§ 408.515 When do we make SVB payments?**

SVB payments are made on the first day of each month and represent payment for that month. If the first day of the month falls on a Saturday, Sunday, or Federal legal holiday, payment will be made on the first day preceding such day that is not a Saturday, Sunday, or Federal legal holiday.

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

[Docket No. DEA-238F]

**Schedules of Controlled Substances: Temporary Placement of alpha-methyltryptamine and 5-methoxy-N,N-diisopropyltryptamine into Schedule I**

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this final rule to temporarily place alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA. This final action is based on a finding by the DEA Deputy Administrator that the placement of AMT and 5-MeO-DIPT into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this rule, the criminal sanctions and regulatory controls of Schedule I substances under the CSA will be applicable to the manufacture, distribution, and possession of AMT and 5-MeO-DIPT.

**EFFECTIVE DATE:** April; 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307-7183.