

and also will be referred to the Division of Enforcement. Deficiency letters describe problems found in an examination, and direct the recipient to correct the problems in a given period of time.

The Division of Enforcement does not provide any informal guidance to the public as to compliance with the securities laws. The Division investigates possible violations of the federal securities laws with a view toward advising the Commission whether civil or administrative action should be initiated, and prosecutes any such actions approved by the Commission.²³

III. Information Outside the Informal Guidance Program

The Commission also provides numerous sources for general information that are outside the informal guidance program. A brief description of these follows.

A. Municipal Securities Ombudsman

The Municipal Securities Ombudsman, in the Office of Municipal Securities, assists municipal securities issuers in obtaining information from Commission staff. The telephone number for the Municipal Securities Ombudsman is 202-942-7300. The e-mail address is oms@sec.gov.

B. Commission Web Site

The Commission maintains a site on the World Wide Web at <http://www.sec.gov>. This Web site contains brochures, news, and information about the Commission, including a list of Commission Internet mailboxes at <http://www.sec.gov/asec/mailboxes>. The Commission also provides access to its electronic filing database, known as EDGAR, through the Web site. The EDGAR database includes most recently filed registration statements, periodic reports and other disclosure documents filed with the Commission. The Web site also includes a page that contains information of special interest to small businesses, and a list of pending and completed Commission rulemakings of particular relevance to small businesses.

C. General Publications and Information on Request

The Commission makes available a variety of publications and resources for information about the Commission and the federal securities laws. On January 28, 1997, the Commission designated many of these publications as small

business compliance guides and described how to obtain these materials.²⁴

D. General Information, Filings and Releases on Request

The Commission's Office of Investment Education and Assistance produces educational material and programs for the public that describe preventive measures investors can take to protect their investments from fraud and abuse. Members of the public may reach this office at the Commission's toll-free number, 800-SEC-0330, to obtain information on topics of current interest and to obtain specific publications. Members of the public also may telephone the Public Reference Room at 202-942-8090, or write to the Public Reference Room at the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549 to obtain non-confidential documents from the Commission.²⁵ Information available from the Public Reference Room includes copies of Commission opinions, statements of policy adopted by the Commission, certain staff manuals and instructions, indices of opinions and statements of policy, required filings with the Commission that are not confidential, requests or petitions for a change in Commission rules, no-action and interpretive letters, exemptions from Commission regulation (when publicly available), transcripts of public proceedings, and Commission reports to Congress.²⁶ Some of these items also may be retrieved from the Commission's Web site.

²⁴ Securities Act Rel. No. 7342; 62 FR 4104 (Jan. 28, 1997) (codified at 17 CFR 202.8).

²⁵ The Commission generally will not publish or make available materials:

- (1) specifically authorized by executive order to be kept secret or that are classified;
- (2) related solely to internal personnel rules and practices;
- (3) specifically exempted from disclosure by statute;
- (4) containing privileged and confidential personal financial information or disclosing trade secrets;
- (5) that are interagency or intra-agency memoranda or communications, except those which would routinely be made available in litigation;
- (6) that are records whose release would constitute a clearly unwarranted invasion of personal privacy;
- (7) that are records compiled for law enforcement purposes;
- (8) contained in or related to any examination of financial institutions; or
- (9) that set forth geological or geophysical information and data concerning wells.

17 CFR 200.80(b).

²⁶ The Public Reference Room charges for copies of these materials.

IV. Regulatory Requirements

The Commission's informal guidance program is not an agency rule and, therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking, opportunities for public participation, and prior publication are not applicable.²⁷ Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or another statute, are not applicable.²⁸

Dated: March 27, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-8359 Filed 4-1-97; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AE44

Federal Old-Age, Survivors and Disability Insurance; Report of Earnings Under the Social Security Earnings Test

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: This final rule amends our regulations regarding reports of earnings to the Social Security Administration (SSA) required of beneficiaries who work and earn more than the applicable exempt amount. Beneficiaries under age 70, who work and earn more than the applicable exempt amount, are required by law to report their earnings to SSA within three months and 15 days following the close of their tax year (usually April 15). As a result of our ongoing efforts both to improve customer service and to reduce the public's paperwork burden, we are changing our regulations to state that we can accept the W-2 report filed by the employer with SSA, and/or the self-employment income tax return filed by the beneficiary with the Internal Revenue Service (IRS), as the report of earnings. We will use the information (wages and net earnings from self-employment) contained in those reports together with other pertinent information to adjust benefits under the earnings test.

DATES: This final rule is effective April 2, 1997.

²⁷ 5 U.S.C. 553.

²⁸ 5 U.S.C. 601-602.

²³ SBREFA requires agencies to establish penalty reduction policies for small entities, which the Commission is doing in a companion release issued today. Securities Act Rel. No. 7408 (Mar. 27, 1997).

FOR FURTHER INFORMATION CONTACT:

Robert Augustine, Division of Regulations and Rulings, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966-5121. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: Under the Social Security earnings test set out in section 203 of the Social Security Act (the Act), benefits are reduced if the annual earnings of a beneficiary (receiving other than disability benefits), under age 70, exceed certain exempt amounts. The exempt amounts are established by law. Individuals who are entitled to a monthly benefit (other than a disability benefit) during the year and who earn over the exempt amount are required to file a report of earnings with the SSA within three months and 15 days following the close of their tax year (usually April 15). The reports may be filed on a form prescribed by SSA, or in person, or by telephone. The report may be filed by someone other than the beneficiary, provided the report contains the required information. Failure to file a report as required will result in a monetary penalty, unless we find that there was good cause for filing late. There are 330,833 public reporting burden hours associated with the completion and filing of these annual earnings reports.

Working beneficiaries are also required to report their income to the IRS during the same time period. SSA receives and processes W-2 information from employers. We also receive limited information from IRS from individual self-employment income tax returns that are filed. Wages and net-earnings from self-employment are "posted" to individual earnings records as part of our mission to maintain accurate earnings records for benefit payment. Until recently, we have been unable to use the earnings information we receive from W-2 forms and self-employment tax returns as the annual report because it took several years for SSA to receive and process the earnings information from the W-2 forms and the tax returns. For that reason, we provided in § 404.452(b) of our regulations that the filing of tax returns with the IRS was not such a report as is required to be filed for the annual earnings test, even where the tax returns showed the same wages and net earnings from self-employment that must be reported to us for purposes of the annual earnings test. Although SSA was unable to use earnings information from W-2 forms and self-employment tax returns to adjust

benefits on a timely basis, we have traditionally used this information as a check to ensure beneficiary compliance with the reporting requirements of the annual earnings test.

Recent improvements in employer reporting practices and in SSA's Annual Wage Reporting (AWR) process have made it feasible and desirable for SSA to change its process for obtaining earnings information from working beneficiaries. For the majority of beneficiaries, information from the W-2 report and/or the self-employment tax return is now processed quickly enough that it is sufficient to serve as the "annual report" without need for further action by the beneficiary. Therefore, as part of the "reinventing government" initiative and in order to reduce the reporting burden on the public, improve customer service and save administrative costs, we are revising § 404.452 to state that the form W-2 filed by the employer with SSA and/or the self-employment income tax return filed by beneficiaries with IRS may serve as the annual report of earnings. Because of this change, SSA will no longer print and mail Annual Report of Earnings forms. For most beneficiaries, the process will be totally automated, with SSA receiving and processing earnings information reported for tax purposes and using that information in conjunction with other relevant information to adjust the Social Security benefits payable accordingly.

Certain situations will require more information than is contained on the form W-2 and self-employment income tax return. When these situations occur, a beneficiary will still have to contact SSA to provide the information in order to ensure the correct amount of benefits are paid, unless the information was otherwise provided to us. In addition, some beneficiaries may wish to file a report directly with SSA, in order to have their benefits adjusted sooner. (Most adjustments now occur during the period February through May, based on reports filed directly with us, but would take place June through October if based on reports filed through IRS). In these instances, we will accept a report of earnings in writing, in person, or over the telephone, from beneficiaries who still need or wish to file a report.

For example, under IRS regulations, wages are reported on forms W-2 for the year in which they are paid. Under the Social Security earnings test, wages are counted for the year in which services are performed. Therefore, if the form W-2 shows wages that were earned in a year or years prior to the year for which the report is made, e.g., deferred compensation, the beneficiary will need

to report to us the correct amount of earnings for the year reported.

There is a similar provision for the self-employed (applicable to years after the initial year of entitlement) that may require contact when no services have been performed in the year for which net earnings from self-employment are reported. Furthermore, in the year in which the monthly earnings test applies (frequently the year of retirement), a beneficiary who has not already done so will need to provide monthly earnings information to SSA that cannot be discerned from the form W-2 or the self-employment income tax return.

Additional examples of situations where other pertinent information must be provided are:

- The beneficiary earned wages above the exempt amount and also had a net loss from self-employment;
- There were wages reported on a W-2 that will be included on a self-employment tax return (e.g., ministers and certain church workers);
- The beneficiary is self-employed and reports earnings on a fiscal year basis which is not the calendar year;
- The beneficiary had Federal agricultural program payments or income from carry-over crops that is included on the SE return;
- The beneficiary estimated earnings over the exempt amount and some benefits were withheld, but there were no earnings for the year, i.e., no wages reported, no self-employment.

SSA already has methods of collecting some of the supplemental information needed to correctly adjust benefits under the earnings test when that information is needed. Much of the information can be gathered in the initial claims process. We also work with employers and payroll groups to have them report directly to us certain payments that should not be counted under the earnings test. We will continue to use these methods as well as develop other means to obtain supplemental information needed to correctly adjust benefits without a separate report of earnings from the beneficiary. We will provide an explanation of the process during the claims interview, and we will provide written information through our public information materials that will allow beneficiaries to understand what earnings should be counted under the earnings test and the situations in which we would need additional information. When we adjust benefits based on the earnings posted to the beneficiary's record, we will, in our notice to the beneficiary, provide full information regarding the earnings that we used and the situations in which those earnings

may not be correct. This will ensure that beneficiaries have full knowledge of our actions. Our notice will also tell beneficiaries how to obtain a reconsideration of our determination if they feel we were wrong, and will advise them of their responsibility to give us any further information that could be pertinent to their benefit adjustment.

It should be noted that we are not revising our regulations regarding extension of time for filing a report (§ 404.452(f)). The deadline for filing employer reports (W-2 forms) is well within the timeframes for required annual reports. In relying on these, as well as the SE tax return information, SSA will assume that posted earnings are based on timely filed reports. However, when a beneficiary requests an extension of time from IRS for filing a self-employment tax return, the beneficiary must either file a timely report of earnings with SSA, or request an extension of time for filing such a report from SSA. An extension granted by IRS will not be considered an extension of time granted by SSA.

This change in our rules will result in improved service to our beneficiaries. First, this final rule will reduce the burden associated with the double filing of information with both SSA and IRS. Second, SSA will be able to shift resources devoted to the solicitation and processing of reports from beneficiaries under the current annual report process to other priority workloads, such as processing claims for benefits and responding to telephone inquiries. Finally, this rule supports the President's request in his remarks on May 22, 1995 on signing the Paperwork Reduction Act of 1995, that agencies review their regulations with the goal of reducing by half the frequency of reports required from citizens. This final rule will eliminate the annual report of earnings form and the need for most working beneficiaries to file a separate report of earnings with SSA, resulting in a savings of up to 330,833 public burden hours each year.

We are also revising paragraphs (a)(1) and (a)(2) of § 404.452 by changing age 72 to age 70. These revisions reflect the statutory change in the Social Security Amendments of 1977 that reduced from age 72 to 70, the age at which beneficiaries become exempt from the annual earnings test. This change was originally scheduled to take effect in 1982 but, due to a provision in the Omnibus Budget Reconciliation Act of 1981, it did not become effective until 1983. Since the statutory provisions were self-implementing, we exempted working beneficiaries age 70 and over

from the annual earnings test beginning in 1983. However, we have not previously updated this regulation to take account of this statutory change.

This regulation was published in the **Federal Register** (62 FR 349) as a notice of proposed rulemaking (NPRM) on January 3, 1997. Interested parties were given 30 days to submit comments. No public comments were received. We are, therefore, publishing this final rule with no changes from the proposed rule.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103-296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides in 5 U.S.C. 553(d)(1) for an exception to the requirement for a 30-day delay in the effective date of a substantive rule if the rule grants or recognizes an exemption or relieves a restriction. As indicated above, this final rule will eliminate the annual report of earnings form and exempt most working beneficiaries from the requirement to file a separate report of earnings with SSA. This will result in a savings of up to 330,833 public reporting burden hours each year and, by allowing us to divert scarce resources to other priority workloads, enable us to provide better overall service to the public. In light of these considerations, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule and determined that it meets the criteria for a significant regulatory action within the meaning of Executive Order 12866. As indicated earlier in this preamble, failure to file a timely report of earnings will result in a monetary penalty, unless we find that there was good cause for filing late. Since, for most beneficiaries, the W-2 and/or self-employment tax return information will be considered the annual report of earnings required by section 203(f) of the Act, we anticipate that there will be very few penalties imposed on beneficiaries for failing to report their earnings. The loss of penalty dollars is estimated to be \$60-75 million for the 5-year period of fiscal years 1997 through 2001. However, we believe that the loss of penalty income should not be given undue consideration because this income results from beneficiaries' failure to timely report their earnings to SSA. It has always been the goal of SSA

to achieve maximum reporting compliance and if this goal was achieved, there would be no penalties imposed. Furthermore, we believe that the loss of penalty revenue is more than offset by the benefits that both the public and SSA will realize under this rule. These benefits include the fact that up to 1.3 million beneficiaries will no longer be required to complete the annual report of earnings forms resulting in a reduction in the public reporting burden of up to 330,833 hours. In addition, this initiative will shift the annual report workload from SSA's peak workload period (January through March) until later in the year and thus, will allow SSA to divert scarce resources to other priority workloads, such as processing claims for benefits and responding to telephone inquiries, resulting in better overall service to the public.

Administrative savings for this initiative are estimated to be 540 workyears and \$23.2 million for fiscal years 1997 through 2001.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities since it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This final regulation will impose no new reporting or recordkeeping requirements requiring OMB clearance. As indicated in the NPRM, we estimate that this new Annual Report of Earnings process will reduce the annual public reporting burden by up to 330,833 hours. This is the annual reporting burden associated with the completion and filing of forms SSA-777 and SSA-7770 (OMB Control Number 0960-0057). Although this final regulation will eliminate those forms, SSA will continue to collect earnings information, through a number of other collection instruments already approved by OMB. In most cases, we will obtain this information through forms W-2 and schedule SEs approved for use by IRS. In those cases where additional information is required, we expect to obtain that information during the initial claims interview through forms approved for use by SSA (primarily the SSA-1 (Application for Retirement Benefits; OMB Approval Number 0960-0007) and the SSA-795 (Statement of Claimant or Other Person; OMB Approval Number 0960-0045)). In addition, OMB has approved a new

form, SSA-131, OMB Number 0960-0566, to collect the additional information needed to correctly adjust benefits in special wage payment situations.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: March 10, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424a, 425, and 902(a)(5)).

2. Section 404.452 is amended by revising paragraphs (a)(1) and (a)(2), revising the last sentence of paragraph (b), and revising paragraph (d) to read as follows:

§ 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment.

(a) * * *

(1) The individual attained the age of 70 in or before the first month of entitlement to benefits in the taxable year, or

(2) The individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which the individual was entitled to benefits and was under age 70.

(b) * * * The filing of an income tax return or a form W-2 with the Internal Revenue Service may serve as the report required to be filed under the provisions of this section where the income tax return or form W-2 shows the same wages and net earnings from self-employment that must be reported to the Administration under this section.

(d) *Information to be provided to us.* The report should show the name and social security claim number of the

beneficiary about whom the report is made; identify the taxable year for which the report is made; show the total amount of wages for which the beneficiary rendered services during the taxable year (if applicable), the amount of net earnings from self-employment for such year (if applicable); and show the name and address of the individual making the report. To overcome the presumption that the beneficiary rendered services for wages exceeding the allowable amount and rendered substantial services in self-employment in each month (see § 404.435), we must also be told the specific months in which the beneficiary did not render services in employment for wages of more than the allowable amount (as described in § 404.435) and did not render substantial services in self-employment (as described in §§ 404.446 and 404.447).

* * * * *

[FR Doc. 97-8271 Filed 4-1-97; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 12

RIN 1076-AD56

Indian Country Law Enforcement

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is establishing standards for Bureau of Indian Affairs (BIA) and tribal law enforcement programs receiving Federal funding or performing duties using a Federal law enforcement commission. These regulations will ensure that law enforcement, crime prevention and recidivism reduction programs are implemented and maintained in a constitutionally sound manner and comply with the Indian Law Enforcement Reform Act of 1990, Public Law 101-379 (25 U.S.C. 2801 *et seq.*).

EFFECTIVE DATE: These regulations take effect on May 2, 1997.

FOR FURTHER INFORMATION CONTACT: The Director, Office of Law Enforcement Services at (505) 248-7937.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Indian Police and Detention Standards regulations were published in 1975 and 1976, respectively, and have not been updated. See 25 CFR Part 12. In 1990, the Indian Law Enforcement Reform Act (Pub. L. 101-379, 25 U.S.C. 2801 *et seq.*) specified changes for the Bureau of Indian Affairs and tribal law enforcement and detention programs to be implemented as rules by the Secretary of the Interior who was given the overall responsibility for providing or assisting in the provision of law enforcement services in Indian country as defined in 18 U.S.C. 1151. Law enforcement appears in Part 12, and Detention and Rehabilitation appears in Part 10, Chapter I of Title 25 Code of Federal Regulations.

The Office of Law Enforcement Services, Bureau of Indian Affairs, is updating and revising the Bureau of Indian Affairs Manual (BIAM), and accompanying operational handbooks that provide policy, procedures, guidelines and standards for all law enforcement programs. The manual and accompanying handbooks will be available to program managers and supervisors, the public, other agencies, and law enforcement officers or investigators. Self-governance tribes with compacts or other tribal entities with enforcement jurisdiction other than the Bureau of Indian Affairs or contracts are encouraged to use the manuals and handbooks for guidance in developing or maintaining their own programs. The Indian Country Detention Facilities and Programs manuals and handbooks may be found in Chapter 69 Bureau of Indian Affairs Manual (BIAM) including an inmate handbook for all individuals who are incarcerated in a BIA or tribal detention facility.

Review of Public Comments

The Nez Perce Tribe expressed several concerns with the proposed rule, many relating to their anticipated contracting of their law enforcement program under self-determination. This rule will not change BIA's relationship with a tribe or any tribe's ability to self-govern. This rule implements the Indian Law Enforcement Reform Act (Pub. L. 101-379) and suggests minimal professional standards for law enforcement officers.

Each of the Nez Perce Tribe's comments are addressed here:

The tribe believes the local superintendent or chief law