

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2009-13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2009-13 and should be submitted on or before May 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy,
Secretary.

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SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed Alteration to Existing System of Records, New Routine Use, and General Housekeeping Changes

AGENCY: Social Security Administration (SSA).

ACTION: Proposed altered system of records, new routine use, and general housekeeping changes.

SUMMARY: We are issuing public notice of our intent to alter, add a new routine use, and make minor housekeeping changes to an existing system of records in accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11). The affected system of records is the *Administrative Law Judge (ALJ) Working File on Claimant Cases (60-0005)*, hereinafter referred to as the *ALJ Working File*. The proposed alterations will result in the following changes:

- Expansion of the purpose of the system of records to include the electronic internal working file of the administrative law judges in the hearing offices. This working file is accessed primarily by hearing office personnel viewing documents stored in the Private Section of eView, an electronic interface.
- Inclusion of our data protection routine use that provides for the release of information in the event of an unauthorized release of personally identifiable information. We published this routine use in the **Federal Register** on December 10, 2007 (72 FR 69723); and
- Updates of various cited Federal Government regulations and minor editing, including correcting miscellaneous and stylistic format errors.

The proposed alteration, new routine use, and housekeeping changes are discussed in the **SUPPLEMENTARY INFORMATION** section below. We invite public comments on this proposal. **DATES:** We filed a report of the proposed altered system of records and added routine use with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 23, 2009. The proposed altered system of records will become effective on June 1, 2009, unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing

to the Deputy Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Etter, Social Insurance Specialist, Disclosure Policy Development and Services Division I, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone: (410) 965-8028, e-mail: neil.etter@ssa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed Alteration and New Routine Use for the ALJ Working File

A. General Background Relating to the Proposed Alteration

Under Titles II and XVI of the Social Security Act, an individual who has received a Federal reviewing official decision, a prototype process determination, or a reconsideration determination on a claim for benefits has a right to a hearing before an ALJ. In the past, hearing offices kept their records in paper form. New technology will allow us to store information electronically and, therefore, we need to update this system of records to reflect the change. As a result, records in this system may be in paper and electronic media formats.

B. Discussion of Proposed Alteration to the ALJ Working File

During the course of adjudicating a claim at the hearing level, ALJs and members of their staffs often create notes and instructions regarding the evidence, testimony, legal theories, merits of the case, and opinions and advice about a case. While there may be both electronic and paper records gathered and maintained in the *ALJ Working File*, this system covers any documents maintained electronically, such as any documents viewed in the Private Section of eView. eView is the interface that allows authorized users to view documents stored electronically. This Private Section is accessible only to authorized SSA staff. Additionally, this proposed alteration provides that any movement of the paper-based records in the *ALJ Working File* to the new electronic environment does not affect:

¹¹ 17 CFR 200.30-3(a)(12).

- The categories of individuals covered by or categories of records contained in this system;
- The purpose, storage, retrieval, or notification policies; and
- The existing routine uses of information contained in this system.

Maintaining information in the Private Section ensures that the information will not be integrated or intermingled with other information contained in the electronic environment.

Some of the documents are compiled in anticipation of litigation and, thus, may be exempt from the access provisions of the Privacy Act (5 U.S.C. 552a(d)(5)). We review requests for access under the Freedom of Information Act and as described in the Social Security Ruling, *SSR 92-1p: Policy Interpretation Ruling: Request Under the Privacy Act or the Freedom of Information Act for Access to Records and for Disclosure of Material Maintained by the Office of Hearings and Appeals*.

C. Discussion of New Routine Use

As recommended by the President's Identity Theft Task Force, as mandated by the Office of Management and Budget (OMB) in Memorandum M-07-16, and in accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we established a routine use disclosure that specifically permits the disclosure of SSA information in connection with response and remediation efforts in the event of an unintentional release of agency information, otherwise known as a "data security breach." Such a routine use serves to protect the interests of the people whose information is at risk by allowing the agency to take appropriate steps to facilitate a timely and effective response to a data breach. (For more information, please see: **Federal Register** (Vol. 72, No. 236) Monday, December 10, 2007.)

II. Records Storage Medium and Safeguards for the Information Maintained in the Proposed Altered ALJ Working File System of Records

The proposed altered *ALJ Working File* system of records will maintain information in electronic and paper form. We permit only authorized personnel who have a need for the information in the performance of their official duties to access the information. Security measures include the use of access codes to enter the computer system that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any related records maintained in paper files

are kept in locked cabinets or in otherwise secure areas.

III. Effects of the Proposed Alteration and New Routine Use Disclosure to the ALJ Working File System of Records on the Rights of Individuals

A. Discussion Relating to the Proposed Alteration

The proposed alteration to the *ALJ Working File* system of records pertains to our responsibilities in continuing to expand the record storage medium to accommodate increasing demand to maintain records in electronic form. We will adhere to all applicable statutory requirements, including those under the Social Security Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed alteration to these systems will have an unwarranted adverse effect on the rights of individuals.

B. Discussion Relating to the Added Routine Use

The new routine use would serve to protect the interests of persons whose information could be at risk. We would take appropriate steps to facilitate a timely and effective response to a security breach of our data, thereby improving our ability to prevent, minimize, or remedy any harm that may result from a compromise of data maintained in our systems of records. We do not anticipate that the new routine use will have any unwarranted adverse effect on the rights of persons about whom data might be disclosed.

IV. Compatibility of Proposed Routine Use

As mandated by OMB, as recommended by the President's Identity Theft Task Force, and in accordance with the Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and our disclosure regulation (20 CFR part 401), we are permitted to release information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.120 of our regulations provides that we will disclose information required by law. Because OMB has mandated the publication of this routine use, the proposed routine use is appropriate and meets the relevant statutory and regulatory criteria. In addition, disclosures to other agencies, entities, and persons when needed to respond to an unintentional release are compatible with the reasons we collect the information, as helping to prevent and minimize the potential for harm is consistent with taking appropriate steps

to protect information entrusted to us. See 5 U.S.C. 552a(e)(10).

V. Minor Housekeeping Changes in the Proposed Altered ALJ Working File System of Records

We are doing some minor editing, including correcting miscellaneous stylistic and formatting errors.

Dated: April 23, 2009.

Michael J. Astrue,
Commissioner.

Social Security Administration Notice of Altered System of Records Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER:

60-0005.

SYSTEM NAME:

Administrative Law Judge Working File on Claimant Cases, Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

SSA, ODAR, Local hearing offices. Access Social Security Administration's Internet Web site: http://www.socialsecurity.gov/foia/bluebook/app_f.htm for local hearing office address information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants—Title II (Retirement and Survivors Insurance (RSI), and Disability Insurance (DI)); Title XI (claimants subject to Professional Standards Review); Title XVI (Supplemental Security Income (SSI)).

CATEGORIES OF RECORDS IN THE SYSTEM:

We establish these files in the hearing office as a record of actions taken on each particular case. The file may contain copies of various documents such as the Notice of Hearing; Decision on Dismissal; the Exhibit List when one is prepared; a copy of congressional inquiries and responses thereto; as well as copies of post-adjudicative material received and any responses made. Official copies of these materials are placed in claim folders. These files also contain working papers such as notes taken during the hearing by the administrative law judge (ALJ); case analyses prepared by hearing office employees; case file cover sheets; attorney worksheets; working papers of hearing office staff; and other developmental notes and instructional sheets.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205 and 1631(d)(1) of the Social Security Act, as amended.

PURPOSE(S):

We use the records in this system of records to reference the actions we take in a particular case at the hearing level. For example, during the course of adjudicating the claim at the hearing level, ALJs and members of their staffs often construct documents for only internal purposes regarding the evidence, testimony, legal theories, merits of the case, and opinions and advice regarding other factors involved in the case. While there may be both electronic and paper records in the *ALJ Working File*, this system covers any documents that are gathered, maintained, and viewed electronically in the Private Section of eView. eView is the interface that allows authorized users to view documents stored electronically. The Private Section is accessible only to authorized SSA staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Routine use disclosures are as indicated below; however, any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

2. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA or any component thereof; or
(b) any SSA employee in his or her official capacity; or

(c) any SSA employee in his or her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components;

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

3. To IRS, as necessary, for the purpose of auditing SSA's compliance with safeguard provisions of the IRC, as amended.

4. To contractors and other Federal agencies, as necessary, for the purpose

of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

5. To the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act, for the use of those agencies in conducting records management studies.

6. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned agency functions.

7. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, if information is necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of SSA facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

8. To the appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs of SSA that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. SSA will use this routine use to respond only to those incidents involving an unintentional release of our records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

We maintain and store records in this system in paper and in electronic form.

RETRIEVABILITY:

We retrieve records by Social Security number (SSN) or name.

SAFEGUARDS:

We will store the records in the ALJ Working File system of records in electronic media (*e.g.*, computer data systems) and in paper forms. We permit only authorized SSA personnel who have a need for the information in the performance of their official duties to access the information. Security measures include the use of access codes (personal identification number (PIN) and password) to enter our computer systems that house the data.

Additionally, we give all of our employees and our contract employees annual reminders of the need to protect personal information to which they have access for official purposes and remind them of the criminal penalties that apply to unauthorized access to, or disclosure of, personal information. *See* 5 U.S.C. 552a(i)(1).

RETENTION AND DISPOSAL:

We will destroy electronic and paper records by deleting them 2 years after the final action is taken.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Commissioner, Office of Disability Adjudication and Review, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041.

NOTIFICATION PROCEDURES:

A person can determine if this system contains a record about them by writing to the hearing office (access http://www.socialsecurity.gov/foia/bluebook/app_f.htm for address information).

Persons can also determine if this system contains a record about them by writing to the system manager(s) at the above address and providing their name, SSN, or other information that may be in the system of records that will identify them. Persons requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification, such as voter registration card, etc. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claimed to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that

parallels the information in the record to which notification is being requested. If we determine that the identifying information the person provides by telephone is insufficient, the person will be required to submit a request in writing or in person. If a person requests information by telephone on behalf of another individual, the subject person must be on the telephone with the requesting person and us in the same phone call. We will establish the subject person's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name), and ask for his or her consent to provide information to the requesting person.

Persons requesting notification by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)). Some of the documents are compiled in anticipation of litigation and, thus, may be exempt from the access provisions of the Privacy Act (5 U.S.C. 552a(d)(5)).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants; their representatives; appropriate members of the public, SSA, and other Federal, State, and local agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

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BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed Alteration to Existing System of Records, New Routine Use, and General Housekeeping Changes

AGENCY: Social Security Administration (SSA).

ACTION: Proposed altered system of records, new routine use, and general housekeeping changes.

SUMMARY: We are issuing public notice of our intent to alter, add a new routine use, and make minor housekeeping changes to an existing system of records in accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)). The affected system of records is the *Working File of the Appeals Council (60-0004)*, hereinafter referred to as the *AC Working File*. The proposed alterations will result in the following changes:

- Expansion of the purpose of the system of records to include the electronic internal working file of the Office of Appellate Operations (OAO) in the Office of Disability Adjudication and Review's (ODAR) Appeals Council. This working file is accessed primarily by OAO personnel viewing documents stored in the Private Section of eView, an electronic interface.

- Inclusion of our data protection routine use that provides for the release of information in the event of an unauthorized release of personally identifiable information. We published this routine use in the **Federal Register** on December 10, 2007 (72 FR 69723); and

- Updates of various cited Federal Government regulations and minor editing, including correcting miscellaneous and stylistic format errors.

The proposed revision, new routine use, and housekeeping changes are discussed in the **SUPPLEMENTARY INFORMATION** section below. We invite public comments on this proposal.

DATES: We filed a report of the proposed altered system of records and added routine use with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 23, 2009. The proposed altered system of records will become effective on June 1, 2009, unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the Deputy Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Etter, Social Insurance Specialist, Disclosure Policy Development and Services Division I, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone: (410) 965-8028, e-mail: neil.etter@ssa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed Alteration and New Routine Use for the AC Working File

A. General Background Relating to the Proposed Alteration

Under Titles II and XVI of the Social Security Act, an individual who is dissatisfied with a hearing decision or hearing dismissal may request review by the Appeals Council (AC). The Appeals Council may decide on its own motion to review the action taken in a case. The AC considers requests of extension of time to file civil actions and is also responsible for certain actions on cases in which a civil action already has been filed. These actions include acting on new court cases, conducting supplemental reviews of pending court cases, acting on remand orders from the court, handling appeals on ALJ decisions issued following a court remand, and recommending whether to seek an appeal when a Federal court makes a decision adverse to the Commissioner. The OAO provides professional and technical advice to other agency components and the Department of Justice on civil action cases when requested. In the past, the AC kept their records in paper form. New technology will allow us to store information electronically and, therefore, we need to update this system of records to reflect the change. As a result, records in this system may be in paper and electronic media formats.

B. Discussion of Proposed Alteration to the AC Working File

Members of the AC are assisted by staff who may prepare an analysis and recommendation. When the AC reaches a favorable decision, the records may be used to process attorney fees.