Calendar No. 320

109TH CONGRESS, *1st Session* | SENATE | REPORT 109–203

IDENTITY THEFT PROTECTION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1408

DECEMBER 8, 2005.—Ordered to be printed
Filed under authority of the order of the Senate of November 18, 2005

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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IDENTITY THEFT PROTECTION ACT

DECEMBER 8, 2005.—Ordered to be printed

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Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 1408]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1408) to strengthen data protection and safeguards, require data breach notification, and further prevent identity theft, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1408 would bolster data security procedures for covered entities that collect, dispose, maintain, sell, or transfer sensitive personal information. The bill would require covered entities to provide consumer notification under circumstances when that entity suffers a breach of security, and the exposure of that sensitive personal information would create a reasonable risk that an identity theft may occur. S. 1408 also would direct the Federal Trade Commission (FTC) to develop rules that would require procedures for authenticating the credentials of third parties to which sensitive personal information may be sold or otherwise transferred. To further protect consumers from identity theft, S. 1408 would allow consumers to freeze their credit report for a reasonable fee. As amended, S. 1408 also would prohibit the solicitation, sale, or display of social security numbers by covered entities, except under certain specified circumstances.

BACKGROUND AND NEEDS

Data Security

In 1998, Congress responded to an explosion in identity theft activity by passing the Identity Theft Assumption and Deterrence Act.[1] This Act addressed identity theft in two ways: First, the Act strengthened then-existing criminal law governing identity theft[2] to make it a Federal crime to knowingly transfer or use, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity; and second, the Act required the FTC to develop a centralized complaint and consumer education service for victims of identity theft. This FTC clearinghouse was established and currently serves as an investigative tool for the FTC and Federal law enforcement to track and thwart identity theft.

Despite the existence of several Federal and State laws designed to reduce identity theft, the crime continues to be perpetrated against American consumers at an alarming rate. A 2003 FTC survey found that, during a one-year period, identity thieves victimized nearly 10 million Americans, or roughly 4.6 percent of the domestic adult population. The FTC has further reported that identity theft—physical and online—accounted for 39 percent of the more than 635,000 consumer fraud complaints filed last year with the agency.

While the aggregation and distribution of consumers' sensitive personal information for marketing, lending, and other purposes are vital to commerce in the United States, such practices have in some ways made it easier for identity thieves to access and misappropriate sensitive personal information in the possession of businesses and other entities.

In 2005, a string of highly publicized data breaches occurred at a variety of private and public organizations ranging from financial institutions and commercial retailers, to public universities. These data breaches involved the sensitive personal information of millions of consumers, including social security numbers and financial information. Many of these security breaches led to identity theft. The most widely publicized data breaches involved the unauthorized access of data held by two large information (or data) brokers. These breaches raised the question whether consumers' sensitive personal information is adequately protected from identity thieves by the entities that collect, maintain, and transfer sensitive personal information.

While several Federal laws address data security in different contexts, there is no single Federal law that requires the protection of sensitive personal information regardless of the type of entity that is in possession of that information. In addition, relevant Federal law that does exist does not require all entities that possess sensitive personal information to notify consumers when a breach involving such consumers' sensitive personal information has occurred. S. 1408 is intended to fill gaps in current Federal data security laws and provide a uniform preemptive Federal standard for the safeguarding of sensitive personal information regardless of the entity with possession. The legislation would strike a balance be-

[1] P.L. 105-318, 112 Stat. 3007 (Oct. 30, 1998)
[2] 18 U.S.C. 1028 ("Fraud and related activity in connection with identification documents")

tween ensuring adequate security of sensitive personal information and not inhibiting the legitimate free flow of information that is vital to the U.S. economy.

Congress has legislated in several contexts in the area of data privacy and security. Among other things, Congress has placed certain limits on the dissemination of credit report, financial, motor vehicle, and health information. The following is a brief description of existing data security laws.

The Fair Credit Reporting Act (FCRA)[3] was enacted partly to ensure that "consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."[4] FCRA requires that consumer reporting agencies only disclose consumer credit reports if such a disclosure is for a "permissible purpose" as defined in the statute.[5]

In FCRA, a permissible purpose is generally a legitimate business need by the individual or entity seeking the credit report, which includes, among others, verification for employment, extension of credit or insurance, or property tenancy background checks. FCRA also requires credit-reporting agencies to use reasonable procedures to ensure that those requesting consumer credit reports are who they claim to be, and that they are eligible to receive the report for a permissible purpose.

Title V of the Gramm-Leach-Bliley Act (GLBA)[6] was enacted to ensure the privacy and security of personally identifiable information handled by financial institutions. Title V of GLBA requires financial institutions to provide notice to customers of a possible disclosure of non-public personal information to non-affiliates and an opportunity to opt out of such disclosure. This non-public information includes an individual's address, as well as social security number, telephone number, and mother's maiden name. The prohibition against disclosure of this information without notice and the ability to opt out are subject to statutory exceptions provided in GLBA. These exceptions allow for disclosure primarily for reasons of law enforcement, prosecution, or fraud prevention. GLBA's Privacy Rule for re-disclosure binds recipients of non-public personal financial information. The GLBA requires financial institutions to adopt and implement appropriate safeguards for the personal information of their customers.[7]

The Health Information Portability and Accountability Act (HIPAA)[8] was enacted partly to provide strong Federal protections for the privacy rights of patients. The HIPAA Privacy Rule prohibits health care providers from disclosing personal health information except when required or permitted under the Rule. The HIPAA Privacy Rule permits health care providers to disclose personal health information for the purpose of carrying out essential health care functions such as patient treatment, payment for care, or health care operations that support treatment and payment. The Rule also requires disclosure of personal health information when

[3] 15 U.S.C. 1681-1681u, as amended; In 2003, FCRA was enhanced by the Fair and Accurate Credit Transactions Act (FACT) Act. The FTC has not completed implementation of the FACT Act.
[4] 15 U.S.C. 1681(a)(4)
[5] 15 U.S.C. 1681b(a)(3)(A) through (F)
[6] 15 U.S.C. 6801-09
[7] 15 U.S.C. 6801(b)
[8] 42 U.S.C. 1320d et seq.

requested by the Department of Health and Human Services (HHS) for an investigation or to determine compliance with the Privacy Rule, or at the request of a patient or health care enrollee. Like GLBA, HIPAA requires health care providers to adopt and implement appropriate safeguards to protect personal health information.[9]

Section 5 of the Federal Trade Commission Act (FTCA)[10] grants authority to the FTC to prevent unfair or deceptive trade practices in or affecting interstate commerce. Entities operating in interstate commerce are subject to section 5 of the FTCA to the extent that they deceptively make false claims concerning their information security policies on which consumers rely to their detriment. Such entities are subject to section 5 of the FTCA if they falsely claim to have adequate information security safeguards in place, and/or if they knowingly cause consumers substantial economic injury that could have been reasonably avoided.

The Driver's Privacy Protection Act (DPPA)[11] prohibits the disclosure of personal information by State departments of motor vehicles except for uses specifically stated by DPPA. It contains fourteen permissible uses, mostly for purposes of law enforcement, vehicle insurance claims or policies, or judicial proceedings.

In April 2004, the California legislature enacted SB 1386, which represented the first effort by a State legislature to address data breach notification. The law provides strict disclosure requirements for commercial entities or government agencies that experience security breaches when the breaches may contain the personal information of California residents. According to many observers, were it not for the breach notification requirements of the California law, most of the data security breaches that were highly publicized in 2005 would not have become publicly known. Thirty-three other States have passed or are considering data breach legislation. The two prevalent themes among these initiatives are consumer notification requirements in the event of a data breach, and consumer redress in the event of such breach.

Credit Freeze

The Fair and Accurate Credit Transaction Act (FACTA) of 2003,[12] which became effective in some States in December 2004,[13] added new sections to FCRA that were intended to provide consumers with tools to combat the effects of identity theft. FACTA allows a consumer who seeks to mitigate or prevent the occurrence of identity theft to contact credit-reporting agencies and place a "fraud alert" on their credit file. Once placed, any entity that attempts to extend credit to the consumer is required to contact the consumer by telephone and take other reasonable steps to ensure that the credit application is not that of an identity thief. Failure to contact the consumer in such instances subjects the entity to civil penalty. The fraud alert is effective initially for 90 days, and can be extended for up to seven years for victims of identity theft by providing a police report or an affidavit proving a theft occurred.

[9] 45 C.F.R. 164.530(c)
[10] 15 U.S.C. 45(a)
[11] 15 U.S.C. 2721-25
[12] Pub. L. 108-159, 111 Stat. 1952
[13] FACTA is being phased in beginning in December 2004 and ending in September 2005.

S. 1408 would take an added step toward providing consumers with tools to combat identity theft by allowing consumers to place a "freeze" on their credit report for a reasonable fee. A freeze effectively would preclude (with limited exceptions) unauthorized third parties from accessing a credit report. Victims of identity theft would be permitted to place freezes on their credit report without a fee.

The credit freeze provision of the bill is a response to a growing number of inconsistent State laws that have been enacted since the passage of FACTA. There are currently 11 similar State credit freeze laws, with the possibility of many more within the next few years.

SUMMARY OF PROVISIONS

S. 1408, the Identity Theft Protection Act, would require covered entities to comply with the existing requirements of the FTC rules on Standards for Safeguarding Customer Information and Disposal of Consumer Report Information and Records (Safeguards Rule),[14] which require covered entities to develop, implement, maintain, and enforce written programs for the security of sensitive personal information to ensure security, protect against any anticipated threats, or unauthorized access to consumers' sensitive personal information.

The bill would apply the Safeguards Rule to entities not currently covered and require those entities that handle sensitive personal information to provide notice to affected consumers in the event of a security breach. S. 1408 also would allow consumers to place, lift, and temporarily remove a security freeze on their credit, which would prevent credit from being extended to third parties without authorization from the consumer. In addition, S. 1408 would prohibit (with limited exceptions) the sale or purchase of consumers' social security numbers. This provision would prohibit employers, educational institutions, and others from using social security numbers for any employee benefit plan, card, or tag that is provided by employers, educational institutions, and others, for the purpose of identification. The use of social security numbers as identifiers on State drivers' licenses would be prohibited as well.

LEGISLATIVE HISTORY

On May 10, 2005, and June 16, 2005, the Committee held hearings chaired by Chairman Stevens and Senator Smith, respectively, to examine the issues pertaining to data security. Those testifying before the Committee were representatives of private companies, industry trade associations, public interest groups, State Attorneys General, and each of the FTC Commissioners.

On July 14, 2005, Senator Smith introduced S. 1408, "The Identity Theft Protection Act," which was referred to the Committee. Senators Stevens, Inouye, McCain, Nelson, and Pryor were original co-sponsors of the bill.

On July 28, 2005, the Committee met in open executive session to consider an amendment in the nature of a substitute to S. 1408 offered by Senator Smith that made several substantive changes to

[14] 16 C.F.R. Part 314. The FTC was required to promulgate this rule in GLBA, 15 U.S.C. Subchapter I, Sec. 6801-6809 (Disclosure of Nonpublic Personal Information).

the bill's provisions as introduced. Senator Boxer offered an amendment during the executive session, which would limit the amount of time a covered entity would have to notify consumers in the event of a data breach. The Committee agreed to incorporate Senator Boxer's amendment into Senator Smith's amendment in the nature of a substitute. In addition, the Committee adopted an amendment offered by Chairman Stevens containing technical corrections to the substitute amendment, and an amendment offered by Senator Dorgan that would prohibit the sale of Social Security numbers with a few exceptions, including for the purposes of public health or national security. The amendments were adopted and the bill, as amended, and the Committee ordered the bill to be reported.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

NOVEMBER 3, 2005.

Hon. TED STEVENS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1408, the Identity Theft Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Melissa Z. Petersen (for federal costs), Sarah Puro (for the state and local impact), and Selena Caldera (for the private-sector impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

S. 1408—Identity Theft Protection Act

Summary: S. 1408 would require private companies to take certain precautions to safeguard the personal information of consumers and to notify consumers whenever there is a breach in the security of their personal information. Under the bill, consumers would have the option to freeze their credit reports in the event of a threat on their personal information. The bill also would restrict the use, display, and sale of Social Security numbers (SSNs). Under S. 1408, the Federal Trade Commission (FTC) would enforce these restrictions and requirements. Assuming appropriation of the amounts specifically authorized in the bill, CBO estimates that implementing S. 1408 would cost $1 million in 2006 and $5 million over the 2006–2010 period.

Enacting S. 1408 could increase federal revenues and direct spending as a result of the collection of additional civil and criminal penalties assessed for violations of identity theft laws. Collections of criminal penalties are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent. CBO esti-

mates, however, that any additional revenues and direct spending that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

S. 1408 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), including limitations on the sale, display, and use of SSNs by state and local governments, requirements that schools—many of which are public—comply with FTC regulations regarding certain personal information that they collect, and explicit preemptions of state laws regarding the treatment of that information. While the aggregate cost of complying with those mandates is uncertain, CBO estimates that such costs would exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation) in at least one of the first five years after the mandates go into effect.

S. 1408 would impose private-sector mandates on employers, retailers, schools, colleges, consumer-credit-reporting agencies, and other entities that acquire, maintain, or utilize sensitive personal information. While CBO cannot estimate the direct cost of complying with each mandate, certain mandates in the bill would impose security standards and notification requirements on a large number of private-sector entities, including more than five million employers. Based on this information, CBO estimates that the total direct cost of mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1408 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit). CBO assumes that the bill will be enacted in calendar year 2006 and that the specified amounts will be appropriated for each year. CBO estimates that implementing the bill would cost $1 million in 2006 and $5 million over the 2006–2010 period to issue regulations and enforce the bill's new provisions restricting the use of personal information.

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1

Estimated impact on state, local, and tribal governments: S. 1408 contains several intergovernmental mandates as defined in UMRA. Specifically, the bill would:

- Limit the sale, display, and use of Social Security numbers by state, local, and tribal governments;
- Require that educational entities—many of which are public—comply with FTC regulations regarding the treatment of certain personal information that they collect;
- Explicitly preempt state laws in at least 17 states regarding the treatment of personal information; and
- Place certain notification requirements on state insurance authorities and State Attorneys General.

While there are a very large number of entities that would be required to make changes to existing systems, the aggregate cost of complying with those mandates is uncertain. Based on discussion with state and local officials, however, CBO estimates that the costs of complying with the mandates in the bill would exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation) in at least one of the first five years after the mandates go into effect.

CBO estimates that the prohibitions against the sale, display, and use of Social Security numbers and the requirements on educational entities would impact the most significant costs on state and local governments. The remainder of this analysis focuses on those provisions.

Social Security numbers

While state and local governments have, in recent years, taken steps to reduce the use of SSNs on public documents, many continue to use them for a variety of purposes. The bill would restrict or prohibit governmental agencies from:

- Selling or displaying Social Security numbers that have been disclosed to the agency because of a mandatory requirement;
- Displaying SSNs on checks or check stubs;
- Placing SSNs on drivers licenses, identification cards, vehicle registrations, or employee identification cards, or coding them into magnetic strips or bar codes on those documents; and
- Allowing prisoners access to SSNs of other individuals.

The bill would allow SSNs to be sold under certain circumstances, for example, when such sale is necessary for public health, national security, or tax-law purposes, when done in compliance with certain motor vehicle laws, or consumer-reporting practices, or for nonmarket research that advances the public good.

If state and local governments do not currently have a system in place to safeguard SSNs, they would have to implement a new system for any documents issued after the regulations become effective (up to one year following enactment of the bill). If they use SSNs on checks and check-stubs as part of their recordkeeping and tracking procedures, they would have to alter those systems and remove the SSNs. Under the provisions of the bill, states would have to implement systems for removing SSNs from many documents that are available to the public. While there is some uncertainty about the extent of the requirements in this provision, CBO assumes that governmental entities would be required to remove SSNs from existing documents, a requirement that would impose significant costs on state and local governments. Further, some states may have to alter their systems for issuing driver's licenses and vehicle registrations to remove SSNs that are coded electronically onto a magnetic strip or digitized as part of a bar code. Finally, any government agency that uses SSNs would have to implement safeguards to preclude unauthorized access to SSNs and their derivatives and to protect confidentiality.

Generally, the use of SSNs by municipal governments for recordkeeping and identification is not widespread. There are over 75,000 municipal governments, however, so even small one-time costs—for

example, as little as $5,000—would impose significant costs, in the aggregate, on intergovernmental entities. On the other hand, counties and states, while fewer in number (there are about 3,600 counties in the U.S.), are more dependent on SSNs for various recordkeeping and identification purposes and are thus likely to face significantly higher costs because of the complexity and scope of their recordkeeping systems. (Some counties estimate that altering their systems to use identifiers other than SSNs or to eliminate the display of SSNs would result in one-time costs ranging from $40,000 to over $1,000,000, depending on the county and the scope of the changes that would need to be made.) In total, compliance costs for all state and local entities would likely be significant.

Requirements on schools

The bill would require elementary, secondary, and post-secondary educational institutions to:

- Develop, implement, and maintain a written program to safeguard certain personal information in accordance with FTC regulations;
- Notify affected individuals of any breach of security; and
- Refrain from using Social Security numbers as identifiers in certain circumstances.

Under current law, educational institutions that receive federal funds already are required to safeguard certain personal information and must comply with Department of Education standards. Depending on the differences between the rules promulgated by the FTC and those already required by the Department of Education, educational institutions may have to make changes to their current systems that could be costly. For example, if institutions are required to add additional systems or provide additional information, they could face added costs. Since there are over 100,000 institutions that would be affected by these changes, the total costs could be significant.

A provision that would require schools to notify affected individuals of any breach of security in which personal information may have been compromised also could be costly. The bill would cap costs for each notification to $250,000. Examples from California—where a similar law was passed in 2002—suggest that a large university could expect to incur costs of between $100,000 and $200,000 to notify individuals whose personal information may have been compromised. The California experience suggests that, because the definition of a security breach is broad, public schools likely would incur some costs to comply with this provision. Because there is a large number of educational institutions nationwide (there are over 14,000 school districts composed of about 100,000 schools and over 1,500 public institutions of higher education), total costs could be significant over time. However, CBO cannot estimate the likely frequency of such security breaches and thus cannot estimate the total costs of complying with this provision.

The bill also would prohibit educational institutions from requesting and using a Social Security number unless no other type of identifier can be used in its place. Reprogramming systems that currently use SSNs as identifiers also could be costly.

Estimated impact on the private sector: S. 1408 would impose private-sector mandates on employers, retailers, schools, colleges, consumer-credit-reporting agencies, and other entities that acquire, maintain, or utilize sensitive personal information. The legislation defines sensitive personal information as a combination of name and Social Security number, driver's license number, or credit card information. While CBO cannot determine the direct cost of complying with each mandate, certain mandates in S. 1408 would impose security standards and notification requirements on a large number of private-sector entities, including more than five million employers. Based on this information, CBO estimates that the total direct cost of mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Security program for the protection of sensitive information

Section 2 would require covered entities to develop, implement, maintain, and enforce a written program containing administrative, technical, and physical safeguards to secure sensitive personal information. In the bill, covered entities would include businesses, employers, and educational and nonprofit institutions that acquire, maintain, and utilize sensitive personal information. The cost of this mandate depends on both the number of covered entities—more than five million—and the average cost to an entity of complying with the mandate. CBO does not have enough information to estimate the average cost to a covered entity to comply with the mandate. Because of the large number of covered entities, however, we expect that even if the average cost of writing the security program was small, the overall costs of this mandate could be significantly above the threshold established in UMRA.

Notification of security breach risk

The bill would set certain procedures for notifying consumers, the FTC, and credit reporting agencies of security breaches involving personal information. In the case of a security breach, section 3(c) would require covered entities to investigate any suspected breach of security. If the breach creates a reasonable risk of identity theft, the entity would be required to notify all those individuals whose personal information was compromised and to notify the FTC and the credit-reporting agencies if the breach affects 1,000 or more individuals.

The cost of this mandate depends on the number of security breaches that occur, the average number of persons affected by a breach, and the cost per person of notification. There is very little information available on the number of breaches each year; only the largest of breaches are noticed and recorded. Nevertheless, information that is available suggests that security breaches are not rare. Although the cost to notify one person by mail may cost up to $2, the potentially large number of people in data systems maintained by some covered entities would make the cost of notification associated with one breach substantial. Furthermore, certain covered entities, such as retailers, do not maintain the mailing addresses of customers for whom they have name and credit card information. It would be costly for those entities to begin keeping that information. Based on this information, CBO expects that the

cost to comply with this mandate could be large relative to UMRA's threshold for private-sector mandates.

Security freeze

Section 4 would allow consumers to place a security freeze on their credit report by making a request to a consumer-credit-reporting agency. The credit-reporting agency would be prevented from releasing the credit report to any third parties without an authorization from the consumer. The agency also would be required to notify all other reporting agencies of the security freeze at the consumer's request. To comply with the mandates in section 4, credit-reporting agencies would have to create and operate new systems to accept, impose, and release freezes on credit reports. Further, such agencies would incur costs in terms of the lost net income from being unable to sell credit reports that they would otherwise be able to sell under current law. CBO does not have sufficient information on how such systems would be added to existing operating systems or the expected revenue from credit report sales. Therefore, CBO has no basis to determine the cost of this mandate.

Social Security number protection

Section 8 would prevent covered entities from soliciting any Social Security numbers from individuals unless no other identifier can be used reasonably. There are many cases in which covered entities ask individuals for their Social Security numbers. For example, employers ask their employees to provide SSNs for the purpose of sending withheld taxes to the Internal Revenue Service; in this case, no other identifier would seem possible to use. Schools, on the other hand, ask students to provide SSNs on their applications where it may be possible to use another identifier. CBO does not have sufficient information about how often covered entities could use another identifier and, if so, how much it would cost for them to switch; therefore, CBO has no basis to estimate the cost of this mandate.

This section also would prevent covered entities from displaying Social Security numbers, or any part of such a number, on any card or tag used for identification, such as student or employee identification cards. This is an increasingly rare practice; therefore, CBO estimates that the cost of this mandate would be small.

Estimate prepared by: Federal Costs: Melissa Z. Peterson. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Selena Caldera and Nabeel Alsalam.

Estimate approved by: Peter H. Fontaine, Deputy Assistance Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

ECONOMIC IMPACT

S. 1408 would require covered entities to develop, implement, maintain, and enforce a written program for the security of sensitive personal information in their possession. In addition, covered entities would be required to notify consumers in event of any breach of sensitive personal information. While some covered entities may already have safeguards and notification procedures in place, nonetheless, the legislation may create compliance costs for such entities in the form of equipment upgrades or personnel addition in order to ensure that their practices satisfy the new Federal requirements.

PRIVACY

S. 1408 would likely bolster consumer privacy by ensuring that covered entities that handle sensitive personal information take appropriate measures to safeguard such information.

PAPERWORK

The legislation would increase paperwork requirements for private industry to the extent that such paperwork is necessary to comply with the information safeguards, breach notification, and credit freeze requirements, as well as the social security number use prohibitions, of this Act. The bill would require two reports submitted to Congress by the FTC. The first, a report by the FTC containing the findings of a working group established by the FTC Chairman pursuant to this Act. And, the second, a report by the FTC developed in conjunction with the Department of Justice (DOJ) on the correlation between methamphetamine use and identity theft crimes.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would provide that the legislation be cited as the "Identity Theft Protection Act."

Section 2. Protection of sensitive personal information

Section 2 would require covered entities to include administrative, technical, and physical safeguards within the written program to ensure security, protect against any anticipated threats, and protect against unauthorized access to sensitive personal information. The Committee notes that the implementation and enforcement of the data security policy is as important as the data security policy itself. Covered entities that are in full compliance with the current FTC Safeguards Rule would be deemed in compliance with this section. The Act also would require that, within one year of enactment, the FTC promulgate regulations that would require procedures for authenticating the credentials of third parties to which sensitive personal information is to be transferred or sold.

The Committee's purposes for allowing covered entities the option of complying with the existing FTC Safeguards Rule are twofold: first, to provide covered entities regulatory consistency without an interim gap that would require such entities to modify their

safeguards procedures more than once in order to comply; and, second, to take into account the impact of mandating safeguards rules on small businesses, particularly sole proprietors. With respect to the latter purpose, the Committee draws a parallel between the Safeguards Rule and S. 1408 to the extent that small businesses should be afforded flexibility to comply with S. 1408 in a manner that is dependent on their size and complexity, the nature and scope of their activities, and the sensitivity of the information that they handle.

Accordingly, in promulgating the regulations required under subsection 3(c), the FTC should consider the impact that such regulations would have on small businesses, as the FTC did when developing the existing Safeguards Rule.

The Committee encourages the FTC in its promulgation of rules to fulfill the requirements of section 2 to take into account the use of technological safeguards and effective alternative methods to reduce the chances of identity theft.

Section 3. Notification of security breach risk

Section 3 would require a covered entity that, after using due diligence, determines that a breach of security has resulted in identity theft for one or more individuals, or that a reasonable risk of identity theft exists, to notify every individual affected by the breach of security. In determining whether a reasonable risk of identity theft exists, a covered entity would be required to consider factors about the nature of the breach, such as if the data is usable by an unauthorized third party and whether the data is in the possession and control of an unauthorized third party who is likely to commit identity theft.

This section also would require covered entities that suffer a breach of security that affects 1,000 or more individuals to report the breach to the FTC or other appropriate market regulator and notify all consumer-reporting agencies (CRA) of the breach. The FTC would be required in such an instance to post a report of the breach of security on the agency's website without personally identifying any individual affected by the breach. In the event that the breach of security affects less than 1,000 individuals, and a covered entity determines that the breach of security does not create a reasonable risk of identity theft, it shall report the breach to the FTC or appropriate market regulator under section 5 of this Act. The report would be required to contain the number of individuals affected, and the type of information that was exposed, as a result of the breach of security.

If a covered entity determines that notification to consumers of the breach of security is warranted, the entity would be required to contact individuals affected by the breach through a written or electronic notice. If the cost of issuing a notice would exceed $250,000, involve contacting more than 500,000 individuals, or the entity lacks the contact information of affected individuals, the entity would have the option to provide a substitute notice through a posting on the website of the entity or via appropriate Statewide or regional media. In the event that this substitute notice is necessary, the covered entity would be required to include in such notice the name of the entity suffering the breach, the affected individuals' names, a description of the sensitive personal information

that was compromised, and the dates indicating the period between the breach of the data and the discovery of the breach.

Section 3 would require a covered entity to give notice to consumers when required by this Act in the most expedient manner possible, but not later than 45 days following the discovery of the breach, unless a Federal or State law enforcement agency determines that the timely giving of notice would materially impede a civil or criminal investigation, or threaten national security or homeland security.

This section would not apply to electronic communications of a third party stored by a cable operator, information service, or telecommunications carrier in the network of such operator, service, or carrier in the course of transferring or transmitting such communication.

The Committee's consumer notification requirement is meant to provide warning to consumers who may become victims of identity theft as a result of a data security breach. The Committee recognizes, however, that setting the threshold for notification too low may result in unnecessary consumer notification, which would reduce the effectiveness of the warning and create unnecessary costs.

When deciding to provide notice, the entity should evaluate the usability of the information and the likelihood that the information is in the possession of an unauthorized party. If the compromised sensitive personal information is usable, but it has merely been misplaced and is not likely in the possession of an unauthorized third party, consumer notification would not be required. Similarly, consumer notification would not be warranted when sensitive personal information has been compromised and is likely in the possession of an unauthorized third party, but the information is not usable. Should a covered entity discover a breach of security, and that the compromised sensitive personal information is both usable and possessed by an unauthorized third party who is likely to commit identity theft, the covered entity must then determine whether a reasonable risk of identity theft to one or more individuals exists. If this analysis yields an affirmative conclusion, then the covered entity would be required to provide consumer notification under this section.

Section 4. Security freeze

Section 4 would allow a consumer to place a security freeze on his or her credit report by making a request to a CRA in writing, by telephone, or through a secure electronic connection made available by the CRA. The security freeze would prevent a consumer's credit report from being released to a third party without express authorization from the consumer. The Committee encourages the CRAs to provide consumers the most expedient means to place and lift security freezes.

A CRA would have up to five days after receiving a written request by a consumer to place a security freeze, and three days to either lift a freeze either temporarily or permanently. This Act would allow the FTC to determine through a rulemaking what constitutes a reasonable fee that can be charged to consumers by CRAs for placing and lifting a credit freeze.

The consumer whose credit report was frozen would be permitted to remove a security freeze on his or her credit report only upon

request to the CRA. The CRA would be permitted to remove a security freeze upon the consumer's request, or if the CRA believes the report was frozen due to a material misrepresentation of fact. If a consumer requests that a security freeze be lifted, after providing proper identification, the CRA must lift the freeze within three days.

This section would allow a consumer who places, removes, or temporarily suspends a security freeze to request that the CRA that initiates the action on the security freeze notify all other CRAs of the request within three days. A CRA that is notified of such a request may request proper identification from the consumer within three business days after receiving the request, and place the security freeze no later than three days after receiving the consumer identification.

Victims of identity theft would be permitted under subsection 4(h)(2) to place a security freeze without charge by requesting in writing, in addition to filing a police report or identity theft report (as defined in section 603 (q)(4) of FCRA (15 U.S.C. 1681a(q)(4))), to a CRA within 90 days after the theft occurred or was discovered by the consumer.

Section 4 would not apply to the use of a credit report by any of the following: a person or entity with which the consumer has had a prior business relationship for the purpose of reviewing an account or collecting the financial obligation owing from an account or contract; any Federal, State or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena; HHS or any similar State agency acting to investigate Medicare or Medicaid fraud; the Internal Revenue Service or a State municipal taxing authority to investigate or collect delinquent taxes or unpaid court orders or any of their other statutory responsibilities; the use of consumer credit information for prescreening; any person administering a credit file monitoring subscription to which the consumer has subscribed; any person or entity for the purpose of providing a consumer with his or her credit report or credit score at the consumer's request; a check services or fraud prevention services company, which issues reports on incidents of fraud; or a deposit account information service company, which issues report regarding account closures due to fraud, substantial overdrafts, or similar negative information.

Section 4 would exempt any CRA that acts only as a reseller of credit information by assembling and merging information contained in the data base of another CRA, and does not maintain a permanent data base of credit information from which new consumer reports are produced.

Section 5. Enforcement

Section 5 provides new authority for the FTC to take action against covered entities that fail to develop, implement, maintain, or enforce a written program for the security of sensitive personal information as unfair or deceptive acts or practices proscribed under section 18(a)(1)(B) of the FTCA (15 U.S.C. 57a(a)(1)(B)). This new authority is analogous to the authority that the FTC currently possesses under Title V of GLBA with respect to financial institutions.

This section also would provide that compliance with this Act be enforced exclusively by agencies under the Federal Deposit Insurance Act (for foreign banks, commercial lenders, bank holding companies, and savings associations), the Federal Credit Union Act (for credit unions), the Securities Exchange Act of 1934 (for brokers and dealers), the Investment Company Act of 1940 (for investment companies), the Investment Advisers Act of 1940 (for investment advisers), and State insurance law.

Section 5 would allow the FTC to seek civil penalties in its enforcement actions against covered entities in an amount up to $11,000 for each individual; and up to $11,000,000 in the aggregate for all such individuals with respect to the same violation by a covered entity under section 3 of this Act.

This section also would provide that nothing in this Act would establish a private cause of action against a covered entity for the violation of any provision in this Act. However, nothing would affect a consumer's right to bring a civil action that is not under this Act in State or Federal court.

In addition, any covered entity to which title V of GLBA (15 U.S.C. 6801 et seq.) or section 607 of FCRA (15 U.S.C. 1681e) applies would be deemed in compliance with sections 2 and 3 of this Act to the extent that the person is in compliance with the provisions of those Acts, which require the protection of sensitive personal information and notification in the event of a breach of security.

It is not the intent of this Committee to impose prohibitively onerous safeguards and notification requirements on small businesses. Thus, the FTC or appropriate market regulator should consider the size of the business and its ability to comply as one of many factors when enforcing this Act.

Section 6. Enforcement of State Attorneys General

Section 6 would allow a State to bring an action under this Act in Federal court on behalf of its residents. The State would be required to notify the FTC or the appropriate Federal market regulator of the action at least 60 days prior to bringing the action. In the event that such notice is not feasible, the State would be required to provide notice immediately upon instituting the action. The FTC or appropriate Federal market regulator would be authorized to intervene in such civil action. If the FTC or appropriate Federal market regulator institutes an action for a violation of this Act, no State attorney general, or official or agency of the State, would be permitted to bring an action during the pendency of that action against any defendant named in the complaint.

Section 7. Preemption of State law

Section 7 of this Act would preempt any State or local law that requires, or holds liable, a covered entity for safeguarding sensitive personal information, notifying affected individuals of breaches of security, or allowing a consumer to place, remove, or temporarily suspend a security freeze on his or her credit report. This section also would provide that any State or local law, regulation, or rule prohibiting or limiting the solicitation or display of social security numbers would be preempted by this Act.

Section 8. Social Security number protection

Subsection 8(a) would prohibit the solicitation of a social security number from an individual unless there is a specific use of the number for which no other identifying number reasonably can be used. Subsection 8(b) would prohibit employers, educational institutions, and others from using social security numbers for any employee benefit plan, card, or tag that is provided by employers, educational institutions, and others for the purpose of identification. This subsection also would prohibit the use of social security numbers as driver identifiers on State drivers' licenses.

Subsection 8(a) would provide certain exceptions for the solicitation of a social security number, including: for the purpose of obtaining a consumer report or any purpose permitted under FCRA (15 U.S.C. 1681 et seq.); for the purpose of verifying or obtaining proof of identity by a CRA; for any purpose permitted under section 502(e) of GLBA (15 U.S.C. 6802(e)); or to identify or locate missing or abducted children, witnesses, criminals and fugitives, parties to lawsuits, parents delinquent in child support payments, organ and bone marrow donors, pension fund beneficiaries, and missing heirs.

Subsection 8(c) would amend the Social Security Act (42 U.S.C. 405(c)(2)(C)) to prohibit any Federal, State, or judicial agency from employing or entering into a contract to utilize inmates who would have access to the social security account numbers of other individuals. This prohibition would go into effect 90 days after the date of enactment.

Subsection 8(d) would prohibit the sale or purchase of social security numbers. Exceptions to this prohibition would be for: national security purposes; public health purposes; emergency situations to protect the health or safety of an individual; compliance with a tax law of the United States or of any State; or if the sale or purchase is to or by a CRA. This section would allow the sale or purchase of an individual's social security if written consent is obtained. The Committee recognizes that there are legitimate uses for social security numbers as indicated in the exceptions to this subsection, and that barring such usage may result in unintended consequences. Therefore, the Committee intends to develop the language of this section as the legislation progresses toward full Senate consideration.

Subsection 8(d) also would require the FTC to promulgate regulations concerning the prohibition of sale within 1 year after the date of enactment of this Act.

Section 9. Information security working group

Section 9 would require the Chairman of the FTC to establish an Information Working Group comprised of industry participants, consumer groups, and other interested parties to collect, review, disseminate, and advise on best practices to protect sensitive personal information. The Information Working Group would be required to submit to Congress a report on its findings within 12 months after its establishment. The FTC, after notifying Congress, would be authorized to terminate the Working Group if the Commission finds that the work and annual reports are no longer necessary.

Section 10. Definitions

Section 10 would provide for a number of notable definitions, as follows:

Breach of Security: The unauthorized access to, and acquisition of, data in any form or format containing sensitive personal information that compromises the security or confidentiality of such information and creates a reasonable risk of identity theft.

Consumer Reporting Agency: Any person engaging in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties.

Covered Entity: A sole proprietorship, partnership, corporation, trust, estate, cooperative, sole propriety, association, or other commercial entity, and any charitable, educational, or nonprofit organization, that acquires, maintains, or utilizes sensitive personal information.

Credit Report: A consumer report as defined in section 603(d) of FCRA (15 U.S.C. 1681a(p)), that is used for the purpose of serving as a factor in establishing a consumer's eligibility for credit for personal, family or household purposes.

Identity Theft: The unauthorized acquisition, purchase, sale, or use by any person of an individual's sensitive personal information that violates section 1028 of title 18, U.S.C., or any provision of State law; or that results in economic loss to the individual whose sensitive personal information was used.

Reasonable Risk of Identity Theft: The term "reasonable risk of identity theft" means that the preponderance of the evidence available to the covered entity that has experienced a breach of security establishes that identity theft for one or more individuals from the breach of security is foreseeable.

Sensitive Personal Information: An individual's name, address, or phone number linked with one or more data elements as listed in this definition. The FTC would be authorized through a rulemaking to designate or delete data elements or identifying information that may be used to effectuate identity theft as sensitive personal information. The Committee has included this FTC authority to add or subtract types of information from this definition with the intention that such authority would be exercised only when necessary to address any change in circumstances by which a new category of information, if breached, would create a reasonable risk of identity theft pursuant to this Act. The Committee understands that additions to or subtractions from the information list may yield economic consequences to covered entities, and particularly small businesses. Therefore, the FTC should proceed under this authority, and, if utilized, the FTC should develop a clear record showing how the information to be added or subtracted would or would not effectuate identity theft. The Committee did not include the following identifiers within the definition of sensitive personal information: genetic or biometric information; electronic mail signature; electronic identifier or screen name with password; consumer credit report information, mother's maiden name; and employee, faculty, student or U.S. Armed forces serial number. These identifiers were excluded because the Committee did not possess clear evidence that obtaining this information would effectuate identity theft. The Committee encourages the Federal Trade Commission to evaluate

these identifiers to decide if they should be included as sensitive personal information.

Public Records: Nothing in the Act would prohibit a covered entity from obtaining, aggregating, or using sensitive personal information it lawfully obtains from public records in a manner that would not violate this Act.

Section 11. Authorization of appropriations

Section 11 would authorize $1,000,000 to be appropriated to the FTC to carry out this Act for fiscal years 2006 through 2010.

Section 12. Related crime study

Section 12 would require the FTC, in conjunction with DOJ, to conduct a study within 18 months of enactment of this Act to examine the correlation, if any, between methamphetamine use and identity theft crimes, as well as the needs of law enforcement to address methamphetamine crimes related to identity theft.

Section 13. Prohibition on technology mandates

This section would make clear that nothing in this Act should be construed as authorizing the FTC to issue regulations that require or impose a specific technology, product, technological standard, or solution.

Section 14. Effective date

This section would require covered entities under subsection 2(a) to implement the information safeguards program within 6 months after the date of enactment of this Act.

Under this Act, the FTC would be required to initiate rulemakings under subsections 2(c), 4(h), and 8(d) within 45 days after enactment, and promulgate final rules within one year after the date of enactment. The requirements of the FTC rulemakings under subsections 2(c), 4(h), and 8(d) would take effect six months after each of the final rules are promulgated. All other provisions of this Act would take effect upon its enactment.

ROLLCALL VOTES IN COMMITTEE

Senator Allen offered an amendment to Senator Smith's amendment (in the nature of a substitute) to limit the authority of the FTC to change the definition of "sensitive personal information." On a rollcall vote of 8 yeas and 14 nays as follows, the amendment was defeated:

YEAS—8	NAYS—14
Mr. Burns	Mr. McCain[1]
Ms. Snowe	Mr. Lott
Mr. Ensign[1]	Mrs. Hutchison[1]
Mr. Allen	Mr. Smith
Mr. Sununu[1]	Mr. Inouye
Mr. DeMint[1]	Mr. Rockefeller[1]
Mr. Vitter	Mr. Kerry[1]
Mr. Nelson of Nebraska[1]	Mr. Dorgan
	Mrs. Boxer[1]
	Mr. Nelson of Florida
	Ms. Cantwell

Mr. Lautenberg[1]
Mr. Pryor
Mr. Stevens

[1]By proxy

Senator Allen offered an amendment to Senator Smith's amendment (in the nature of a substitute) to amend the definition in the bill of what constitutes a "reasonable risk of identity theft" that would require companies to notify consumers of a security breach or loss of personal information. On a rollcall vote of 8 yeas and 14 nays as follows, the amendment was defeated:

YEAS—8	NAYS—14
Mr. Burns[1]	Mr. Lott[1]
Mr. Smith	Mrs. Hutchison[1]
Mr. Allen	Ms. Snowe[1]
Mr. Sununu[1]	Mr. Inouye
Mr. McCain[1]	Mr. Rockefeller[1]
Mr. Ensign[1]	Mr. Kerry[1]
Mr. DeMint[1]	Mrs. Boxer[1]
Mr. Vitter[1]	Mr. Nelson of Florida
	Ms. Cantwell[1]
	Mr. Lautenberg[1]
	Mr. Nelson of Nebraska[1]
	Mr. Pryor
	Mr. Dorgan
	Mr. Stevens[1]

[1]By proxy

Senator Bill Nelson offered an amendment to Senator Smith's amendment (in the nature of a substitute) to require data brokers and others to provide consumers with the same rights to sensitive personal information about themselves that they now enjoy under FCRA. On a rollcall vote of 9 yeas and 13 nays as follows, the amendment was defeated:

YEAS—9	NAYS—13
Mr. Inouye	Mr. McCain[1]
Mr. Rockefeller[1]	Mr. Burns[1]
Mr. Kerry[1]	Mr. Lott[1]
Mr. Dorgan[1]	Mrs. Hutchison[1]
Mrs. Boxer[1]	Ms. Snowe[1]
Mr. Nelson of Florida	Mr. Smith
Ms. Cantwell[1]	Mr. Ensign[1]
Mr. Lautenberg[1]	Mr. Allen[1]
Mr. Pryor	Mr. Sununu[1]
	Mr. DeMint[1]
	Mr. Vitter[1]
	Mr. Nelson of Nebraska[1]
	Mr. Stevens[1]

[1]By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

SEC. 205. EVIDENCE AND PROCEDURE FOR ESTABLISHMENT OF BENEFITS.

[42 U.S.C. 405]

(a) RULES AND REGULATIONS; PROCEDURES.—The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(b) ADMINISTRATIVE DETERMINATION OF ENTITLEMENT TO BENEFITS; FINDINGS OF FACT; HEARINGS; INVESTIGATIONS; EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.—

(1) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, surviving divorced mother, surviving divorced father husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Commissioner of Social Security has rendered, the Commissioner shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the Commissioner's findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this title. In the course of any hearing, investigation or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under rules of evidence applicable to court procedure.

(2) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Commissioner of Social Security not to be entitled to such benefits, any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Commissioner of Social Security (before any hearing under paragraph (1) on the issue of such entitlement) of the Commissioner's determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Commissioner of Social Security where the finding was originally made by the State agency, and shall be made by the Commissioner of Social Security where the finding was originally made by the Commissioner of Social Security. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Commissioner of Social Security of a finding described in subparagraph (B) which was originally made by the Commissioner of Social Security, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).

(3)(A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any benefit under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

(B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this title of choosing to reapply in lieu of requesting review of the determination.

(c) RECORDS OF WAGES AND SELF-EMPLOYMENT INCOME.—

(1) For the purposes of this subsection—

(A) The term "year" means a calendar year when used with respect to wages and a taxable year when used with respect to self-employment income.

(B) The term "time limitation" means a period of three years, three months, and fifteen days.

(C) The term "survivor" means an individual's spouse, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent, who survives such individual.

(D) The term "period" when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1986 or regulations thereunder (or on reports filed by a State under section 218(e) (as in effect prior to December 31, 1986) or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.

(2)(A) On the basis of information obtained by or submitted to the Commissioner of Social Security, and after such verification thereof as the Commissioner deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B)(i) In carrying out the Commissioner's duties under subparagraph (A) and subparagraph (F), the Commissioner of Social Security shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups of categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

(I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part

from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Commissioner of Social Security, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment; and, in carrying out such duties, the Commissioner of Social Security is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Commissioner of Social Security shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual. With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).

(iii) In carrying out the requirements of this subparagraph, the Commissioner of Social Security shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including nonpublic school authorities).

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

(ii) In the administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if the parent has more than one such number) issued to the parent unless the State (in accordance with regulations prescribed by the Commissioner of Social Security) finds good cause for not requiring the furnishing of such number. The State shall make numbers furnished under this sub-

clause available to the Commissioner of Social Security and the agency administering the State's plan under part D of title IV in accordance with Federal or State law and regulation. Such numbers shall not be recorded on the birth certificate. A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect in the State, unless section 7(a) of the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of such number, by reason of the State having adopted, before January 1, 1975, a statute or regulation requiring such disclosure.

(iii)(I) In the administration of section 9 of the Food Stamp Act of 1977 (7 U.S.C. 2018) involving the determination of the qualifications of applicants under such Act, the Secretary of Agriculture may require each applicant retail store or wholesale food concern to furnish to the Secretary of Agriculture the social security account number of each individual who is an officer of the store or concern and, in the case of a privately owned applicant, furnish the social security account numbers of the owners of such applicant. No officer or employee of the Department of Agriculture shall have access to any such number for any purpose other than the establishment and maintenance of a list of the names and social security account numbers of such individuals for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 of such Act (7 U.S.C. 2021 or 2024).

(II) The Secretary of Agriculture may share any information contained in any list referred to in subclause (I) with any other agency or instrumentality of the United States which otherwise has access to social security account numbers in accordance with this subsection or other applicable Federal law, except that the Secretary of Agriculture may share such information only to the extent that such Secretary determines such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this subclause may be used by such other agency or instrumentality only for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for the purpose of investigation of violations of other Federal laws or enforcement of such laws.

(III) The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in this subclause, shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the purposes described in subclause (II).

(IV) The Secretary of Agriculture, and the head of any agency or instrumentality with which information is shared pursuant to clause (II), shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(iv) In the administration of section 506 of the Federal Crop Insurance Act, the Federal Crop Insurance Corporation may require each policyholder and each reinsured company to furnish to the in-

surer or to the Corporation the social security account number of such policyholder, subject to the requirements of this clause. No officer or employee of the Federal Crop Insurance Corporation shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such Act. The Manager of the Corporation may require each policyholder to provide to the Manager, at such times and in such manner as prescribed by the Manager, the social security account number of each individual that holds or acquires a substantial beneficial interest in the policyholder. For purposes of this clause, the term "substantial beneficial interest" means not less than 5 percent of all beneficial interest in the policyholder. The Secretary of Agriculture shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration of the Federal Crop Insurance Act. The Secretary of Agriculture shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of such social security account numbers. For purposes of this clause the term "authorized person" means an officer or employee of an insurer whom the Manager of the Corporation designates by rule, subject to appropriate safeguards including a prohibition against the release of such social security account number (other than to the Corporation) by such person.

(v) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i), such provision shall, on and after the date of the enactment of this subparagraph, be null, void, and of no effect. If and to the extent that any such provision is inconsistent with the requirement set forth in clause (ii), such provision shall, on and after the date of the enactment of such subclause, be null, void, and of no effect.

(vi)(I) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency administering a program funded under part A of title IV or an agency operating pursuant to the provisions of part D of such title.

(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).

(vii) For purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(viii)(I) Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

(II) Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of social security account numbers and related records obtained or maintained by an authorized person pursuant to a provision of law enacted on or after October 1, 1990, in the same manner and to the same extent as such paragraphs as such paragraphs apply with respect to unauthorized disclosures of returns and return information described in such paragraphs. Paragraph (4) of such 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such social security account number or related record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(III) For purposes of this clause, the term "authorized person" means an officer or employee of the United States, an officer or employee of any State, political subdivision of a State, or agency of a State or political subdivision of a State, and any other person (or officer or employee thereof), who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term "officer or employee" includes a former officer or employee.

(IV) For purposes of this clause, the term "related record" means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number or a request for a social security account number is maintained pursuant to this clause.

(ix) In the administration of the provisions of chapter 81 of title 5, United States Code, and the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.), the Secretary of Labor may require by regulation that any person filing a notice of injury or a claim for benefits under such provisions provide as part of such notice or claim such person's social security account number, subject to the requirements of this clause. No officer or employee of the Department of Labor shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such provisions. The Secretary of Labor shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of such provisions. The Secretary of Labor shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate

to protect the confidentiality of the social security account numbers.

(x) No executive, legislative, or judicial agency or instrumentality of the Federal Government or of a State or political subdivision thereof (or person acting as an agent of such an agency or instrumentality) may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the social security account numbers of other individuals. For purposes of this clause, the term 'prisoner' means an individual who is confined in a jail, prison, or other penal institution or correctional facility, serving community service as a term of probation or parole, or serving a sentence through a work-furlough program.

(D)(i) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) and any authorized blood donation facility may utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of identifying blood donors, and

(II) any State (or political subdivision of a State) may require any individual who donates blood within such State (or political subdivision) to furnish to such State (or political subdivision), to any agency thereof having related administrative responsibility, or to any authorized blood donation facility the social security account number (or numbers, if the donor has more than one such number) issued to the donor by the Commissioner of Social Security.

(ii) If and to the extent that any provision of Federal law enacted before the date of the enactment of this subparagraph is inconsistent with the policy set forth in clause (i), such provision shall, on and after such date, be null, void, and of no effect.

(iii) For purposes of this subparagraph—

(I) the term "authorized blood donation facility" means an entity described in section 1141(h)(1)(B), and

(II) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(E)(i) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) may utilize the social security account numbers issued by the Commissioner of Social Security for the additional purposes described in clause (ii) if such numbers have been collected and are otherwise utilized by such State (or political subdivision) in accordance with applicable law, and

(II) any district court of the United States may use, for such additional purposes, any such social security account numbers which have been so collected and are so utilized by any State.

(ii) The additional purposes described in this clause are the following:

(I) Identifying duplicate names of individuals on master lists used for jury selection purposes.

(II) Identifying on such master lists those individuals who are ineligible to serve on a jury by reason of their conviction of a felony.

(iii) To the extent that any provision of Federal law enacted before the date of the enactment of this subparagraph is inconsistent with the policy set forth in clause (i), such provision shall, on and after that date, be null, void, and of no effect.

(iv) For purposes of this subparagraph, the term "State" has the meaning such term has in subparagraph (D).

(F) The Commissioner of Social Security shall require, as a condition for receipt of benefits under this title, that an individual furnish satisfactory proof of a social security account number assigned to such individual by the Commissioner of Social Security or, in the case of an individual to whom no such number has been assigned, that such individual make proper application for assignment of such a number.

(G) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

(H) The Commissioner of Social Security shall share with the Secretary of the Treasury the information obtained by the Commissioner pursuant to the second sentence of subparagraph (B)(ii) and to subparagraph (C)(ii) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

(3) The Commissioner's records shall be evidence for the purpose of proceedings before the Commissioner of Social Security or any court of the amounts of wages paid to, and self- employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Commissioner of Social Security may, if it is brought to the Commissioner's attention that any entry of wages or self- employment income in the Commissioner's records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in the Commissioner's records, as the case may be. After the expiration of the time limitation following any year—

(A) the Commissioner's records (with changes, if any, made pursuant to paragraph (5)) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this title;

(B) the absence of an entry in the Commissioner's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this title that no such alleged wages were paid to such individuals in such period; and

(C) the absence of an entry in the Commissioner's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this title that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year, in which case the Commissioner of Social Security shall include in the Commissioner's records the self- employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Commissioner of Social Security may change or delete any entry with respect to wages or self-employment income in the Commissioner's records of such year for such individual or include in the Commissioner's records of such year for such individual any omitted item of wages or self-employment income but only—

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Commissioner's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Commissioner's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this title when they should have been credited under the Railroad Retirement Act of 1937 or 1974, or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act of 1937 or 1974 when they should have been credited under this title;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform his records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act, under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1954 or the Internal

Revenue Code of 1986, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 218 or regulations of the Commissioner of Social Security thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 218 (as in effect prior to December 31, 1986), if such assessments are made within the period specified in subsection (q) of such section (as so in effect), or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section; except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Commissioner's records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self- employment income entered in the records of the Commissioner of Social Security;

(H) to include wages paid during any period in such year to an individual by an employer;

(I) to enter items which constitute remuneration for employment under subsection (o), such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 or section 7(b)(7) of the Railroad Retirement Act of 1974; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Commissioner of Social Security as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F)) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Commissioner of Social Security of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Commissioner of Social Security of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of the Commissioner's records pursuant to this subsection, as the Commissioner of Social Security may prescribe), opportunity for hear-

ing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Commissioner of Social Security shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in the Commissioner's records as may be required by such findings and decision.

(8) A translation into English by a third party of a statement made in a foreign language by an applicant for or beneficiary of monthly insurance benefits under this title shall not be regarded as reliable for any purpose under this title unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(9) Decisions of the Commissioner of Social Security under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g).

(d) ISSUANCE OF SUBPENAS IN ADMINISTRATIVE PROCEEDINGS.—For the purpose of any hearing, investigation, or other proceeding authorized or directed under this title, or relative to any other matter within the the Commissioner's jurisdiction hereunder, the Commissioner of Social Security shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Commissioner of Social Security. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Commissioner of Social Security shall be served by anyone authorized by the Commissioner (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) JUDICIAL ENFORCEMENT OF SUBPENAS; CONTEMPT.—In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Commissioner of Social Security, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

(f) [Repealed]

(g) JUDICIAL REVIEW.—Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which

he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the District Court of the United States for the District of Columbia. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

(h) FINALITY OF COMMISSIONER'S DECISION.—The findings and decisions of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental

agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28, United States Code, to recover on any claim arising under this title.

(i) CERTIFICATION FOR PAYMENT.—Upon final decision of the Commissioner of Social Security, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this title, the Commissioner of Social Security shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Commissioner of Social Security (except that in the case of (A) an individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) creditable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1974, (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974, and (D) any other person entitled to benefits under section 202 of this Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): Provided, That where a review of the Commissioner's decision is or may be sought under subsection (g) the Commissioner of Social Security may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Commissioner of Social Security.

(j) REPRESENTATIVE PAYEES.—

(1)(A) If the Commissioner of Social Security determines that the interest of any individual under this title would be served thereby, certification of payment of such individual's benefit under this title may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's "representative payee"). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 807 or 1631(a)(2), the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representa-

tive payee pursuant to this subsection and certify payment to an alternative representative payee or, if the interest of the individual under this title would be served thereby, to the individual.

(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Commissioner of Social Security in regulations).

(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this title, title VIII, or title XVI,

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 208, 811, or 1632,

(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

(V) obtain information concerning whether such person is a person described in section 202(x)(1)(A)(iv), and

(VI) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection, the designation of such person as a representative payee has been revoked pursuant to section 807(a), or payment of benefits to such person has been terminated pursuant to section 1631(a)(2)(A)(iii) by reason of misuse of funds paid as benefits under this title, title VIII, or title XVI.

(ii) The Commissioner of Social Security shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits

has been revoked on or after January 1, 1991, pursuant to this subsection, whose designation as a representative payee has been revoked pursuant to section 807(a), or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1631(a)(2)(A)(iii), by reason of misuse of funds paid as benefits under this title, title VIII, or title XVI, and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 208, 811, or 1632.

(iii) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 202(x)(1)(A)(iv),

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(VI) the designation of such person as a representative payee has been revoked pursuant to section 807(a), or payment of benefits to such person pursuant to section 1631(a)(2)(A)(ii) has previously been terminated as described in section 1631(a)(2)(B)(ii)(VI),

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration,

(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

(V) such person is a person described in section 202(x)(1)(A)(iv).

(ii) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual,

(II) a legal guardian or legal representative of such individual,

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary,

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

(III) no other more suitable representative payee can be found.

(v) In the case of an individual described in paragraph (1)(B), when selecting such individual's representative payee, preference shall be given to—

(I) a certified community-based nonprofit social service agency (as defined in paragraph (10)),

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities,

(III) a State or local government agency with fiduciary responsibilities, or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate, unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(D)(i) Subject to clause (ii), if the Commissioner of Social Security makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct

payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

(ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in paragraph (1)(B).

(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the individual entitled to such benefits.

(E)(i) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in subsection (b), and to judicial review of the Commissioner's final decision as is provided in subsection (g).

(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent, then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such re-

ports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of another, if the Commissioner of Social Security has reason to believe that the person receiving such payments is misusing such payments.

(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(F) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection, section 807, or section 1631(a)(2), and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection, section 807, or section 1631(a)(2).

(G) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and certified community-based nonprofit social service agencies (as defined in paragraph (10)) which are qualified to serve as representative payees pursuant to this subsection or section 807 or 1631(a)(2) and which are located in the area served by such servicing office.

(4)(A)(i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which the individual is described in paragraph (1)(B)). A

qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 215(i)(2)(A), except that any amount so adjusted that is not a multiple of $ 1.00 shall be rounded to the nearest multiple of $1.00.

(ii) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this title but to whom all past-due benefits have not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I). Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

(B) For purposes of this paragraph, the term "qualified organization" means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in paragraph (10)), if such agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(i) regularly provides services as the representative payee, pursuant to this subsection or section 807 or 1631(a)(2), concurrently to 5 or more individuals,

(ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual. The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representa-

tive payee an amount equal to such misused benefits. In any case in which a representative payee that—

(A) is not an individual (regardless of whether it is a "qualified organization" within the meaning of paragraph (4)(B)); or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles; misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (10) of this subsection or section 1631(a)(2)(I)); or

(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(i) the number of such reviews;

(ii) the results of such reviews;

(iii) the number of cases in which the representative payee was changed and why;

(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(v) the number of cases discovered in which there was a misuse of funds;

(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(viii) such other information as the Commissioner deems appropriate.

(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(8) For purposes of this subsection, the term "benefit based on disability" of an individual means a disability insurance benefit of such individual under section 223 or a child's, widow's, or widower's insurance benefit of such individual under section 202 based on such individual's disability.

(9) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term "use and benefit" for purposes of this paragraph.

(10) For purposes of this subsection, the term "certified community-based nonprofit social service agency" means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(k) PAYMENTS TO INCOMPETENTS.—Any payment made after December 31, 1939, under conditions set forth in subsection (j) any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Commissioner of Social Security of incompetency prior to certification of payment, if otherwise valid under this title, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(l) DELEGATION OF POWERS AND DUTIES BY COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security is authorized to delegate to any member, officer, or employee of the Social Security Administration designated by the Commissioner any of the powers conferred upon the Commissioner by this section, and is authorized to be represented by the Commissioner's own attorneys in any court in any case or proceeding arising under the provisions of subsection (e).

(m) [Repealed]

(n) JOINT PAYMENTS.—The Commissioner of Social Security may, in the Commissioner's discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 204(a) with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this title for such month.

(o) CREDITING OF COMPENSATION UNDER THE RAILROAD RETIREMENT ACT.—If there is no person who would be entitled, upon application therefor, to an annuity under section 5 of the Railroad Retirement Act of 1974, or to a lump-sum payment under section 6(b) of such Act, with respect to the death of an employee (as defined in such Act), then, notwithstanding section 210(a)(10) of this Act, compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 3(i) of such Act if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 217 of this Act) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this title on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this title, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

(p) SPECIAL RULES IN CASE OF FEDERAL SERVICE.—

(1) With respect to service included as employment under section 210 which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (l)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 210(o) are applicable, the Commissioner of Social Security shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1954 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive. Nothing in this paragraph shall be construed to affect the Commissioner's authority to determine under sections 209 and 210 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Commissioner of Social Security, to make certification to the Commissioner with respect to any matter determinable for the Commissioner of Social Security by such head or his agents under this subsection, which the Commissioner of Social Security finds necessary in administering this title.

(3) The provisions of paragraphs (1) and (2) shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Transportation shall be deemed to be the head of such instrumentality.

(q) EXPEDITED BENEFIT PAYMENTS.—

(1) The Commissioner of Social Security shall establish and put into effect procedures under which expedited payment of

monthly insurance benefits under this title will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this title was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit—

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Commissioner of Social Security (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Commissioner of Social Security has evidence that such allegation is true, whichever is later), the Commissioner of Social Security shall, if the Commissioner finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Commissioner of Social Security determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2)(A) is true, the Commissioner may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2)(B)(i) and (B)(ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

(5) For purposes of this subsection, benefits payable under section 228 shall be treated as monthly insurance benefits payable under this title. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 223, or section 202 to a wife, husband, or child of an individual entitled to or applying for benefits under section 223, or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

(r) USE OF DEATH CERTIFICATES TO CORRECT PROGRAM INFORMATION.—

(1) The Commissioner of Social Security shall undertake to establish a program under which—

(A) States (or political subdivisions thereof) voluntarily contract with the Commissioner of Social Security to furnish the Commissioner of Social Security periodically with information (in a form established by the Commissioner of Social Security in consultation with the States) concerning individuals with respect to whom death certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this Act, (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Commissioner of Social Security with information on records of deaths in the State or subdivision under this subsection may be paid by the Commissioner of Social Security from amounts available for administration of this Act the reasonable costs (established by the Commissioner of Social Security in consultations with the States) for transcribing and transmitting such information to the Commissioner of Social Security.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this Act, the Commissioner of Social Security shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if—

(A) under such arrangement the agency provides reimbursement to the Commissioner of Social Security for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Commissioner of Social Security under paragraph (1).

(4) The Commissioner of Social Security may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of subparagraphs (A) and (B) of paragraph (3) are met.

(5) The Commissioner of Social Security may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Commissioner of Social Security determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Commissioner of Social Security under this subsection may not be used for any purpose other than the purpose described in this subsection and is exempt from disclosure under section 552 of title 5, United States Code, and from the requirements of section 552a of such title.

(7) The Commissioner of Social Security shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 704 of the Act.

(8)(A) The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002—

(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.

(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.

(D) For purposes of this paragraph—

(i) the term "applicable information" means information regarding whether—

(I) the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

(II) such individual is shown on the records of the Commissioner as being deceased; and

(ii) the term "State driver's license agency" means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.

(E) Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).

(F) Applicable information provided by the Commission pursuant to an agreement under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a con-

tractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony and upon conviction thereof shall be fined or imprisoned, or both, as described in section 208.

(s) NOTICE REQUIREMENTS.—The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient. In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(t) SAME-DAY PERSONAL INTERVIEWS AT FIELD OFFICES IN CASES WHERE TIME IS OF THE ESSENCE.—In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(1) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(2) the theft, loss, or nonreceipt of a benefit payment under this title, the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(u) REDETERMINATION OF ENTITLEMENT IN CASES OF FRAUD OR SIMILAR FAULT.—

(1)(A) The Commissioner of Social Security shall immediately redetermine the entitlement of individuals to monthly insurance benefits under this title if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to beneficiaries in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(B) When redetermining the entitlement, or making an initial determination of entitlement, of an individual under this title, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(2) For purposes of paragraph (1), similar fault is involved with respect to a determination if—

(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(B) information that is material to the determination is knowingly concealed.

(3) If, after redetermining pursuant to this subsection the entitlement of an individual to monthly insurance benefits, the Commissioner of Social Security determines that there is insufficient evidence to support such entitlement, the Commissioner of Social Security may terminate such entitlement and may treat benefits paid on the basis of such insufficient evidence as overpayments.

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