



SOCIAL SECURITY ADMINISTRATION

20 CFR Part 401

[Docket No. SSA-2018-0012]

RIN 0960-AI31

Anti-Fraud System

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We separately published, in today's Federal Register, notice of a modified system of records entitled Anti-Fraud (AF) System. Because this system will contain some investigatory material compiled for law enforcement purposes, this proposed rule will exempt those records within this system of records from specific provisions of the Privacy Act.

DATES: To ensure that your comments are considered, we must receive them no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to docket number SSA-2018-0012, in order that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA–2018-0012. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Melissa Feldhan, Supervisory Government Information Specialist, SSA, Office of Privacy & Disclosure, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, Phone: (410) 965-1416, for information about this rule. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Privacy Act,¹ we are issuing public notice of our intent to establish a modified system of records, the Anti-Fraud (AF) System (60-0388). The AF System is an agency-wide and overarching system that includes the ability to detect, prevent, and mitigate fraud in our programs. The AF System collects and maintains personally identifiable information (PII) for assisting us in identifying suspicious or potentially fraudulent activities performed by individuals across all of the agency's programs and service delivery methods.

We established the AF System to support our goal of enhancing SSA's fraud prevention and detection activities by protecting the public's data, providing secure online services, and increasing payment accuracy. The AF System provides us with access to a single repository of data that currently resides across many of our different systems of records. We use the PII in the AF System to employ advanced data analytics solutions to identify patterns indicative of fraud, improve the functionality of data-driven fraud activations, conduct real-time risk analysis, and integrate developing technology into our anti-fraud business processes. This solution also provides true business intelligence to agency leadership with assistance in data-driven anti-fraud decision-making. We use the records in the AF System to detect indications of fraud in all of our programs and operations initiated by individuals outside of SSA or internal to SSA (e.g., SSA employees).

We are claiming that the AF System is exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Some information in the AF System relates to our efforts to mitigate, detect, and investigate fraud in our programs and systems and to collaborate with the Office of the Inspector General in fraud investigations and prosecutions. Therefore, we need these exemptions to protect information from public

¹ 5 U.S.C. 552a

access. The exemptions are required to avoid disclosure of screening techniques; to protect the identities and physical safety of confidential informants; to ensure our ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Allowing an individual to access the information in the AF System could permit the individual to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of the AF System and the overall law enforcement process, we may, at our discretion, grant notification of or access to a record in the AF System. If an individual is denied any right, privilege, or benefit to which he or she is otherwise entitled under Federal law due to the maintenance of material in the AF System, we will provide such material to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to us under an express promise that the identity of the source would be held in confidence.

We are claiming exemption from Privacy Act subsection (c)(3) (Accounting and Disclosure); subsection (d) (Access and Amendment to Records); subsection (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements); and subsection (f) (Agency Rules) for this system of records. We claim exemption from these Privacy Act subsections for the AF System because release of the accounting of disclosures, access to the records, and notice to individuals with respect to existence of records could alert the individual whom might be a subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation. Disclosures of accounting would therefore present a serious impediment to law enforcement efforts. These Privacy Act subsections would permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses, or evidence, and to avoid detection or

apprehension, which would undermine the investigative process. Thereby, these Privacy Act subsections would undermine SSA investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

In summary, due to the investigatory nature of information that we maintain in this system of records, we propose to add the AF System to the list of our systems that are exempt from specific provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Rulemaking Analyses and Notices

We will consider all comments received on or before the close of business on the comment closing date indicated above and we will make the comments available for examination in the docket at the previously noted address. We will file comments received after the comment closing date in the docket, and we will consider them to the extent practicable. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?

- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g. grouping and order of sections, use of headings, paragraphing?

REGULATORY PROCEDURES

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this NPRM does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

We also determined that this NPRM meets the plain language requirement of Executive Order 12866.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132, and we determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed rule.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

List of Subjects in 20 CFR Part 401

Administrative practice and procedure, Privacy.

The Commissioner of the Social Security Administration, Andrew Saul, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the Federal Register.

Faye I. Lipsky,
Federal Register Liaison,
Office of Legislation and Congressional Affairs,
Social Security Administration.

For the reasons stated in the preamble, we are revising subpart B of part 401 of title 20 of the Code of Federal Regulations as set forth below:

PART 401—PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Subpart B— [Amended].

1. The authority citation for subpart B of part 401 continues to read as follows:

Authority: Secs. 205, 702(a)(5), 1106, and 1141 of the Social Security Act (42 U.S.C. 405, 902(a)(5), 1306, and 1320b-11); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 26 U.S.C. 6103; 30 U.S.C. 923.

2. In §401.85, add paragraph (b)(2)(ii)(H) to read as follows.

(b)(2) * * *

(ii) * * *

(H) Anti-Fraud, SSA.

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