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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 408.120 Periods of limitations ending on Federal nonworkdays.

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

Subpart B—SVB Qualification and Entitlement

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

§ 408.201 What is this subpart about?

You are qualified for SVB if you meet the requirements listed in § 408.202 and if none of the conditions listed in § 408.204 exist. However, you cannot be entitled to receive benefits for any month before the first month in which you reside outside the United States on the first day of the month and meet all the qualification requirements. You must give us any information we request and evidence to prove that you meet these requirements. You continue to be qualified for SVB unless we determine that you no longer meet the requirements for qualification in § 408.202 or we determine that you are not qualified because one of the conditions listed in § 404.204 of this chapter exists. You continue to be entitled to receive benefits unless we determine you are no longer residing outside the United States.

§ 408.202 How do you qualify for SVB?

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

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

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

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

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

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

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

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

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

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

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

(4) *Residence in certain countries.* Any month during which you are not a citizen or national of the United States

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

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

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

§ 408.206 What happens when you apply for SVB?

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

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

(1) You are qualified for SVB;

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

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

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

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

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

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

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

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

AGE

§ 408.214 Are you age 65?

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

MILITARY SERVICE

§ 408.216 Are you a World War II veteran?

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

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

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

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

SSI ELIGIBILITY

§ 408.218 Do you meet the SSI eligibility requirements?

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

(a) You have been determined to be eligible for SSI (except as noted in paragraph (c) of this section); you do

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not have to actually receive a payment for that month;

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

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

OTHER BENEFIT INCOME

§ 408.220 Do you have other benefit income?

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

(b) *When other benefit payments are considered to be similar payments from the same or a related source.* Payments are similar payments from the same or a related source if they are received from sources substantially related to the sources of income received before you became entitled to SVB. For example, if you received U.S. Social Security spouse's benefits in the 12-month period before you filed your application for SVB and these were changed to widower's benefits after you became entitled to SVB, we would consider this to be from the same or a related source.

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

- (1) Veterans' compensation or pension,
- (2) Workers' compensation,

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

(4) Railroad retirement annuity or pension,

(5) Retirement or disability pension,
(6) Individual Retirement Account (IRA) payments, and

(7) Unemployment insurance benefit.

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

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

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

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

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

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

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

(b) *Bi-weekly payments.* We multiply the amount of the bi-weekly payment by 26 and divide by 12 to determine the equivalent monthly payment amount.

(c) *Quarterly payments.* We multiply the amount of the quarterly payment

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by 4 and divide by 12 to determine the equivalent monthly payment amount.

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

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

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

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

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

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

RESIDENCE OUTSIDE THE UNITED STATES

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

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

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

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

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

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

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

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

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

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

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

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

§ 408.232 When do you lose your foreign resident status?

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

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

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

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

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

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

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

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

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

(2) Are exercising your option to be personally present in the United States to present testimony and other evidence in the appeal of an SSA decision on a claim filed under any SSA-administered program. This extension applies

only as long as you are participating in activities where you are providing testimony and other evidence in connection with a determination or decision at a specific level of the appeals process (e.g., a hearing before an administrative law judge).

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

Subpart C—Filing Applications

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

FILING YOUR APPLICATION**§ 408.301 What is this subpart about?**

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

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

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

(a) Permit us to make a formal decision on whether you qualify for SVB;

(b) Assure that you receive SVB for any months you are entitled to receive payments; and