

or exceed the amount set forth in § 15.03.

**PART 18—REPORTS BY TRADERS**

4. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a, and 19; 5 U.S.C. 552 and 552(b) unless otherwise noted.

5. Part 18 is amended by adding a new § 18.03 as follows:

**§ 18.03 Delegation of authority to the Director of the Division of Economic Analysis.**

The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls on traders for information as set forth in §§ 18.00, 18.04 and 18.05 to the Director of the Division of Economic Analysis to be exercised by the Director or by such other employee or employees of the Director as may be designated from time to time by the Director. The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

6. Section 18.04 is amended by removing paragraph (d) and by revising the introductory text to read as follows:

**§ 18.04 Statement of reporting trader.**

Every trader who holds or controls a reportable options or futures position shall after a special call upon such trader by the Commission or its designee file with the Commission a "Statement of Reporting Trader" on the Form 40 at such time and place as directed in the call. All traders shall complete part A of the Form 40 and, in addition, shall complete:

Part B—If the trader is an individual, a partnership or a joint tenant.

Part C—If the trader is a corporation or type of trader other than an individual, partnership, or joint tenant.

\* \* \* \* \*

**PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON**

7. The authority section for part 19 continues to read as follows:

Authority: U.S.C. 6g(a), 6i, and 12a(5), unless otherwise noted.

8. Section 19.00 is amended by revising paragraph (a)(1) to read as follows:

**§ 19.00 General provisions.**

(a) \* \* \*

(1) All persons holding or controlling options or futures positions that are reportable pursuant to § 15.00(b)(1)(ii) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter,

\* \* \* \* \*

Issued in Washington, D.C., January 31, 1997 by the Commission.

Catherine D. Dixon,

*Assistant to the Secretary of the Commission.*

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**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Part 404**

RIN 0960-AE31

**Cycling Payment of Social Security Benefits**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rules.

**SUMMARY:** Historically, Social Security benefits generally have been paid on the 3rd of each month. As a result of our ongoing efforts to improve service to our customers, we are establishing additional days throughout the month on which Social Security benefits will be paid. Current beneficiaries are not affected.

**EFFECTIVE DATE:** These final rules are effective May 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1713. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1-800-772-1213.

**SUPPLEMENTARY INFORMATION:**

**Background**

The second phase of the National Performance Review (NPR), the Federal Reinventing Government effort, was announced by the President and Vice President on December 19, 1994. It was designed to focus attention on what each agency does, examining its mission and looking at its programs and functions to see if there are ways to provide better service to the public and, at the same time, do business in a more cost-effective manner, i.e., "make government work better and cost less." Each agency was asked to assemble a team to review its own programs and functions. SSA's team worked closely

with a team of representatives from NPR and the Office of Management and Budget (OMB) to develop recommendations for the Vice President's consideration.

On April 11, 1995, the White House formally approved SSA's reinvention proposals and officially announced them the next day. One of these proposals was to cycle the payment of benefits.

Recipients of Old-Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments currently are paid in the first few days of each month. While these specific payment days have never been required by the Social Security Act (the Act), which in §§ 205(i) and 1631(a)(1) commits the time for making benefit payments to the discretion of the Commissioner of Social Security, it has been our longstanding administrative practice to make payment on these days. Monthly benefits are paid to all OASDI beneficiaries on the same day (generally the 3rd day of each month for the preceding month) and to all SSI beneficiaries on the same day (generally the 1st day of each month for which the payment is due).

Over the years, a trend has developed that has resulted in deterioration of services we provide face-to-face or over the telephone on and around our payment days. This phenomenon is described fully below and is of particular concern to us in light of the Agency's commitment to provide "world class" service to our beneficiaries and customers.

Executive Order 12862, issued on September 11, 1993, mandates that the standard of quality for services provided to the public for all government agencies shall be "customer service equal to the best in the business." This standard has been incorporated into SSA's goal of providing "world class" public service. For example, when you conduct business with us, we have set as goals that:

- When you make an appointment to talk with someone at one of our field offices, we will serve you within 10 minutes to the scheduled time.
- When you call our toll-free 800 number, you will get through to it within 5 minutes of your first try.

SSA's current practice of paying 47 million beneficiaries within the first 3 days of each month results in a large surge of work during the first week of each month. This surge includes a large number of visitors to field offices and calls to our toll-free 800 number to report nonreceipt of a check, question the amount paid, or ask about other payment-related issues. Approximately

9 percent of all calls during check week concern nonreceipt, compared to 3 percent during the rest of the month. As an example of the surge that occurs around the current payment days, on April 3, 1995, 1,091,282 calls were placed to SSA's 800 number. On April 14, 1995, the number of calls placed to our 800 number decreased to 229,022.

It is important to beneficiaries and customers to be able to reach SSA with fewer busy signals, and we have pledged to enable callers to get through to the 800 number within 5 minutes of their original attempt. However, in fiscal year (FY) 1994, during peak periods, customers encountered busy signals on SSA's 800 number 40–63 percent of the time and had to wait more than 5 minutes to get through about 30 percent of the time. This delay often occurs at a time when it may be the most critical for the individual to reach us, to report a lost check, for example. Anyone who experiences a delay in reaching us to report a lost check also faces a delay in receiving a replacement check. Since many beneficiaries rely solely on their Social Security benefits, this can be a real hardship for them.

Our goal is for our customers to have minimal waits for service when visiting a Social Security field office. Today, SSA does not always meet this goal. In FY 1994 there were 24 million visitors to our field offices. While the average wait during check week for individuals with an appointment was 8 minutes, some individuals with appointments had to wait over 2 hours. Thirty-two percent of the visitors to our offices without appointments in FY 1994 (typically people who have questions related to their payments or who want to report payment delivery problems) had to wait more than 30 minutes after arriving to be served. The average wait during check week for individuals without appointments was 16 minutes, although some individuals without appointments had to wait over 3 hours. This can be a particular hardship to those who are elderly or disabled, as well as to people who might take off from work to come to our offices.

The demographic and resource challenges we will face over the next 25 years will make it even more difficult for us to meet our service-delivery objectives. Currently, we pay 47 million OASDI and SSI beneficiaries within the first three days of each month. Due to the aging of the "baby boomer" generation, by the year 2020, we will be paying about 75 million beneficiaries, a 60 percent increase over today's beneficiary population. This will place an unprecedented demand on our benefit delivery system.

We are concerned that, in the next 25 years, with the prospect of about 75 million beneficiaries all receiving their payments on single days, there will be a serious deterioration in our service to the public, and we will not be able to provide the kind of service to which we are committed. The growth in beneficiary population is expected to place an even greater strain on SSA's resources at the beginning of the month. At the same time that the number of SSA customers is growing, SSA's resources are being reduced. Public Law 103–226 mandates an overall 12 percent reduction of Federal staffing levels by 1999, and this will impact SSA's resources. As a result, we are particularly concerned that we will not be able to cope with the monthly workload peaks and still maintain our goal of being readily accessible to the public unless we make significant changes in the way in which we deliver service.

In the future, the increased number of beneficiaries and customers plus the mandated reduction of Federal staffing levels will have a real impact on the public's ability to contact us. This will be especially hard on individuals during check week (currently the first week in each month that benefits are paid) when the system will be overloaded. Check week is the time that beneficiaries often have the most urgent need to reach us to report nonreceipt or other problems related to their payment, and to request a replacement check.

Each attempted phone contact by an SSA beneficiary, whether over or under age 65, may represent a personal crisis due, for example, to nonreceipt of benefits. Social Security benefits affect, in particular, nearly all individuals age 65 and over in the United States (U.S.). For a significant proportion of individuals over age 65, the benefits represent 90 percent or more of their total income. For these beneficiaries, nonreceipt is not an abstract concept or statistic. It may represent the difference between paying rent or mortgage payments on time or late. It may mean the ability to purchase food. It may represent lack of gasoline or busfare to get to a medical appointment. A phone contact or visit may be by a recent widow(er) who is reporting the death of her/his spouse. One successful telephone call may be all that is necessary to enable SSA to convert retirement benefits as a spouse into higher widow(er)'s benefits. An unsuccessful phone contact could prevent us from holding back payments to the deceased individual and scheduling benefits to the newly widowed beneficiary. When individuals

are unsuccessful at reaching us by telephone, either they, or a friend or family member, may take time off from work to come into a field office. Any additional delay waiting in the field office causes them to lose even more time from work.

Today, we are attempting to cope with the uneven workload pattern in order to maintain our level of service through a series of administrative and management initiatives. For example, at the beginning of the month, we redeploy staff from other work to handle the increase in telephone inquiries which sometimes exceeds two million calls a day. While this practice has been generally successful so far, it will not continue to be as effective in the future when the number of beneficiaries increases substantially and our staffing decreases.

We are considering all our options in preparing for this increase in SSA's workloads and staff reductions and, accordingly, are looking for ways to reengineer our various processes to allow us to achieve our world class customer service goals and, at the same time, increase efficiency and productivity to the maximum extent possible. It is clear, though, that SSA's goal to achieve a level of world class customer service cannot be realized unless our workloads are evened out. This is critical to providing better access to SSA's services for our beneficiaries and customers.

The release of all OASDI and SSI payments on single days also has an adverse effect on certain sectors of the economy. Based on meetings we held with representatives of the banking and business community, the Department of the Treasury (DT), the Federal Reserve System (FRS) and the U.S. Postal Service (USPS), it is clear that the large, once-a-month OASDI and SSI payment files are creating many problems. The banking and business community, the DT, FRS and the USPS all have to bear the expense of providing sufficient resources and processing capacity to deal with OASDI and SSI payments as they flow through the national payment system at the beginning of the month. This capacity is not needed throughout the remainder of the month.

Equally significant is the growing operational risk that is associated with SSA's current payment pattern. Representatives from several large financial institutions made it clear that when the Social Security direct deposit payment file becomes available for processing from FRS, they stop all other business and devote their entire operation to ensuring the file is processed quickly and accurately.

Because of the inordinately large number of payments involved, these institutions must ensure that nothing goes wrong as the file passes through the national payment system and is deposited into individual customers' accounts. Any event that adversely affects the operational capacity of DT, FRS or a large financial institution in the 1 to 4 day window prior to the 3rd of the month may result in the delay or nonreceipt of literally millions of Social Security benefit payments which could create hardship for SSA beneficiaries. Leveling the Social Security payment files through cycling will help prevent this operational risk and resulting hardship.

In order to improve our service to the public, both now and in the future, we will spread the payment of OASDI benefits throughout the month, rather than continue to make all benefit payments on single days at the beginning of the month. That is, we will establish several additional payment days for each month, and pay the full monthly benefit to some beneficiaries on the first of those payment days, to other beneficiaries on the second of those payment days, and so forth. The payment day, or cycle, on which a beneficiary is paid generally will not be changed, so that if you are paid on the second payment day in one month you will be paid on the second payment day in each succeeding month as well. This approach, which we call "cycling of payments," will level the workload peaks associated with our current practice of paying all benefits on the same day. Since calls and visits associated with receipt of the monthly benefit payment will be distributed throughout the month, rather than concentrated in a few days, there will be shorter waiting times for assistance and we will be able to achieve or sustain our world class service to the public.

It is important to note that payment cycling will not change the way benefits are computed. We will continue to follow the same rules in determining month of entitlement and the payment amount. People whose benefits are cycled will receive the same amount they would receive if they were paid on the 3rd of the month.

The benefits to society of implementing payment cycling are potentially significant but extremely difficult to estimate. Cycling will benefit members of the public in that they will have better access to SSA services, including shorter waiting times in field offices and when calling the 800 number, as SSA's workloads increase in the future. Cycling will benefit the business and banking communities in

that they will be better able to utilize their resources throughout the month, processing Social Security payments on a weekly basis. Cycling will also reduce the risk involved in processing large once-a-month files. If we continue to pay all beneficiaries on single days once-a-month, SSA's service to the public will deteriorate, and the adverse impact that the once-a-month payments have on the business and financial community will continue, as will the growing operational risk that goes along with processing all benefit payments at one time.

After considering how best to implement the reinvention proposal to cycle the timing of benefit payments, we have decided the following:

1. We will establish three additional payment days throughout the month (i.e., the second, third and fourth Wednesdays of the month) on which individuals may be paid. This schedule will alleviate to the maximum extent possible the current Monday workload peak which is also now being experienced by SSA's toll-free 800 number and field offices when the payment day falls on Friday, Saturday, Sunday or Monday, which occurs more than half of the time.

2. We will implement payment cycling prospectively only for new OASDI beneficiaries whose claims are filed on or after May 1, 1997. Payments to current beneficiaries will not be cycled, as they are already in the established pattern of receiving their benefits on the third of the month.

In the notice of proposed rulemaking (NPRM) we indicated that we proposed to implement payment cycling by January 1997. However, we are delaying implementation because we anticipate heavy workloads between December 1996 and March 1997 due to recently enacted legislation, and we believe it would be unwise to begin payment cycling during that time. The May 1, 1997 implementation date was also selected to allow SSA, DT and FRS, who share responsibility for delivery of SSA's payments, sufficient time to complete the essential modifications required before cycling can begin. Moreover, publishing the final regulation several months in advance of the implementation date allows the business and financial community lead time to prepare for cycling.

3. We will assign one of the newly established payment days to each new OASDI beneficiary based on the date of birth of the person on whose record entitlement is established (the insured individual). Generally, new OASDI beneficiaries who receive auxiliary or survivors benefits on an insured

individual's record will be assigned to the payment day based on the insured individual's date of birth. Insured individuals born on the 1st through the 10th of the month will be paid on the second Wednesday of each month. Insured individuals born on the 11th through the 20th of the month will be paid on the third Wednesday of each month. Insured individuals born after the 20th of the month will be paid on the fourth Wednesday of each month. With the few exceptions described below, no new OASDI beneficiaries will receive payments on the 3rd of the month.

Individuals who are being paid benefits on one record on the 3rd of the month, and who become entitled on another record after April 30, 1997 without a break in entitlement, will continue to receive all benefits on the 3rd of the month.

After April 30, 1997, individuals who become entitled on one record and later entitled on another record, without a break in entitlement, will be paid all benefits to which they are entitled no later than their current payment day. They will not be assigned a later payment day as long as they remain continuously entitled. We believe this change from our proposed rule is desirable to ensure that those individuals who have become accustomed to receiving their payments on a certain day are not required to wait an additional 1 to 2 weeks for payment when the second entitlement begins. We have had to establish an interim process to implement this change until such time as systems enhancements can fully support a permanent process. Under the interim process, these individuals will be assigned a payment day based on the new entitlement situation or, if that is later than the current payment day, they will be paid on the 3rd of the month. Under the permanent process, individuals will be assigned whichever payment day is earlier: the current payment day or the payment day which would be assigned based on the new entitlement situation.

4. We may accommodate some beneficiaries currently being paid on the 3rd of the month who voluntarily wish to change to the payment day that would be selected by the date of birth criteria described above, in order to accelerate the workload leveling effect of cycling. For example, we plan to allow them to volunteer to switch if only one person is being paid on the record or, if there are other beneficiaries being paid on the same record, all others agree, in writing, to the change. However, once a volunteer is assigned to a new payment day, that day will be

permanent and the person will not be allowed to change back to the 3rd of the month. We will not allow beneficiaries being paid on one of the three new days to switch to a different payment day.

5. We will not include persons receiving SSI payments, and persons concurrently entitled to both OASDI and SSI benefits, in payment cycling. Since SSI is a needs-based program, we believe we should continue to pay these individuals as early in the month as possible. Concurrently entitled individuals who lose eligibility for SSI will continue to be paid on the 3rd.

6. We will not apply payment cycling to OASDI beneficiaries whose income is deemed to SSI beneficiaries. The reason is that most deeming cases involve family members who receive Federal income maintenance benefits. Those family units should continue to receive payments as early in the month as possible. Likewise, payment cycling will not apply to OASDI beneficiaries who, due to their income and/or resources, are not entitled to SSI but the State in which they live covers their Medicare premium. The Health Care Financing Administration requested that these OASDI beneficiaries be paid early in the month.

7. Payment cycling will not apply to beneficiaries living in a foreign country. For those beneficiaries who will be paid by check because SSA does not have direct deposit arrangements with the country in which they reside, foreign check delivery is often unreliable. However, with one delivery day on the 3rd of the month it is easier to target when checks should be received than if they were sent four times throughout the month. Also, since foreign beneficiaries do not have access to the 800 number or to SSA's field offices in the country where they reside, these facilities will not be adversely affected if we continue to pay foreign beneficiaries on the 3rd of the month. The presence of a foreign address for any beneficiary on a Social Security record will mean that all beneficiaries on that record will be paid on the 3rd of the month. The reason is that, for operational purposes, we are assigning a single payment day for all individuals who receive benefits on the earnings record of a particular individual. Once a beneficiary has reported a foreign address and all individuals receiving benefits on that account are changed to the 3rd of the month, the payment day for all of them will remain the 3rd of the month even if the person with the foreign address returns to the U.S. This is to prevent potential confusion caused by beneficiaries frequently leaving and entering the U.S.

8. We will notify affected beneficiaries in writing of the particular monthly payment day that is assigned to them. However, the assignment of a payment day is not an initial determination and is not appealable. Beneficiaries have never been able to choose their payment day and will not be able to choose a payment day under payment cycling except under very specific and limited circumstances.

#### Early Consultations

Prior to publishing the NPRM, we conducted 10 focus group meetings at 5 locations around the country to solicit comments and obtain reaction from the public to cycling payments throughout the month. Two meetings were held in each location: one with current beneficiaries age 21 and over and one with future beneficiaries age 21 and over. After we described our future workload projections and resultant service delivery deterioration, the vast majority of future beneficiaries with whom we met said they would not mind being paid later in the month.

We also conducted a series of separate meetings with stakeholders including representatives from the business community, financial community, other government agencies and advocacy groups. The overwhelming consensus of opinion among all stakeholders who participated was that SSA should implement some form of payment cycling.

#### Comments on NPRM

On January 26, 1996, we published proposed regulations in the Federal Register at 61 FR 2654 and provided a 60-day period for interested individuals to comment. On February 15, 1996 we held an informational briefing for representatives of groups and organizations, and any others, who were interested in attending, to provide details and to answer questions on how SSA proposed to implement payment cycling.

In response to the NPRM, we received comments from 17 commenters. Most of the comments came from financial institutions, financial trade associations, and State and local human services agencies, as well as DT. Several comments came from individuals who did not identify themselves as representing any particular organization or advocacy group.

The comments on the proposed rules were overwhelmingly favorable. Fifteen commenters, including both organizations and individuals, fully supported payment cycling. Only two individuals expressed opinions against the proposed change. The majority of

commenters also agreed with SSA's decision not to cycle current beneficiaries.

Most of the financial institutions who commented indicated that payment cycling would help them to provide better customer service on or around payment days. One also mentioned payment cycling easing concerns they currently have for the safety of bank employees and customers on payment days due to the large amount of cash they have on hand on those days.

One commenter who identified herself as a future beneficiary who would be covered by payment cycling said she supported it because she wants SSA to be able to provide the best possible service for current beneficiaries and for her when she is eligible to file for benefits. A human services agency that supported payment cycling said it is aware of the problems clients currently encounter getting through to SSA on or around payment days. The agency also mentioned cycling as being a crime deterrent, since it is well known that checks arrive on the 3rd.

Only two commenters from the financial community responded to SSA's request for information from the business and financial community about the incremental cost or savings to them. One of these two commenters, who fully supported payment cycling, said "\*\*\* gradual enrollment of beneficiaries and anticipated increase in the number of beneficiaries make it difficult to determine the costs the banking industry will be able to avoid as a result of the adoption of this policy." This commenter said, "In addition to eventual long-term cost savings, there are also payment system risk reduction effects flowing from this proposal." The other commenter who responded to this request from SSA, and who also fully supported payment cycling, said since it applies prospectively to new beneficiaries, it will not reduce their current expenses and that it is difficult to quantify future savings at this time.

Some of those who supported payment cycling suggested changes in some of the specific details about cycling. One of the two individuals who were not in favor of payment cycling also submitted comments. Following are summaries of those suggested changes and comments and our responses to them:

*Comment:* One commenter said that instead of SSA's toll free 800 number being busy at the beginning of the month (and SSA having the rest of the month to get caught up with its other work), the toll free 800 number will be consistently busy throughout the month.

This will make it more difficult for SSA to get caught up with its work.

*Response:* In cycling benefit payments, SSA's objective is to improve public service by reducing the inordinate workload peak that now occurs when all payments are delivered at the beginning of the month. By leveling SSA's workload, the public will be able to get a consistent level of quality service at any time of the month.

It is true that eventually payment cycling will have an effect upon SSA's workforce. Employees may receive more telephone inquiries and field office contacts in the last 2 weeks of the month than occur today. Again, this is the purpose of payment cycling. By leveling workloads, the public is better served because it consistently has better access to SSA services. At the same time, SSA is in a position to make better use of its available resources.

*Comment:* The same commenter was concerned that there will be additional work and expense for SSA because someone who now receives two types of benefits (one on his/her own record and one on a spouse's record) will now receive two checks. Receiving one check later in the month will cause more people to call with inquiries about receipt of the second check. This will also cost SSA more (i.e., the costs associated with disbursing two checks).

*Response:* SSA's intent is to pay each entitled beneficiary all monies due on one day regardless of whether they are dually entitled on their own work record and that of a spouse. For example, a woman who receives benefits on her husband's record, but is also entitled on her own work record, would receive benefits on the payment date assigned based on her birth date. On that date, she would receive a payment reflecting the combined amount of her own benefits and the excess due for the "wife's benefit."

*Comment:* This same commenter was concerned that payment cycling is more favorable to someone whose birthday is earlier in the month. Some people will not receive their payment until 3 or 4 weeks after the month for which they are due, whereas someone whose payment is not cycled receives it only 3 days after the month for which it is due.

*Response:* There are two issues mentioned. First, it is true that in using the method of cycling based on birth dates, individuals born early in the month receive their benefits earlier each month. But any formula designed to evenly distribute future beneficiaries' payments throughout the month (e.g., using the last 2 digits of a person's social security number) will produce the

same result. The birth date formula was unanimously favored by members of the public who participated in SSA's focus groups in that it was the easiest for them to relate to and understand.

Second, this raises an issue of perception. Beneficiaries who are paid on the second, third and fourth Wednesdays of the month for the previous month's entitlement may perceive that they are not receiving the same level of service as someone who is paid on the 3rd of the month. This was not an issue that concerned participants in SSA's focus groups. These individuals indicated that because they had not yet begun receiving Social Security benefits, it was not of concern whether their future benefits were paid on the 3rd of the month or on the second, third or fourth Wednesdays because once their payments start, they would be paid consistently at the same monthly interval. Further, these same focus group participants recognized that unless SSA did something to level workloads that now occur at the beginning of the month, their ability to file a claim, have a question answered or otherwise receive prompt service was being jeopardized as the Agency's workloads increased.

*Comment:* The above commenter also believed it is unfair to pay SSI recipients and OASDI beneficiaries who qualify for Qualified Medicare Beneficiary (QMB) payments early in the month while paying all other OASDI beneficiaries later in the month, particularly since some of these OASDI beneficiaries miss qualifying for SSI by a small amount. In a similar vein, another commenter recommended that two additional groups of individuals be excluded from payment cycling: those living below 200% of the poverty level and those who would face "undue hardship" if they received their benefits after the 3rd of the month.

*Response:* SSA can readily identify SSI recipients as those individuals of limited means. Accordingly, we will exempt anyone who receives SSI from having their payment cycled. However, we have no information relating to the economic circumstances of anyone receiving OASDI benefits to enable us to determine who is of limited means. Even if we did, we would have to establish a benchmark at some level. Whatever benchmark SSA established, there would be individuals who fall just below the mark and those who fall just above the mark. Therefore, we continue to believe that the use of the SSI means test is appropriate from both a policy and operational perspective.

We do not believe that creating additional criteria for an "undue

hardship" test is necessary. Indeed, people who otherwise would have been paid on the 3rd of the month will now be paid later in the month as a result of payment cycling. However, we believe the improved access to SSA's services for all beneficiaries and customers, as well as the benefits to the banking and business community which will enable them to provide better customer service, and the reduction of the risk involved in processing large once-a-month files outweigh the effects of being paid later in the month. Moreover, as mentioned by many of the focus group participants, individuals paid consistently on the second Wednesday of the month from the inception of their entitlement are receiving the same level of service as individuals paid on the 3rd of the month from the inception of their entitlement. In addition, already limited SSA staff and resources would have to be assigned to administer an "undue hardship" test.

*Comment:* One commenter thought SSA should assign the payment day for cycled payments based on something other than the date of birth. The commenter believed using the date of birth means banks would need to know the customer's date of birth in order to process customer inquiries. The commenter also indicated the banking industry does not know a customer's date of birth and some customers will not give out that information or do not know it. A suggestion was to use the first initial of the customer's last name to assign the payment day. However, another commenter said that using birthdays to determine distribution "makes a great deal of sense in evening out the workload." And still another commenter suggested giving beneficiaries a sticker showing the payment day which they could place in a prominent place in their house so the date would be easily available.

*Response:* SSA considered a number of options in developing a means of evenly distributing payments throughout the month. In addition to the alpha formula suggested in this comment, SSA considered using the last 2 digits of the individual's Social Security number. Any of these methods would result in a random distribution of payments. However, the fact that people's surnames often change makes using the alpha formula more complex.

SSA selected the birth date formula based on the unanimous endorsement of this method by those members of the public who participated in the Agency's focus groups. All participants expressed their belief that the public would relate best to a formula based on a person's date of birth.

To do all it can to minimize potential problems like those cited in this comment, SSA plans to provide all new beneficiaries with a written notice informing the individual of his or her assigned payment date. Included with the written notice will be a pamphlet explaining payment cycling and a calendar providing the individual with the scheduled payment dates.

*Comment:* Several commenters urged SSA to consider requiring all benefits to be paid by direct deposit.

*Response:* Since these comments were made, Public Law 104-134, the Omnibus Consolidated Rescissions and Appropriations Act of 1996, has been signed. This law requires, with limited exceptions, anyone who files for government benefits after July 25, 1996, to be paid by direct deposit. In addition, with certain limited exceptions, the legislation requires that by 1999, all government benefits be paid by direct deposit, even for those who began receiving payments before July 26, 1996. However, without payment cycling, SSA and the financial community will still experience workload surges the first 10 days of the month in terms of direct deposits all occurring at the same time, calls to SSA and to the financial institutions concerning crediting of the direct deposit, the amount of the deposit, or many other issues related to the benefit, as well as bank customers wanting to make withdrawals as soon as the direct deposit is made.

*Comment:* Several commenters thought SSA should schedule the delivery of cycled benefits on assigned payment dates rather than the planned Wednesday schedule. They believed this would be less confusing for customers than having to remember which Wednesday is their payment day. However, another commenter, a non-profit electronic banking trade association, said its members supported paying on Wednesdays. The commenter said many beneficiaries currently become confused about when they will receive their payments if the 3rd is on a holiday or weekend. The commenter believed Wednesday payments will clear up this confusion.

*Response:* SSA gave the payment schedule under cycling a great deal of consideration. We decided on the Wednesday schedule for the following reasons:

- If the objective of payment cycling is to improve service by providing the public with better access to SSA through a leveling of workloads, then Wednesday payments offer the best opportunity to achieve this. Any fixed date schedule (e.g., the 10th, 17th and 24th of the month) will fall on a Friday,

Saturday, Sunday or Monday 57 percent of the time. This is likely to exacerbate the workload peaks now experienced by SSA every Monday;

- A Wednesday schedule avoids the problem of having to adjust payment dates because the date coincides with a Saturday or Sunday; and

- A Wednesday schedule avoids the problem of having to adjust payment dates because the date coincides with a Federal holiday to the maximum extent possible.

Again, SSA plans to provide payment schedules to both the financial community and the public to minimize questions or confusion regarding the date on which beneficiaries will be paid.

*Comment:* One commenter said that SSA should clarify how these payments should be counted for means-tested programs, such as AFDC, food stamps and AFDC-related Medicaid.

*Response:* We do not issue rules governing these other programs and have no authority to decide how our payments should be counted for those programs. It is not clear, however, that any changes are necessary. Certainly, SSA will provide any additional guidance to State and local governments that may be needed about our procedures. As it has done for the past 56 years, Social Security will continue to pay future OASDI beneficiaries in the month following the month of entitlement.

*Comment:* Two commenters wanted an appeals process available for those beneficiaries for whom receiving their benefit payment later in the month creates a hardship.

*Response:* The payment date has never been appealable and SSA does not plan to make it appealable or establish a new appeals process. This decision is based on a number of considerations. First, all individuals of limited means (i.e., those identified at or below the poverty level through their entitlement to SSI) will not be affected by payment cycling. Accordingly, they will receive both their SSI and Social Security benefits at the beginning of the month.

It is true that people who otherwise would have been paid on the 3rd of the month will now be paid later in the month as a result of payment cycling. However, we believe the improved access to SSA's services for all beneficiaries and customers, as well as the benefits to the banking and business community which will enable them to provide better customer service, and the reduction of the risk involved in processing large once-a-month files outweigh the effects of being paid later in the month. Moreover, SSA's decision

reflects the advice given by members of the public who participated in the Agency's focus groups. These individuals expressed a strong belief that someone who has not yet begun to receive Social Security benefits is not disadvantaged if they receive their payment on any of the assigned Wednesdays from the outset of their entitlement.

Establishing an appeals process would place an undue administrative burden on SSA and could defeat the purpose of payment cycling.

*Comment:* One commenter indicated disapproval of payment cycling but gave no reasons. Therefore, we cannot respond.

*Comment:* One commenter said that in some States, individuals can be eligible for State payment of their Medicare premium under the QMB and Specified Low Income Medicare Beneficiary programs but not eligible for Medicaid. Therefore, the commenter said the regulations should be clarified to make certain that all individuals whose Medicare premium is paid by the State are excluded from payment cycling.

*Response:* We are adopting this comment and revising § 404.1807(c)(4) to clarify that all OASDI beneficiaries whose Medicare premiums are paid by the State in which they live are excluded from payment cycling.

*Comment:* One commenter urged SSA to include current beneficiaries in payment cycling by splitting current recipients into two groups that would be processed as two primary cycles and to add new beneficiaries to two secondary cycles on alternate weeks.

*Response:* Prior to publishing the NPRM, SSA considered including current beneficiaries in payment cycling. We rejected this option because shifting the payment date of one half of current beneficiaries one week later would disrupt monthly payment arrangements for 22 million current OASDI recipients. Further, without a one-time "bridge payment" (a one-time additional payment which would cover the period of time from the 3rd of the month to their first payment day) of up to \$3.3 billion, affected beneficiaries would be required to wait more than 5 weeks between benefit payments during the month of transition. Without legislation, SSA does not have authority to issue this type of special adjustment payment. Current beneficiaries who participated in focus groups were unanimous in their opinion that SSA should not change the monthly payment patterns of beneficiaries currently on the rolls. Finally, the majority of

commenters agreed with SSA's decision not to cycle current beneficiaries.

*Comment:* One commenter recommended that SSA launch a comprehensive educational program to advise all stakeholders of the new payment dates once adopted.

*Response:* Individual beneficiaries whose benefits are cycled will receive an informational pamphlet explaining payment cycling and a calendar providing them with the scheduled payment dates. Also, SSA is putting together informational material about payment cycling which will be made available to financial institutions and businesses to help them respond to any concerns raised by their customers.

After considering the comments on the proposed regulations, we have changed § 404.1807(c)(4), as discussed above in the response to the public comment. Also, upon further consideration, we have decided to revise § 404.1807(c)(5) to show that individuals who become entitled on one record and later entitled on another record, without a break in entitlement, will be paid all benefits to which they are entitled no later than their current payment day. In addition, we have made several nonsubstantive changes to the proposed regulations. We are, therefore, publishing these regulations as final regulations.

**Regulatory Procedures**

*Executive Order 12866*

We have determined that these final regulations meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, we prepared and submitted to OMB an assessment of the potential benefits and costs of this regulatory action. This assessment also contains an analysis of alternative policies we considered and chose not to adopt. It is available for review by members of the public by contacting SSA.

*Regulatory Flexibility Act*

These final regulations affect when Social Security recipients receive their payments. Recipients are not small entities within the definition of the Regulatory Flexibility Act. Therefore, these final regulations will not have a significant impact on a substantial number of small entities.

*Paperwork Reduction Act*

These final regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-

Retirement Insurance; 96.003 Social Security-Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance)

**List of Subjects in 20 CFR Part 404**

Administrative Practice and Procedure, Blind benefits, Old-Age, Survivors and Disability Benefits; Reporting and recordkeeping requirements; Social Security.

Dated: January 28, 1997.

Shirley S. Chater,

*Commissioner of Social Security.*

For the reasons set forth in the preamble, subparts J and S of part 404 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )**

**Subpart J—[Amended]**

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

Authority: Secs. 201(j), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405 (a), (b), (d)–(h), and (j), 421, 425 and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6 (c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.903 is amended by removing the word “and” at the end of paragraph (q), and by removing the period at the end of paragraph (r) and adding a semicolon and the word “and” in its place, and adding paragraph (s) to read as follows:

**§ 404.903 Administrative actions that are not initial determinations.**

\* \* \* \* \*

(s) The assignment of a monthly payment day (see § 404.1807).

**Subpart S—[Amended]**

3. The authority citation for subpart S of part 404 is revised to read as follows:

Authority: Secs. 205 (a) and (n), 207, 702(a)(5), and 708(a) of the Social Security Act (42 U.S.C. 405 (a) and (n), 407, 902(a)(5) and 909(a)).

4. Section 404.1805 is amended by revising paragraph (a)(3) to read as follows:

**§ 404.1805 Paying benefits.**

(a) \* \* \*

(3) The time at which the payment or payments should be made in accordance with § 404.1807.

\* \* \* \* \*

5. Section 404.1807 is added to read as follows:

**§ 404.1807 Monthly payment day.**

(a) *General.* Once we have made a determination or decision that you are entitled to recurring monthly benefits, you will be assigned a monthly payment day. Thereafter, any recurring monthly benefits which are payable to you will be certified to the Managing Trustee for delivery on or before that day of the month as part of our certification under § 404.1805(a)(3). Except as provided in paragraphs (c)(2) through (c)(6) of this section, once you have been assigned a monthly payment day, that day will not be changed.

(b) *Assignment of payment day.* (1) We will assign the same payment day for all individuals who receive benefits on the earnings record of a particular insured individual.

(2) The payment day will be selected based on the day of the month on which the insured individual was born. Insured individuals born on the 1st through the 10th of the month will be paid on the second Wednesday of each month. Insured individuals born on the 11th through the 20th of the month will be paid on the third Wednesday of each month. Insured individuals born after the 20th of the month will be paid on the fourth Wednesday of each month. See paragraph (c) of this section for exceptions.

(3) We will notify you in writing of the particular monthly payment day that is assigned to you.

(c) *Exceptions.* (1) If you or any other person became entitled to benefits on the earnings record of the insured individual based on an application filed before May 1, 1997, you will continue to receive your benefits on the 3rd day of the month (but see paragraph (c)(6) of this section). All persons who subsequently become entitled to benefits on that earnings record will be assigned to the 3rd day of the month as the monthly payment day.

(2) If you or any other person become entitled to benefits on the earnings record of the insured individual based on an application filed after April 30, 1997, and also become entitled to Supplemental Security Income (SSI) benefits or have income which is deemed to an SSI beneficiary (per § 416.1160), all persons who are or become entitled to benefits on that earnings record will be assigned to the 3rd day of the month as the monthly payment day. We will notify you in writing if your monthly payment day is being changed to the 3rd of the month due to this provision.

(3) If you or any other person become entitled to benefits on the earnings record of the insured individual based on an application filed after April 30,



1997, and also reside in a foreign country, all persons who are or become entitled to benefits on that earnings record will be assigned to the 3rd day of the month as the monthly payment day. We will notify you in writing if your monthly payment day is being changed to the 3rd of the month due to this provision.

(4) If you or any other person become entitled on the earnings record of the insured individual based on an application filed after April 30, 1997, and are not entitled to SSI but are or become eligible for the State where you live to pay your Medicare premium under the provisions of § 1843 of the Act, all persons who are or become entitled to benefits on that earnings record will be assigned to the 3rd day of the month as the monthly payment day. We will notify you in writing if your monthly payment day is being changed to the 3rd of the month due to this provision.

(5) After April 30, 1997, all individuals who become entitled on one record and later entitled on another record, without a break in entitlement, will be paid all benefits to which they are entitled no later than their current payment day. Individuals who are being paid benefits on one record on the 3rd of the month, and who become entitled on another record without a break in entitlement, will continue to receive all benefits on the 3rd of the month.

(6) If the day regularly scheduled for the delivery of your benefit payment falls on a Saturday, Sunday, or Federal legal holiday, you will be paid on the first preceding day that is not a Saturday, Sunday, or Federal legal holiday.

[FR Doc. 97-3205 Filed 2-10-97; 8:45 am]  
BILLING CODE 4190-29-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AH89

#### VA Homeless Providers Grant and Per Diem Program Clarification of Per Diem Eligibility

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document amends the regulations implementing the VA Homeless Providers Grant and Per Diem Program concerning per diem assistance by: Establishing more detailed criteria for determining which entities are eligible for obtaining per diem

assistance; establishing a priority for funding eligible entities; Clarifying the requirements for continued receipt of per diem payments; and clarifying the maximum amount payable for per diem assistance. This rule is designed to ensure that the appropriate entities receive the appropriate amount of per diem assistance under fair and objective procedures.

**EFFECTIVE DATES:** March 13, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 273-8442. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In the Federal Register of July 16, 1996 (61 FR 37024), VA published a proposal to amend the regulations implementing the VA Homeless Providers Grant and Per Diem Program. Interested persons were invited to submit written comments on or before September 16, 1996. No comments were received. The information presented in the proposed rule document still provides a basis for this final rule. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with changes discussed below and with nonsubstantive changes.

#### Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule concerning VA Homeless Providers Grants (38 CFR 17.710-17.714) have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3520) and have been assigned OMB Control Number 2900-0554. The regulations require that the application for VA Homeless Providers Grants be submitted on VA forms included in the application package. The corresponding form numbers are included in the text of the rule.

Information collection and recordkeeping requirements associated with this final rule concerning the VA Homeless Providers Per Diem have not been approved by OMB under the provisions of the Paperwork Reduction Act. OMB has withheld approval pending review of any comments received. VA intends to obtain OMB control numbers for the information collection requirements concerning VA Homeless Providers Per Diem. Once OMB approval is received, OMB control numbers will be announced by a separate Federal Register document.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

#### Regulatory Flexibility Act

The Secretary hereby certifies that the provisions of the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602. In all likelihood, only similar entities that are small entities will participate in the Homeless Providers Grant and Per Diem Program, therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.024.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: January 31, 1997.

Jesse Brown,

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 17 is amended as set forth below:

#### PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

#### § 17.700 [Amended]

2. In § 17.700, paragraph (a) is amended by removing "17.715(a)" and adding, in its place, "17.716".

3. Sections 17.710 through 17.719 are revised to read as follows:

#### § 17.710 Application requirements.

(a) *General.* Applications for grants must be submitted in the form prescribed by VA in the application package, must meet the requirements of this part, and must be submitted within the time period established by VA in the notice of fund availability under