

“materially supported” by an executive officer or director.<sup>30</sup> The Commission requests comment on whether the proposed spinning restrictions should also apply to “immediate family members” who do not live in the same household and do not receive more than 25% of their “income” from the officer or director, as is the case with the Voluntary Initiative and the IPO Report.<sup>31</sup> Should the proposed spinning restrictions also prohibit investment banking personnel from participating in the member firm’s allocation of IPO shares to specific individual customers, as in the Voluntary Initiative?

In addition, the Commission specifically solicits comment on whether the proposals concerning “returned shares” in NYSE Rule 470(D)(3) and NASD Rule 2712(e)(3) should clarify any possible implications under Regulation M, particularly with respect to continuation of the distribution.<sup>32</sup>

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File Nos. SR-NYSE-2004-12 and SR-NASD-2003-140. These file numbers should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the

<sup>30</sup>The SROs proposed to define “material support” to mean “directly or indirectly providing more than 25% of a person’s income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support.” See NYSE Rule 470(F)(3) and NASD Rule 2712(d)(3).

<sup>31</sup>“Material support” is defined to include persons living in the same household or who receive more than 25% of their “income” from the officer or director. However, it may exclude close relations—such as a son or daughter—who do not live in the same household and do not receive more than 25% of their “income” from the officer or director.

<sup>32</sup>See Rule 100 of Regulation M for definition of “completion of participation in a distribution.” 17 CFR 242.100. In order to comply with Regulation M, an underwriter or other distribution participant generally cannot commence trading in IPO securities in the secondary market unless they have completed their participation in the offering.

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the NYSE and NASD. All submissions should refer to File Nos. SR-NYSE-2004-12 and SR-NASD-2003-140 and should be submitted by January 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-28274 Filed 12-27-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional “peg” rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.5 (4½) percent for the January-March quarter of FY 2005.

**James E. Rivera,**

*Associate Administrator for Financial Assistance.*

[FR Doc. 04-28397 Filed 12-27-04; 8:45 am]

**BILLING CODE 8025-01-P**

## SOCIAL SECURITY ADMINISTRATION

### Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

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

**ACTION:** Proposed new system of records and proposed routine uses.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled *Medicare Part D and Part D Subsidy File, 60-0321*, and routine uses applicable to the system of records. We also are issuing notice that we may disclose personally identifiable information from the *Medicare Part D and Part D Subsidy File* to consumer reporting agencies in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C.

3711(e). We invite public comment on this proposal.

**DATES:** We filed a report of the proposed *Medicare Part D and Part D Subsidy File* and the applicable routine uses with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 16, 2004. The proposed *Medicare Part D and Part D Subsidy File* system of records and the proposed routine uses will become effective on January 25, 2005, unless we receive comments warranting that they not be effective.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine W. Johnson, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3-C-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, e-mail address at [chris.w.johnson@ssa.gov](mailto:chris.w.johnson@ssa.gov), or by telephone at (410) 965-8563.

### SUPPLEMENTARY INFORMATION:

#### I. Background and Purpose of the Proposed New Medicare Part D and Part D Subsidy File System of Records

##### A. General Background

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003, was signed into law (Public Law 108-173). The MMA creates a voluntary prescription drug benefit program under new Part D of Medicare for all individuals eligible for Medicare Part A or Part B under which a monthly premium is required to assist in the purchase of prescription drugs. The new coverage, which is effective January 1, 2006, will assist Medicare-eligible seniors, people with disabilities and persons with end-stage renal disease with their prescription drug costs. In 2006, almost all of the 43 million Medicare beneficiaries will have a chance to enroll in the subsidized drug cost program.

The MMA also created a premium subsidy program for Medicare

<sup>33</sup> 17 CFR 200.30-3(a)(12).

beneficiaries with limited means. This program limits beneficiaries' premiums, co-payments and deductibles if they have low incomes and limited assets. Low-income status under Part D is income of less than 150% of the Federal poverty guidelines for a family of the applicable size. Low assets are resources of no more than \$10,000 for an individual or \$20,000 for a couple, which will change after 2006 according to the Consumer Price Index. We expect approximately 5 million beneficiaries to apply for the low-income assistance program in 2006 and about 3.3 million are expected to be approved.

The MMA introduces considerable changes to existing Medicare processes and supporting automation systems within SSA. For example, in response to the new legislation, SSA will implement significant enhancements to key programmatic and management information systems, create new Medicare-specific systems and databases, and enhance or create new data exchange agreements with multiple government agencies to support this initiative. The new enhancements will support—

- Selection of initial and subsequently entitled Medicare beneficiaries (*e.g.*, those who attain age 65 after the initial selection);
- Screening for individuals with low-income and limited assets, including “deemed eligible” individuals that do not need to apply for the premium subsidy;
- Prospective eligibility and effective month determinations (and subsequent redeterminations) for the Part D subsidy;
- Data exchanges with other government agencies for income and resource data;
- Generating and mailing outreach notices and applications to individuals potentially eligible for the premium subsidy;
- Subsidy calculations;
- Collection of subsidy application data via machine-readable application forms, the Internet and the Intranet; and
- Medicare Part D subsidy appeals.

To this end, the *Medicare Part D and Part D Subsidy File* will encompass all related information from the initial intake process through the administrative appeals process. Information from the application will be created, maintained and stored electronically and source systems within SSA will interface with the *Medicare Part D and Part D Subsidy File* to support the subsidy application process.

Because SSA will maintain and retrieve information from the proposed *Medicare Part D and Part D Subsidy File*

using Social Security numbers (SSN) and/or names, the proposed *Medicare Part D and Part D Subsidy File* will constitute a “system of records” under the Privacy Act.

#### *B. Collection and Maintenance of Data in the Medicare Part D and Part D Subsidy File System of Records*

The *Medicare Part D and Part D Subsidy File* will include identifying information about beneficiaries and potential applicants for subsidy benefits administered by SSA. See the “Categories of Records” section of the notice below for a full description of the data that will be maintained in the system of records.

### **II. Proposed Routine Use Disclosures of Data Maintained in the Proposed Medicare Part D and Part D Subsidy File System of Records**

#### *A. Proposed Routine Use Disclosures*

We are proposing to establish the following routine use disclosures of information that will be maintained in the proposed new *Medicare Part D and Part D Subsidy File* system of records:

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to the *Medicare Part D and Part D Subsidy File*. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

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

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to the *Medicare Part D and Part D Subsidy File*. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

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

- (a) SSA, or any component thereof, or
- (b) Any SSA employee in his/her official capacity; or
- (c) Any SSA employee in his/her individual capacity where DOJ (or SSA

where it is authorized to do so) has agreed to represent the employee; or

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

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

However, any information defined as “return or return information” under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS Regulations.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed system of records or when the United States is a party to litigation and SSA has an interest in the litigation.

4. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach,

(b) Representing the Commissioner, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

We will disclose information under this routine use only as necessary to enable DOJ to represent SSA in matters concerning violations of the Social Security Act; to represent the Commissioner of Social Security or to investigate issues of fraud by SSA officers or employees or violation of civil rights.

5. To applicants, claimants, prospective applicants or claimants, other than the data subject, and their authorized representatives to the extent necessary for the purpose of pursuing Medicare Part D and Part D subsidy entitlement or appeals rights.

We will disclose information under this routine use only as necessary to enable authorized representatives to pursue entitlement to or appeal rights for the Medicare Part D or Part D subsidy on behalf of the claimant.

6. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the

Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The Department of Veterans Affairs (VA) for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State agencies for making determinations of Medicaid eligibility;

(e) State agencies for making determinations of food stamp eligibility under the food stamp program;

(f) State audit agencies for auditing Medicaid eligibility considerations; and

(g) State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of Supplemental Security Income recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

We will disclose information under this routine use only for the purpose of supporting other government agencies that administer programs which have the same compatible purposes as SSA programs, *e.g.*, eligibility, benefit amounts, or other matters of benefit status in a Social Security program and the information is relevant to determining the same matters in the other program.

7. To Internal Revenue Service, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

This proposed routine use would allow the IRS to audit SSA's maintenance of earnings and wage information in the *Medicare Part D and Part D Subsidy File* to ensure that SSA complies with the safeguard requirements of the IRC.

8. To the Centers for Medicare & Medicaid Services (CMS), for the purpose of administering Medicare Part D enrollment and premium collection processes.

We will disclose information under this routine use only for the purpose of assisting in the administration of Medicare Part D enrollment and premium collection.

9. To Federal and State agencies for administering the Medicare Part D and Part D subsidy under the MMA of 2003. Such disclosures include, but are not limited to, release of information to:

(a) The Bureau of Public Debt, Department of Treasury;

(b) The Internal Revenue Service; and

(c) The Office of Child Support and Enforcement for the purpose of assisting in the verification of eligibility for the prescription drug subsidy.

We will disclose information under this routine use only for the purpose of supporting the administration of the prescription drug subsidy program under the MMA of 2003.

10. To a Federal, State, or congressional support agency (*e.g.*, the Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to, release of information in assessing the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance (SSDI) benefits; examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test, if SSA:

(a) Determines that the routine use does not violate legal limitations under which the record was provided, collected or obtained;

(b) Determines that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies individuals;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the individual which such limited additional exposure of the record might bring;

(iii) Has reasonable probability that the objective of the use would be accomplished;

(iv) Is of importance to the Social Security program or the Social Security beneficiaries or is for an epidemiological research project that relates to the Social Security program or beneficiaries;

(c) Requires the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by SSA's personnel, its agents, or by independent agents of the recipient agency of those safeguards;

(ii) Remove or destroy the information that enables the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from SSA that it is justified, based on research objectives, in retaining such information;

(iii) Make no further use of the records except

(a) Under emergency circumstances affecting the health or safety of any individual following written authorization from SSA;

(b) For disclosure to an identified person approved by SSA for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about an individual;

(d) Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

We will disclose information under this routine use only for the purpose of allowing new studies to occur regarding the administration of the Social Security program and other related programs.

11. To the Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

We will disclose information under this routine use only for the purpose of identifying and locating illegal aliens pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

12. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations

in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

SSA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. SSA must be able to give a contractor whatever information the Agency can legally provide in order for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

13. To addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

Under this routine use we will disclose only address information to the Secretary of Education for the purpose of locating beneficiaries that are obligated on loans held by the Secretary.

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

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. An example of such statutes and programs includes: 5 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned agency duties.

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

- To enable them to protect the safety of SSA employees and customers, the security of SSA workplace and the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

We will disclose information under this routine use to law enforcement agencies and private security

contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of SSA customers, employees or workplaces or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating Federal or local law in connection with such activities.

16. To the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, non-tax return information which is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

#### *B. Compatibility of Proposed Routine Uses*

The Privacy Act (5 U.S.C. 552a(b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. SSA's Regulations at 20 CFR 401.150(c) permit us to disclose information under a routine use where necessary to carry out SSA programs. SSA's Regulations at 20 CFR 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 10, 12, 14, and 15 above will ensure efficient administration of SSA programs administered through the proposed *Medicare Part D and Part D Subsidy File*; the disclosures that would be made under routine uses number 11, 13, and 16 are required by law. The proposed routine uses are appropriate and meet the relevant statutory and regulatory criteria.

#### **III. Disclosure to Consumer Reporting Agencies**

The Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(12)) permits Federal

agencies to disclose certain information to consumer reporting agencies in accordance with 31 U.S.C. 3711(e) without the consent of the individuals to whom the information pertains. The purpose of this disclosure is to provide an incentive for individuals to pay any outstanding debts they owe to the Federal government by including information about these debts in the records relating to those persons maintained by consumer reporting agencies. This is a practice commonly used by the private sector. The information disclosed will be limited to that which is needed to establish the identity of the individual debtor, the amount, status, and history of the debt, and the agency or program under which the debt arose.

We have added the following statement at the end of the routine uses section of the proposed system of records:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*), as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

#### **IV. Records Storage Medium and Safeguards for the Proposed Medicare Part D and Part D Subsidy File System of Records**

*The Medicare Part D and Part D Subsidy File* is a repository. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be

kept in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

Contractor personnel having access to data in the *Medicare Part D and Part D Subsidy File* will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. See 5 U.S.C. 552a(i)(1).

#### V. Effect of the Proposed Medicare Part D and Part D Subsidy File System of Records on the Rights of Individuals

The proposed new *Medicare Part D and Part D Subsidy File* system of records will maintain only that information that is necessary for the efficient and effective control and processing of subsidy applications from the initial phase through the appeals process. Security measures will be employed that protect access to and preclude unauthorized disclosure of records in the proposed system of records. Therefore, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

Dated: December 16, 2004.

**Jo Anne B. Barnhart,**  
Commissioner.

#### Social Security Administration (SSA) Notice of System of Records Required by the Privacy Act of 1974

##### SYSTEM NUMBER:

60-0321.

##### SYSTEM NAME:

*Medicare Part D and Part D Subsidy File*, Social Security Administration, Deputy Commissioner for Disability and Income Security Programs.

##### SECURITY CLASSIFICATION:

None.

##### SYSTEM LOCATION:

The *Medicare Part D and Part D Subsidy File* is virtually established before applications are mailed to potentially eligible beneficiaries, when applications are filed through the Internet, in Social Security field offices, or a lead is expected to result in a claim, and maintained in the National Computer Center at SSA Headquarters. The computerized records and database are maintained at the Social Security

Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

Other authorized Federal and State agencies that generally have access to information in SSA systems will also have access as needed to the *Medicare Part D and Part D Subsidy File*. Contact the system manager for address information.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries, ineligible spouses and potential claimants for Medicare Advantage Part C and Medicare Part D and drug prescription premium and co-payment subsidies.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

The *Medicare Part D and Part D Subsidy File* contains the name and Social Security number (SSN) of the claimant or potential claimant and may contain the subsidy application; supporting evidence and documentation for eligibility; documentation for income and resource verification; supporting evidence and documentation for appeal requests; premium payment documentation; correspondence to and from claimants and/or personal representatives; and leads information from third parties such as social service agencies and hospitals.

The *Medicare Part D and Part D Subsidy File* also may contain data collected as a result of inquiries or complaints, and evaluation and measurement studies of the effectiveness of Medicare Prescription Drug Improvement and Modernization Act (MMA) policies. Separate files may be maintained of certain actions, which are entered directly into the *Medicare Part D and Part D Subsidy File*. These relate to reports of changes of income and resources, and other post-adjudicative reports. Separate data are also maintained for statistical purposes (i.e., subsidy denial, and demographic and statistical information relating to subsidy decisions).

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202-205, 223, 226, 228, 1611, 1631, 1818, 1836, 1840 and 1860D-1-1860D-15 of the Social Security Act (42 U.S.C. §§ 402-405, 423, 426, 428, 1382, 1383, 1395i-2, 1395o, 1395s and 1395w-101-1395w-115).

##### PURPOSE(S):

The *Medicare Part D and Part D Subsidy File* contains material related to the request for subsidized prescription drug coverage under the MMA of 2003. Medicare Part D and Part D subsidy claim file information is used throughout SSA for the purposes of

collecting, documenting, organizing and maintaining information and documents for making determinations of eligibility for subsidized benefits, the amount of the subsidy, processing appeals; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

Medicare Part D and Part D subsidy claim file information may be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

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

Disclosure may be made for routine uses as indicated below. However, any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

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

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

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

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

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

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

However, any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code will not be disclosed unless authorized by the IRC, the Internal Revenue Service, or IRS Regulations.

4. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach,

(b) Representing the Commissioner, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

5. To applicants, claimants, prospective applicants or claimants, other than the data subject, and their authorized representatives to the extent necessary for the purpose of pursuing Medicare Part D and Part D subsidy entitlement or appeal rights.

6. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The Department of Veterans Affairs (VA) for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for, or amount of, VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State agencies for making determinations of Medicaid eligibility; and

(e) State agencies for making determinations of food stamp eligibility under the food stamp program;

(f) State audit agencies for auditing Medicaid eligibility considerations; and

(g) State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of Supplemental Security Income recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

7. To the Internal Revenue Service, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

8. To the Centers for Medicare & Medicaid Services (CMS), for the purpose of administering Medicare Part D enrollment and premium collection.

9. To Federal and State agencies administering Medicare Part D and Part D subsidy under the MMA of 2003. Such disclosure include release of information to:

(a) The Bureau of Public Debt, Department of the Treasury;

(b) The Internal Revenue Service; and

(c) The Office of Child Support and Enforcement for the purpose of assisting in the verification of eligibility for the prescription drug subsidy.

10. To a Federal, State, or congressional support agency (e.g., the Congressional Budget Office and the Congressional Research Service in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to, release of information in assessing the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits; examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test, if SSA:

(a) Determines that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies individuals;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the individual which such limited additional exposure of the record might bring;

(iii) Has reasonable probability that the objective of the use would be accomplished;

(iv) Is of importance to the Social Security program or the Social Security beneficiaries or is for an epidemiological research project that relates to the Social Security program or beneficiaries;

(c) Requires the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection, by SSA's personnel, its agents, or by independent agents of the recipient agency, of those safeguards;

(ii) Remove or destroy the information that enables the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from SSA that it is justified, based on research objectives, for retaining such information;

(iii) Make no further use of the records except

(a) Under emergency circumstances affecting the health or safety of any individual following written authorization from SSA;

(b) For disclosure to an identified person approved by SSA for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about an individual;

(d) Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, the provisions.

11. The Department of Homeland Security, Bureau of Citizenship and Immigration Services, upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

12. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

13. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

14. To student volunteers and other workers, who technically do not have the status of Federal employees, when

they are performing work for SSA as authorized by law, and who need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

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

- To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

16. To the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, non-tax return information which is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*), as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

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

**STORAGE:**

Records are maintained electronically.

**RETRIEVABILITY:**

Medicare Part D and Part D subsidy claim files are retrieved electronically by SSN and alphabetically by name.

**SAFEGUARDS:**

Medicare Part D and Part D subsidy claim files are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed about SSA confidentiality rules as a part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

**RETENTION AND DISPOSAL:**

Pursuant to 36 CFR 1228.26, SSA will submit to NARA for approval a schedule for the Medicare Part D and Part D Subsidy File no later than one year from implementation of this new program. Until a schedule is developed and approved, records may not be destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Commissioner, Disability and Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

**NOTIFICATION PROCEDURE:**

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record for which notification is being requested. If it is determined that the identifying

information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent to providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

**RECORD ACCESS PROCEDURES:**

Same as Notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

**CONTESTING RECORD PROCEDURES:**

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

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources, to support factors of entitlement and continuing eligibility or to provide leads information.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 04-28302 Filed 12-27-04; 8:45 am]

BILLING CODE 4191-02-P