

application for SVB if the following requirements are met:

(a) The inquiry asks about your entitlement to SVB.

(b) The inquiry is made by you, your spouse, or a person who may sign an application on your behalf as described in § 408.315.

(c) The inquiry, whether in person or by telephone, is directed to an office or an official described in § 408.325(a).

(d) You, or a person on your behalf as described in § 408.315, file an application on a prescribed form within 60 days after the date of the notice we will send telling of the need to file an application. The notice will say that we will make an initial determination on whether you qualify for SVB if an application form is filed within 60 days after the date of the notice. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who made the inquiry.

(e) You are alive when the prescribed application is filed.

Deemed Filing Date Based on Misinformation

§ 408.351 What happens if we give you misinformation about filing an application?

(a) *General rule.* You may have considered applying for SVB, for yourself or another person and you may have contacted us in writing, by telephone or in person to inquire about filing an application for SVB. It is possible that in responding to your inquiry, we may have given you misinformation about qualification for such benefits that caused you not to file an application at that time. If this happened and use of that date will result in entitlement to additional benefits, and you later file an application for SVB with us, we may establish an earlier filing date as explained in paragraphs (b) through (f) of this section.

(b) *Deemed filing date of an application based on misinformation.* Subject to the requirements and conditions in paragraphs (c) through (f) of this section, we may establish a deemed filing date of an application for SVB under the following provisions.

(1) If we determine that you failed to apply for SVB because we gave you misinformation about qualification for or entitlement to such benefits, we will deem an application for such benefits to have been filed with us on the later of—

(i) The date on which we gave you the misinformation; or

(ii) The date on which all of the requirements for qualification to SVB were met, other than the requirement of filing an application.

(2) Before we may establish a deemed filing date of an application for SVB under paragraph (b)(1) of this section, you or a person described in § 408.315 must file an application for such benefits.

(c) *Requirements concerning the misinformation.* We apply the following requirements for purposes of paragraph (b) of this section.

(1) The misinformation must have been provided to you by one of our employees while he or she was acting in his or her official capacity as our employee. For purposes of this section, an employee includes an officer of SSA, an employee of a U.S. Foreign Service office, and an employee of the SSA Division of the Veterans Affairs Regional Office in the Philippines who is authorized to take and develop Social Security claims.

(2) Misinformation is information which we consider to be incorrect, misleading, or incomplete in view of the facts which you gave to the employee, or of which the employee was aware or should have been aware, regarding your particular circumstances. In addition, for us to find that the information you were given was incomplete, the employee must have failed to provide you with the appropriate, additional information which he or she would be required to provide in carrying out his or her official duties.

(3) The misinformation may have been provided to you orally or in writing.

(4) The misinformation must have been provided to you in response to a specific request by you to us for information about your qualification for SVB.

(d) *Evidence that misinformation was provided.* We will consider the following evidence in making a determination under paragraph (b) of this section.

(1) *Preferred evidence.* Preferred evidence is written evidence which relates directly to your inquiry about your qualification for SVB and which shows that we gave you misinformation which caused you not to file an application. Preferred evidence includes, but is not limited to, the following—

(i) A notice, letter or other document which was issued by us and addressed to you; or

(ii) Our record of your telephone call, letter or in-person contact.

(2) *Other evidence.* In the absence of preferred evidence, we will consider other evidence, including your statements about the alleged misinformation, to determine whether we gave you misinformation, which

caused you not to file an application. We will not find that we gave you misinformation, however, based solely on your statements. Other evidence which you provide or which we obtain must support your statements. Evidence which we will consider includes, but is not limited to, the following—

(i) Your statements about the alleged misinformation, including statements about—

(A) The date and time of the alleged contact(s);

(B) How the contact was made, e.g., by telephone or in person;

(C) The reason(s) the contact was made;

(D) Who gave the misinformation; and

(E) The questions you asked and the facts you gave us, and the questions we asked and the information we gave you, at the time of the contact;

(ii) Statements from others who were present when you were given the alleged misinformation, e.g., a neighbor who accompanied you to our office;

(iii) If you can identify the employee or the employee can recall your inquiry about benefits—

(A) Statements from the employee concerning the alleged contact, including statements about the questions you asked, the facts you gave, the questions the employee asked, and the information provided to you at the time of the alleged contact; and

(B) Our assessment of the likelihood that the employee provided the alleged misinformation;

(iv) An evaluation of the credibility and the validity of your allegations in conjunction with other relevant information; and

(v) Any other information regarding your alleged contact.

(e) *Information which does not constitute satisfactory proof that misinformation was given.* Certain kinds of information will not be considered satisfactory proof that we gave you misinformation which caused you not to file an application. Examples of such information include—

(1) General informational pamphlets that we issue to provide basic program information;

(2) General information which we review or prepare but which is disseminated by the media, e.g., radio, television, magazines, and newspapers; and

(3) Information provided by other governmental agencies, e.g., the Department of Veterans Affairs (except for certain employees of the SSA Division of the Veterans Affairs Regional Office in the Philippines as provided in paragraph (c)(1) of this section), the Department of Defense,