

## Background

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires the Commissioner of Social Security to verify all relevant information provided regarding the eligibility of SSI applicants and recipients. Section 213 of the Foster Care Independence Act of 1999, Public Law 106–169, amended section 1631(e)(1)(B) of the Act to grant the Commissioner new authority with respect to verifying financial accounts. Under section 213, the Commissioner may require each SSI applicant or recipient to provide us with permission to obtain any financial record (as defined in section 1101(2) of the Right to Financial Privacy Act) held by any financial institution (as defined in section 1101(1) of the Right to Financial Privacy Act) with respect to the applicant or recipient. This law also allows the Commissioner to require such permission from deemors (*i.e.* individuals whose income and resources we consider as being available to the applicant or recipient).

This law requires us to tell you, or any other person whose income and resources we consider as being available to you, how we will use the permission and how long the permission lasts. It also allows us to request the information from financial institutions without furnishing a copy of the permission to the financial institution. We may request the information from financial institutions at any time we think it is needed to determine your eligibility or payment amount. Requests under this provision are considered to meet the requirements of the Right to Financial Privacy Act regarding identification and description of the financial record to be disclosed.

This law also allows us to deny your SSI eligibility or suspend your SSI eligibility if you, or any person whose income and resources we consider as being available to you, refuses to provide or cancels the permission.

## Explanation of Changes

The Commissioner is exercising her authority under section 213 of the Foster Care Independence Act of 1999 by promulgating new rules to make giving permission to contact financial institutions a condition of SSI eligibility. Therefore, we are amending our regulations by adding a new section § 416.207 to explain that in order to receive SSI benefits, you must give us permission to contact any financial institution, and request any financial records that financial institution may have for you. The section further explains that the permission to contact

financial institutions is required from anyone whose income and resources we consider as being available to you, unless there is good cause why the permission cannot be obtained. This section also explains that the permission to contact financial institutions lasts until one of the following terminating events occur:

(1) You cancel the permission in writing and provide the writing to us.

(2) The deemor cancels their permission in writing and provides the writing to us.

(3) The basis on which we consider a deemor's income and resources available to you ends, *e.g.* when spouses separate or divorce or a child attains age 18.

(4) Your application for SSI is denied, and the denial is final. A denial is final when made, unless you appeal the denial timely as described in §§ 416.1400 through 416.1499.

(5) You are no longer eligible for SSI as described in §§ 416.1331 through 416.1335.

This section explains that we will ask financial institutions for this information when we think that it is necessary to determine SSI eligibility and payment amount. This section defines a financial institution as any bank, savings bank, credit card issuer, industrial loan company, trust company, savings association, building and loan, homestead association, credit union, consumer finance institution, or any other financial institution as defined in section 1101(1) of the Right to Financial Privacy Act. The section also defines a financial record as an original of, a copy of, or information known to have been derived from any record held by the financial institution pertaining to your relationship with the financial institution.

In addition, we are revising current § 416.200 to add the new section § 416.207 as a reference, to redesignate current § 416.1321 as § 416.1320, and to add a new section § 416.1321, "Suspension for not giving us permission to contact financial institutions," to Subpart M as a reason for suspending SSI benefits.

## Public Comments

On May 2, 2002, we published proposed rules in the **Federal Register** at 67 FR 22021 and provided a 60-day period for interested parties to comment. We received comments from ten organizations and four individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the significant issues raised by the

commenters that are within the scope of the proposed rules. We have made revisions to the proposed rules to address some of the concerns of the commenters.

*Comment:* Ten organizations submitted comments regarding the fact that deemors (*i.e.* individuals whose income and resources we consider as being available to the applicant or recipient) are required to provide us with permission to obtain any financial record held by any financial institution with respect to the deemor as a condition of the applicant's or recipient's eligibility. Specifically, these organizations stated that we should provide a good cause exception for applicants and recipients who act in good faith to obtain the permission from the deemor, but are unable to do so through no fault of their own. In addition, six organizations stated that we should provide a good cause exception from this third party requirement for applicants and recipients who are victims of domestic violence. These organizations believe that it is improper to deny or suspend benefits because of the actions of a third party.

*Response:* After careful consideration, we have decided to include a limited good cause exception. We believe a good cause exception is warranted because it is consistent with our current policy. Good cause might exist in cases where the applicant or recipient cannot obtain permission from a deemor to access their financial records because the deemor is harassing, abusing, or endangering the life of the applicant or recipient. Good cause may also exist in cases where the applicant or recipient acts in good faith to obtain the permission from certain deemors, but is unable to do so through no fault of their own. We have revised §§ 416.207 (g) and 416.1321(a), and added § 416.207(h) to include the good cause exception. These provisions are consistent with our current policy regarding a third party's failure to cooperate.

In § 416.207(h)(3) we explain that good cause does not apply if certain deemors (*i.e.* someone whose income and resources we consider as available to you) refuse to give us permission to access their financial records. It is our long-standing policy to deny an applicant benefits or suspend a recipient's benefits if the applicant or recipient's prospective or appointed representative payee, who is also the legal guardian or parent with custody of a minor child, or if an alien's sponsor or sponsor's living-with spouse, fails to provide requested information. In these situations, the legal guardian or