



SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2013-0016]

RIN 0960-AH58

Extension of Effective Date for Temporary Pilot Program Setting the Time and Place for a Hearing Before an Administrative Law Judge

AGENCY: Social Security Administration.

ACTION: Final rule.

**SUMMARY:** We are extending our pilot program that authorizes the agency to set the time and place for a hearing before an administrative law judge (ALJ). This final rule will extend the pilot program for 1 year. The extension of the pilot program continues our commitment to improve the efficiency of our hearing process and maintain a hearing process that results in accurate, high-quality decisions for claimants. The current pilot program will expire on August 9, 2013. In this final rule, we are extending the effective date to August 9, 2014. We are making no other substantive changes.

**DATES:** This final rule is effective (INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER).

**FOR FURTHER INFORMATION CONTACT:** Rainbow Forbes, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041-3260, 703-605-8100 for information about this final rule. For information on eligibility for filing for benefits, call our

national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

Over the past several years, one of our highest priorities has been to improve the efficiency of our hearing process for the Old Age, Survivors, and Disability Insurance (OASDI) programs under title II of the Social Security Act (Act) and the Supplemental Security Income (SSI) program under title XVI of the Act. We intended the pilot program we adopted in July 2010 (75 FR 39154), under which the agency, rather than the ALJ, may set the time and place of the hearing under certain circumstances, to be part of our efforts to improve the efficiency of the hearing process. Since that time, we continue to face significant challenges in dealing with the historically large number of hearing requests. Over the next several years, we anticipate that requests for hearings before ALJs will continue to remain high. Therefore, we must maintain programs and policies that can provide us with the flexibility we need to improve the efficiency of our hearing process.

On November 10, 2008, we published a notice of proposed rulemaking to amend our rules to allow the agency to set the time and place for a hearing before an ALJ. (73 FR 66564). At that time, we explained that we would continue to monitor ALJ productivity closely, and if hearings were not being scheduled in a prompt and professional manner, we would use all existing authorities to correct the situation. Although we expected limit use of the rule, we

planned to monitor the success of the regulation to ensure that it did not produce unintended consequences.

Following receipt of public comments, we issued a final rule on July 8, 2010. (75 FR 39154). Under the rule, the agency acquired the authority to set the time and place for a hearing before an ALJ. In the rule, we explained that we would implement our authority to set the time and place for a hearing before an ALJ as a temporary pilot program. Therefore, we included in sections 404.936(h) and 416.1436(h) of the final rule a provision that the pilot program would end on August 9, 2013, unless we decided to either terminate the program earlier, or extend it beyond that date by publication of a final rule in the Federal Register.

#### Explanation of Extension

In establishing the final rule establishing the pilot program in 2010, we hoped to determine whether providing us with the authority to set the time and place of the hearing would allow us to better manage the number of hearings held and keep our hearing process as efficient as possible. During the 3 year pilot program, we tracked ALJ productivity closely. In situations where hearings were not being promptly scheduled, we worked with ALJs to correct these situations. To date, our efforts to work with our ALJs to correct situations in which we may have otherwise had to exercise the authority provided for in these rules has been successful. As a result, we have not been required to exercise our authority to schedule hearings. Nevertheless, we believe that we should continue the authority for the pilot program in order to provide us with the flexibility we need to manage the hearing process appropriately. We consider the pilot program a potentially important component in our overall effort to reduce hearing backlogs.

By extending the pilot program an additional year, we will continue to monitor the productivity of ALJs and to work with our ALJs to address any concerns regarding our hearing process. Accordingly, we are extending our authority to set the time and place for a hearing before an ALJ for another year, until August 9, 2014. As before, we are reserving the authority to end the program earlier, or to extend it by publishing a final rule in the Federal Register.

## REGULATORY PROCEDURES

### Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B). This final rule only extends the date on which the pilot program will no longer be effective. It makes no substantive changes to our rules. Our current regulations expressly provide that we may extend the expiration date of the pilot program by notice of a final rule in the Federal Register. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this rule as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any

substantive changes in our rules. Without an extension of the expiration date for the pilot program, we will not have the flexibility we need to ensure the efficiency of our hearing process. Therefore, we find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: July 23, 2013

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Carolyn W. Colvin,  
Acting Commissioner of Social Security.

For the reasons stated in the preamble, we are revising subpart J of Part 404 and subpart N of part 416 of title 20 of the Code of Federal Regulations 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), 204(f), 205(a)-(b), (d)-(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)-(b), (d)-(h), and (j), 421, 423(i), 425, and 902(a)(5)); 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); sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

2. In § 404.936, revise the second sentence in paragraph (h) to read as follows:

§404.936 Time and place for a hearing before an administrative law judge.

\* \* \* \* \*

(h) Pilot program. \* \* \* These provisions will no longer be effective on August 9, 2014, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the Federal Register.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND  
DISABLED

Subpart N—[Amended]

3. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

4. In §416.1436, revise the second sentence in paragraph (h) to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

\* \* \* \* \*

(h) Pilot program. \* \* \* These provisions will no longer be effective on August 9, 2014, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the Federal Register.

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