



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2017-0062]

RIN 0960-AI26

Extension of Sunset Date for Attorney Advisor Program

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending for six months our rule authorizing attorney advisors to conduct certain prehearing proceedings and to issue fully favorable decisions. The current rule is scheduled to expire on February 5, 2018. In this final rule, we are extending the sunset date to August 3, 2018. 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: Susan Swansiger, Office of Hearings Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605-8500. For information on eligibility or filing for benefits, call our national toll-free number, 800-772-1213 or TTY 800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background of the Attorney Advisor Program

On August 9, 2007, we issued an interim final rule permitting some attorney advisors to conduct certain prehearing proceedings and issue fully favorable decisions when the documentary record warrants doing so. 72 FR 44763. We instituted this practice to provide more timely service to the increasing number of applicants for Social Security disability benefits and Supplemental Security Income payments based on disability. We considered the public comments we received on the interim final rule, and on March 3, 2008, we issued a final rule without change. 73 FR 11349. Under this rule, some attorney advisors may develop claims and, in appropriate cases, issue fully favorable decisions before a hearing.

We originally intended the attorney advisor program to be a temporary modification to our procedures. Therefore, we included in sections 404.942(g) and 416.1442(g) of the interim final rule a provision that the program would end on August 10, 2009, unless we decided to either terminate the rule earlier or extend it beyond that date by publication of a final rule in the Federal Register. Since that time, we have periodically extended the sunset date (see 74 FR 33327 extending to August 10, 2011; 76 FR 18383 extending to August 9, 2013; 78 FR 45459 extending to August 7,

2015; and 80 FR 31990 extending to August 4, 2017). As we noted above, the current sunset date for the program is February 5, 2018. 82 FR 34400.

Explanation of Extension

We published the final rule to adopt without change the interim final rule that we published on August 9, 2007. We stated our intent to monitor the program closely and to modify it if it did not meet our expectations. 73 FR 11349.

We explained in the 2008 final rule that the number of requests for hearings had increased significantly in recent years. From 2008 to the present, the number of pending hearing requests has continued to remain at a high level, and we anticipate that we will receive several hundred thousand hearing requests in fiscal year 2018.¹ We are extending the program at this time while we continue to consider our options with respect to the program.

To preserve the maximum degree of flexibility we need to manage our hearings-level workloads effectively, we have decided to extend the attorney advisor rule for six months until August 3, 2018. As before, we reserve the authority to end the program earlier, to extend it by publishing a final rule in the Federal Register, or to discontinue it altogether.

REGULATORY PROCEDURES

¹ Our budget estimates indicate that we expect to receive approximately 645,000 hearing requests in fiscal year 2018 (available at: <https://www.ssa.gov/budget/FY18Files/2018BO.pdf>).

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). 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). Good cause exists because this final rule only extends the expiration date of an existing rule. It makes no substantive changes to the rule. The current regulations expressly provide that we may extend or terminate this rule. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this rule as a final rule.

In addition, because we are not making any substantive changes to the existing rule, we find that there is good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d)(3). To ensure that we have uninterrupted authority to use attorney advisors to address the number of pending cases at the hearing level, we find that it is in the public interest to make this final rule effective on the date of publication.

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and although we do not believe that this will be a significant regulatory action under Executive Order (E.O.) 12866, as supplemented by E.O. 13563, OMB has reviewed this final rule.

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, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: December 28, 2017.

Nancy A. Berryhill,
Acting Commissioner of Social Security.

For the reasons stated in the preamble, we are amending subpart J of part 404 and subpart N of part 416 of Chapter III 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 §404.942, revise paragraph (g) to read as follows:

§404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) Sunset provision. The provisions of this section will no longer be effective on August 3, 2018, 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 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 §416.1442, revise paragraph (g) to read as follows:

§416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) Sunset provision. The provisions of this section will no longer be effective on August 3, 2018, 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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