

# Proposed Rules

Federal Register

Vol. 68, No. 241

Tuesday, December 16, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 422

[Regulations No. 22]

RIN 0960-AF87

#### Evidence Requirements for Assignment of Social Security Numbers (SSNs); Assignment of SSNs to Foreign Academic Students in F-1 Status

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

**ACTION:** Proposed rules.

**SUMMARY:** We propose to clarify our rules for assigning SSNs to foreign academic students in Bureau of Citizenship and Immigration Services (BCIS, formerly the Immigration and Naturalization Service or INS) classification status F-1 (referred to throughout this preamble as F-1 students). Specifically, we propose to add additional evidentiary requirements for F-1 students who are applying for an SSN. In addition to meeting SSA's requirement to provide evidence of age, identity, legal alien status, and work authorization, F-1 students would also be required to present evidence that employment has been secured before we will assign the F-1 student an SSN. These rules would further enhance the integrity of SSA's enumeration processes for assigning SSNs by reducing the opportunity for fraud through misuse of SSNs.

**DATES:** To be sure that your comments are considered, we must receive them by February 17, 2004.

**ADDRESSES:** You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal: <http://www.regulations.gov>; email to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security

Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days.

Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

#### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Augustine, Social Insurance Specialist, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-0020, or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet web site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 205(c)(2)(A) of the Social Security Act (the Act), the Commissioner of Social Security is required to "establish and maintain records of the amounts of wages paid to \* \* \* each individual and of the periods in which such wages were paid \* \* \*". In addition, under section 205(c)(2)(B)(i)(I) of the Act, the Commissioner is required to assign Social Security numbers "to the maximum extent practicable \* \* \* to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment."

#### Current SSA Rules

Our regulations at 20 CFR 422.105 currently state that a nonimmigrant alien whose INS Form I-94, Arrival/Departure Record, does not reflect a

classification permitting work must submit a current document issued by INS that verifies authorization to work has been granted.

Our regulations at 20 CFR 422.107(e) currently state that "When a person who is not a U.S. citizen applies for an original social security number or a duplicate or corrected social security number card, he or she is required to submit, as evidence of alien status, a current document issued by the [INS] in accordance with [its] regulations. The document must show that the applicant has been lawfully admitted to the United States, either for permanent residence or under authority of law permitting him or her to work in the United States, or that the applicant's alien status has changed so that it is lawful for him or her to work." If the applicant submits a valid unexpired INS document(s) that shows current authorization to work, we will assign an SSN and issue a card that is valid for work.

Current SSA procedures require an F-1 student who needs an SSN for work to present evidence of age, identity, lawful F-1 alien status, and work authorization. This work authorization can either be from BCIS in the form of an employment authorization document (EAD) or from the F-1 student's school. In the past, when an F-1 student applied for an SSN, we believed that the student had a job or imminent plans to secure a job. However, our recent experience has shown that some F-1 students apply for an SSN even when there is limited or no employment available. F-1 students often inform us that they do not intend to work but need an SSN to obtain goods or services in the community.

Additional evidence requirements for F-1 student SSN applicants are needed because available SSA data suggest that some F-1 students assigned SSNs misuse those SSNs to work illegally in the U.S. (*i.e.*, in work not permitted by their classification under immigration regulations at 8 CFR 274a.12) or engage in other fraudulent activities. (See the SSA Office of the Inspector General (OIG) study, "Using Social Security Numbers To Commit Fraud" (A-08-99-42002, May 1999) at <http://www.ssa.gov/oig/ADOBEPDF/A-08-99-42002.pdf>).

Wages have been reported to us for F-1 students who have been engaged in

off-campus employment without proper authorization from their schools or BCIS. SSN misuse can impact society in the form of illegal employment in the U.S., fraudulent entitlement to Federal and State benefits and services, and other types of illegal activity such as bank and credit card fraud and identity theft.

In order to strengthen the security of the enumeration process, we propose to require additional evidence from F-1 students before we will assign SSNs to them.

### Explanation of Additional Evidentiary Requirements

#### 422.105 *Presumption of Authority of Nonimmigrant Alien To Accept Employment*

We propose to revise § 422.105 to state that, unless the F-1 student has an employment authorization document issued by BCIS, the F-1 student applicant must provide additional documentation that confirms both that he or she has authorization from the school to engage in employment and has secured authorized employment. (As of March 1, 2003, INS's benefit functions became part of the BCIS in the Department of Homeland Security.) We understand from discussions with BCIS officials that they support our plans to assign SSNs only to those F-1 students who have secured a job. The proposed revision includes a cross-reference to § 422.107(e)(2), where the specific evidence requirements will be explained.

#### 422.107 *Evidence Requirements*

We propose to revise paragraph (e) of § 422.107 of our regulations by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e)(2) to specify that if an F-1 student does not have an employment authorization document, the F-1 student must provide documentation of both work authorization and employment before we will assign an SSN to the student. First, the F-1 student would need to provide documentation from the school that he or she will be engaging in

authorized employment. Under this clarification of our policy, we would not assign an SSN to the F-1 student unless the student provides a Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Status, and provides written confirmation from the designated school official (DSO) of (1) the nature of the employment the F-1 student is or will be engaged in and (2) the identification of the employer for whom the F-1 student is or will be working.

Second, we also propose to require that the F-1 student provide us with documentation that he or she is engaged in or has secured employment, e.g., a statement from the F-1 student's employer.

By adding these additional evidentiary requirements, we believe there will be fewer opportunities for abuse of the enumeration process without having any adverse effects on F-1 students who need to work while they are in the U.S. The additional documentation we would require should be readily available.

### Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists or diagrams?
- What else could we do to make the rules easier to understand?

### Regulatory Procedures

#### *Executive Order 12866, as Amended by Executive Order 13258*

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

#### *Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### *Federalism*

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132 and have determined that they would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. There may be some minimal impact on those States whose academic institutions have not developed an alternative method in their record-keeping systems for identifying F-1 students not eligible for SSNs. There may also be some minimal impact on States whose academic institutions may be an F-1 student's employer.

#### *Paperwork Reduction Act*

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of these burdens because they were not considered during the clearance of the forms.

| CFR citation              | Number of respondents | Frequency of response | Average burden per response | Estimated annual burden |
|---------------------------|-----------------------|-----------------------|-----------------------------|-------------------------|
| 422.105(a); 422.107 ..... | 1                     | 1                     | 1                           | 1                       |
| 422.105(b) .....          | 125,000               | 1                     | 1 minute                    | 2,083 hours             |

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to

enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Office of Management and Budget at the following fax number and to the Social Security Administration at the following address or fax number:

Office of Management and Budget,  
Attn: Desk Officer for SSA, Fax Number:  
202-395-6974.

Social Security Administration, Attn:  
SSA Reports Clearance Officer, 1338  
Annex Building, 6401 Security  
Boulevard, Baltimore, MD 21235-6401,  
Fax Number: 410-965-6400.

Comments can be received for  
between 30 and 60 days after  
publication of this notice and will be  
most useful if received by SSA within  
30 days of publication.

(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)

#### List of Subjects in 20 CFR Part 422

Administrative practice and  
procedure, Organization and functions  
(Government agencies), Reporting and  
recordkeeping requirements, Social  
Security.

Dated: November 13, 2003.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

For the reasons set forth in the  
preamble, we propose to amend part  
422, subpart B, chapter III of title 20,  
Code of Federal Regulations as follows:

#### PART 422—ORGANIZATION AND PROCEDURES

##### Subpart B—[Amended]

1. The authority citation for subpart B  
of part 422 continues to read as follows:

**Authority:** Secs. 205, 232, 702(a)(5), 1131,  
and 1143 of the Social Security Act (42  
U.S.C. 405, 432, 902(a)(5), 1320b-1, and  
1320b-13).

2. Section 422.105 is revised to read  
as follows:

##### **§ 422.105 Presumption of authority of nonimmigrant alien to engage in employment.**

(a) *General rule.* Except as provided in  
paragraph (b) of this section, if you are  
a nonimmigrant alien, we will presume  
that you have permission to engage in  
employment if you present a Form I-94  
issued by the Bureau of Citizenship and  
Immigration Services that reflects a  
classification permitting work. (See 8  
CFR 274a.12 for Form I-94  
classifications.) If you have not been  
issued a Form I-94, or if your Form I-  
94 does not reflect a classification  
permitting work, you must submit a  
current document authorized by the  
Bureau of Citizenship and Immigration  
Services that verifies authorization to  
work has been granted, e.g., an  
employment authorization document, to

enable SSA to issue an SSN card that is  
valid for work.

(b) *Exception to presumption for  
foreign academic students in Bureau of  
Citizenship and Immigration Services  
classification status F-1.* If you are an  
F-1 student and do not have a separate  
Bureau of Citizenship and Immigration  
Services employment authorization  
document as described in paragraph (a)  
of this section, we will not presume you  
have authority to engage in employment  
without additional evidence. Before we  
will assign an SSN to you that is valid  
for work, you must give us proof (as  
explained in § 422.107(e)(2)) that:

(1) You have authorization from your  
school to engage in employment, and  
(2) You are engaging in, or have  
secured, employment.

3. Section 422.107 is amended by  
redesignating paragraph (e) as paragraph  
(e)(1), adding a heading for paragraph  
(e)(1), and adding a new paragraph (e)(2)  
to read as follows:

##### **§ 422.107 Evidence requirements.**

\* \* \* \* \*

(e) *Evidence of alien status.* \* \* \*

(2) *Additional evidence rules for F-1  
students.* (i) *Evidence from your  
designated school official.* If you are an  
F-1 student, you must give us  
documentation from your designated  
school official that you are authorized to  
engage in employment. You must  
submit your Form I-20, the Certificate  
of Eligibility for Nonimmigrant (F-1)  
Status. You must also submit  
documentation from your designated  
school official that includes:

(A) The nature of the employment you  
are or will be engaged in, and

(B) The identification of the employer  
for whom you are or will be working.

(ii) *Evidence of your employment.*  
You must also provide us with  
documentation that you are engaging in,  
or have secured employment; e.g., a  
statement from your employer.

\* \* \* \* \*

[FR Doc. 03-30965 Filed 12-15-03; 8:45 am]

BILLING CODE 4191-02-P

#### **JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION**

##### **45 CFR Part 2400**

##### **Fellowship Program Requirements**

**AGENCY:** James Madison Fellowship  
Foundation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The following are proposed  
amendments to the regulations

governing the annual competition for  
James Madison Fellowships and the  
obligations of James Madison Fellows.  
These amendments would update and  
replace certain provisions of the  
Foundation's existing regulations as  
implemented by the James Madison  
Memorial Fellowship Act of 1986.  
These revised regulations would govern  
the qualifications and applications of  
candidates for fellowships; the selection  
of Fellows by the Foundation; the  
graduate programs Fellows must pursue;  
the terms and conditions attached to  
awards; the Foundation's annual  
Summer Institute on the Constitution;  
and related requirements and  
expectations regarding fellowships.

**DATES:** Comments must be submitted on  
or before February 17, 2004.

**ADDRESSES:** Address all comments about  
these proposed regulations to James  
Madison Memorial Fellowship  
Foundation, 2000 K Street, NW., Suite  
303, Washington, DC 20006-1809.

**FOR FURTHER INFORMATION CONTACT:**  
Lewis F. Larsen. Telephone: (202) 653-  
8700.

**SUPPLEMENTARY INFORMATION:** The  
reason for the proposed changes to the  
Foundation's regulations comes as a  
result of the Foundation's desire to  
clarify several of the rules and  
regulations that James Madison Fellows  
must observe when accepting their  
fellowships. Although many of the  
changes are minor insertions of words  
and punctuation, this document  
specifically expands the definition  
section to include further detailed  
definitions on Credit Hour Equivalent,  
Incomplete, Repayment, Satisfactory  
Progress, Stipend, Teaching Obligation,  
Termination and Withdrawal. The  
Foundation now encourages James  
Madison Fellows to choose a graduate  
program which does not include the  
writing of a thesis. Graduate programs  
for which Fellows may apply have been  
broadened to included political science.  
Finally, a section entitled "Teaching  
Obligation" was added to further clarify  
the obligation to teach, required by the  
Foundation once each fellow has earned  
a master's degree.

##### **Regulatory Flexibility Act Certification**

The President certifies that these  
regulations would not have a significant  
economic impact on a substantial  
number of small entities.

These regulations apply to  
individuals eligible to apply for  
fellowship assistance. Individuals are  
not included in the definition of "small  
entities" in the Regulatory Flexibility  
Act.