

SSA Establishes New Requirements for Number Issuance to F-1 Students

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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: Final rules.

SUMMARY: We are revising our rules for assigning SSNs to foreign academic students in Department of Homeland Security (DHS, which has subsumed most of the various functions of the former Immigration and Naturalization Service or INS) classification status F-1 (referred to throughout this preamble as F-1 students). Specifically, we are requiring additional evidence for F-1 students who are applying for SSNs. Like all other applicants, an F-1 student must provide SSA with evidence of age, identity, immigration status, and work authorization. In addition, unless the F-1 student has an employment authorization document (EAD) from DHS or is authorized by the F-1 student's school for curricular practical training (CPT), the F-1 student must provide evidence that he or she has been authorized by the school to work and has secured employment or a promise of employment before we will assign an SSN. These rules will further enhance the integrity of SSA's enumeration processes for assigning SSNs by reducing the proliferation of SSNs used for purposes that are not related to work and thereby decreasing the potential for SSN fraud and misuse.

DATES: These regulations are effective October 13, 2004.

Electronic Version: The electronic file of this document is

available on the date of publication in the Federal Register
at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.gpoaccess.gov/fr/index.html>.

It is also available on the Internet

site for SSA (i.e., Social Security Online)
at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=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

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site, Social Security Online, at
<http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration has been working to strengthen the process for assigning SSNs, our "enumeration" process. Concerns about national security, along with the growing problem of identity theft, have prompted us to identify additional areas where we can strengthen the integrity of the enumeration process. We have undertaken many initiatives but mention just a few here as background. As part of the SSN application process, we now verify the birth records submitted as evidence for U.S.-born citizens age one or older, and verify the immigration status of non-citizens with DHS. We have heightened the importance of our screening process for all evidentiary documents and recently promulgated new regulations lowering the age for mandatory in-person interviews.

As part of our overall review of our enumeration processes for citizens and non-citizens alike, we considered our policy of assigning SSNs to F-1 students who do not have specific work authorization from DHS or from their schools. It might be helpful to look at how the Immigration and Nationality Act (INA) defines the F-1 nonimmigrant classification to better understand the context in which we made our regulations change.

The INA, in section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i), describes an F-1 nonimmigrant as "an alien having a residence in a

foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study." (Italics added.) This definition provides the purpose of the F-1 student's stay in the U.S.--to study. Working in the U.S. is ancillary. In this respect, the F-1 classification is different from certain other nonimmigrant classifications that are based upon the type of work the nonimmigrant will be performing while in the U.S.

DHS regulations do provide, however, that F-1 students, while maintaining valid nonimmigrant student status, may work in the U.S. under certain circumstances. Under 8 CFR 214.2(f)(9)-(10), F-1 students may be authorized to work off-campus in optional practical training (OPT) and in an internship with a recognized international organization, or in cases of severe economic hardship. For these off-campus situations, they must apply to DHS for employment authorization. DHS then determines whether the applicant is eligible for employment authorization, and, if so, issues the applicant an EAD.

In the case of OPT, the employment must be directly related to the F-1 student's major area of study. If offered employment in an internship with a recognized international organization, the student must have a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship. In cases of extreme economic hardship, the student must present documentation as to why it is critical to be allowed to work off-campus (i.e., loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living expenses, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses).

An F-1 student may also be eligible to participate in a CPT program that is an integral part of an established curriculum at the school where the student is enrolled. The work must be approved by the Designated School Official (DSO), who signs the student's Student and Exchange Visitor Information System (SEVIS) Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, with the particulars of the employment, including whether the training is full time or part time, the name and location of the employer, and the start and end dates of the employment. For CPT, the student is neither required to submit a Form I-765 to DHS, nor required to present an EAD. See 8 CFR 214.2(f)(10)(i).

Under 8 CFR 214.2(f)(9)(i) and 274a.12(b)(6)(i), an F-1 student may also work "on campus" for a "specific employer incident to status" on the school's premises or at an off-campus location that is educationally affiliated with the school. F-1 students may perform such work without submitting a Form I-765 to DHS or having a DSO report on-campus employment or endorse the student's SEVIS Form I-20. However, 8 CFR 274a.12(b)(6)(i) does state, "Part-time on-campus employment is authorized by the school." DHS regulations are silent on how the school must authorize that on-campus employment because there is no DHS specific requirement as to how a school provides such authorization to F-1 students. It is clear that such work must not displace a U.S.

resident and must be an integral part of the student's educational program. In addition, there are limitations on when the work may be performed (e.g., not more than 30 days prior to the actual start of classes) and the maximum number of work hours.

When there is no EAD or school endorsement to document employment, SSA's experience indicates that many F-1 students are assigned SSNs when the students do not have jobs, are not intending to work, and, in some cases, where the school does not have on-campus employment available. Currently, for on-campus employment, where there is no EAD card or school annotation regarding employment on the SEVIS Form I-20, SSA accepts a letter from the DSO affirming that the student is enrolled in a full course of study and is therefore authorized to work on campus. However, our field experience shows that these letters are not always reliable. An October 2003 General Accounting Office (GAO) Report to the Chairman, Subcommittee on Social Security, Committee on Ways and Means, House of Representatives, entitled "Social Security Administration: Actions Taken to Strengthen Procedures for Issuing Social Security Numbers to Noncitizens but Some Weaknesses Remain" (GAO-04-12), cited an SSA Office of Inspector General (OIG) investigation that "uncovered a ring of 32 foreign students in four states who used forged work authorization letters to obtain SSNs. * * * However, an unknown number of other students associated with this ring had already obtained illegal SSNs with forged work authorization letters." Because of these types of investigations and numerous similar anecdotal field reports about significant anomalies between authorized work and actual work, we are revising our regulations for assigning SSNs to F-1 students. To ensure the authenticity of the student's work authorization from the school and to address student allegations about employment, we are requiring the F-1 student to provide evidence from the DSO of on-campus employment authorization and verification of employment or a promise of employment from the actual on-campus employer.

Assigning SSNs based on work that is authorized to be performed on campus, which we do not verify and which our experience and audits have shown to be often unsubstantiated--in effect assigning SSNs for non-work--runs counter to efforts SSA has initiated. These efforts also include those in response to Congressional inquiries and

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OIG and GAO audits to strengthen enumeration integrity and decrease opportunities for potential SSN fraud and misuse. It also runs counter to SSA's recently promulgated regulation, "Evidence Requirements for Assignment of Social Security Numbers (SSNs): Assignment of SSNs for Nonwork Purposes," published in the Federal Register on September 25, 2003 (68 FR 55304), and effective October 27, 2003. This regulation, available online at http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.socialsecurity.gov/regulations/articles/rin0960_af05f.htm, limits the number of valid non-work reasons for

assigning an SSN to a non-citizen.

Because of these considerations, SSA is changing its regulations for SSN assignment to F-1 students for on-campus work. While we recognize that this change in our regulations will cause some inconvenience for F-1 students and schools, we believe that SSA's mission and the recommendations made by OIG, GAO and Congress to strengthen the enumeration process require that we make these revisions. We will provide assistance to schools and employers in implementing these regulatory changes as outlined below and will continue to work with educational associations and DHS as the process moves forward.

The Commissioner of the Social Security Administration has been given broad powers under law to carry out the provisions of the Social Security Act (the Act) and to establish procedures deemed necessary for that purpose. Section 205(a) of the Act states: ``The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder." [Italics added]

Under section 205(c)(2)(A) of 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." [Italics added] We consider the F-1 student to be in a status permitting on-campus work, which makes the student eligible for an SSN and a restricted Social Security card, when we have received evidence from the DSO that the school has authorized such work and the student has made arrangements to work for a specific employer.

Section 205(c)(2)(B)(ii) goes on to add that ``The Commissioner of Social Security shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual."

SSA's regulations at 20 CFR 422.107(a) implement the Act with respect to the evidence required to support an application for an SSN: ``An applicant for an original social security number card must submit documentary evidence which the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity." [Italics added] Additionally, they provide, ``A social security number will not be assigned, or an original, duplicate, or corrected card issued, unless all the evidence requirements are met."

Current SSA Rules

Our regulations at 20 CFR 422.105 currently state that a nonimmigrant alien whose immigration Form I-94, Arrival/Departure Record, does not reflect a classification permitting work must submit a current document issued by U.S. immigration authority 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 immigration 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, F-1 immigration status, and work authorization. This work authorization can either be from DHS in the form of an EAD document or from the F-1 student's school for on-campus employment or CPT. 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, who do not have an EAD and are not authorized by their schools for on-campus curricular practical training, but who do have a letter from the DSO, apply for SSNs even when there is limited or no general on-campus employment available. Some F-1 students have informed us that they do not intend to work but need the SSNs to obtain goods or services in the community.

Because of these factors, we are requiring additional evidence for F-1 student SSN applicants. The purpose of the SSN is to keep track of an individual's earnings in the U.S. over his or her lifetime and to pay Social Security benefits. The assignment of SSNs for purposes other than that for which the SSN is intended can lead to potential misuse and/or fraud, which 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 are requiring additional evidence from F-1 students before we will assign SSNs to them because they are allowed to work only in certain circumstances. We want to confirm that the student needs the SSN for such authorized work. If F-1 students are not planning to work in the kinds of jobs allowed by their F-1 status, then they would not have a legitimate need for the SSNs and the SSNs would not be assigned.

A number of published government audits and reports support this change. Three are cited here and are accessible online:

SSA (OIG) study, ``Using Social Security Numbers To Commit Fraud" (A-08-99-42002, May 1999) at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/oig/ADOB/EPDF/A-08-99-42002.pdf>

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GAO Report to the Chairman, Subcommittee on Social Security, Committee on Ways and Means, House

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of Representatives, `` Social Security Administration: Actions Taken to Strengthen Procedures for Issuing Social Security Numbers to Noncitizens but Some Weaknesses Remain" (GAO-04-12, October 2003) at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.gao.gov>; and

SSA's OIG report, `` Management Advisory Report: The Social Security Administration's Procedures for Enumerating Foreign Students" (A-05-03-23056, December 17, 2003) at http://http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/oig/office_of_audit/audit2004.htm

Explanation of Additional Evidentiary Requirements

Section 422.105 Presumption of Authority of Nonimmigrant Alien To Accept Employment

We are revising Sec. 422.105 to state that, unless the F-1 student has an employment authorization document issued by DHS or a SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, completed and signed by the school's DSO authorizing CPT on the employment page (page 3), 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. (In 2003, INS's benefit functions became part of the DHS.) This wording differs somewhat from that in the Notice of Proposed Rulemaking to clarify that this rule change only applies to F-1 students for on-campus work (these students have neither EADs nor authorization from their schools on Form I-20 for CPT). In discussions over the last year with DHS officials, they supported our plans to assign SSNs only to those F-1 students who have secured a job. The revision includes a cross-reference to Sec. 422.107(e)(2), where the specific evidence requirements are explained.

Section 422.107 Evidence Requirements

We are revising paragraph (e) of Sec. 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 and is not authorized for CPT as shown on the F-1 student's SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, the F-1 student must provide documentation of both work authorization from the school and secured

employment before we will assign an SSN to the student. First, the F-1 student will need to provide documentation from the school that he or she will be engaging in authorized employment. Under this change in our policy, we will not assign an SSN to the F-1 student unless the student provides a SEVIS Form I-20, and provides written confirmation from the 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 are also requiring 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. For purposes of these requirements, evidence of a formal job offer, a promise of a job, or evidence that the student is in fact engaged in that job will be considered "secured" employment.

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.

In addition to the revisions discussed above, we are also making technical non-substantive revisions to Sec. Sec. 422.103(b)(3) and (c)(3), 422.104(c), 422.105, 422.107(c), (d)(4), (d)(6), (e)(1) and (e)(2), and 422.110(b) that were not included in the NPRM. The revisions reflect that the Immigration and Naturalization Service has been reconstituted into the Department of Homeland Security.

Public Comments

On December 16, 2003, we published proposed rules in the Federal Register at 68 FR 69978 and provided a 60-day period for interested parties to comment. We received comments from 5 advocacy groups, 1 attorney representing international student interests, more than 70 colleges, universities and graduate schools, and 5 individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We have tried to present all views adequately and carefully address all of the issues raised by the commenters that are within the scope of the proposed rules.

Purpose of This Regulation: Connection to the Prevention of Terrorism, Fraud and Misuse of the Social Security Number (SSN)

Comment: A number of commenters suggested that SSA "withdraw" this regulation, questioning the purpose behind the rule and how its promulgation will prevent fraud, reduce misuse of the SSN, and/or deter terrorism. One questioned how this rule, had it been in effect in 2001, might have prevented the 9/11 terrorist attack and how it could prevent terrorist attacks in the future. Questions were raised about SSA's fraud prevention measures and some asked specifically how many international students commit SSN fraud, how this rule will reduce instances of SSN fraud and how international student fraud compares to overall SSN fraud. Comments were made that our rule "purports to solve a problem that does not exist" and criticized our using the May 1999,

SSA OIG report, "Using Social Security Numbers To Commit Fraud" (A-08-99-42002), as part of the justification for this rule. This report was said to be too old to use as justification for a current regulation that would create "[s]erious policy changes with * * * far-reaching negative impact." Some commenters said the OIG report showed only that most of a small sample of international students who had SSNs did not have any earnings for the year studied; it did not indicate that the SSNs were used to work illegally in the U.S. Some mentioned that if F-1 students were to "misuse" their SSNs, it would be an issue for DHS, not SSA, to resolve. And, some commented that the rule provides no follow-up mechanism for SSA to determine whether the SSNs were actually used for work purposes.

Response: As we pointed out in the Proposed Rule language, 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 SSNs even when there is limited or no employment available. Some schools and universities provide all their registered F-1 students with letters authorizing on-campus employment and refer them to SSA offices to apply for SSNs. Often, many of these students inform us that they do not intend to work but need the SSNs to obtain goods or services in the community.

We are revising our policy on the assignment of SSNs to F-1 students because our experience suggests that SSNs are assigned to some F-1 students who are not working and do not intend

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to work. There are rare instances where an F-1 student might qualify for a non-work SSN. The only valid nonwork reasons for an SSN are: (1) A Federal statute or regulation requires an SSN to get the particular benefit or service to which a nonimmigrant has otherwise established entitlement; and (2) a State or local law requires a nonimmigrant who is legally in the U.S. to provide his/her SSN to get public assistance benefits to which he or she has otherwise established entitlement and for which all other requirements have been met. In all other cases, an F-1 student is not eligible for an SSN unless he or she will be working for a specific employer or in a specific type of employment, such as CPT, OPT or for a recognized international organization, or in cases of extreme economic hardship, as permitted by the F-1 classification. Assigning SSNs that are not needed for authorized work for a specific employer or in specific employment would put into circulation SSNs that may be used for fraudulent purposes or illegally for work not permitted while in the U.S. (i.e., in work not permitted by their classification under immigration regulations at 8 CFR 274a.12).

With respect to how this rule relates to actual or potential terrorists, we note that SSA must do its part to strengthen the integrity of the SSN, lessen the fraudulent use of the SSN, and guard against providing SSNs inappropriately that could enable someone to integrate into American society who might intend to engage in criminal behavior or harm our country. The issuance of Federal documents to individuals who intend to do us harm enables those individuals to move more easily in our society. Therefore, in our discussions over the last

year with DHS, it supported our plans to assign SSNs only to those F-1 students who have secured jobs.

Numerous studies support our concerns in this area and the need to revise policy. In addition to the reports cited in the Preamble, we reference the following OIG reports:

``Congressional Response Report: SSN Misuse: A Challenge for the Social Security Administration," A-08-02-22030, October 3, 2001, http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/oig/office_of_audit/audit2002.htm;

``Inspector General Statement on the Social Security Administration's Major Management Challenges," A-02-02-12054, December 7, 2001, http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/oig/office_of_audit/audit2002.htm; and

``Management Advisory Report: Social Security Number Integrity: An Important Link in Homeland Security," A-08-02-22077, May 9, 2002, http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/oig/office_of_audit/audit2002.htm.

Additional audit reports may be found on SSA's Web site of the Inspector General at http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/oig/office_of_audit/index.htm

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The GAO also issued a report to the Chairman, Subcommittee on Social Security, Committee on Ways and Means, House of Representatives, in October 2003 entitled ``Social Security Administration: Actions Taken to Strengthen Procedures for Issuing Social Security Numbers to Noncitizens but Some Weaknesses Remain" (GAO-04-12 accessible at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.gao.gov>). In this report, based on its work from July 2002

through July 2003, GAO discussed SSA's verification of documents for foreign students seeking SSNs. GAO mentioned that SSA had stepped up its verification efforts for foreign students by requiring that they prove enrollment in a full course of study at a DHS-approved school before assigning SSNs to them. However, on page 7, it also advised the Committee that ``SSA still does not require its field staff to verify this information or letters from the school stating the student is authorized to work--with the school," and ``SSA also does not require that students actually have a job to qualify for an SSN, only that they have been authorized by their school to work on campus." On page 10 of the report, GAO supports its contention that ``verification of foreign students * * * remains problematic" by citing a ``recent" investigation by SSA's OIG, which we alluded to earlier in the preamble, regarding the ring of 32 foreign students in four states who

presented to SSA forged work authorization letters along with their SSN applications. There were other students associated with this ring who had already obtained SSNs using the bogus letters.

In addition, the report cited a foreign student Web site that ``advises" foreign students to ``shop around" for an SSN by visiting more than one SSA office. The Web site also states, ``If you are not authorized to work, ask your Foreign Student Advisor for help. Sometimes they can give you a letter to the SSA stating that you need a SSN for on-campus employment. Sometimes SSA clerks dont really read these letters, they just look at them." The GAO report included reports of schools, operating out of storefronts, that issued work authorization letters for students, claiming the students were working on campus. Another SSA office recounted to GAO reviewers experiences with schools selling work authorization letters to students who wished to get SSNs. These findings were pointed out in the report to the Committee as vulnerabilities for the integrity of SSA's enumeration system and as contributing to the proliferation of SSNs with the potential for misuse.

Most recently, SSA's OIG issued its final report on the enumeration of foreign students: ``Management Advisory Report: The Social Security Administration's Procedures for Enumerating Foreign Students," A-05-03-23056, December 17, 2003, http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/oig/office_of_audit/audit2004.htm.

The report pointed out problems that OIG sees in the

enumeration of foreign students and stated that, while it recognized that increased security measures will impact on the time necessary to process SSN applications, it recommended that SSA employ more effective front-end controls over the enumeration of foreign students.

The OIG auditors corroborated our field experiences. In its examination of 15 educational institutions that enrolled 61,760 foreign students during the period November 2002 through October 2003 (during which time SSA was already requiring schools to provide evidence of school attendance and work authorization), OIG found that only 4 of the 15 (27 percent) stated that employment or an offer of employment was required to receive a work authorization letter from the school. The remaining 11 schools provided employment letters to all students based on their eligibility for employment. The OIG auditors cited a school that gave out the SS-5, Application for a Social Security Card, to every freshman during orientation as part of the normal registration process at that school. Also, one of the schools OIG examined, which has one of the highest percentages of foreign students among U.S. institutions, had just recently changed its policies to require that the student have a job offer prior to issuing a work authorization letter to SSA.

OIG recognized that work authorization and related work status of an F-1 student are difficult to substantiate in the absence of any annotation on the I-20 or an EAD, and went on to recommend that SSA propose the regulatory requirement that evidence of actual employment be required for foreign students to be assigned SSNs. This requirement should help prevent the proliferation of SSNs used for non-work purposes and reduce the potential for fraud by confirming that each F-1

SSN applicant is attending school and is in good academic standing, that there is a legitimate job on campus for him or her,

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and that each student has individualized, specific documentation to that effect.

This effort, as well as SSA's new verification procedures utilizing data from SEVIS to track foreign students and exchange visitors while they are in the U.S., may not prevent fraud and misuse, but both our enhanced enumeration processes and SEVIS work to make it less likely that fraud and misuse will occur.

With regard to the comments indicating that misuse of the SSN is solely a DHS issue, we point out here that SSA is responsible for investigating unauthorized uses of SSNs under the Act. Following the events of September 11, 2001, we increased management attention to possible enumeration weaknesses. We have developed major new initiatives that affect the assignment of SSNs to citizens and noncitizens alike. The examination of how and to whom we assign SSNs, which includes possible misuse of the SSN--unauthorized assignment or fraudulent application--is an issue of the utmost importance to us. As the Agency responsible for assigning SSNs, and maintaining the earnings records and other personal information for millions of SSN holders, SSA is responsible for investigating the misuse of SSNs.

Legality of Regulation

Comment: Several commenters questioned the legal basis for SSA's regulation with respect to F-1 students and on-campus work, saying that neither the Act nor SSA's regulations require actual employment as a precursor to obtaining an SSN.

Response: As already discussed in the Background section of the Preamble, we believe the Act supports a change in our regulations with respect to the type of evidence we require that is both appropriate and convincing to establish a work-related need for SSNs assigned to F-1 students. While F-1 students are allowed into the U.S. to study, DHS regulations also provide specific types of work in which F-1 students may engage. They are not allowed to work anywhere they wish in the general economy. As part of the application process for an SSN, SSA needs to know where an F-1 student will work in order to verify that the SSN will be used for legitimate and authorized purposes as allowed by the student's immigration classification.

For off-campus work, the F-1 student will have an EAD. If CPT is involved, the F-1 student will have the I-20 completed and signed by the DSO with specific employment information on the employment page (page 3). For on-campus work, DHS regulations require authorization by the school, although no specific endorsement by the school or DHS is necessary. See 8 CFR 274a.12(b)(6)(i). We are revising our regulations to state that we will need to see evidence of employment authorization, as well as evidence that a specific job has been secured, in order to establish a work-related need for the SSN.

The Act and regulations allow the Commissioner, as custodian of the SSN, to make rules and regulations that are necessary and appropriate

to administer Social Security programs. Our rule is revising 20 CFR 422.105, "Presumption of authority of nonimmigrant alien to accept employment," and 20 CFR 422.107, "Evidence Requirements," to more clearly stipulate what is convincing evidence for F-1 students so as to assign them SSNs.

The additional documentation we are requiring will provide more definitive evidence than our current process of accepting DSO letters that confirm only that the student is enrolled in a full course of study and is work-authorized. SSA's OIG and others have found these procedures to be deficient. The new procedures will link the request for an SSN to an actual job that the student is allowed to hold, consistent with the F-1 status, and will help prevent the proliferation of SSNs for non-work purposes.

F-1 Work on Campus "Incident to Status"

Comment: Some commenters questioned SSA's understanding of DHS regulations as they pertain to our asking for additional documentation about the F-1 student's on-campus work, saying that such employment, under immigration regulations, is "incident to their status" or that it is a "benefit" or "entitlement" of their immigration status and, therefore, needs no formal documentation. One commenter said our proposed ruling "effectively negates" DHS regulations allowing F-1 students to work on campus.

Response: We have compared DHS regulations with our draft regulations and disagree that our regulations will negate an F-1 student's on-campus work possibilities. DHS establishes work eligibility for the various immigration categories. For F-1 on-campus work, DHS has delegated the authority to authorize work to the DSOs. See 8 CFR 274a.12(b)(6). DHS regulations at 8 CFR 214.2(f)(9) include a restriction on the number of hours that can be worked while school is in session and provide the specifics for what does and does not constitute "on-campus employment." For example, this regulation states that, "Employment with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment" and, "An F-1 student may engage in any on-campus employment authorized under this paragraph which will not displace United States residents."

Further, 8 CFR 274a.12(b) provides that an F-1 student is authorized to work with a "specific employer incident to status" (*italics added*), i.e., if that employment is on campus or for purposes of CPT. 8 CFR 274a.12 (b)(6) adds another qualifier about such employment: the student must be in "valid nonimmigrant status." Also, CPT must be specifically authorized by the DSO before an F-1 student may engage in CPT. The types of off-campus work an F-1 student may perform are governed by other DHS regulations not directly germane to this discussion.

Thus, an F-1 student's ability to work on campus is dependent on meeting certain DHS criteria as stipulated in that Agency's regulations.

When an F-1 student files an application for an SSN, and if the student does not have an employment authorization document from DHS or an I-20 with employment information filled in by the DSO (as well as

the signed approval of the DSO) on the employment page (page 3), it is not obvious to an SSA employee that the F-1 student can work. We have no way of knowing if the F-1 student is still in status, and therefore eligible and authorized to work (i.e., is still a lawfully enrolled F-1 student at the school in a full course of study and/or otherwise maintaining valid nonimmigrant F-1 student status as stipulated in DHS regulations). For this reason, we require additional documentation to verify or otherwise validate that the F-1 student is still meeting those legal obligations. Thus, we are requiring evidence and verification of a job or job offer in order to ensure that we are assigning an SSN for a legitimate work-related purpose within the scope of the F-1 student's immigration classification.

We do not believe that this additional documentation is ``effectively negating" DHS regulations. From our discussions with DHS officials, we understand that they support our plans to assign SSNs to those F-1 students who have secured jobs. We also know of schools and universities in the U.S. that already advise their students not to visit an SSA office until they have a job, job

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prospects or even a written job offer or ``contract" in hand.

DHS Does Not Require an F-1 Student To Have a Job Before Providing the Student an EAD

Comment: One commenter said that DHS does not require an F-1 student to have a job before applying for an EAD to work off-campus and questioned why SSA is requiring proof of a job before assigning an SSN.

Response: We have discussed this issue with DHS officials in light of the regulations at 8 CFR 214.2(f)(9) that provide the DHS requirements that must be met before F-1 students can work while in the U.S. The DHS regulation cited does not require that an F-1 student prove he or she has an off-campus job before DHS provides the student an EAD. However, it does require that the DSO, as part of the student's application for an EAD, provide adequate ``documentation" to prove why the student legitimately needs to work off-campus, and that the student is meeting all other requirements for maintaining lawful nonimmigrant status as an F-1 student at the school. This additional documentation provides support for the off-campus work and helps DHS decide whether to provide an EAD to the student. For SSA, the EAD provides a link to actual work.

Also, for CPT, DHS regulations provide that the DSO must first provide specific employment information on the employment page (page 3) of the SEVIS Form I-20 before the student may begin such work. The DSO updates ``the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study." The DSO also indicates ``whether the training is full-time or part-time, the employer and location, and the employment start and end date." Finally, the DSO prints out a copy of the employment page indicating that curricular practical training has been approved, signs and dates it, and returns the SEVIS Form I-20 to the student, prior to the student beginning the CPT. Again, this

documentation provides SSA field employees a link to actual work.

The only type of work an F-1 student may engage in that does not require some type of additional documentation under DHS regulations as described above is on-campus work pursuant to 8 CFR 214.2(f)(9)(i) and 274a.12(b)(6)(i). Each year, SSA field employees interview numerous F-1 SSN applicants who do not have EADs or work documented on their SEVIS Form I-20s. These are the types of cases that SSA's OIG, in several audits referred to earlier in this document, has found to be most problematic. Because in these cases it is not clear to SSA employees that the F-1 student needs an SSN for work (in the absence of an EAD or specific employment information on the I-20), we are requiring additional documentation from the F-1 student to confirm that he or she needs an SSN in order to work for a specific employer in a type of work allowed by their F-1 classification.

Requirement for DSO Work Information and Verification of That Information With Employer for On-Campus Work

Comment: A number of commenters agreed with our position that it is important to verify an F-1 applicant's claim with respect to employment on campus. A few commenters suggested that one all-inclusive letter, in which the DSO provides information about the type of work the student is performing and verification of that work, suffice as proof of employment.

Response: We appreciate these comments, but the intent of the rule is to provide not only a statement from the school's DSO about the student's enrollment in a full course of study and work information, but also to confirm that information with the actual department or school office employing the student. In those cases where the DSO might also be the actual employer of the F-1 student, we would ask to have that employment confirmed with the human resources department or some other department that is responsible for payroll and wage reporting. If a student has already started a job, a pay slip or stub from the employer for work already performed would be acceptable proof of employment.

The reasons for needing to corroborate the work information that the DSO provides has already been cited above: SSA's experience with "DSO letters" that were fabricated by students, work allegations where there are very limited or no on-campus jobs, and the various OIG and GAO reports that confirm these experiences and recommend we require proof of employment from F-1 students for on-campus work. The verification from the actual employer (or HR/payroll department) is meant to support the DSO's statement about the student's work and confirm the need for the student to be assigned an SSN.

Curricular and Optional Practical Training, and Off-Campus Employment

Comment: We received several comments that questioned how this regulation would affect F-1 students who need to perform curricular or optional practical training (CPT and OPT) as part of their program, or who need to work in cases of severe economic hardship.

Response: This regulation only affects F-1 students who want to work or are already engaged in general on-campus work. This regulation

is not meant to apply to any other type of work that an F-1 student may be authorized to perform while in this country, including work for CPT purposes. We agree, however, that the regulation language as drafted did not make that clear with respect to CPT. We have thus changed the language of the regulation in this final rule in 20 CFR 422.105, ``Presumption of Authority of Nonimmigrant Alien to Engage in Employment," and 20 CFR 422.107, ``Evidence Requirements," to make it clear that this rule applies only to F-1 students who do not have an EAD and are not authorized by the DSO for curricular practical training (CPT) as shown on the student's SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status. For CPT work, we will not require a DSO letter or separate employment verification because the DSO already provides work authorization and additional specific employment information on the student's I-20 employment page (page 3) as evidence of work. For OPT and other types of off-campus employment, we use the employment authorization document (EAD) that the student receives from DHS as proof of work authorization. These students do not need to provide proof of having a job, as we are requiring of F-1 students for general on-campus work, because they have provided sufficient information to obtain authorization to work off-campus so that we know they are seriously planning to work.

Exceptions to Regulation for Graduate Assistantships and Fellowships

Comment: Some commenters asked about the potential impact of this regulation on individuals who are attending school, particularly graduate school, and receiving a fellowship or assistantship in exchange for teaching or other services.

Response: The regulation as written does not prohibit the F-1 student from presenting his or her acceptance letter, which outlines the stipulations of the work portion of the fellowship or assistantship, as proof of employment. In such cases, we may not require any additional statement from the employer, but we will require the letter from the DSO that certifies the student is

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attending school and has authorization to engage in on-campus employment.

Scholarships

Comment: Some have asked about the potential impact on individuals who are attending school via academic or athletic scholarships, or some other form of subsidy where the student receives finances that are not in exchange for employment, but must be reported as income to the Internal Revenue Service (IRS).

Response: Those students who are receiving scholarships, and who do not qualify for an SSN under these revised regulations, should contact the IRS to inquire about how to file for an Individual Taxpayer Identification Number (ITIN) for legitimate income tax reporting purposes. See information on ITINs at the IRS Web site at the following

URLs: <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.irs.gov/newsroom/article/0,,id=112728,00.html> and

<http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.irs.gov/individuals/article/0,,id=96287,00.html>.

We understand from discussions with IRS that students must provide evidence that they are not eligible for an SSN (letter from SSA) and a copy of their scholarship acceptance letter when applying for an ITIN under this provision. We recommend that these students seek the guidance of legal counsel or a local IRS representative for exact information and filing requirements.

Form W-7, Application for IRS Individual Taxpayer Identification Number, and instructions on who is eligible for an ITIN, and how and when to submit the W-7 are accessible online at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.irs.gov/pub/irs-pdf/fw7.pdf>

Hiring Issues/Lack of On-Campus Jobs

Comment: Several individuals commented that if new international students do not have their SSNs in hand, they would be at a severe disadvantage when vying for jobs against those students who already have their numbers and/or against U.S. citizen students.

Response: Those students who are looking for work off-campus are not affected by this regulation and will need to abide by current SSA regulations that require EADs as evidence of work authority before we will assign SSNs to them.

As far as how this regulation change would affect an F-1 student ``competing'' for an on-campus job with a U.S. student, we do not believe this regulation will create an additional burden for the F-1 student for several reasons. First, it is important to remember that many jobs that fall under the DHS definition of ``on-campus'' are often jobs that also count as Federal work-study employment available to U.S. students as part of their ``financial aid'' package. As such, these are jobs for which, under Federal regulations, international students do not qualify. Second, F-1 students cannot be placed in a job if their being hired into the position would displace an eligible U.S. student or U.S. worker for that same position. As is clearly stated in 8 CFR 214.2(f)(9)(i), ``An F-1 student may engage in any on-campus employment authorized under this paragraph which will not displace United States residents.'' Where direct competition for an on-campus job (which could include those jobs eligible as Federal work-study positions for a U.S. student) occurs between an international student and a U.S. student, DHS regulations require that the position go to the U.S. student.

As far as the concern about how this regulation, in general, might affect those F-1 students who do not yet have SSNs vying against other students who do, we anticipate that SSA's new verification procedures

utilizing the data in SEVIS (see next section) will result in F-1 student applicants being assigned SSNs much more quickly than has been the case in the past. We believe that any disadvantages that might exist for F-1 students who do not yet have their SSNs, versus students who do, will be minimized once the school's employer community understands that F-1 student applicants for on-campus jobs should receive SSNs very quickly after providing evidence to SSA that they have job offers.

Also, F-1 students, once they apply for an SSN, can request that SSA issue them an "acknowledgment letter." This dated letter confirms that SSA has received an application for an SSN. It can be given to any SSN applicant whose evidence must be verified before final action can be taken to assign or deny an SSN application. An F-1 student can show this letter to an employer as proof that they have filed for an SSN.

Delays in Receiving SSNs Until DHS Verifies Nonimmigrant Status

Comment: A number of commenters noted the delays in processing SSN requests due to the time it takes for SSA to receive a response from DHS that verifies the student's nonimmigrant status. One commenter noted that, "SSN applications for non-immigrant applicants already take from 2 weeks to 8 months to be approved by the social security office" and that this regulation would cause even more delays. Some students are offered jobs that are of short duration, such as being asked to quickly translate documents, or are asked to help with orientation sessions when they first arrive on campus at the beginning of a new school year. Receiving an SSN timely seems even more critical in these situations.

Response: SSA has recently developed, in conjunction with DHS and the Department of State, an expedited way to verify the nonimmigrant status of F-1 and M-1 (vocational/nonacademic) students and J-1 exchange visitors. For these categories of nonimmigrants, if we cannot verify their status online using the Systematic Alien Verification for Entitlements system (SAVE), we request verification from the Los Angeles Immigration Status Verification Unit (LOS ISV) of DHS. LOS ISV will search SEVIS records. If the school has "registered" or the sponsor has "validated" that student in the SEVIS database upon the student's arrival in the U.S. and before we request verification of that status from LOS ISV, a positive verification response indicating the student is "active" in SEVIS can be sent to SSA within a few days. Once verification of the student's status is received, SSA will assign an SSN and issue an SSN card within two weeks. It is important to note that while this new SEVIS process speeds up the verification of student status, there is no information currently contained in SEVIS that verifies employment for on-campus work.

Hiring and Starting Work Without an SSN

Comment: Quite a few commenters asked how F-1 students could apply for jobs without first having an SSN. They told us that their schools and/or private on-campus employers do not hire anyone who does not already have an SSN. Many commenters said it is against the law to hire without an SSN, and that SSNs are required for payroll reporting and

end-of-year wage reporting.

Response: A valid SSN is necessary for all employees so that employers can properly report their wages to SSA and the IRS as required by law. However, there is no provision in the Act that requires employers to mandate that employees have SSNs before they can be hired. Neither is there any provision in the Act that prohibits an employee from beginning work if he or she has not yet obtained an SSN. Furthermore, when the employer files the annual wage report, if the employee has applied for an SSN but has not yet received it, the employer can still file without the particular SSN by following the

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procedures located on SSA's Web site at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.socialsecurity.gov/employer1.htm>.

See also the fact sheet entitled, ``Employer

Responsibilities When Hiring Foreign Workers," found at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.socialsecurity.gov/employer/hiring.htm>.

However, once the employee

has received the number, he or she is required to inform the employer as soon as possible, and may be requested by the employer to show his or her Social Security card. The employer can then file a corrected wage report with SSA and the IRS following instructions that are available on both Agencies' Web sites, <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.socialsecurity.gov/employer/how.htm> and <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.irs.gov>.

We recognize this regulation may cause inconveniences for schools

using certain payroll software systems. Schools with this problem may wish to discuss a work-around with their software vendor. Also, schools may contact one of SSA's Employer Services Liaison Officers (ESLOs), who specialize in payroll reporting issues. ESLOs for each State are listed on our Web site at: http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/employer/wage_reporting_specialists.htm

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It is SSA's hope that our new expedited method of verifying a student's nonimmigrant status with DHS using SEVIS will minimize the delays for F-1 students in obtaining SSNs. We are receiving positive feedback from our offices that this new verification process that began in January 2004 is greatly reducing verification times.

Timing of the Payment of Wages

Comment: Several of the commenters raised concerns that if an F-1 student begins work without an SSN, the employer may withhold that

student's paycheck until the SSN is assigned and an SSN card is received in the mail.

Response: Employers are required to abide by Federal and State laws with respect to the payment of wages to employees who have completed the agreed-to amount of work. Also, different States have different payday requirements. A comprehensive list can be found on the Department of Labor's Web site at: <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.dol.gov/esa/programs/whd/state/payday.htm>.

We would strongly recommend that employers and/or

their payroll or HR departments check Federal and State labor laws and their own legal counsel before withholding payment of wages from their employees.

As previously mentioned, there is no provision in the Act that requires employers to mandate that employees have SSNs before they can be hired. Neither is there any provision in the Act that prohibits an employee from beginning work if he or she has not yet obtained an SSN.

Also, we expect that the decreased amount of time it takes to verify student nonimmigrant status using the new SEVIS verification process should increase the speed with which SSA can assign SSNs and students can pass along their SSNs to employers.

Form I-9 Requirements

Comment: Several commenters pointed out the F-1 student's need to use the SSN card as one of the proofs of employment eligibility on Form I-9, Employment Eligibility Verification, when they are applying for a job. They feared that if a student were required to receive a job offer before they could receive an SSN, they would not get the number in time to fill out the required I-9 form completely.

Response: The restricted Social Security card given to an F-1 student cannot be used for Form I-9 purposes. Form I-9 was developed for verifying that new employees are eligible to work in the U.S. Section 1 is completed and signed by the employee at the time employment begins and asks the employee to provide his or her name, address, date of birth, SSN and attest that he or she is authorized to work in the U.S. The employer then completes and signs Section 2 after examining certain employee documents, specified as List A, List B and List C documents, on the reverse side of the Form I-9. Any one document from List A establishes both identity and employment eligibility. Therefore, if an employee presents a List A document, he or she does not have to show the employer any other document. However, if the employee does not have a List A document, then he or she must establish identity by providing one document from List B and establish employment authorization by providing one document from List C.

While the SSN card is shown as a List C document, it only applies to "unrestricted" SSN cards--those issued to U.S. citizens, asylees, refugees, legal permanent resident aliens, and citizens of Compact of Free Association countries (Palau, Micronesia and the Marshall Islands)--all of whom are authorized by their status to work without restriction in the U.S. The SSN card issued to an F-1 student does not meet the List C requirement because an F-1 student who is assigned an

SSN will always receive a "restricted" SSN card. A restricted SSN card bears one of two legends: "Not Valid For Employment" or "Valid Only With INS Authorization." (Effective for SSN cards issued March 27, 2004, and later, the printed legend reads "Valid Only With DHS Authorization.") The F-1 student generally receives the second type. This means that, for employment purposes, a restricted SSN card does not provide employment eligibility. (See DHS Web site on Form I-9 located at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://uscis.gov/graphics/howdoi/faqeev.htm>, which discusses

that a restricted SSN card with the legend "Valid Only With INS (or DHS) Authorization" does not satisfy the Form I-9 requirements.) Since all SSN cards given to F-1 students include this legend, although the number is valid for wage and tax reporting purposes, the card itself does not prove employment eligibility. SSA's regulation does not change that fact.

DHS regulations at 8 CFR 274.a.2, accessible at [\[27219?f=templates&fn=document-frame.htm#slb-8cfrsec274a2\]\(http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://uscis.gov/lpBin/lpext.dll/inserts/slb/slb-1/slb-9960/slb-27136/slb-27219?f=templates&fn=document-frame.htm#slb-8cfrsec274a2\), discuss verification of employment eligibility and the Form I-9 requirements. Further questions regarding on-campus employment and what documentation is needed to meet the Form I-9 requirements should be directed to the Department of Homeland Security. We have been advised by DHS that the Employer, Business, Investor and School Services \(EBISS\) helpdesk \(1-800-357-2099\), which is part of the United States Citizenship and Immigrations Service \(USCIS\) Customer Service Support Center, is the appropriate place to call for Form I-9 questions.](http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://uscis.gov/lpBin/lpext.dll/inserts/slb/slb-1/slb-9960/slb-27136/slb-</p></div><div data-bbox=)

Obtaining Legal Employment

Comment: A couple of commenters suggested that this regulation would make it harder for an F-1 student to get an SSN and make it more tempting for a student to get a job illegally.

Response: We do not believe that this regulation will make it so difficult to get an SSN that F-1 students will resort to working illegally in the U.S. resulting in negative consequences in their legal status. SSA is working to strengthen the integrity of the SSN while balancing the need to ensure that those who do need SSNs for work are assigned numbers as expeditiously and securely as possible.

Discrimination

Comment: Some commenters questioned the "fairness" of this regulation on this particular alien category. One individual asked whether international students who were denied employment could file a lawsuit for discriminatory practices based on "national origin."

Response: We do not believe there is anything in the proposed regulation that discriminates against a particular ethnic or national group. Any international F-1 student who meets the evidentiary requirements we have set forth for on-campus employment will be granted an SSN, regardless of nationality or ethnic origin.

Diversity

Comment: A few individuals commented that the proposed regulation would have a negative impact on the diversity of the academic community and the surrounding community at large, particularly the business community, by imposing a roadblock which could ultimately discourage international students from attending schools in the U.S.

Response: It is certainly not the intention of SSA in the development of this regulation to discourage international students from enrolling in U.S. schools. We are making every effort to provide assistance to schools and F-1 students and will continue to examine ways to minimize any unforeseen impact this regulation change may have on students' work lives in the future.

The Need for an SSN To Secure Goods and Services in the Community

Comment: A frequently mentioned issue was the expressed concern about the impact that denial, or delayed receipt, of an SSN would have on a student's ability to assimilate into U.S. society. In particular, the lack of access to a driver's license was listed as a significant concern, especially in comments from individuals who represent community colleges and other institutions where the population, or at least a significant portion of it, needs to drive to the campus. Commenters also noted that many foreign students find they cannot lease an apartment, open a bank account or negotiate utility services without an SSN, which has come to be a required element to do business with many providers of goods and services in U.S. society. Some commenters requested that SSA "do something" to prohibit this business use of the SSN.

Response: While we recognize the many uses of the SSN by other Federal and State agencies, organizations and businesses in U.S. society, the primary purpose of an SSN is for SSA to track earnings over a worker's lifetime. SSA cannot control the types of information that private businesses request of their customers. We suggest that schools work with the local businesses in the community on alternatives to requiring SSNs from their foreign students in order to access services.

From our discussions with some credit-checking agencies, we have been informed that credit checks can be run using the name and date of birth information without an SSN. While the SSN is often requested on business forms and applications, the SSN is not always a required data element if the applicant does not have one, but is required if the applicant has been assigned an SSN.

With respect to needing an SSN to open a bank account or cash or deposit payroll checks, it is our understanding from talking to various banks that most banks will cash a payroll check for a non-customer if

the check is from their bank. This should be helpful to many F-1 students whose employers' banks have branches in the employees' areas. Some banks charge for this service; others do not. There are other alternative business entities that cash checks for a fee.

Those students who need to open bank accounts, and who do not qualify for an SSN under these revised regulations, should contact the IRS to inquire about how to file for an Individual Taxpayer Identification Number (ITIN) for legitimate income tax reporting purposes. See information on ITINs at the IRS Web site at the following URLs: <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.irs.gov/newsroom/article/0,,id=112728,00.html> and

<http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.irs.gov/individuals/article/0,,id=96287,00.html>.

We understand from discussions with IRS that students who need to open bank accounts must provide evidence that they are not eligible for an SSN (letter from SSA) and a letter of intent to open an account from the financial institution when applying for an ITIN under this provision. We recommend that these students seek the guidance of legal counsel or a local IRS representative for exact information and filing requirements.

Form W-7, Application for IRS Individual Taxpayer Identification Number, and instructions on who is eligible for an ITIN, and how and when to submit the W-7 are accessible online at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.irs.gov/pub/irs-pdf/fw7.pdf>.

As stated in Social Security regulation 20 CFR 422.104, the only circumstance in which SSA can assign an SSN to an alien for other than work purposes is when it is for a valid non-work reason. The only valid non-work reasons to assign an SSN to an alien are:

To satisfy a Federal statute or regulation that requires the alien to have an SSN in order to receive a federally-funded benefit (such as Temporary Assistance to Needy Families) to which the alien has otherwise established entitlement; or

To satisfy a State or local law that requires an alien who is legally in the U.S. to have an SSN in order to receive public assistance benefits (such as State-funded general assistance) to which the alien has otherwise established entitlement.

See also SSA's recently promulgated regulation "Evidence Requirements for Assignment of Social Security Numbers (SSNs): Assignment of SSNs for Nonwork Purposes," published in the Federal Register on September 25, 2003 (68 FR 55304), and effective October 27, 2003. In relation to this regulation, we have worked with States to amend their policies regarding the use of an SSN to obtain a driver's license. This regulation is available online at Social Security's Web

page http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.socialsecurity.gov/regulations/articles/rin0960_af05f.htm

We do not consider the need of an SSN in order to apply to purchase or rent a house or apartment, obtain a driver's license, and apply for a bank account, to be valid non-work reasons to assign a nonimmigrant an SSN. An F-1 student who does not qualify for an SSN may qualify for an ITIN under certain limited circumstances that involve Federal tax reporting or filing requirements. An ITIN is issued by the IRS. See section on ``Scholarships'' for information on applying for an ITIN.

Currently, there are no statutory restrictions on the private sector's lawful use of the SSN. Action to limit the use of the SSN in the private sector would require Congressional action and is outside the scope of this regulation.

Ways SSA Will Provide Assistance to the Public and SSA Employees

Comment: Several commenters remarked on the extra burden this rule would place on school administrations and F-1 students. Some believe that this regulation will have an adverse economic effect on the community by reducing foreign student attendance at approved schools. One commenter questioned how SSA intends to adequately communicate this revision of policy to our own employees to ensure that it is carried out correctly and equitably. Some questioned how the regulation will be implemented operationally; i.e., what specific types of documents and information will DSOs and employers be expected to provide?

Response: SSA recognizes that this regulation will: (1) Cause some inconvenience; (2) need to be communicated widely and explained in detail to the academic community; and (3) need to be well-understood and

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applied equitably and respectfully by SSA field employees.

To lessen the inconvenience and to help schools and F-1 students comply with this rule, we will do the following:

Provide a ``sample'' DSO letter format that schools can download from our Web site and/or obtain from local SSA field offices that can be used to document student attendance and work information;

Provide a ``sample'' employer letter format that employers can download from SSA's Web site and/or obtain from local SSA field offices that can be used in certifying an F-1's on-campus work relationship (if the student does not have a pay stub or pay slip);

Provide appropriate assistance to F-1 students in SSA field offices, as well as through the toll-free 800 assistance number (1-800-772-1213), if they are having difficulty securing the needed documentation.

As public information tools, we will develop informational handouts and fact sheets--available online and in SSA field offices--including an explanation of the new evidence requirements. Some other public information materials may be developed as needed.

SSA currently has available online at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.ssa.gov/employer/hiring.htm>

an informational fact sheet for employers, `` Employer

Responsibilities When Hiring Foreign Workers," that provides SSA and IRS Web sites, links to employer reporting responsibilities, and how to report if the employee has not yet received his or her SSN.

And, SSA will continue to work with schools and advocacy groups on F-1 student issues as they arise.

For our own employees, we will:

Issue new national instructions that implement the provisions of the revised regulations;

Provide appropriate training on how the new procedures are to be implemented; and

Advise our field and regional offices to provide feedback on how the process is working.

Excessive Paperwork

Comment: Several commenters raised the issue of the increased amount of paperwork a school's administration would have to create and process to comply with the proposed regulation. Their concern is that the already strained resources of school administrations will be stretched even further if they are required to provide additional documentation to prove that a student already has employment or an employment commitment before obtaining an SSN.

Response: While we recognize there will be an increased demand on school administrators, the primary concern of SSA must be to ensure the integrity of SSNs by not assigning SSNs for other than work or valid non-work purposes. We certainly sympathize with the plight of administrators and that is why SSA will provide assistance to the schools as described above.

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these final rules in accordance with Executive Order 12866, as amended by Executive Order 13258. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they 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 final rules under the threshold criteria of Executive Order 13132 and have determined that they will 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 recordkeeping 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

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in Sec. Sec. 422.105(a) & (b) and 422.107(e)(2) of these final rules. The OMB Control Number for these collections is 0960-0684, expiring 01/31/2007.

(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: June 7, 2004.
Jo Anne B. Barnhart,
Commissioner of Social Security.

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

PART 422--ORGANIZATION AND PROCEDURES

Subpart B--[Amended]

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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).

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2. Section 422.105 is revised to read as follows:

Sec. 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 Department of Homeland Security 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 Department of Homeland Security 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. (See 8 CFR 274a.12(c)(3).)

(b) Exception to presumption for foreign academic students in immigration classification F-1. If you are an F-1 student and do not have a separate DHS employment authorization document as described in paragraph (a) of this section and you are not authorized for curricular practical training (CPT) as shown on your Student and Exchange Visitor Information System (SEVIS) Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, we will not presume you have authority to

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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 Sec. 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.

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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:

Sec. 422.107 Evidence requirements.

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(e) Evidence of alien status--(1) General evidence rules. * * *

(2) Additional evidence rules for F-1 students--(i) Evidence from your designated school official. If you are an F-1 student and do not have a separate DHS employment authorization document as described in Sec. 422.105(a) and you are not authorized for curricular practical training (CPT) as shown on your SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, you must give us documentation from your designated school official that you are

authorized to engage in employment. You must submit your SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student 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.

Sec. Sec. 422.103, 422.107, and 422.110 [Amended]

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4. In addition to the amendments set forth above, remove the terms "Immigration and Naturalization Service (INS)," "Immigration and Naturalization Service," and "INS" and, in their place, add the term "Department of Homeland Security" in the following places:

- a. Section 422.103(b)(3), and (c)(3);
- b. Section 422.107(d)(4), and (d)(6); and
- c. Section 422.110(b).

[FR Doc. 04-20614 Filed 9-10-04; 8:45 am]

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