

Other Situations

This same procedure will be used to verify the identity of pilot participants in the following situations:

- If the claim is allowed, subsequent interviews for payment purposes.
- Continuing Disability Reviews.
- SSI redeterminations.
- If the claim is denied, appeals and any associated CE.

Explanation of Proposed Changes

Section 404.617 *Pilot program for photographic identification of disability benefit applicants in designated geographic areas*. In this new section, individuals filing for title II disability benefits will be required to have their photograph taken by the Social Security Administration. We will permit an exception to the photograph requirement when an individual has a sincere religious objection.

Section 416.327 *Pilot program for photographic identification of disability benefit applicants in designated geographic areas*. In this new section, individuals filing for title XVI disability or blindness benefits will be required to have their photograph taken by the Social Security Administration. We will permit an exception to the photograph requirement when an individual has a sincere religious objection.

Proposed Rules

On November 15, 2002, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (67 FR 69161—69164) that led to these final rules. We have made one minor change from what we published. We have added the words “and blindness” in § 416.327 to clarify that we intended to include all such cases in the pilot.

Public Comments

During the comment period that began on November 15, 2002, and ended on January 14, 2003, we received seven comments on the proposed rules. All of them were generally supportive of the proposed rules and six of the comments included suggestions. They came from interested persons, a State agency, and professional associations. We carefully considered all of the comments relevant to the Claimant Identification Pilot Projects and provide our responses to those comments below. While we have condensed, summarized or paraphrased the comments, we have tried to present all views adequately and to respond to all the relevant issues raised by the commenters.

Comments That SSA Should Not Permit an Exception to the Photograph Requirement Based on a Sincere Religious Objection

Comment: Two commenters believed that the rules should not allow for any exception to the photograph requirement, even on religious grounds.

Response: We are providing for an exception in order to accommodate those persons who have a sincere religious objection to having their picture taken. We note that the Supreme Court upheld a decision by a court of appeals that a person with a sincere religious objection against having her picture taken could not be denied a driver's license. See *Quaring v. Peterson*, 728 F.2d 1121 (8th Cir. 1984), *aff'd by an equally divided Court sub nom. Jensen v. Quaring*, 472 U.S. 478 (1985). An objection based on personal beliefs that are as sincere as a religious objection also may be accommodated, as the government may not distinguish among religions or between those who hold traditional religious beliefs and those who have sincere beliefs not based on a traditional religion. The Supreme Court has recognized as a valid objection to a government requirement those beliefs that occupy the same place in a person's life as belief in a traditional deity, noting that there is a vast diversity of religious beliefs in our country. See *United States v. Seeger*, 380 U.S. 163 (1965), cited in *Quaring v. Peterson*. As part of the pilot study, we will learn how many people might object for this reason to our taking their picture and how our accommodating their objection may affect our program.

Comments About Including Additional Exceptions to the Photograph Requirement

Comment: Three commenters thought the exception to the photograph requirement should be broadened to include other “good cause” exceptions, such as individuals who would have difficulty traveling to an office to have a picture taken and individuals with medical conditions or behavioral problems that might be affected by having to visit an office and have a photograph taken. More specifically, one commenter believed that the need to bring individuals into an office for the photograph could present a problem if they were under the care of government agencies, public or private institutions, or other types of organizations. It could possibly disrupt the ongoing treatment and/or routine of individuals with certain types of impairments.

Response: We believe that in order for the photograph requirement to be a deterrent for complicit impersonation, the provision must be as inclusive as possible. It is also important to strike a balance between the degree of burden imposed and the overall effectiveness of the process. While we acknowledge that government agencies and other organizations might experience additional responsibilities because of the photographs, we believe that it is a prudent requirement. Since the number of individuals filing and/or receiving disability benefits increases substantially every year, it becomes even more essential for SSA to be cautious and vigilant in the verification of claimants' identities. It is important to note that the pilot regulations will be in effect for only a six month period of time in a limited geographic area. We will be gathering information on the acceptability of the photograph requirement and exploring possible changes that might be needed to the exceptions if the procedures are later implemented on a nationwide basis.

Comments About the Fact That Many Individuals Do Not Have Photographic Identification Readily Available

Comment: Two commenters believed that the procedures should not result in adverse actions against individuals who cannot produce photographic identification. They point out that many individuals will not have acceptable photographic identification readily available.

Response: The pilot regulations state that providing some form of photographic identification for SSA to copy is not a mandatory requirement. No adverse actions will result if an individual does not provide a photographic identification. The purpose of including this request as part of the pilot is to gather information on the general availability and usability of photographic identifications among the individuals we serve.

Comments About the Fact That the Photographs Taken by SSA During the Pilot Should be Subject to Privacy Act Protections

Comment: Two commenters stated that SSA should state that the photographs taken by SSA during the pilot will be subject to the provisions of the Privacy Act.

Response: We are preparing a **Federal Register** notice amend the *Claims Folders System* that is maintained by SSA in order to permit the storage of photographs of individuals taken during the pilot. This will explain that the photographs are covered by the Privacy