

SSA, even with the parent in attendance.

Evidence of Identity

We are changing § 422.107 of our regulations to eliminate the provision to waive the requirement for evidence of identity for children under age 7 when an original application for an SSN is filed. Evidence of identity is required for all SSN applicants, regardless of age. Thus, an SSN will not be assigned to a child under age 7 without all the evidentiary requirements being met. Such evidence requirements also have a direct correlation with the prevention of fraud. Through convincing documentary evidence of identity, the individual's continued existence is established in our records, thus limiting opportunities for fraud such as identity theft.

We are clarifying that the identity document should contain sufficient biographical or physical information to identify the applicant (e.g., contain the applicant's name plus age, date of birth, or parents' names and/or a photograph or physical description). Identity documents containing biographical or physical data can be used for comparison with data we already have or with other documents the applicant may submit in connection with the application for an SSN card. A birth record is not sufficient evidence to establish identity. In a 2000 audit, "Procedures for Verifying Evidentiary Documents Submitted with Original Social Security Number Applications (#A-08-98-41009)," SSA's Inspector General indicated that SSA assigned SSNs to individuals whose U.S. birth certificates were counterfeit. Individuals typically posed as the mothers of nonexistent children and presented counterfeit birth certificates as evidence. This audit can be found at <http://www.socialsecurity.gov/oig/ADOBEPDF/A-08-98-41009.pdf>. Requiring an identity document other than a birth certificate will make it harder for fraudulent applicants to obtain SSNs under a fictitious identity because they must obtain additional evidence. This requirement should not unduly burden legitimate applicants because sufficient proof of identity, such as a medical record or school record, will normally exist, even for very young children.

The pilot project on providing replacement SSN cards by telephone, which we were conducting on the issuance of duplicate SSN cards for U.S. citizens, has been completed. Therefore, we are removing from § 422.107(c) the rules pertaining to this pilot.

Public Comments and Responses

On March 26, 2003, we published a notice of proposed rulemaking in the **Federal Register** (68 FR 14563) that led to these final rules. We provided a 60 day comment period. During this period, we received over 60 comments from interested individuals, organizations, two States and a foreign government. We carefully considered all of the comments we received 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.

Valid Nonwork Reason

Comment: Several commenters expressed their concern that the elimination of the need for a driver's license as a "valid nonwork reason" for obtaining an SSN presents a hardship for spouses of employment-authorized aliens and for States that rely on the SSN as a unique identifier. Specifically, these commenters indicated that, because some States still require an SSN from all drivers' license applicants, the need for a drivers' license should remain a "valid nonwork reason" for the assignment of an SSN. These commenters include numerous members of the general public as well as representatives from the State of Illinois, the State of Pennsylvania, the Government of Japan, the American Immigration Lawyers Association, the National Council of La Raza, the American Council on International Personnel, the Brazilian Immigrant Center, and three Japanese Chambers of Commerce in the U.S., and other organizations, and counsel for the plaintiffs in *Sonali Iyengar v. Jo Anne B. Barnhart*, Civil Action No. 02-0825 (ESH) in the U.S. District Court for the District of Columbia.

Response: We are changing our policy based on the guidance provided by investigative authorities that show that some non-citizens assigned SSNs for nonwork purposes misuse those SSNs. Our experience has revealed that fraud and misuse regarding SSNs for nonwork purposes has been almost exclusively in relation to SSNs issued for driver licensing. SSN misuse can impact all levels of government in the form of illegal employment in the U.S., fraudulent entitlement to Federal and State benefits and services, and identity theft. It may also help illegal aliens, including those who are lawfully admitted but overstay the period of their

lawful entry, to integrate into U.S. society.

Moreover, the primary use of SSNs is for SSA to track earnings over a worker's lifetime. As steward of the SSN, one of our chief concerns is to do all we can to prevent SSN fraud and misuse. This rule change will help prevent this type of SSN fraud and misuse, and in doing so, help protect the American public by enhancing homeland security.

Meanwhile, we do plan to continue assigning SSNs for entitlement to federally-funded benefits (as required by Federal statute) and to State and local public assistance programs for non-citizens in lawful status in deference to State and local statutes requiring SSNs. Our experience shows that the SSNs assigned for these programs have not been misused.

We acknowledge that our definition of a "valid nonwork reason" may present a challenge to some aliens without work authorization. We have encouraged States to develop an alternative identifier for several years, and our efforts have been met with considerable success as many States that previously required an SSN for all drivers' license applicants no longer do. In 1997, there were 17 States that required an SSN from all applicants for a driver's license. Currently, there are only seven States that have laws requiring an SSN for all drivers' license applicants. Furthermore, four of those States were previously able to implement systems of alternative identification during the period of March 1, 2002 through December 6, 2002 when SSA was not assigning SSNs for driver's license purposes. Additionally, we have, with the assistance of the American Association of Motor Vehicle Administrators and the support of the U.S. Department of Transportation, combined efforts to assist States that require SSNs for driver licensing and motor vehicle registration purposes to develop alternative identifier systems to accommodate individuals not authorized to work in the U.S. As issuing drivers' licenses is a State function, we continue to urge those few remaining States that require an SSN from all drivers' license applicants to develop an alternative identifier for those individuals affected by this rule change.

Finally, we believe that while section 466(a)(13) of the Social Security Act, 42 U.S.C. 666(a)(13) concerning the recording of SSNs on driver's licenses and other documents, does require that States have procedures which require recording an individual's SSN that he or she may have, this section of the Act does not require that an individual be