



SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2013-0011]

Rules of Administrative Finality

AGENCY: Social Security Administration (SSA)

ACTION: Notice and request for Comments.

SUMMARY: We are requesting information from the public regarding whether and how we should change our rules of administrative finality. These rules govern when we can reopen and revise a determination or decision that has become final and is no longer subject to administrative or judicial review. We are requesting information about several possible ways to change various aspects of our administrative finality rules. We are interested in obtaining information about issues such as whether and how we should revise the rules that govern the timeframes in which we can reopen a determination or decision, and whether and how we should revise the rules that govern the diligent pursuit of an investigation. We are also interested in obtaining information about whether we should adopt rules that would address our ability to make prospective changes to the amount of an individual's benefits without making changes for months in which the individual has already received payment. We are requesting your comments on several questions that we address below.

DATES: To ensure that your comments are considered, we must receive them no later than

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit written comments by any one of three methods—Internet, fax or mail. Do not submit the same comments multiple times, or by more than one method.

Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2013–0011, so that we may associate your comments with the correct activity.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

- Internet: We strongly recommend this method for submitting your comments. Visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function of the Web page to find docket number SSA–2013–0011, and then submit your comment. Once you submit your comment, the system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately as we must manually post each comment. It may take up to a week for your comment to be viewable.
- Fax: Fax comments to (410) 966-2830.
- Mail: Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov>, or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Zeenat Kolia, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, 410-965-8629. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

An initial determination is a determination we make that is subject to administrative and judicial review. Generally, an initial determination resolves the legal or factual issues affecting your entitlement or eligibility as provided by the Social Security Act (Act). Some examples of initial determinations are determinations about your entitlement to benefits, the benefit amount you receive, the termination of your benefits, and any overpayments or underpayments that may occur. Initial determinations are final and binding unless you request an appeal within the appropriate timeframe or we reopen and revise the initial determination under our rules of administrative finality.

The rules of administrative finality govern whether we may reopen and revise determinations or decisions that are no longer subject to administrative and judicial review. The

administrative finality rules that allow us to reopen and revise determinations or decisions only in specific situations and within specific timeframes were first put in place to help ensure that individuals could rely on the determinations and decisions we made in their claims.

Current Rules for Reopening

Our rules of administrative finality are located at 20 CFR 404.987 – 404.996 for title II claims and at 20 CFR 416.1487 – 416.1494 for title XVI claims.

Some of the timeframes for reopening are different for title II and title XVI. Currently, for title II claims, we may reopen a determination or decision:

- Within 12 months of the date of the notice of the initial determination for any reason;
- Within 4 years of the date of the notice of the initial determination if we find good cause to reopen the determination or decision; or
- At any time in certain situations, such as when fraud or similar fault is involved.

For title XVI claims, we may reopen a determination or decision:

- Within 12 months of the date of the notice of the initial determination for any reason;
- Within 2 years of the date of the notice of the initial determination if we find good cause to reopen the determination or decision; or

- At any time only if fraud or similar fault is involved.

For both title II and title XVI, after we have reopened a determination or decision, we apply the concept of diligent pursuit on cases where the applicable reopening period ends but we have not completed our investigation. We will presume diligent pursuit to have been met if we conclude the investigation and if needed, revise the determination or decision within 6 months from the date we began the investigation. If we have not diligently pursued the investigation to its conclusion, we will revise the determination or decision only if it will be favorable to you.

In addition, under our current rules of administrative finality, if we cannot reopen the case, we also will not make any prospective changes to the amount of an individual's benefits. For example, if we erroneously entitled you to a larger payment amount than was due, we will continue to pay you the larger benefit amount even though we know it is wrong.

Why are we considering changing our rules of administrative finality?

We are considering changing our rules of administrative finality for a variety of reasons:

1. We take our responsibility as effective stewards of the trust funds very seriously.

Modifying our rules would enable us to take corrective action on more cases, and could decrease the amount of improper payments that we make.

2. Our current rules are complex to administer. The fact that our rules under title II and title XVI contain different timeframes for reopening for good cause can result in

confusion for our adjudicators and the public, particularly in situations where an individual is concurrently receiving benefits under title II and title XVI of the Act.

3. The current rules may prevent us from making changes regardless of the possible outcome for the individual. For example, if an individual presents or we discover new and material evidence after the time period that would allow us to reopen, we cannot take corrective action and revise the determination or decision. Modifying our rules to change certain timeframes for reopening may enable us to take corrective actions on more cases.
4. The Office of the Inspector General has recommended that we review our rules on administrative finality to find ways that will allow us to correct more erroneous payments.
5. Some of our administrative finality rules have not been revised in sixty years. Over the years, there has been an increase in our workloads and the complexity of our programs. Updating the rules would allow us to reflect these changes.
6. Finally, modifying our current rules would enable us to streamline and simplify our rules on administrative finality. We believe this would allow us to operate more efficiently in a challenging, limited-resource environment.

Request for Comments

We are requesting comments concerning whether and how we should change our rules of administrative finality. We ask that, in preparing comments, you address questions such as:

1. Should the timeframe for reopening for good cause be consistent for both title II and title XVI? If so, what should that timeframe be?
2. Should we extend the timeframe for reopening for any reason under both title II and title XVI? If so, what would a reasonable timeframe be? If not, how would you address concerns that the current 12-month timeframe does not give us adequate time to correct errors in determinations or decisions without applying complex good cause rules?
3. Should we revise our rules to provide that we can change an individual's current and future payments, even if we cannot reopen a determination or decision to correct previously issued payments? If not, what actions would you take to address the Office of the Inspector General's September 2007 report¹ that reviewed our title II administrative finality rules and estimated that we would pay approximately an additional \$50 million in incorrect payments in the future because we did not correct ongoing benefits?
4. Should we revise our rules on diligent pursuit? If so, what would be a reasonable timeframe? Or should we eliminate diligent pursuit and instead require that we both reopen and complete any revisions during the applicable reopening timeframe?

¹ Social Security Administration, Office of the Inspector General, Administrative Finality in the Old-Age, Survivors and Disability Insurance Program (Audit No. A-01-07-27029) (September 2007), at page 3 (available at: <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-07-27029.pdf>).

5. Are there any other aspects of our administrative finality rules that we should consider revising?

Please see the information under ADDRESSES earlier in this document for methods to give us your comments. We will not respond to your comments, but we will consider them as we review our policies and instructions to determine if we should revise or update them.

Dated: July 24, 2013

Carolyn W. Colvin
Acting Commissioner of Social Security

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