

**SMALL BUSINESS ADMINISTRATION****Data Collection Available for Public Comments and Recommendations**

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Comments should be submitted on or before April 2, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202-205-6629.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Verification of Damaged Property".

*Type of Request:* Revision of a currently approved collection.

*Form No's:* 5C, 739, 1632.

*Description of Respondents:*

Applicants requesting SBA Disaster Home Loans.

*Annual Responses:* 63,205.

*Annual Burden:* 115,665.

*Comments:* Send all comments regarding this information collection to, Bridget Dusenbury, Disaster Resource Specialist, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW, Suite 6500, Washington, DC 20416. Phone No: 202-205-6734.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: January 27, 1999.

**Jacqueline K. White,**

*Chief, Administrative Information Branch.*

[FR Doc. 99-2312 Filed 1-29-99; 8:45 am]

BILLING CODE 8025-01-P

**SOCIAL SECURITY ADMINISTRATION**

[Social Security Acquiescence Ruling 99-1(2)]

**Florez on Behalf of Wallace v. Callahan; Supplemental Security Income—Deeming of Income From a Stepparent to a Child When the Natural Parent is Not Living in the Same Household—Title XVI of the Social Security Act**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Acquiescence Ruling.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 99-1(2).

**EFFECTIVE DATE:** February 1, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

**SUPPLEMENTARY INFORMATION:** Although not required to do so pursuant to 5 U.S.C. 522(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Second Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after February 1, 1999. If we made a determination or decision on your application for benefits between September 29, 1998, the date of the Court of Appeals' decision, and February 1, 1999, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 416.1485(b), that application of the Ruling could change our prior determination or decision. If you file a request for application of an Acquiescence Ruling within the 60-day appeal period for requesting administrative review and we deny that request, we shall extend the time to file an appeal on the merits of the claim to 60 days after the date that we deny the request for readjudication.

Additionally, after we receive a precedential circuit court decision and determine that an Acquiescence Ruling may be required, we will begin to identify those claims that are pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling is subsequently issued. When an Acquiescence Ruling is published, we will send a notice to those individuals whose claims we have identified which may be affected by the Acquiescence Ruling. It is not necessary

for an individual to receive a notice in order to request application of an Acquiescence Ruling to their claim.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security - Disability Insurance; 96.006 - Supplemental Security Income.)

Dated: January 21, 1999.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

**Acquiescence Ruling 99-1(2)**

*Florez on Behalf of Wallace v. Callahan*, 156 F.3d 438 (2d Cir. 1998)—Supplemental Security Income—Deeming of Income From a Stepparent to a Child When the Natural Parent is Not Living in the Same Household—Title XVI of the Social Security Act.

*Issue:* Whether a stepparent is considered an ineligible parent whose income is subject to deeming to a child eligible for Supplemental Security Income (SSI) when the natural or adoptive parent is not living in the same household.

*Statute/Regulation/Ruling Citation:* Section 1614 of the Social Security Act (42 U.S.C. 1382c), 20 CFR 416.1101, 416.1160, 416.1806.

*Circuit:* Second (Connecticut, New York and Vermont).

*Florez on Behalf of Wallace v. Callahan*, 156 F.3d 438 (2d Cir. 1998).

*Applicability of Ruling:* This Ruling applies to all determinations, including all post-eligibility determinations, or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

*Description of Case:* Raul Wallace was born on October 28, 1982. His natural father is deceased. His natural mother is married to Jorge Florez, the plaintiff, but she abandoned her husband and children in 1985. Mr. Florez later obtained full custody of Raul and an order of protection against Raul's mother that instructed her to stay away from the family residence and the plaintiff's place of business. Mr. Florez has unsuccessfully attempted to obtain a divorce from Raul's mother and remains married to her. Raul lived with

his stepfather until July 31, 1991, when Raul voluntarily began inpatient psychiatric treatments on a weekly basis from Monday afternoon through Friday morning. During the weekends he lived at the Florez apartment.

Mr. Florez filed an application, on behalf of Raul, for SSI based on disability on March 24, 1992. The Social Security Administration (SSA) determined that Raul satisfied the disability requirements of the Social Security Act (the Act) retroactive to August 1, 1989, based on an earlier application. SSA also determined that Raul was not eligible for any payments for the 16-month period between August 1989 and December 1990 because Mr. Florez' income was too high. Mr. Florez requested reconsideration of the benefit amount, which was denied on the grounds that his income as a stepparent was deemable to Raul. The plaintiff requested and received a hearing before an ALJ who found that SSA had correctly calculated the SSI benefits. After the Appeals Council denied the claimant's request for review, he sought judicial review but the district court affirmed SSA's application of the regulations providing for deeming a stepparent's income. Mr. Florez appealed this decision to the United States Court of Appeals for the Second Circuit.

**Holding:** The Second Circuit reversed in part the judgment of the district court and remanded the case with instructions to recalculate Raul's SSI benefits excluding the income earned by his stepfather. After reviewing SSA's regulations governing deeming of income and defining who is the spouse of a natural or adoptive parent, the court held that 20 CFR 416.1101 creates a two-part test for determining whether a spouse, who lives with a child eligible for SSI, is an ineligible parent for deeming purposes under 20 CFR 416.1160:

- (1) the spouse must live with the natural or adoptive parent; and
- (2) the relationship must be as husband or wife, as further defined in 20 CFR 416.1806.

Under the Second Circuit's construction of this regulation, it found that Mr. Florez's marriage to Raul's mother ended, for all intents and purposes, when she abandoned the family home. Although the court recognized SSA's concern about holding a natural parent financially responsible for contributing to the care of a child eligible for SSI, the court believed that SSA should not discourage a stepparent from voluntarily accepting such financial responsibility, when the natural parent has abandoned the child,

by reducing the stepchild's SSI benefits. The court concluded that the plain language of the regulations (20 CFR 416.1101 and 416.1806), supported by the legislative history of the Act, required SSA to exclude a stepparent's income from the calculations used to determine the amount of a child's SSI benefits when the natural parent no longer lives in the family home.

*Statement as to How Florez Differs From SSA's Interpretation of the Regulations*

Section 1614(f) of the Act, as implemented by the regulations, provides that, when determining SSI eligibility and the benefit amount of a child under age 18, the child's income shall be deemed to include the income of a parent (or the spouse of such parent) who is ineligible for SSI benefits and is living in the same household as the child. Under SSA's regulations, 20 CFR 416.1160 defines an ineligible parent as "a natural or adoptive parent, or the spouse (as defined in §416.1101) of a natural or adoptive parent, who lives with [the child] and is not eligible for SSI benefits." Spouse is defined in 20 CFR 416.1101 as "someone who lives with another person as that person's husband or wife. (See §416.1806)" Under 20 CFR 416.1806(a)(1), SSA considers someone to be a person's spouse for SSI purposes if they are legally married under State law.

SSA considers 20 CFR 416.1806 to be the controlling regulation for determining who is a person's spouse for SSI purposes and for deeming of income. Accordingly, SSA deems the income of a stepparent to a child eligible for SSI benefits living in the same household when the stepparent is legally married under State law to that child's natural or adoptive parent, even if the natural or adoptive parent is not living in the same household.

The Second Circuit held that 20 CFR 416.1101 is the controlling regulation for the purpose of determining who is a person's spouse under the deeming regulations. The court concluded that, under the two-part test created by this regulation, a stepparent is not an ineligible spouse and deeming of income does not apply when the natural parent no longer lives in the family home.

*Explanation of How SSA Will Apply The Florez Decision Within the Circuit*

This Ruling applies only where the SSI claimant is an eligible child who resides in Connecticut, New York or Vermont at the time of the determination (including all post-eligibility determinations) or decision at any administrative level of review, i.e.,

initial, reconsideration, ALJ hearing or Appeals Council.

When deeming income from an ineligible parent who is a stepparent to reduce a child's SSI benefit, adjudicators must exclude the income of the stepparent from the deeming calculation if the natural or adoptive parent is not living in the same household with that child and stepparent. Adjudicators will continue to apply SSA's other rules for applying and calculating deeming of income, including the rules regarding temporary absences.

[FR Doc. 99-2302 Filed 1-29-99; 8:45 am]

BILLING CODE 4190-29-F

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority.

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** To be published 26 January 1999 (Docket No. 991804).

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9 a.m. (EST), Wednesday, January 27, 1999.

**PREVIOUSLY ANNOUNCED PLACE OF MEETING:** Chattanooga Office Complex, 110 Market Street, Chattanooga, Tennessee.

**CHANGES IN THE MEETING:** Each member of the TVA Board of Directors has approved the addition of the following items to be previously announced agenda:

### Agenda Items: F—Unclassified

F1. Authority to license TVA intellectual property.

F2. Participation in capital funding entities.

**CONTACT PERSON FOR MORE INFORMATION:** Please call TVA Media Relations at (423) 632-6000, Knoxville, Tennessee. Information is also available through TVA's Washington Office at (202) 898-2999.

**Edward S. Christenbury,**

*General Counsel and Secretary to the Board.*

[FR Doc. 99-2466 Filed 1-28-99; 3:34 pm]

BILLING CODE 8120-08-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**Aviation Proceedings, Agreements filed during the week ending January 22, 1999**

The following Agreements were filed with the Department of Transportation