



SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 416, and 422

[Docket No. SSA-2023-0018]

RIN 0960-AI22

Changes to the Administrative Rules for Claimant Representation and Provisions for Direct Payment to Entities

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our regulations to enable us to directly pay entities fees we may authorize to their employees, as required by the decision of the United States Court of Appeals for the First Circuit (First Circuit) in *Marasco & Nesselbush, LLP v. Collins*. To make direct payments, issue the necessary tax documents, and properly administer these rules, we propose to require all entities that want to receive direct payment of assigned fees and all representatives who want to be appointed on a claim, matter, or issue to register with us. We also propose to standardize the registration, appointment, and payment processes. We expect that this proposed rule will help us implement the changes required by the *Marasco* decision, increase accessibility to our electronic services, reduce delays, and help us prepare for more automation, thereby improving our program efficiencies.

DATES: To ensure that your comments are considered, we must receive them by no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit 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 Number SSA-2023-0018 so that we may associate your comments with the correct regulation.

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.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the “*search*” function to find Docket Number SSA-2023-0018. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must manually post each comment. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to 1-833-410-1631.

3. Mail: Mail your comments to the Office of Legislation and Congressional Affairs, Regulations and Reports Clearance Staff, Social Security Administration, Mail Stop 3253 Altmeyer, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

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

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Director, Office of Disability Policy, Office of Vocational Evaluation and Process Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-4794. 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 <https://www.ssa.gov>.

SUPPLEMENTARY INFORMATION:

Background

Any person who claims a benefit under our programs may appoint a representative(s) to assist with their claim, and the representative(s) may seek a fee for the services they provide. We must generally authorize any fee that the representative(s) wants to charge or collect. If we authorize a fee to the representative(s), we may also pay that fee directly out of the claimant's past-due benefits, if certain conditions are met.¹ These representatives may be employed by an entity, but currently, we do not directly pay the entity for work performed by a representative it employs.²

In 2017, Marasco & Nesselbush, LLP, a law firm, brought an action in Federal court alleging, among other things, that the law firm's employees had no direct right to authorized fees and that their salaries do not depend on the amount of fees generated by the disability cases in which they act as representatives. On July 16, 2021, the First Circuit issued a decision instructing us to find a reasonably reliable means for law firms to receive direct payment of fees we authorize to their salaried employees while correctly reporting the income to the Internal Revenue Service (IRS).³ On remand, the United States District Court for the District of Rhode Island issued an order requiring us to, among other things, undertake good faith efforts to develop a process within 24 months from the date of its March 23, 2022 order to ensure that law firms that employ salaried

¹ Generally, we will pay the fee directly if the representative is registered and eligible for direct payment; has not withdrawn or been revoked prior to the favorable decision; and did not waive the fee or direct payment of the fee. *See* Program Operations Manual System (POMS) GN 03920.017.

² *Entity* means any business, firm, or other association, including but not limited to partnerships, corporations, for-profit organizations, and not-for-profit organizations. *See* 20 CFR 404.1703 and 416.1503.

³ *Marasco*, 6 F.4th 150, 178 (1st Cir. 2021).

associates to represent claimants may receive direct payment of fees to which the associates are entitled for representation performed while employed by the law firms.⁴

Each year we directly pay, on average, almost a billion dollars in fees authorized to appointed representatives in title II cases alone.⁵ Standardization and accuracy are essential to meet our stewardship duties because these direct fee payments are made from claimants' past-due benefits. To implement the First Circuit's decision in a responsible, timely, efficient, and practical manner, we are proposing changes to standardize several processes in our rules, including: (1) registration of representatives and entities; (2) assignment of representational fees to entities for direct payment, as well as rescission of assignment; (3) point of contact (POC) requirements for the entity; and (4) direct payment to entities by electronic funds transfer (EFT). Below, we explain why and how these four elements are necessary to implement the court's decision.

I. Definition of Terms for Purposes of This Proposed Rule

We propose to define, or redefine, certain terms as they will be used in our rules on representation.⁶ These definitions would only apply within the context of our rules on representation found at 20 CFR 404.1700 *et seq.* and 416.1500 *et seq.* We would include these definitions in 20 CFR 404.1703 and 416.1503.

We propose to define *Assignment* to mean the transfer of the right to receive direct payment of an authorized fee to an entity. This defined term is used in changes proposed to 20 CFR 404.1703, 404.1730, 416.1503, and 416.1530.

We propose to define a *Point of Contact* to mean an individual who is a registered representative selected by an entity to speak and act on the entity's behalf and who

⁴ See Order, ECF No. 63, *Marasco & Nesselbush, LLP v. Collins*, No. 17-cv-317 (D.R.I. Mar. 23, 2022). A copy of the district court's order has been submitted to the rulemaking record in the supporting documents.

⁵ In 2022, we paid \$923.9 million in authorized fees for title II claims. See <https://www.ssa.gov/representation/statistics.htm#2022>.

⁶ 20 CFR part 404, subpart R and part 416, subpart O.

assumes the affirmative duties and obligations we prescribe. This defined term is used in changes proposed to 20 CFR 404.1703, 404.1735, 404.1740, 416.1503, 416.1535, and 416.1540.

We propose to define *Registration* to mean a process by which a representative or entity provides the information we require to conduct business with us. This defined term is used in changes proposed to 20 CFR 404.1703, 404.1705, 404.1735, 416.1503, 416.1505, and 416.1535.

We propose to redefine *Representative* to mean an attorney who meets all the requirements of 20 CFR 404.1705(a) and 416.1505(a), or a person other than an attorney who meets all the requirements of 20 CFR 404.1705(b) and 416.1505(b), and whom you appoint to represent you in dealings with us. For purposes of our rules of conduct and standards of responsibility, *Representative* also includes an individual who provides representational services and an individual who is listed as a POC for an entity, as applicable to their identified role. This defined term is used in changes proposed to 20 CFR 404.1703, 404.1720, 404.1740, 416.1503, 416.1520, and 416.1540.

II. Allowing Representatives to Assign Direct Payment of Authorized Fees to Entities

Under this proposal, to comply with the *Marasco* decision, reduce burden, and improve efficiency, we would allow representatives to assign their right to receive direct payment of an authorized fee to an entity on each claim. If the applicable conditions explained in Section VI are met, we would accept an assignment and certify payment of the authorized fee to the entity. We would make these changes in 20 CFR 404.1720 and 416.1520.

III. Registration by All Representatives and Use of the Representative ID (Rep ID)

Currently, representatives who want direct payment of fees or access to our electronic claim(s) file (eFolder) must register with us.⁷ To register, representatives complete and submit Form SSA-1699 (OMB No. 0960-0732), “Registration for Appointed Representative Services and Direct Payment.”⁸ To protect representatives’ privacy, we created the Representative Identification number or Rep ID, which we issue to the representatives during registration to use in lieu of their Social Security number (SSN). The Rep ID is meaningful only within our systems. Among other purposes, we use the information we collect during registration to issue checks or EFT to the representative’s preferred banking institution and to report the income on Form IRS 1099 (OMB No. 1545-0119), as required by the IRS.⁹ This information is also necessary to assess a user fee on each direct payment, as required by sections 206(d) and 1631(d)(2)(C) of the Social Security Act (the Act).¹⁰ We currently have several thousand registered representatives.¹¹

Currently, we generally communicate with unregistered representatives via manual notifications. In this rule, we propose to require all representatives to register with us prior to being appointed on any claim. We expect several benefits from this proposed requirement. We expect that this requirement would allow us to conduct

⁷ 71 FR 58043 (Oct. 2, 2006).

⁸ *Id.*, at 58043-44.

⁹ To pay an authorized fee directly to a representative we must collect certain information that enables us to meet our obligations under sections 6041(a) and 6045(f) of the Internal Revenue Code (IRC) as implemented by 26 CFR 1.6041-1. These sections require us to issue a Form 1099-MISC or 1099-NEC (whichever is applicable) to those who receive aggregate fees of \$600 or more in a calendar year. To comply with this requirement, we collect the requisite information such as the representative’s taxpayer identification number (TIN), and the address where we can send a check or the financial institution where we can send an EFT payment.

¹⁰ The Debt Collection Improvement Act of 1996 (DCIA) provides that when an individual is doing business with an agency, such as when that person is assessed a fee, the agency head must require the individual to provide their TIN to the agency. 31 U.S.C. 7701(c)(1), (c)(2)(D).

¹¹ As of May 3, 2023, 43,620 attorneys and 2,955 eligible for direct payment non-attorneys (EDPNAs) were registered for direct payment and access to our electronic claim files in our centralized database, Registration, Appointment and Services for Representatives (RASR). Because we are unable to maintain detailed information on unregistered representatives in our centralized representative database, we do not have specific numerical data or statistics about this group.

business more efficiently because it would allow us to automate more notices, minimize manual errors, properly track transactions and related communications, and improve our sanctions process. The proposed registration requirement would help us further automate communications that are managed by our centralized representative database and share the information with our secondary databases used to process cases at different adjudicatory levels, so these systems can also automate their communications. We expect that this increased automation would also make the processing of appointments and fee payments more efficient by reducing errors associated with manual actions. In addition, the registration requirement would enable us to better track all representatives' actions and conduct on their cases, rather than just those who choose to register with us, and it would extend access to our electronic services to more representatives. Access to our Electronic Records Express (ERE) system, for example, has been an important tool for representatives to obtain real-time information from our files in an easy and efficient way without the need to contact an agency employee for that information. Registration will continue to be a one-time process unless the representative's information changes and registration data must be updated.

We will also require representatives to register before being named as a POC for an entity. Requiring representatives to register with us before being designated as POCs would facilitate quicker processing of the entity's registration because the representative's information would already be in our system and would not need to be manually keyed-in by a technician prior to processing the entity's registration. It would also allow us to readily identify and verify the POC when we share certain claim information to resolve fee matters and, if needed, ensure accountability under our rules of conduct as explained in Section VIII below. Registration would also help us ensure that

we keep accurate and comprehensive records of our communications with the entities and their POCs. We would make these changes in 20 CFR 404.1705 and 416.1505.

IV. Requiring Entity Registration Before We Accept a Request to Directly Pay an Entity

To enable direct payments to entities and meet our mandatory tax reporting obligations to the IRS, we will need to collect information such as tax identification numbers, addresses, and banking institutions from entities. We currently ask representatives to voluntarily register the entity with which they are affiliated so that we can issue a copy of Form IRS 1099 to their employer to assist the parties in their accounting and tax reporting duties. When an entity elects not to register with us, we cannot issue a Form IRS 1099 to that entity. To pay an entity, we will need the entity to register before we can accept any assignment of direct payment so that we can ascribe income to the entity correctly. To register entities, we developed the standard Form SSA-1694 (OMB No. 0960-0731), “Request for Business Entity Taxpayer Information” to collect the entity’s name and address to mail the Form IRS 1099.

Under this proposed rule, registration would continue to be voluntary for entities not being assigned direct payment of authorized fees. Like representative registration, entity registration would be a one-time transaction unless the entity needs to update its information. However, any entity previously registered under our prior process that wants to receive direct payment of assigned fees would have to register again to provide additional information we do not currently have, such as its banking information and information regarding a designated POC. Entities would then be responsible, through their POC, for keeping their information accurate and current. To ensure we collect all the information we need to make direct payment and issue tax forms, we propose to require use of a standard process (currently this involves submission of the Form SSA-

1694) to register. This would ensure that the information we need would be collected in one document to facilitate processing. We would make these changes in 20 CFR 404.1735 and 416.1535.

V. Standardizing the Representative Appointment Process

Our rules in 20 CFR 404.1707 and 416.1507 require claimants and their representatives to submit a written notice of appointment to inform us about the claimants' decision to engage representation. This notice allows us to confirm the person has the requisite qualifications to be a representative and recognize the person as the representative.¹² Currently, we do not require the use of our standard notice of appointment Form SSA-1696 (OMB No. 0960-0527), "Claimant's Appointment of a Representative," to document representative appointments. However, in practice we find that most representatives and claimants use this form. We also do not currently require attorney representatives to sign a notice of appointment, whether they use our standard form or another writing, but do require non-attorneys to sign.¹³

Our standard Form SSA-1696 collects information that helps us properly identify the claimant, the principal representative,¹⁴ and any other representative. It helps us collect other important information, such as the fee arrangement, which helps us determine whether we should withhold funds from past-due benefits for possible direct payment of any fee we authorize. It also helps us determine the representative's affiliation with an entity, which enables us to link the representative, the case, and the

¹² See POMS GN 03910.020A.

¹³ 20 CFR 404.1707 and 416.1507.

¹⁴ A claimant may appoint multiple representatives. However, if a claimant appoints more than one individual to serve concurrently, the claimant must designate one representative to be the principal representative. We contact and send notices or requests for development only to the principal representatives. They are expected to provide copies to other representatives. See POMS GN 03910.040C (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0203905040>), and Hearing, Appeals and Litigation Law manual (HALLEX) I-1-1-10C (https://www.ssa.gov/OP_Home/hallex/I-01/I-1-1-10.html) and I-1-1-11 (https://www.ssa.gov/OP_Home/hallex/I-01/I-1-1-11.html).

entity in our records, so that we may issue appropriate form(s) IRS 1099 for any payments we make in the case.

In any adjudicatory system as large as ours, which processes millions of claims each year, “the need for efficiency is self-evident.”¹⁵ To increase our efficiency, we propose to require use of our prescribed form for the appointment of a representative (currently the SSA-1696 or its electronic equivalent (e1696)). We expect that the use of our prescribed form will allow us to standardize the appointment process, facilitate the assignment of fees, and allow quicker processing of each appointment. Use of a prescribed process and form for each individual appointment will enable us to collect necessary information, such as the Rep ID we issue at registration and fee arrangement information, with every appointment. We also would require a signature by all representatives, whether the representative is an attorney or a non-attorney.

Additionally, under our current process, we have difficulty identifying individuals or processing their documents when we do not receive certain information at the start of the appointment. Considering the large number of claims that we process each year, it is only prudent that we require the use of a prescribed process and form, rather than relying on representatives to develop their own method to supply the information we need. In addition to the efficiencies discussed above, this standardized process would also minimize inconsistencies and reduce the need for recontacts that can cause delays and inconvenience. Lastly, when processing appointments under our current rules, technicians must confirm different requirements are met depending on the representative’s status as an attorney or non-attorney. Standardizing the signature requirement will improve efficiency by implementing a uniform rule.

¹⁵ See *Barnhart v. Thomas*, 540 U.S. 20, 29 (2003); *Heckler v. Campbell*, 461 U.S. 458, 461, n.2 (1983).

Requiring a prescribed form (e.g., the Form SSA-1696 or e1696) and signatures from all representatives will also strengthen uniformity in the processing of appointments. We would make these changes in 20 CFR 404.1707 and 416.1507, with additional language changes to accommodate potential developments in the method for submitting appointments. With this proposed rule, we are not changing our current signature method requirements.

VI. Payment to Entities via EFT/Direct Deposit Only

Currently, we collect preferences and pay individual representatives by check or EFT.¹⁶ We propose to pay entities to whom fees have been assigned through EFT only. Generally, EFT is the safest and most convenient method to receive Federal payments. It is a reliable, secure, fast, and contact-free method to receive payments. In recent years, EFT has also become increasingly popular because for most recipients it is more convenient than paper checks.¹⁷ For over a decade, EFT has also been required by law for Federal nontax payments, with limited exceptions.¹⁸ One of those exceptions allows agencies to waive the EFT requirement when the agency does not anticipate making payments to the same recipient on a regular, recurring basis within a one-year period and the recipient's financial institution does not make remittance data explaining the purpose of the payment readily available.¹⁹ As the Department of the Treasury explained in a 2010 rulemaking proceeding, this exception arose to address the needs of individual representatives seeking fee payments from us who claimed that their banks were not able or willing to provide all the information needed to identify the client on whose account

¹⁶ See 31 CFR 208.4 (enumerating certain exceptions to the requirement that all non-tax payments made by Federal agencies be made by EFT).

¹⁷ U.S. Dept. of the Treasury, *Final Rule for Electronic Government Payment Will Balance Recipient Needs With Benefits of Electronic Payment* (June 25, 1998), available at <https://home.treasury.gov/news/press-releases/rr2560>.

¹⁸ See 31 U.S.C. 3332(e), (f); 31 CFR 208.1; *but see* 31 CFR 208.3 and 208.4 (enumerating certain exceptions to the EFT requirement).

¹⁹ 31 CFR 208.4(a)(6).

the deposit was made and who were precluded from electronically depositing their fee payments into their employer/firm's bank account.²⁰ However, even at the time of that 2010 rulemaking, we had taken steps to begin transmitting information to banks to enable representatives to link payments to clients, and we encouraged those banks to pass that information on to their account holders as quickly as possible, thus addressing the issue of the availability of information tying payments to specific clients.²¹ Allowing direct payment to entities will resolve the representatives' concern about the inability to deposit their fee payments into their employer's bank account. Because we propose to resolve the issues that led to the waiver rule and because the Department of the Treasury discourages use of this waiver and advised that it only be used sparingly,²² we propose not to apply the waiver to entity payments.

Further, offering check payments to entities would require changes to our systems that would involve significant time and resources. Limiting entity payments to EFT would help us ensure that our implementation of direct payment to entities is timely and that, upon the effective date of any final rule based on this proposal, we would begin certifying payment of fees directly to entities. The proposed rule would not change our current payment process or options for individual representatives. We would include these changes in 20 CFR 404.1735 and 416.1535.

VII. Establishing a New Process for Appointed Representatives to Request Direct Payment of Authorized Fees to an Entity

To assign direct payment of an authorized fee, the representative would need to: 1) be eligible for and seek direct payment; 2) be associated (affiliated) with the entity through our registration process; and 3) make the assignment timely and in the manner

²⁰ See 75 FR 80315, 80325.

²¹ *Id.*

²² *Id.*

we prescribe. In addition, the entity would need to be eligible for direct payment as described later in this proposed rule. Where all these conditions are satisfied, we propose to accept or honor an assignment. We would check eligibility at the time we process the assignment and at the time we certify the direct payment. An invalid assignment would not affect the processing of an otherwise valid notice of appointment.

Although we will not limit representatives to only assigning fees at the time of an appointment, we believe that it will be most efficient to collect the representative's intent to assign direct payment of the fee at that time. Capturing information about assignments during the appointment process would ensure we record each assignment early in the claim(s) process, help us streamline fee payments, allow us to automate as many fee payments as possible, and prevent delays and errors, all of which help us improve the timeliness and accuracy of our fee payment process.

We propose to allow representatives to rescind a previously submitted assignment in the same manner they established it. We would allow a representative to withdraw an assignment by submitting an updated version of our prescribed form on which the representative deselects the assignment option, provided that the representative does so before the date we notify the claimant of our first favorable determination or decision.²³ We would not accept any request to rescind an assignment after this date. Having a deadline for assignments and revisions to assignments also helps to ensure the accuracy and timeliness of our fee payments. After our decision makers render a favorable determination or decision, we transfer the case to the appropriate office for final review and payment (called "effectuation"). New representational documents received after the date we notify the claimant of a favorable determination or decision will delay the effectuation process or cause inaccurate payments.

²³ Throughout this preamble, "favorable determination or decision" refers to either a fully or partially favorable determination or decision.

An assignment would remain valid regardless of continued employment with the entity unless other reasons would invalidate the assignment. Some reasons to invalidate an assignment would include a disqualification or suspension of the representative, because an entity's eligibility for direct payment in a case depends on the representative's eligibility for direct payment; the entity becoming ineligible for direct payment; or the representative's timely rescission of the assignment, as explained above. By its own actions, an entity could become ineligible for direct payment, such as if it retains unauthorized fees or fees that exceed the amount we authorized,²⁴ as explained more fully later in this preamble.

We propose to reject an assignment if the representative and entity did not properly register prior to submission of the assignment, or if the representative did not properly identify the entity by providing the entity's name and EIN when making the assignment. We would also reject any assignment that was made to an entity that is ineligible for direct payment, that was made by a representative who is not eligible for or requesting direct payment of an authorized fee, or that was not filed before the date that we notify the claimant of our first favorable determination or decision. To prevent individuals from circumventing our direct payment and professional conduct rules, we would allow direct payment to entities only when the assignment is made by a representative eligible for direct payment.²⁵ We would notify the representative if we rejected an assignment. The rejection of an assignment would not affect processing of an otherwise valid appointment or the representative's eligibility for direct payment.

Payments to entities would be subject to all our other rules governing payment of fees, including the requirement that past-due benefits are available and that we have withheld them. If, at the time we calculate the fee, the assignment meets all the criteria

²⁴ POMS GN 03920.051A.

²⁵ 42 U.S.C. 406 and 1383; *see also* POMS GN 03920.017.

for a valid assignment, we would certify payment of the authorized fee to the entity. However, we would not charge claimants with an overpayment to make direct payment to an entity in situations where, through no error of our own, we did not withhold funds from past-due benefits; where we were not timely informed of an assignment of fees; where the entity was, at the time of payment, ineligible for direct payment but later became eligible; or where the representative waived the fee, even if the representative withdrew the waiver, if that withdrawal occurred after we already made all payments and released the past-due benefits.

We would allow only one assignment per representative per case. This restriction means representatives could not assign direct payment to multiple entities in a single case. Doing so could create confusion and increase the administrative burden of processing these payments. Additionally, allowing a representative to assign fees to multiple entities could lead to manual processing errors which would be contrary to our goal of increasing the timeliness and efficiency of our fee payment process. If multiple representatives involved in a case are affiliated with different entities, we would make fee payments following our existing rules for payments to multiple representatives and apply the rules proposed herein to qualify and fulfill each assignment. If all other conditions for a valid assignment are met, we would accept or honor the most recently updated (and timely submitted, as described above) request to assign a fee, which would supersede all prior assignment requests made by that representative. We would make these changes in 20 CFR 404.1730, 404.1735, 416.1530, and 416.1535.

VIII. Recovery of Excess or Erroneously Paid Fees, the Requirement to Name an Entity POC, and Entity Eligibility for Direct Payment

With this proposal, we would establish a business process to ensure that fee errors can be corrected, consistent with our obligations to claimants and our stewardship

obligation to protect taxpayer money. To facilitate resolution of fee discrepancies and other fee related issues, such as correcting a Form IRS-1099, we would require an entity to name a POC during the entity's registration. This POC would need to be a registered representative who is not currently suspended or disqualified from practicing before us. However, we would not require the POC to be eligible for direct payment to serve as a POC or for the entity to receive an assigned fee. We would collect the POC's information, including the POC's name, Rep ID, and phone number, during the entity's registration. We would reject any registration that is missing this information and notify the entity or representative to provide the missing information. To ensure consistent communication, we would make the POC and the entity jointly responsible for keeping this information current.

We would expect the POC to assist us in resolving fee-related matters and to conduct all entity affairs with us with diligence, truthfulness, and competence. We would hold the POC responsible under our Rules of Conduct and Standards of Responsibility if these duties are not met, but we would not hold the POC financially responsible for repayment of excess or otherwise erroneous fee payments made directly to the entity. The entity would be responsible for repayment of excess or otherwise erroneous fees. We propose to revise our Rules of Conduct and Standards of Responsibility for Representatives to account for the new POC role in our processes. We would make these changes in 20 CFR 404.1735, 404.1740, 416.1535, and 416.1540.

IX. Restricting Eligibility for Direct Payment for Certain Entities

We propose to make entities ineligible for direct payment if they do not remit excess or otherwise erroneous fees; if they do not maintain an active POC; if they, through their POCs, do not assist us in correcting a fee payment error; or if they do not comply with our rules. An entity would need to update the entity registration to name a

new POC immediately if there is any change in the current POC's status. This would ensure that any necessary communications regarding fees and fee payments would not be disrupted. We would work with the POC to correct possible fee inaccuracies or recover erroneous fees.

We will maintain a list of entities that are ineligible for direct payment. We would place an entity on this list if that entity failed to resolve an excess or otherwise erroneous fee, after notice to the POC in our records. We would halt direct payments to any entity on this list and not accept new assignments from representatives made to an entity on this list. We would remove an entity from the list and accept new assignments when the entity resolves to our satisfaction the fee matter or other issue restricting eligibility. If the entity is ineligible for direct payment at the time we are ready to make direct payment, we will make the payment to the representative who created the assignment if that representative remains eligible for direct payment. If the representative is no longer eligible for direct payment at that time, we would, as we currently do, release the funds to the claimant.

Establishing a process to recover fees and correct errors is necessary to preserve program integrity, safeguard claimants' past-due benefits, and ensure that we properly and efficiently manage financial matters with entities. We would make these changes in 20 CFR 404.1735 and 416.1535.

X. Waivers' Effect on Direct Payment to Entities

To avoid circumvention of our direct payment rules, as discussed above, representatives who waive their fee, direct payment, or both would not be permitted to make an assignment, since there would be no fee or direct payment to assign. We would not accept fee or direct payment waivers made by representatives who previously assigned a fee and did not timely rescind that assignment. Issues arising from untimely assignment submissions or rescissions, improper waivers, or similar events would be

matters between the entity and the representative. We would make these changes in 20 CFR 404.1730 and 416.1530.

XI. Replacing Form SSA-1695

We previously issued a Federal Register Notice (FRN), “Identifying Information For Possible Direct Payment of Authorized Fees,” that required the submission of Form SSA-1695 (OMB No. 0960-0730), a now-obsolete form that required the representatives’ SSN and other personally identifiable information, in each case in which a representative sought direct payment.²⁶

We have included relevant information from this collection instrument in the SSA-1696, while eliminating the SSN requirement. The 2006 FRN’s requirements would be obsolete if we finalize this proposal by publishing a final rule.

Authority:

The Commissioner of Social Security is authorized to make rules and regulations to carry out the provisions of the Act, including recognition of representatives, under sections 205(a), 206(a)(1), 702(a)(5), 810(a), and 1631(d) of the Act.²⁷

Solicitation for Public Comment:

As discussed elsewhere in this rulemaking, we are seeking public comment on this proposed rule. The initial impetus for this proposal was to ensure we are in compliance with the *Marasco* decision guidelines. However, as previously stated, we also want to use this opportunity to minimize inconsistencies and reduce the need for recontacts associated with the representative fee direct payment or appointment processes (within the scope of this proposed rule). Accordingly, while we encourage public comments on all aspects of the proposed rule, we note these comments can include thoughts and

²⁶ 71 FR 58043 (Oct. 2, 2006).

²⁷ 42 U.S.C. 405(a), 406(a)(2), 902(a)(5), 1010(a), and 1383(d).

suggestions on other, related improvements, provided they are within the scope of this proposal.

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order (E.O.) 12866, as supplemented by E.O. 13563 and E.O. 14094, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

When Will We Start To Use This Proposed Rule?

We will not use this proposed rule until we evaluate public comments and publish a final rule in the *Federal Register*. All final rules include an effective date. We will continue to use our current rules until that date. When we publish a final rule, we will include a summary of the significant comments we received along with responses and an explanation of how we will apply the new rule.

REGULATORY PROCEDURES

Executive Order 12866, as supplemented by Executive Orders 13563 and 14094

We consulted with the Office of Management and Budget (OMB) and they determined that this proposed rule does not meet the criteria for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and is not subject to OMB review.

We also determined that this proposed rule meets the plain language requirement of E.O. 12866.

Anticipated Accounting Costs of This Proposed Rule

Anticipated Costs to Our Programs

Our Office of the Chief Actuary estimates that implementation of these proposed rules would result in negligible changes (i.e., less than \$500,000) in scheduled OASDI benefits and Federal SSI payments. This estimate is based primarily on the assumption that these proposed rules would not materially affect the availability and quality of representation.

Anticipated Administrative Costs to the Social Security Administration

The systems upgrades necessary to comply with the *Marasco* decision are funded and currently underway. We do not expect that additional funding will be needed. Once the rule becomes effective, the Office of Budget, Finance, and Management estimates

administrative costs of less than 15 work years and \$2 million annually from the updates to our current business processes.

Anticipated Time-Savings and Qualitative Benefits

Beyond complying with the *Marasco* decision, we also anticipate this proposed rule will be less burdensome and more efficient for the affected public. Currently, entities that employ representatives must spend time and effort working with those representatives so the latter can remit Social Security fee remuneration back to the firm. By making the payment directly to an entity rather than only to a representative, we save both the entity and the representative the time and effort they would have otherwise spent on completing the requisite paperwork and financial transactions involved in transferring funds (on the representative's end) and adjusting accounting records to reflect the transfer (on the part of the entity's accounting or bookkeeping staff). Ultimately, then, this change will ensure a faster and more efficient process for representatives and the entities who employ them. This may also have downstream positive effects for claimants seeking representation; if representatives and their employing entities do not need to spend as much time dealing with accounting and paperwork, they could perhaps work on existing cases faster, or could take on more claimants to represent.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by E.O. 13132 and determined that this proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this proposed rule would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. Although this proposed rule would require small entities who want to receive direct payment of authorized fees to provide us with certain information, maintain an active POC responsible for interacting with the agency, and accept payment by EFT, these requirements would not disadvantage small entities or limit their ability to compete with larger competitors. Additionally, this proposed rule does not place significant costs on entities.

We estimate that the time required for a small entity to complete the one-time transaction required to fill out and submit a basic registration form, provide banking information, and identify a POC would be minimal. Once the initial registration is complete, there would be no additional burden on the entity unless and until the entity needed to update its registration information. We anticipate that small entities that take advantage of the opportunity to receive direct payment of authorized fees through the assignment process may experience slight cost savings because of improved accuracy and efficiency in their recordkeeping processes and because they would no longer need to collect and properly account for payments made to individual representative employees. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain public reporting requirements. For some sections in these rules, we previously accounted for the public reporting burdens under the following OMB approved information collections: 0960-0527 (SSA-1696, Appointment of Representative, which allows an individual to appoint a representative, and requires the representative's agreement to serve as representative), 0960-0731 (SSA-1694, Request for Business Entity Taxpayer Information, which requests specific taxpayer data from

representatives requesting a fee), and 0960 0732 (SSA-1699, Registration for Appointed Representative Services and Direct Payment, which requires the representatives to prove eligibility when they register with SSA and allows them to request a fee). Consequently, we are not reporting those sections below.

The sections below pose new public reporting burdens not currently covered by an existing OMB-approved form; therefore, we provide burden estimates for them. We are seeking approval for these regulation sections under the revised SSA Forms SSA-1694 (0960-0731) and SSA 1696 (OMB No. 0960-0527), which we will use to collect the information required by these revised sections. Below we provide burden estimates for the public reporting requirements we are revising:

Regulation Section	Description of Public Reporting Requirement	Number of Respondents (annually)	Frequency of Response	Average Burden Per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)**	Total Annual Opportunity Cost (dollars)***
404.1707(a) 416.1507(a) SSA-1696 (0960-0527)	You [claimant] complete and sign our prescribed appointment form, and	1,100,000	1	7	128,333	\$12.81**	\$1,643,946***
404.1707(a) 416.1507(a) SSA-1696 (0960-0527)	Your representative completes and signs our prescribed appointment form, and	1,100,000	1	5	91,667	\$73.86**	\$6,770,525***
404.1720(f) 416.1520 (f) SSA-1696 (0960-0527)	A representative who is eligible for direct payment of an authorized fee may assign direct payment of the authorized fee to an entity that is eligible for direct payment.	500,000	1	5	41,667*	\$73.86**	\$3,077,525***
404.1730(e)(2) 416.1530(e)(2)	A representative may rescind an assignment before the date on which	150,000	1	3	7,500	\$73.86**	\$553,950***

SSA-1696 (0960-0527)	we notify you of our first favorable determination or decision.						
404.1735 416.1535 SSA-1694 (0960-0731)	An entity is eligible for direct payment if the entity: (a) has an Employment Identification Number, (b) is registered with us in the manner we prescribe, (c) has not been found ineligible for direct payment, (d) designates and maintains a registered representative as a point of contact to speak and act on the entity's behalf, (e) accepts payment via electronic transfer, and (f) conforms to our rules	7,000	1	18	2,100	\$73.86**	\$155,106***
Totals		2,857,000			271,267		\$12,201,052***

* This is not additional burden but part of the existing burden for those representatives who complete this instrument but also check the assignment box. We include it here to indicate a change in burden for this regulatory section.

** We based these figures on average Legal Service hourly salary, as reported by Bureau of Labor Statistics data (<https://www.bls.gov/oes/current/oes231011.htm>) and the average

DI payments based on SSA's current FY 2023 data

(<https://www.ssa.gov/legislation/2023factsheet.pdf>).

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

SSA submitted revised Information Collection Requests under both OMB Numbers 0960-0527 and 0960-0731 for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget

Attn: Desk Officer for SSA

Fax Number: 202-395-6974

E-mail address: OIRA_Submission@omb.eop.gov

Social Security Administration, OLCA

Attn: Reports Clearance Director

Mail Stop 3253 Altmeyer

6401 Security Blvd

Baltimore MD 21235

Fax: 410-966-2830

Email address: OR.Reports.Clearance@ssa.gov

You can submit comments until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure; Reporting and recordkeeping requirements; Social security.

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the *Federal Register*.

Faye I. Lipsky,
Federal Register Liaison,
Office of Legislation and Congressional Affairs,

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, parts 404, 416 and 422, as set forth below:

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY
INSURANCE (1950-)**

Subpart R—Representation of Parties

1. The authority citation for subpart R of part 404 is revised to read as follows:

Authority: 42 U.S.C. 405(a), 406, 902(a)(5), and 1320a-6.

2. In § 404.1703, add definitions for “Assignment,” “Point of Contact,” and “Registration” in alphabetical order, and revise the definition of Representative to read as follows:

§ 404.1703 Definitions.

Assignment means the transfer of the right to receive direct payment of an authorized fee to an entity as described in § 404.1730(e).

* * * * *

Point of Contact means an individual who is a registered representative selected by an entity to speak and act on the entity’s behalf and who assumes the affirmative duties and obligations we prescribe.

Registration means a process by which a representative or entity provides the information we require to conduct business with us.

* * * * *

Representative means an attorney who meets all of the requirements of § 404.1705(a), or a person other than an attorney who meets all of the requirements of § 404.1705(b), and whom you appoint to represent you in dealings with us. For purposes

of our rules of conduct and standards of responsibility, *Representative* also includes an individual who provides representational services and an individual who is listed as a point of contact for an entity, as applicable to their identified role.

* * * * *

3. In § 404.1705, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c), and revise newly redesignated paragraph (d) to read as follows:

§ 404.1705 Who may be your representative.

* * * * *

(c) Your representative(s) must be registered with us in the manner we prescribe before you submit the appointment(s).

(d) We may refuse to recognize your chosen representative if the person does not meet the requirements in this section. We will notify you and the proposed representative if we do not recognize the person as your representative.

4. Revise § 404.1707 to read as follows:

§ 404.1707 Appointing a representative.

We will recognize a person as your representative if:

(a) You and your representative complete and sign our prescribed appointment form, and

(b) You or your representative file our prescribed appointment form in the manner we designate.

5. In § 404.1720, add new paragraph (f) to read as follows:

§ 404.1720 Fee for a representative's services.

* * * * *

(f) *Assignment of fees.* A representative who is eligible for direct payment of an authorized fee may assign the authorized fee to an entity that is eligible for direct payment of fees (see 404.1730(e) and 404.1735).

6. In § 404.1730, revise the heading of paragraph (b), revise paragraph (b)(1), redesignate (b)(1)(i) as (b)(1)(iii) and (b)(1)(ii) as (b)(1)(iv), add new paragraphs (b)(1)(i) and (b)(1)(ii), and add a new paragraph (e) to read as follows:

§ 404.1730 Payment of fees.

* * * * *

(b) *Fees we may pay - (1) Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney (see § 404.1717), and as a result of the determination or decision you have past-due benefits,

(i) We will pay your representative out of the past-due benefits the lesser of the amounts in paragraph (b)(1)(iii) or (iv) of this section, less the amount of the assessment described in paragraph (d) of this section, unless the representative submits to us in writing a waiver of the fee or direct payment of the fee, and

(ii) If there is a valid assignment (see paragraph (e) of this section), we will pay the representative's fee (see paragraph (b)(1)(i) of this section) to an entity.

* * * * *

(e) *Assignment of a fee to designated entity (1)* A representative may assign the fee we authorize to an eligible entity if the representative:

- (i) Is eligible for direct payment,
- (ii) Has not waived the fee or direct payment,
- (iii) Assigns the entire fee we authorize to one entity,

- (iv) Makes the assignment before the date on which we notify you of our first favorable determination or decision, and
- v) Affiliates with the entity through registration.

(2) A representative may rescind an assignment before the date on which we notify you of our first favorable determination or decision.

(3) A representative may not assign a fee to an entity that is ineligible to receive direct payment.

(4) A representative may not waive a fee or direct payment of a fee if the representative previously assigned a fee in accordance with paragraph (e)(1) of this section and did not timely rescind that assignment in accordance with paragraph (e)(2) of this section.

7. Add § 404.1735 to read as follows:

§ 404.1735 Entity eligible for direct payment of fees.

An entity is eligible for direct payment of an authorized fee if the entity:

- (a) Has an Employer Identification Number,
- (b) Has registered with us in the manner we prescribe,
- (c) Has not been found ineligible for direct payment,
- (d) Designates and maintains an employee who is a registered representative as a point of contact to speak and act on the entity's behalf,
- (e) Accepts payment via electronic funds transfer, and
- (f) Conforms to our rules.

8. In § 404.1740, add a new paragraph (c)(15) to read as follows:

§ 404.1740 Rules of conduct and standards of responsibility for representatives.

* * * * *

(c) * * *

(15) While serving as a point of contact for an entity, violate applicable affirmative duties, engage in prohibited actions, or conduct dealings with us in a manner that is untruthful or does not further the efficient and prompt correction of a fee error.

PART 416— SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart O—Representation of Parties

9. The authority citation for subpart O of part 416 is revised to read as follows:

Authority: 42 U.S.C. 405(a), 406, 902(a)(5), and 1320a-6.

10. In § 416.1503, add definitions for “Assignment,” “Point of Contact,” and “Registration”, and revise the definition of “Representative” to read as follows:

§ 416.1503 Definitions.

* * * * *

Assignment means the transfer of the right to receive direct payment of an authorized fee to an entity as described in § 416.1530(e).

* * * * *

Point of Contact means an individual who is a registered representative selected by an entity to speak and act on the entity’s behalf and who assumes the affirmative duties and obligations we prescribe.

Registration means a process by which a representative or entity provides the information we require to conduct business with us.

* * * * *

Representative means an attorney who meets all of the requirements of § 416.1505(a), or a person other than an attorney who meets all of the requirements of § 416.1505(b), and whom you appoint to represent you in dealings with us. For purposes of our rules of conduct and standards of responsibility, *Representative* also includes an

individual who provides representational services and an individual who is listed as a point of contact for an entity, as applicable to their identified role.

* * * * *

11. In § 416.1505, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c), and revise newly redesignated paragraph (d) to read as follows:

§ 416.1505 Who may be your representative.

* * * * *

(c) Your representative(s) must be registered with us in the manner we prescribe before you submit the appointment(s).

(d) We may refuse to recognize your chosen representative if the person does not meet the requirements in this section. We will notify you and the proposed representative if we do not recognize the person as your representative.

12. Revise § 416.1507 to read as follows:

§ 416.1507 Appointing a representative.

We will recognize a person as your representative if:

(a) You and your representative complete and sign our prescribed appointment form, and

(b) You or your representative file our prescribed appointment form in the manner we designate.

13. In § 416.1520, add new paragraph (f) to read as follows:

§ 416.1520 Fee for a representative's services.

* * * * *

(f) *Assignment of fees.* A representative who is eligible for direct payment of an authorized fee may assign the authorized fee to an entity that is eligible for direct payment of fees (see 416.1530(e) and 416.1535).

14. In § 416.1530, revise the heading of paragraph (b), revise paragraph (b)(1), and add a new paragraph (e) to read as follows:

§ 416.1530 Payment of Fees.

* * * * *

(b) *Fees we may pay.* (1) *Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney (see 416.1517), and as a result of the determination or decision you have past-due benefits,

(i) We will pay your representative out of the past-due benefits the lesser of the amounts in paragraph (b)(1)(iii) or (iv) of this section, less the amount of the assessment described in paragraph (d) of this section, unless the representative submits to us in writing a waiver of the fee or direct payment of the fee, and

(ii) If there is a valid assignment (see paragraph (e) of this section), we will pay the representative's fee (see paragraph (b)(1)(i) of this section) to an entity.

* * * * *

(e) *Assignment of a fee to designated entity* (1) A representative may assign the fee we authorize to an eligible entity if the representative:

- (i) Is eligible for direct payment,
- (ii) Has not waived the fee or direct payment,
- (iii) Assigns the entire fee we authorize to one entity,
- (iv) Makes the assignment before the date on which we notify you of our first favorable determination or decision, and
- (v) Affiliates with the entity through registration.

(2) A representative may rescind an assignment before the date on which we notify you of our first favorable determination or decision.

(3) A representative may not assign a fee to an entity that is ineligible to receive direct payment.

(4) A representative may not waive a fee or direct payment of a fee if the representative previously assigned a fee in accordance with paragraph (e)(1) of this section and did not timely rescind that assignment in accordance with paragraph (e)(2) of this section.

15. Add § 416.1535 to read as follows:

§ 416.1535 Entity eligible for direct payment of fees.

An entity is eligible for direct payment of an authorized fee if the entity:

- (a) Has an Employer Identification Number
- (b) Has registered with us in the manner we prescribe,
- (c) Has not been found ineligible for direct payment,
- (d) Designates and maintains an employee who is a registered representative as a point of contact to speak and act on the entity's behalf,
- (e) Accepts payment via electronic funds transfer, and
- (f) Conforms to our rules.

16. In § 416.1540, add a new paragraph (c)(15) to read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

* * * * *

(c) * * *

(15) While serving as a point of contact for an entity, violate applicable affirmative duties, engage in prohibited actions, or conduct dealings with us in a manner that is untruthful or does not further the efficient and prompt correction of a fee error.

PART 422—ORGANIZATION AND PROCEDURES

Subpart F—Applications and Related Forms

17. The authority citation for subpart F of part 422 is revised to read as follows:

Authority: 42 U.S.C. 1320b-10(a)(2)(A).

18. In § 422.515, revise the designation of form SSA-1696 to read as follows:

§ 422.515 Forms used for withdrawal, reconsideration and other appeals, and appointment of representative.

* * * * *

SSA-1696-Claimant's Appointment of Representative. (For use by claimants or representatives as a notice of their appointment of a representative in a claim, issue, or other matter that is pending a determination or a decision before the agency).

* * * * *

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