



SOCIAL SECURITY

Karen Y. Matsuoka
Office of Information and Regulatory Affairs, OMB
Room 10235, New Executive Office Bldg.
725 17th St. NW
Washington, D.C. 20503

January 3, 2007

Dear Ms. Matsuoka:

The Social Security Administration (SSA) is requesting immediate emergency clearance to provide guidance for the proper completion by taxpayers of the Internal Revenue Service (IRS) Form 8821, which is used to release tax data to a third party, in order to permit appeals of the income-related monthly adjustment amounts (IRMAA) to Medicare Part B premiums. Without the properly completed 8821 to designate the Department of Health and Human Services (HHS) to receive the tax information of a Medicare Part B beneficiary who has appealed an IRMAA determination, SSA has no authority to re-disclose the IRS tax data. Emergency clearance is requested to coincide with today's publication of the Federal Register Notice dated 1/03/2007.

Medicare Part B, Supplementary Medical Insurance, is a voluntary supplement to Medicare Part A, Hospital Insurance. Beneficiaries who elect coverage under Part B pay a monthly premium for outpatient, physician and other services not covered under Medicare Part A. The Social Security Act requires deduction of Medicare Part B premiums from Social Security benefits for the vast majority of beneficiaries.

Section 811 of Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (also known as the Medicare Modernization Act or MMA) amends section 1839 of the Social Security Act and section 6103 of the Internal Revenue Code. The amendment to the Social Security Act requires the Commissioner of Social Security to index the cost of monthly premiums for Medicare Part B to income amounts reported to the IRS for beneficiaries with higher incomes. The amendment to the Internal Revenue Code authorizes the Secretary of the Treasury to disclose certain tax information to SSA to carry out the requirements of section 811 of the MMA.

In keeping with other Medicare decisions, income-related Medicare Part B premiums are subject to four levels of beneficiary appeal. The first level of appeal is a reconsideration of the facts by a different SSA employee than the one who made the original decision. Beneficiaries who are dissatisfied with their reconsidered determinations may request an appeal by an administrative law judge, and if dissatisfied with that decision, they may request further administrative review by the Appeals Council and subsequent judicial review by the Federal district court.

Because section 811 of the MMA places responsibility for income-related Medicare Part B premiums with the Commissioner of SSA, we originally foresaw an appeals process paralleling most of our other programs with all levels of administrative appeal addressed by SSA employees. This process would have involved no redisclosure of IRS information outside of SSA before judicial review, requiring no clearance of new forms to be completed by a beneficiary who would use existing, approved appeal request documents.

However section 931 of the MMA requires a blanket transfer of responsibility for Medicare appeals to HHS. Originally SSA read its responsibility for income-related Medicare Part B premiums to include responsibility for all administrative appeals as well. In March 2006, after executive discussions of the NPRM to implement Section 811, it was agreed that HHS would be responsible for administrative appeals of income-related Part B premiums beyond the first-level review.

The amendment to the Internal Revenue Code in section 811 of the MMA permits IRS to disclose tax information to SSA but lacks authority for SSA to re-disclose that tax information to HHS for appeals beyond the reconsideration. Because such appeals would require the Administrative Law Judge (ALJ) to have tax return information in hand, IRS, HHS and SSA decided that rather than HHS requesting disclosure on a time-consuming case-by-case basis from IRS and IRS then reissuing data already provided to SSA, taxpayers would request IRS to permit SSA to designate HHS to receive the tax information from SSA when they have appealed an IRMAA determination.

IRS requested SSA to use their existing general use disclosure form, IRS Form 8821, Tax Information Authorization, which IRS has been using successfully for many years. As originally conceived, beneficiaries would have to complete IRS Form 8821 and those forms would have to go to IRS for approval. IRS would then convey its approval to SSA to disclose data to HHS. This original concept was flawed by the amount of time the process would take to complete, the general use nature of the form, and the need to educate both SSA and IRS employees on a brand new process involving proper completion of a form which was carefully designed to allow disclosure for many different purposes, such as disclosures to mortgagers, automobile loan companies and various State and Federal programs.

On November 16, 2006, IRS conveyed authority to SSA to receive and validate the accuracy of consents to disclose gathered on IRS Form 8821. That authority provides for more administrative efficiency and better public service but adds the burden to SSA of issuing SSA-specific guidance for proper completion of the general-use IRS Form 8821 and careful review of completed forms.

While SSA works with IRS to design an SSA-specific taxpayer consent form for administrative appeals of income-related Medicare Part B premiums, we will be asking those beneficiaries who have requested an administrative appeal beyond SSA and those who will request such appeals to follow IRS instructions on completing the form while using SSA guidance which reduces the complexity inherent in the general use form and reduces burden completion for the public.

SSA has already processed approximately 500 reconsideration requests. Since the reconsideration process is an electronic one, reconsideration decisions are processed almost immediately. SSA also expects to see an increase in requests following the receipt of the Social Security checks in January 2007 since these checks include the first Part B IRMAA deduction. SSA needs to ensure beneficiaries are provided with their appropriate due process rights and be ready to process all appeals with release of the appropriate tax information to HHS for requests for a hearing before an ALJ.

We appreciate your timely review of this urgent Emergency request. As we indicated in the Federal Register Notice, we plan to immediately begin full clearance for our use of this form.

Sincerely,

Elizabeth A. Davidson
Reports Clearance Officer
Social Security Administration