

Name of Respondent		This Report is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____					
<b>MONTHLY ISO/RTO TRANSMISSION SYSTEM PEAK LOAD</b>										
<p>(1) Report the monthly peak load on the respondent's transmission system. If the Respondent has two or more power systems which are not physically integrated, furnish the required information for each non-integrated system.</p> <p>(2) Report on Column (b) by month the transmission system's peak load.</p> <p>(3) Report on Column (c) and (d) the specified information for each monthly transmission – system peak load reported on Column (b).</p> <p>(4) Report on Columns (e) through (i) by month the system's transmission usage by classification. Amounts reported as Through and Out Service in Column (g) are to be excluded from those amounts reported in Columns (e) and (f).</p> <p>(5) Amounts reported in Column (j) for Total Usage is the sum of Columns (h) and (i).</p>										
<b>NAME OF SYSTEM:</b>										
Line No.	Month	Monthly Peak MW – Total	Day of Monthly Peak	Hour of Monthly Peak	Imports Into ISO/RTO	Exports From ISO/RTO	Through and Out Service	Network Service Usage	Point-to-Point Service Usage	Total Usage (MWh)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	January									
2	February									
3	March									
4	Total for Quarter									
5	April									
6	May									
7	June									
8	Total for Quarter									
9	July									
10	August									
11	September									
12	Total for Quarter									
13	October									
14	November									
15	December									
16	Total for Quarter									
17	Total Year to Date									

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[FR Doc. E7-6213 Filed 4-4-07; 8:45 am]

BILLING CODE 6717-01-C

**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404 and 416**

[Docket No. SSA 2006-0097]

RIN 0960-AG35

**Temporary Extension of Attorney Fee Payment System to Title XVI; 5-Year Demonstration Project Extending Fee Withholding and Payment Procedures to Eligible Non-Attorney Representatives; Definition of Past-Due Benefits; and Assessment for Fee Payment Services**

**AGENCY:** Social Security Administration.  
**ACTION:** Interim final rules with request for comments.

**SUMMARY:** We are issuing these interim final rules to reflect in our regulations three self-implementing statutory provisions in the Social Security Protection Act of 2004 (SSPA) and three

related self-implementing provisions in earlier legislation. These earlier provisions are in the Omnibus Budget Reconciliation Act of 1990 (OBRA), the Social Security Independence and Program Improvements Act of 1994 (SSIPIA), and the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA).

**DATES:** These rules are effective April 5, 2007. To be sure your comments are considered, we must receive them no later than June 4, 2007.

**ADDRESSES:** You may give us your comments by: Internet through the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal

eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**FOR FURTHER INFORMATION CONTACT:** Marg Handel, Supervisory Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 239 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-4639 or TTY (410) 966-5609. 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:**

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

**Background**

Sections 206(a) and 1631(d) of the Social Security Act (Act) direct the Commissioner of Social Security

(Commissioner) to determine the maximum fees representatives may charge claimants for services that they perform in claims before the Social Security Administration (SSA) under title II or title XVI of the Act. For claims under title II in which the claimant is found entitled to past-due benefits, section 206 of the Act further authorizes the Commissioner to pay attorneys' fees, approved by the Commissioner or by a Federal court, out of a portion of the past-due benefits in the case. Prior to enactment of the SSPA (Pub. L. 108-203), we were not authorized to withhold and pay fees approved for attorneys in title XVI cases or for non-attorney representatives in cases under either title of the Act.

#### **Direct Payment of Attorneys' Fees in Title XVI**

Section 302 of the SSPA amended section 1631(d)(2) of the Act to extend the attorney fee withholding and direct payment procedures to claims under title XVI of the Act. The amendments made by section 302 apply with respect to attorney fees that were first required to be paid from title XVI past-due benefits on or after February 28, 2005, and we began paying fees directly to attorneys in cases effectuated on or after that date. Section 302 includes a sunset provision. Under that provision, the amendments made by section 302 will not apply to claims for benefits with respect to which the claimant and the representative enter into the agreement for representation after February 28, 2010.

#### **Direct Payment of Fees to Eligible Non-Attorney Representatives**

Section 303 of the SSPA directs the Commissioner to carry out a 5-year nationwide demonstration project to determine the potential results of extending the fee withholding and direct payment procedures that apply to attorneys under titles II and XVI of the Act, to non-attorney representatives who meet certain minimum prerequisites specified in section 303 and any additional prerequisites that the Commissioner may prescribe. Under the prerequisites specified in section 303, individuals applying to participate in the demonstration project must have a bachelor's degree or equivalent education, possess liability insurance or equivalent insurance adequate to protect claimants in the event of malpractice by the representative, pass a criminal background check ensuring fitness to practice before SSA, pass an examination testing knowledge of the relevant provisions of the Act and the most recent developments in Agency

and court decisions, and demonstrate ongoing completion of qualified continuing education courses. In addition, the Commissioner has required that individuals applying to participate in the demonstration project show that they have sufficient prior experience representing claimants before SSA. More detailed information about these prerequisites may be found in the **Federal Register** notices published at the start of the demonstration project in 2005 (70 FR 2447, January 13, 2005; 70 FR 14490, March 22, 2005; and 70 FR 41250, July 18, 2005).

The 5-year demonstration project on direct payment of fees to eligible non-attorneys under section 303 of the SSPA commenced on February 28, 2005. We began making direct payment to non-attorneys under the demonstration project on July 28, 2005, the date on which we determined that the initial group of applicants had satisfied the prerequisites for participation in the project. The demonstration project established by SSPA section 303 applies to claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010. In these interim final rules, we are amending our regulations to reflect the fact that non-attorney representatives participating in the demonstration project may have their approved fees withheld from their clients' past-due benefits and paid directly to them.

#### **Definition of "Past-Due Benefits"**

The amount of "past-due benefits" is important in calculating the fees of representatives and in determining the maximum amount we can pay directly for representation. Since we last defined the term "past-due benefits" in our regulations, there have been several legislative enactments that affect the definition of past-due benefits. In section 5106 of the OBRA (Pub. L. 101-508), section 321(f) of the SSIPIA (Pub. L. 103-296), and section 302 of the SSPA, the Act was amended to exclude from past-due benefits any continued benefits paid pursuant to § 404.1597a of part 404, any interim benefits paid pursuant to section 223(h) of the Act, any continued benefits paid pursuant to § 416.996 of part 416, any continued benefits paid pursuant to § 416.1336(b) of part 416, and any interim benefits paid pursuant to section 1631(a)(8) of the Act; to specify how a reduction under section 1127 of the Act (for receipt of benefits for the same period under both title II and title XVI) affects the past-due benefit computation; and to address the effect of interim assistance

reimbursement payments. We are amending our regulations to reflect these statutory changes.

#### **Assessment on Direct Payment of Fees**

Section 406 of the TWWIIA (Pub. L. 106-170) amended section 206 of the Act by adding section 206(d), which imposed an assessment on attorneys for the services we provide in determining and paying fees directly to attorneys from the benefits due claimants under title II of the Act. When that provision took effect on February 1, 2000, the amount of the assessment was 6.3 percent of the direct payment amount, with a provision allowing the Commissioner to determine for future years the percentage (not to exceed 6.3 percent) necessary to achieve full recovery of the costs of determining and paying fees to attorneys. Effective September 1, 2004, section 301 of the SSPA revised section 206(d) to cap the assessment at the lesser of the amount calculated using the percentage rate determined by the Commissioner or \$75, and to provide for annual adjustment of the \$75 cap based on the cost-of-living computation in section 215(i)(2)(A)(ii) of the Act. Sections 302 and 303 of the SSPA extended this assessment to the direct payment of fees to attorneys under title XVI and to the direct payment of fees to non-attorney representatives participating in the demonstration project authorized by section 303.

#### **Explanation of Changes**

We are amending our regulations on representation in 20 CFR parts 404 and 416 to reflect the legislative changes to sections 206, 1127 and 1631(d) of the Act that were enacted under section 5106 of OBRA, section 321(f) of the SSIPIA, section 406 of the TWWIIA, and sections 301 and 302 of the SSPA. In addition, we are revising the regulations to reflect the provisions of section 303 of the SSPA. We are making only those substantive changes necessary to conform our regulations to these currently applicable statutory provisions. In these changes we are:

- Amending § 404.1703 to revise the definition of "past-due benefits" to explain that we determine past-due benefits before any applicable reduction for receipt of benefits for the same period under title XVI and that past-due benefits do not include continued payment of disability benefits during appeal or interim benefits in cases of delayed final decision.
- Adding to § 416.1503 the definition of "past-due benefits" for title XVI benefits to explain that when we determine the amount of past-due

benefits, we subtract the amount of any reduction under section 1127 for the concurrent receipt of benefits for the same period under both title II and title XVI, regardless of whether the actual reduction was applied to the title II benefits or to the title XVI benefits, and that past-due benefits do not include continued benefits or interim benefits.

- Adding new §§ 404.1717 and 416.1517 to reflect the demonstration project extending benefit withholding and direct fee payment to non-attorneys under title II and title XVI. These sections also define “eligible to participate in the direct payment demonstration project” and describe the claims to which the demonstration project applies.

- Amending § 404.1720 to revise paragraph (b)(4) to provide that we make direct fee payments from title II past-due benefits both to attorneys and to non-attorney representatives eligible to participate in the direct payment demonstration project, and that we assume no responsibility for the payment of any fee that we have authorized to a non-attorney if the representative is not eligible to participate in the demonstration project. We are also revising paragraph (c)(3) to provide that our notice of a fee determination will state whether we are responsible for paying the representative’s fee from past-due benefits.

- Amending § 416.1520 to add a new paragraph (b)(4) stating that we make direct payment of fees from past-due benefits under title XVI to attorneys and to non-attorneys eligible to participate in the direct payment demonstration project, and that we assume no responsibility for the payment of any fee that we have authorized to a non-attorney if the representative is not eligible to participate in the demonstration project. We are revising paragraph (c)(3) to state that our notice of fee determination will state whether we are responsible for paying the fee, rather than that we are not responsible for paying the fee. We are also revising paragraph (d)(3) to state that we assume no responsibility for fee payment based on a revised determination if the representative does not file the request for administrative review timely.

- Revising § 416.1528 to place the existing text in a newly designated paragraph (a) having the heading, “Representation of a party in court proceedings” and to add a new paragraph (b) that has the heading “Attorney fee allowed by a Federal court.” Paragraph (b) states that the court may allow a reasonable fee to an attorney as part of its favorable

judgment in a proceeding under title XVI of the Act and that we may pay the attorney the amount of the fee out of, but not in addition to, the amount of the past-due benefits payable to the claimant by reason of the court judgment.

- Amending § 404.1730 to insert a previously omitted “the” in paragraph (a), to add a cross-reference to the definition of “past-due benefits” in § 404.1703, and to reflect in paragraphs (b) and (c) the extension of the direct payment of fees from past-due benefits under title II to non-attorneys eligible to participate in the direct payment demonstration project. We are also adding a new paragraph (d) to reflect that we impose an assessment on the representative when we pay a fee directly to the representative; to explain how we calculate the assessment; and to state that the representative may not, directly or indirectly, request or otherwise obtain reimbursement of the amount of the assessment from the claimant.

- Adding new § 416.1530 to state that direct payment of fees under title XVI extends to attorneys for fees we authorize and for fees a Federal court allows, and extends to non-attorneys eligible to participate in the direct payment demonstration project for fees we authorize. This section also describes the maximum amount we will pay to the representative; shows that we impose an assessment on the representative when we pay a fee directly to the representative; explains how we calculate the assessment; and states that the representative may not, directly or indirectly, request or otherwise obtain reimbursement of the amount of the assessment from the claimant.

In addition to these substantive changes, we are revising §§ 404.1720(b)(4) and 404.1730(a), (b), and (c) to refer to the person claiming a right under the old-age, disability, dependents’, or survivors’ benefits program in the second person, and thus make the language in these sections consistent with the use of the second person throughout the regulations.

### Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5) and 1631(d)(1) of the Act, 42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such

procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these rules, we believe that, under 5 U.S.C. 553(b)(B), good cause exists for issuing these regulatory changes as interim final rules, without prior public comment. In these rules, we are merely revising our existing regulations on representation of parties to reflect statutory changes made by section 5106 of OBRA, section 321(f) of the SSIPIA, section 406 of the TWWIIA, and sections 301, 302 and 303 of the SSPA. Our intent is to conform our regulations to the changes enacted in those statutes, all of which are already in effect and all of which we have already implemented. We also have no discretion not to apply these statutory enactments. Therefore, we believe opportunity for prior public comment is unnecessary, and we are issuing these regulations as interim final rules. However, we recognize that the statutory provisions reflected in these rules are of considerable importance to those who are affected by them. We also are considering the possibility that some affected individuals may disagree with our interpretation of the numerous statutory provisions reflected in these interim final rules. Therefore, we are inviting public comment on the changes made by these interim final rules, and will consider any responsive comments received within 60 days of the publication of these interim final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are revising our title II and title XVI rules on representation of parties to reflect legislative provisions that are already in effect, and that we have been applying since they became effective. Without these changes, our rules will not reflect current law or our operating policy and procedures, and thus may mislead the public. Therefore, we find that it is in the public interest to make these rules effective upon publication.

### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these interim final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

*Regulatory Flexibility Act*

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Also, these final regulations simply reflect legislation already in effect. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These rules contain reporting requirements at §§ 404.1717,

404.1730(c)(1), 404.1730(c)(2)(i), 404.1730(c)(2)(ii), 416.1528(a), 416.1530(c)(1), 416.1530(c)(2)(i), and 416.1530(c)(2)(ii). Following is a chart describing the burdens posed by these regulation sections. Most of the Information Collections contained in this rule have been cleared under pre-existing OMB control numbers 0960-0699 (Non-Attorney Representative Demonstration Project), 0960-0737 (Continuing Education Information Collection under Non-Attorney Demonstration Project), and 0960-0104

(SSA-1560-U4, the Petition to Obtain Approval of a Fee for Representing a Claimant before the Social Security Administration). The 1-hour placeholder burden figures in the chart indicate that the burdens for these sections were already cleared by OMB in ICRs submitted prior to the publication of these interim final rules. For the sections not covered by existing Information Collections, we have provided specific burden information.

Regulation section	Description of public reporting requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.1717 .....	To establish eligibility to participate in the demonstration project.	.....	.....	.....	1 hour (placeholder burden).
404.1730(c)(1) .....	To receive direct payment of fees from beneficiaries' past-due benefits, their representatives must file a request for approval of a fee, or written notice of intent to file a request, at an SSA office within 60 days of the date a favorable determination notice is mailed.	.....	.....	.....	1 hour (placeholder burden).
404.1730(c)(2)(i) .....	If representatives do not file a request within 60 days, they will receive a notice telling them to do so within 20 days of the notice date.	841	10	30	4,205
404.1730(c)(2)(ii) .....	Representatives must send beneficiaries copies of time extension requests they made to SSA.	600	1	3	30
416.1517 .....	Same as for 404.1717, except this section applies to Title XVI beneficiaries.	.....	.....	.....	1 hour (placeholder burden).
416.1528(a) .....	If representatives have provided the beneficiary services relating to dealings with SSA, they must specify what portion of the fee they want to charge for those services; representatives must file the request for charging fees.	.....	.....	.....	1 hour (placeholder burden).
416.1530(c)(1) .....	Same as for 404.1730(c)(1), except this section applies to Title XVI beneficiaries.	1	1	1	1 hour (placeholder burden).
416.1530(c)(2)(i) .....	Same as for 404.1730(c)(2)(i), except this section applies to Title XVI beneficiaries.	561	10	30	2,805
416.1530(c)(2)(ii) .....	Same as for 404.1730(c)(2)(ii), except this section applies to Title XVI beneficiaries.	400	1	3	20
Totals .....	N/A .....	2,402	.....	.....	7,065

Information Collection Requests have been submitted to OMB for those information collections that require revisions as a result of this rule. While these rules will be effective upon publication, these burdens will not be effective until cleared by OMB. We will publish a notice in the **Federal Register** upon OMB approval of the information collection requirement(s).

Not all Information Collections will be revised as a result of this rule. Nevertheless, 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 on ways to minimize the burden on respondents,

including the use of automated collection techniques or other forms of information technology. Comments should be faxed or e-mailed to the OMB desk officer for SSA at the following fax number or e-mail address: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974, E-mail address: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

A comment is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer at 410-

965-0454 or e-mail at [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov). (Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

**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.

Dated: December 1, 2006.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending subpart R of part 404 and subpart O of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

**Subpart R—[Amended]**

- 1. Revise the authority citation for subpart R of part 404 to read as follows:

**Authority:** Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6); sec. 303, Pub. L. 108–203, 118 Stat. 493.

- 2. Amend § 404.1703 by revising the definition of “past-due benefits” to read as follows:

**§ 404.1703 Definitions.**

\* \* \* \* \*

*Past-due benefits* means the total amount of benefits under title II of the Act that has accumulated to all beneficiaries because of a favorable administrative or judicial determination or decision, up to but not including the month the determination or decision is made. For purposes of calculating fees for representation, we determine past-due benefits before any applicable reduction under section 1127 of the Act (for receipt of benefits for the same period under title XVI). Past-due benefits do not include:

- (1) Continued benefits paid pursuant to § 404.1597a of this part; or  
(2) Interim benefits paid pursuant to section 223(h) of the Act.

\* \* \* \* \*

- 3. Add § 404.1717 to read as follows:

**§ 404.1717 Demonstration project on direct payment of fees to non-attorneys.**

(a) Section 303 of the Social Security Protection Act of 2004 (SSPA), Public Law 108–203, requires the Commissioner of Social Security (Commissioner) to develop and implement a 5-year nationwide demonstration project that extends attorney fee withholding and direct payment procedures to any non-attorney representative who meets minimum prerequisites for participating in the

project specified in section 303 of the SSPA and any additional prerequisites prescribed by the Commissioner. The objective of the demonstration project is to determine the effect of extending to certain non-attorneys the fee withholding and direct payment procedures that apply to attorneys. A final report on the results of the demonstration project is to be completed and transmitted to Congress within 90 days of the project termination date, February 28, 2010.

(b) As used in this subpart, the term “eligible to participate in the direct payment demonstration project” refers to the status of a non-attorney who we have determined meets the prerequisites for participation in the demonstration project.

(c) The provisions of section 303 authorizing the direct payment of fees to non-attorneys and the withholding of title II benefits for that purpose apply in claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010.

- 4. Amend § 404.1720 by revising paragraphs (b)(4) and (c)(3) to read as follows:

**§ 404.1720 Fee for a representative's services.**

\* \* \* \* \*

(b) \* \* \*

(4) If your representative is an attorney, or a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 404.1717, and you are entitled to past-due benefits, as defined in § 404.1703, we will pay the authorized fee, or a part of the authorized fee, directly to the representative out of the past-due benefits, subject to the limitations described in § 404.1730(b)(1). If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized.

(c) \* \* \*

(3) Whether we are responsible for paying the fee from past-due benefits; and

\* \* \* \* \*

- 5. Revise § 404.1730 to read as follows:

**§ 404.1730 Payment of fees.**

(a) *Fees allowed by a Federal court.* We will pay a representative who is an attorney, out of your past-due benefits, as defined in § 404.1703, the amount of the fee allowed by a Federal court in a

proceeding under title II of the Act. The payment we make to the attorney is subject to the limitations described in paragraph (b)(1) of this section.

(b) *Fees we may authorize—(1) Attorneys and non-attorneys eligible to participate in the direct payment demonstration project.* 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 a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 404.1717, and as a result of the determination or decision you have past-due benefits, as defined in § 404.1703, we will pay the representative out of the past-due benefits, the smaller of the amounts in paragraph (b)(1)(i) or (ii) of this section, less the amount of the assessment described in paragraph (d) of this section.

(i) Twenty-five percent of the total of the past-due benefits; or

(ii) The amount of the fee that we set.

(2) *Non-attorneys not eligible to participate in the direct payment demonstration project.* If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized. We will not deduct the fee from your past-due benefits.

(c) *Time limit for filing request for approval of fee in order to obtain direct payment.* (1) In order to receive direct payment of a fee from your past-due benefits, a representative who is either an attorney or a non-attorney who is eligible to participate in the direct payment demonstration project should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices within 60 days of the date the notice of the favorable determination is mailed.

(2)(i) If no request is filed within 60 days of the date the notice of the favorable determination is mailed, we will mail a written notice to you and your representative at your last known addresses. The notice will inform you and the representative that unless the representative files, within 20 days from the date of the notice, a written request for approval of a fee under § 404.1725, or a written request for an extension of time, we will pay all the past-due benefits to you.

(ii) The representative must send you a copy of any request made to us for an extension of time. If the request is not filed within 20 days of the date of the notice, or by the last day of any extension we approved, we will pay all

past-due benefits to you. We must approve any fee the representative charges after that time, but the collection of any approved fee is a matter between you and the representative.

(d) *Assessment when we pay a fee directly to a representative.* (1) Whenever we pay a fee directly to a representative from past-due benefits, we impose an assessment on the representative.

(2) The amount of the assessment is equal to the lesser of:

(i) The product we obtain by multiplying the amount of the fee we are paying to the representative by the percentage rate the Commissioner of Social Security determines is necessary to achieve full recovery of the costs of determining and paying fees directly to representatives, but not in excess of 6.3 percent; and

(ii) The maximum assessment amount. The maximum assessment amount was initially set at \$75, but by law is adjusted annually to reflect the increase in the cost of living. (See §§ 404.270 through 404.277 for an explanation of how the cost-of-living adjustment is computed.) If the adjusted amount is not a multiple of \$1, we round down the amount to the next lower \$1, but the amount will not be less than \$75. We will announce any increase in the maximum assessment amount and explain how the increase was determined in the **Federal Register**.

(3) We collect the assessment by subtracting it from the amount of the fee to be paid to the representative. The representative who is subject to an assessment may not, directly or indirectly, request or otherwise obtain reimbursement of the assessment from you.

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

### Subpart O—[Amended]

■ 6. Revise the authority citation for subpart O of part 416 to read as follows:

**Authority:** Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a-6 and 1383(d)); sec. 303, Pub. L. 108-203, 118 Stat. 493.

■ 7. Amend § 416.1503 by adding a new definition, in alphabetical order, to read as follows:

#### § 416.1503 Definitions.

*Past-due benefits* means the total amount of payments under title XVI of the Act, the Supplemental Security Income (SSI) program, including any

Federally administered State payments, that has accumulated to you and your spouse because of a favorable administrative or judicial determination or decision, up to but not including the month the determination or decision is made. For purposes of calculating fees for representation, we first determine the SSI past-due benefits before any applicable reduction for reimbursement to a State (or political subdivision) for interim assistance reimbursement, and before any applicable reduction under section 1127 of the Act (for receipt of benefits for the same period under title II). We then reduce that figure by the amount of any reduction of title II or title XVI benefits that was required by section 1127. We do this whether the actual offset, as provided under section 1127, reduced the title II or title XVI benefits. Past-due benefits do not include:

(1) Continued benefits paid pursuant to § 416.996 of this part;

(2) Continued benefits paid pursuant to § 416.1336(b) of this part; or

(3) Interim benefits paid pursuant to section 1631(a)(8) of the Act.

\* \* \* \* \*

■ 8. Add § 416.1517 to read as follows:

#### § 416.1517 Demonstration project on direct payment of fees to non-attorneys.

(a) Section 303 of the Social Security Protection Act of 2004 (SSPA), Public Law 108-203, requires the Commissioner of Social Security (Commissioner) to develop and implement a 5-year nationwide demonstration project that extends attorney fee withholding and direct payment procedures to any non-attorney representative who meets minimum prerequisites for participating in the project specified in section 303 of the SSPA and any additional prerequisites prescribed by the Commissioner. The objective of this demonstration project is to determine the effect of extending to certain non-attorneys the fee withholding and direct payment procedures that apply to attorneys. A final report on the results of the demonstration project is to be completed and transmitted to Congress within 90 days of the project termination date, February 28, 2010.

(b) As used in this subpart, the term “eligible to participate in the direct payment demonstration project” refers to the status of a non-attorney who we have determined meets the prerequisites for participation in the demonstration project.

(c) The provisions of section 303 authorizing the direct payment of fees to non-attorneys and the withholding of title XVI benefits for that purpose apply

in claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010.

■ 9. Amend § 416.1520 by adding paragraph (b)(4) and revising paragraphs (c)(3) and (d)(3) to read as follows:

#### § 416.1520 Fee for a representative's services.

\* \* \* \* \*

(b) \* \* \*

(4) If your representative is an attorney, or a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 416.1517, and you are entitled to past-due benefits, as defined in § 416.1503, we will pay the authorized fee, or a part of the authorized fee, directly to the representative out of the past-due benefits, subject to the limitations described in § 416.1530(b)(1). If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized.

(c) \* \* \*

(3) Whether we are responsible for paying the fee from past-due benefits; and

\* \* \* \* \*

(d) \* \* \*

(3) *Payment of fees.* We assume no responsibility for the payment of a fee based on a revised determination if the request for administrative review was not filed on time.

■ 10. Revise § 416.1528 to read as follows:

#### § 416.1528 Proceedings before a State or Federal court.

(a) *Representation of a party in court proceedings.* We shall not consider any service the representative gave you in any proceeding before a State or Federal court to be services as a representative in dealings with us. However, if the representative also has given service to you in the same connection in any dealings with us, he or she must specify what, if any, portion of the fee he or she wants to charge is for services performed in dealings with us. If the representative charges any fee for those services, he or she must file the request and furnish all of the information required by § 416.1525.

(b) *Attorney fee allowed by a Federal court.* If a Federal court in any proceeding under title XVI of the Act makes a judgment in favor of the claimant who was represented before the court by an attorney, and the court, under section 1631(d)(2) of the Act,

allows to the attorney as part of its judgment a fee not in excess of 25 percent of the total of past-due benefits to which the claimant is eligible by reason of the judgment, we may pay the attorney the amount of the fee out of, but not in addition to, the amount of the past-due benefits payable. We will not pay directly any other fee your representative may request.

■ 11. Add § 416.1530 to read as follows:

**§ 416.1530 Payment of fees.**

(a) *Fees allowed by a Federal court.* Commencing February 28, 2005, we will pay a representative who is an attorney, out of your past-due benefits, as defined in § 416.1503, the amount of the fee allowed by a Federal court in a proceeding under title XVI of the Act. The payment we make to the attorney is subject to the limitations described in paragraph (b)(1) of this section.

(b) *Fees we may authorize*—(1) Attorneys and non-attorneys eligible to participate in the direct payment demonstration project. Except as provided in paragraphs (c) and (e) of this section, commencing February 28, 2005, if we make a determination or decision in your favor and you were represented by an attorney or a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 416.1517, and as a result of the determination or decision you have past-due benefits, as defined in § 416.1503, we will pay the representative out of the past-due benefits, the smallest of the amounts in paragraphs (b)(1)(i) through (iii) of this section, less the amount of the assessment described in paragraph (d) of this section.

(i) Twenty-five percent of the total of the past-due benefits, as determined before any payment to a State (or political subdivision) to reimburse the State (or political subdivision) for interim assistance furnished you, as described in § 416.525 of this part, and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127 of the Act;

(ii) The amount of past-due benefits remaining after we pay to a State (or political subdivision) an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished you, as described in § 416.525 of this part, and after any applicable reductions under section 1127 of the Act; or

(iii) The amount of the fee that we set.

(2) *Non-attorneys not eligible to participate in the direct payment demonstration project.* If the representative is a non-attorney who is not eligible to participate in the direct

payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized. We will not deduct the fee from your past-due benefits.

(c) *Time limit for filing request for approval of fee in order to obtain direct payment.* (1) In order to receive direct payment of a fee from your past-due benefits, a representative who is either an attorney or a non-attorney who is eligible to participate in the direct payment demonstration project should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices within 60 days of the date the notice of the favorable determination is mailed.

(2)(i) If no request is filed within 60 days of the date the notice of the favorable determination is mailed, we will mail a written notice to you and your representative at your last known addresses. The notice will inform you and the representative that unless the representative files, within 20 days from the date of the notice, a written request for approval of a fee under § 416.1525, or a written request for an extension of time, we will pay all the past-due benefits to you.

(ii) The representative must send you a copy of any request made to us for an extension of time. If the request is not filed within 20 days of the date of the notice, or by the last day of any extension we approved, we will pay to you all past-due benefits remaining after we reimburse the State for any interim assistance you received. We must approve any fee the representative charges after that time, but the collection of any approved fee is a matter between you and the representative.

(d) *Assessment when we pay a fee directly to a representative.* (1) Whenever we pay a fee directly to a representative from past-due benefits, we impose an assessment on the representative.

(2) The amount of the assessment is equal to the lesser of:

(i) The product we obtain by multiplying the amount of the fee we are paying to the representative by the percentage rate the Commissioner of Social Security determines is necessary to achieve full recovery of the costs of determining and paying fees directly to representatives, but not in excess of 6.3 percent; and

(ii) The maximum assessment amount. The maximum assessment amount was initially set at \$75, but by law is adjusted annually to reflect the increase in the cost of living. (See §§ 404.270 through 404.277 for an explanation of how the cost-of-living

adjustment is computed.) If the adjusted amount is not a multiple of \$1, we round down the amount to the next lower \$1, but the amount will not be less than \$75. We will announce any increase in the maximum assessment amount, and explain how that increase was determined in the **Federal Register**.

(3) We collect the assessment by subtracting it from the amount of the fee to be paid to the representative. The representative who is subject to an assessment may not, directly or indirectly, request or otherwise obtain reimbursement of the assessment from you.

(e) *Effective dates for extension of direct payment of fee to attorneys.* The provisions of this subpart authorizing the direct payment of fees to attorneys and the withholding of title XVI benefits for that purpose, apply in claims for benefits with respect to which the agreement for representation is entered into before March 1, 2010.

[FR Doc. E7-6383 Filed 4-4-07; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CCGD05-07-023]

RIN 1625-AA00

**Safety Zone: Willoughby Point Located on Langley Air Force Base, Back River, Hampton, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in support of the Langley Air Force Base Air Show event occurring on April 27, 28 and 29, 2007 on the Back River in the vicinity of Willoughby Point in Hampton, VA. This action is intended to restrict vessel traffic on Back River as necessary to protect mariners from the hazards associated with the air show.

**DATES:** This rule is effective from 2 p.m. on April 27, 2007 until 4:30 p.m. on April 29, 2007.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-07-023 and are available for inspection or copying at the Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Norfolk, VA 23510, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.