

rule were requested on or before September 23, 2008.

#### Extension of Comment Period

In response to the proposed rule published in the **Federal Register**, CBP has received correspondence from several parties requesting an extension of the comment period. A decision has been made to grant an extension of 30 days. Comments are now due on or before October 23, 2008.

Dated: September 2, 2008.

**Harold M. Singer,**

*Director, Regulations and Disclosure Law Division, Regulations and Rulings, Office of International Trade.*

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade and Tariff Policy), Office of Tax Policy, United States Treasury Department.*

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404, 408, 416, and 422

[Docket No. SSA-2007-0068]

RIN 0960-AG56

#### Revisions to Rules on Representation of Parties

**AGENCY:** Social Security Administration.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We are proposing several revisions to our rules on representation of parties. These proposed rules would recognize entities as representatives, define the concept of a principal representative, and authorize principal representatives to sign and file a claim for benefits on behalf of a claimant. These proposed rules would also mandate the use of Form SSA-1696 to appoint, revoke, or withdraw an appointment of a representative, and to waive a fee or direct payment of the fee. We propose to define the concept of a professional representative and require professional representatives to use our electronic services as they become available, including requiring professional representatives to submit certain requests for reconsideration or a hearing before an administrative law judge (ALJ) electronically. Finally, we propose to require representatives to keep paper copies of certain documents that we may require. We are proposing these revisions to reflect changes in representatives' business practices and to improve our efficiency by enhancing use of the Internet.

**DATES:** To make sure that your comments are considered, we must

receive them no later than November 7, 2008.

**ADDRESSES:** You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA-2007-0068 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at <http://www.regulations.gov>. (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the *Search Documents* section of the Web page, type "SSA-2007-0068", select "Go", and then click "Send a Comment or Submission." The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966-2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

**Caution:** All comments we receive from members of the public are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov>. Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

#### FOR FURTHER INFORMATION CONTACT:

Marg Handel, Supervisory Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-4639. 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>.

#### Explanation of Changes

##### Background

We may issue rules and regulations to administer the provisions of the Act. 42 U.S.C. 405(a), 902(a)(5), 810(a), and 1383(d)(1). Specifically, we may issue regulations to recognize agents or other persons, other than attorneys, as representatives of individuals claiming benefits under the programs we administer. 42 U.S.C. 406(a)(1) and 1383(d)(2). We may also issue regulations to administer the Special Benefits for Certain World War II Veterans program, 42 U.S.C. 1010, and we have extended the rules by which we appoint and discipline representatives for claims under that program except where to do so would be impractical or contrary to the Act. 20 CFR 408.1101. Pursuant to the cited authority, we propose to revise our current regulations on Representation of Parties found in part 404 subparts G, J, and R, part 408 subpart K, part 416 subparts C, N, and O, and part 422 subparts C and F.

##### Recognizing Entities as Representatives

Individuals who want to obtain benefits from us may want someone to help them through the application process. Frequently, such claimants formally appoint a representative to act on their behalf and help guide their claim. A representative may, on behalf of a claimant, obtain and submit information and evidence about the claim, make statements about facts and law, and make requests or give notices about the claim to us. In return, the representative may receive a fee for their services from a portion of the claimant's past-due benefits.

Currently, we recognize attorneys or other "persons" as representatives of individuals who claim benefits under title II or title XVI of the Act. 42 U.S.C. 406(a)(1) and 1383(d)(1). Although the term "person" is defined broadly in the Act to include partnerships, corporations, and associations, we have previously chosen to recognize only individuals as representatives of claimants. In the decades since we adopted that policy, the business practices of those who represent claimants have changed significantly. Many representatives now practice in group settings and provide their services collectively to claimants. In addition, many claimants may prefer to hire a

firm rather than a single individual within the firm. Recognizing entities as representatives will make it easier for individuals to obtain the representation they want. We believe it is appropriate for us to propose to amend our rules to more accurately reflect the changes in the way representatives conduct their businesses.

Under our current process, we require the filing of a new Form SSA-1696, Appointment of Representative, to appoint each individual associated with an entity who represents a claimant before us. By recognizing entities as representatives, we will give claimants better flexibility to pursue their claims by not requiring the filing of a new Form SSA-1696 for each entity employee who represents a claimant during the claims process. This proposal will allow entities who represent claimants to alternate employees to represent a claimant based on availability and workload. However, an entity will be bound by the signatures and actions of its employees during their association with the entity, regardless of whether that association ends at a later date. If the claimant appoints an entity as his or her representative, the entity employee who signs the Form SSA-1696 on behalf of the entity will be considered the contact person for the entity for the purpose of receiving notices and information from us until or unless the entity updates its contact person information.

The proposed change also will allow us to properly pay entities for the representational services they provide to claimants, if certain conditions are met. It also makes our reporting to the Internal Revenue Service (IRS) and the issuance of Form IRS 1099-MISC to entities more efficient. We propose to permit "direct payment" of fees to entities if the employees who perform representational services on their behalf meet our requirements for direct payment. 42 U.S.C. 406 and the Social Security Protection Act of 2004 (SSPA), Public Law 108-203, section 301.

We propose to include these rules in §§ 404.1703, 404.1710, 404.1712, 404.1715, 404.1720, 404.1730, 404.1732, 416.1503, 416.1510, 416.1512, 416.1515, 416.1520, 416.1530, and 416.1732. We also propose to make conforming changes to other sections.

#### *Multiple Representatives and the Role of a Principal Representative*

We propose new rules explaining our current policy that a claimant may appoint multiple representatives to represent him or her at the same time. A claimant may appoint one or more individuals or entities to work on his or

her claim at the same time. A principal representative is responsible for disseminating information and requests from us to a claimant and the claimant's other representatives, if any. It is our current practice to require a claimant to appoint a principal representative only if the claimant appoints more than one representative. We now propose to require that a claimant choose and appoint a principal representative. If a claimant appoints only one representative, that individual or entity is the principal representative.

If a principal representative's authority ends for any reason, and the claimant continues to be represented by only one appointed representative, we will consider that appointed representative to be the claimant's principal representative until the claimant files a new Form SSA-1696 with us designating another principal representative. If a principal representative's authority ends for any reason, and the claimant continues to be represented by multiple representatives, we will name one of the appointed representatives as the principal representative. The claimant may change the principal representative by filing a new Form SSA-1696.

We also propose to allow principal representatives to sign and file applications on behalf of claimants, provided the claimant has opportunity to review and verify the accuracy of the completed application. We expect this change to expedite the claims filing process, simplify the application process for some claimants, and afford the principal representative the opportunity to better serve the client. However, a claimant will have to expressly acknowledge on the Form SSA-1696 that he or she is responsible for the information provided to the principal representative for the application. We believe that this type of acknowledgement is necessary to ensure that the claimant remains responsible for the content of the application.

We will send to a claimant and his or her representatives notices relating to the appointment of a principal representative and other representatives, the revocation of the appointment of any representative, and the withdrawal of any representative. We will also send notices regarding the release of a claimant's past-due benefits to any representative who fails to file a request for approval of a fee.

Through these changes, we believe that we will better accommodate the needs of claimants and their representatives, that claimants' representatives will be better able to

serve their clients, and that we will process fee payments more efficiently.

We propose to include these rules in §§ 404.612, 404.1700, 404.1703, 404.1705, 404.1707, 404.1710, 404.1715, 408.1101, 416.315, 416.1500, 416.1503, 416.1505, 416.1507, 416.1510, and 416.1515.

#### *The Role of a Professional Representative*

We propose to introduce the concept of a professional representative and to distinguish it from a principal representative. A professional representative includes any attorney, any individual other than an attorney, or any entity that holds itself out to the public as providing representational services before us (see §§ 404.1735 and 416.1535), regardless of whether the representative charges or collects a fee for providing the representational services.

We also propose to require that professional representatives conduct business with us electronically at the times and in the manner that we prescribe. For example, we intend to require a professional representative to use electronic media that we prescribe, such as the Internet, to register with us and to file certain requests for reconsideration and hearings before an ALJ. We are continuing to improve access for claimants, representatives, and the general public to forms and information about our programs by automating more of our business processes. When we have completed the automation of a specific business process that we intend to require, such as the use of Form SSA-1696, Appointment of Representative, we will announce in the **Federal Register** that the process has been automated and will be required.

If a professional representative cannot access our system because the representative's system is not functioning, our system is not functioning, the electronic media is not available, or because the representative's system cannot communicate with our system, we will waive the requirement that the professional representative use the electronic media that we prescribe. If the error is related to the representative's system rather than our system, we will require some type of documentation explaining why the representative is requesting the waiver.

We are particularly interested in receiving public comment on our definition of "professional representative." While we believe that the proposed definition covers the vast majority of representatives who do

business with us, we are interested in receiving public comment on whether our proposed definition adequately includes all relevant organizations.

We propose to include these rules in §§ 404.910, 404.934, 404.1703, 404.1707, 404.1713, 416.1410, 416.1434, 416.1503, 416.1507, and 416.1513.

#### *Access Registration*

We propose to require professional representatives and their employees to complete an initial access registration with us through the use of electronic media that we prescribe. Representatives who are not classified as professional representatives and their employees will also be required to complete an initial access registration with us, but will be permitted to do so either electronically or by other means. Access registration requires representatives and their employees to supply us with certain personal, professional, and business affiliation information that we will use to authenticate and authorize representatives and their employees to do business with us. This initial registration will also require professional representatives and their employees to provide us with specific attestations to ensure that they know, understand, and will comply with our rules and regulations. Access registration is a one-time process, and it will allow us to process each claim more efficiently. However, representatives and their employees must update the access registration if their personal, professional, or business affiliation information changes. The authorization and authentication process will also assist us in safeguarding the personally identifiable information provided to us.

We propose to include these rules in §§ 404.1703, 404.1705, 404.1713, 416.1503, 416.1505, and 416.1513.

#### *Direct Payment Registration*

We pay representatives' fees out of a portion of the past-due benefits for claims under title II of the Act. Under provisions of the SSPA, we also are authorized to withhold and pay fees approved for attorneys in title XVI cases, and to withhold and pay fees approved for certain non-attorney representatives in cases under title II and title XVI of the Act.

On October 2, 2006, we published a notice in the **Federal Register** that advised both attorneys and eligible non-attorney representatives of additional requirements that a representative must meet in order for us to pay some or all of an approved fee directly to the representative from a claimant's past-

due benefits. 71 FR 58043. That notice explained the registration process that a representative must complete in order to receive direct fee payment in a specific claim. We now propose to pay all representative fees via electronic funds transfer. This proposal will allow us to make direct payment of the representative's fee more efficiently, to more accurately report payments to the IRS, and to issue IRS Form 1099-MISC more quickly.

To ensure that we only make direct payments for work done by attorneys and eligible non-attorneys, there are certain actions that must be taken before an entity may receive direct payment of fees. Any entity seeking direct payment of fees must maintain, and provide to us upon our request, a signed statement from each of the entity's attorneys and eligible non-attorneys who represent claimants before us. The statement must state that the attorney or eligible non-attorney is performing representational services on behalf of the entity. The statement must also assert that any fees should be paid directly to the entity and that the representatives receive any compensation directly from the entity. Any request for direct payment of fees made by an entity must include an attestation that the entity is in possession of this signed statement from each attorney or eligible non-attorney who has performed any representational services for the claim in question. Additionally, the entity must attest that all individuals who have performed representational services on the claim in question are individuals who qualify for direct payment under the Act or the SSPA. Such services include, but are not limited to, representing the claimant at any hearing or proceeding before the Agency or before a Federal court.

We also propose to modify our current rules to clarify that we may issue IRS Form 1099-MISC to both individuals and entities for payments over the annual aggregate of \$600. We will gather additional information during the registration process to simplify our compliance with the applicable Internal Revenue Service's regulation, 26 CFR 1.6045-5.

We propose to include these changes in §§ 404.1703, 404.1713, 404.1730, 416.1503, 416.1513, and 416.1530.

#### *New Requirements to Use Form SSA-1696 to Appoint or Revoke the Appointment of a Representative and to Waive a Fee, Direct Payment of a Fee, or Both*

We propose to require that a claimant use Form SSA-1696 to appoint or revoke the appointment of a representative. Similarly, we propose to

require that a representative use Form SSA-1696 when the representative withdraws from representing a claimant. Currently, when a claimant appoints a representative using Form SSA-1696, we require only non-attorney representatives to sign the Form SSA-1696. However, we are moving toward an electronic process that will require the "electronic signature" of professional representatives, including attorneys, on the Form SSA-1696. To make the paper process as consistent as possible with the electronic process we envision, we propose to require both the signature of the claimant and the signature of any representative, including an attorney representative, on the paper Form SSA-1696 for the appointment of a representative. Making this change now will permit a seamless transition to the electronic process in the future.

We also propose to require a representative to use the Form SSA-1696 to waive a fee for representing the claimant before us, to waive direct payment of the fee, or both. By standardizing the transaction for these situations to one commonly-used form, we will simplify the process for our claimants and their representatives, and we will be able to manage the appointment, fee authorization, and fee payment processes more efficiently. We also propose to clarify our policies about when a claimant's appointment of a representative begins and ends.

We propose to include these rules in §§ 404.1707, 404.1712, 404.1732, 416.1507, 416.1512, and 416.1532.

#### *Internet Appeals*

We propose to require professional representatives to submit certain requests for administrative appeal electronically at the times and in the manner that we prescribe, e.g., through the Internet. Claimants who are unrepresented or who are represented by individuals who are not classified as professional representatives may continue to file certain requests for reconsideration or an ALJ hearing by submitting either paper forms at one of our offices or using the electronic media we prescribe. We currently are making our Internet Appeals Web portal available for this purpose. That Web portal, which is now being voluntarily used by representatives to file requests for reconsideration and ALJ hearings, can be found at <https://secure.ssa.gov/apps6z/iAppeals/ap001.jsp>.

By requiring professional representatives to file certain requests for appeal with us electronically, we are following precedent set in the Federal court system. According to the Federal

judiciary's Case Management and Electronic Case Files System, as of February 2008, electronic filing systems are in use in 99% of Federal courts, over 31 million cases are maintained on these systems, and more than 320,000 users have filed documents over the Internet. Requiring professional representatives to file certain requests for reconsideration or an ALJ hearing via the Internet is a cost-effective measure that we expect will increase our efficiency and help reduce the disability determination backlog.

We do not expect this requirement to impose a burden on professional representatives. Representatives currently use several of our online services extensively, including the online Disability Report and the Electronic Records Express (ERE) system, which allows representatives to submit evidence to the electronic folder. We implemented the Internet Appeals software application in December 2007, and, to date, representatives have filed almost 100,000 appeals electronically. We may expand this electronic process to include appeals to the Appeals Council at a later time.

We propose to include these rules in §§ 404.901, 404.909, 404.910, 404.933, 404.934, 404.1740, 416.1401, 416.1409, 416.1410, 416.1433, 416.1434, and 416.1540.

#### *New Affirmative Duties for Representatives*

We propose to add a new affirmative duty for professional representatives and individuals working on their behalf to provide us with specific attestations to ensure they know, understand, and will comply with our rules and regulations. As indicated above, these attestations will be provided during the access registration process. We also propose to add a new affirmative duty for professional representatives, and for non-professional representatives who choose to file the Appointment of Representative form electronically. These representatives must keep, and provide to us upon request, paper copies of the Form SSA-1696 with the original signature of the claimant, the electronic signature of the representative, and the respective dates of the signing. Further, we will require entities to maintain, and provide to us on request, a signed statement from each attorney, eligible non-attorney, and employee. In the statement, they must aver that they are performing all representational services on behalf of the entity, that any fees should be paid directly to the entity, and that they will receive compensation directly from the entity.

We also propose to place an affirmative duty on professional representatives to file certain requests for reconsideration or an ALJ hearing using the electronic media that we prescribe. However, if a representative disregards or violates our rules or regulations, we will not penalize the claimant. We will not reject or delay a claimant's request for appeal or process it differently than a request for appeal submitted correctly.

Violation of these affirmative duties may subject the representative to sanctions under 20 CFR 404.1745 and 416.1545. We may ask representatives to provide us with forms, documents, copies of signed statements, and other information to confirm that representatives are complying with our rules. We expect that these changes will create safeguards against fraudulent activity.

Consistent with our proposal to recognize entities as representatives and our recognition that the business practices of those who represent claimants have changed significantly, we propose to clarify that an attorney or a non-attorney whom a claimant has not appointed as his representative but who works for or on behalf of the claimant's appointed representative and helps represent the claimant in his claim before us will also be subject to our rules of conduct and standards of responsibility and our sanctions procedures in 20 CFR 404.1740-404.1799 and 416.1540-416.1599.

We propose to add these rules in §§ 404.1703, 404.1740, 416.1503, and 416.1540.

#### *New Prohibited Actions for Representatives*

We propose to revise our list of prohibited actions to include three additional items: refusing to comply with any of our regulations, violating any section of the Act for which a criminal or civil monetary penalty is prescribed, and assisting another individual whom we have suspended or disqualified. Violation of these prohibited actions may subject the representative, or an attorney or a non-attorney whom a claimant has not appointed as his representative but who works for or on behalf of the claimant's appointed representative and helps represent the claimant in his claim before us, to sanctions under §§ 404.1745 and 416.1545. We propose to add these rules in §§ 404.1740 and 416.1540.

#### *Other Changes*

We propose several additional changes. First, we propose to clarify that

we may reject a claimant's appointment of a representative if the representative does not meet our requirements and that we will notify the claimant and the claimant's representative of our decision. §§ 404.903, 404.1705, 416.1403, and 416.1505. Our refusal to accept an appointment of a representative is not an administrative action subject to our administrative review process.

Second, we propose to add several new definitions, revise existing definitions, and to move existing definitions from §§ 404.1770 and 416.1570 to §§ 404.1703 and 416.1503. These definitions include the terms: "disqualify," "electronic media," "Federal agency," "Federal program," "fee petition," "person," "principal representative," "professional representative," and "representative." We also propose to add a new definition for "initial disability claim" to §§ 404.901 and 416.1401.

Third, we propose in several sections to change references from the Deputy Commissioner for Disability and Income Security Programs to the General Counsel and references from the Associate Commissioner for Hearings and Appeals to the Deputy Commissioner for Disability Adjudication and Review to reflect a recent reorganization and a new delegation of authority. Finally, we propose to make other minor conforming changes.

#### *Clarity of These Rules*

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

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

#### *When Will We Start To Use These Rules?*

We will not use these rules until we evaluate the public comments we

receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

**Regulatory Procedures**

*Executive Order 12866, as Amended*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Therefore, they were reviewed by OMB.

*Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities. Although these proposed rules would require small entities to provide us with certain information and to use available electronic services in certain instances, small entities would not be disadvantaged or limited in their ability to compete with larger competitors. Additionally, these proposed rules do not place significant costs on small entities. It is anticipated that small entities that take advantage of our electronic service delivery may find slight cost savings as a result of increased efficiency. Therefore, a regulatory flexibility analysis as

provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These regulations, which propose several revisions to our rules on Representation of Parties, contain reporting requirements in the regulation sections listed below. For some sections, we previously accounted for the public reporting burdens in the Information Collection Requests for the various forms the public uses to submit the information to SSA. Consequently, in those cases we inserted a 1-hour placeholder burden to these sections. For those sections whose public reporting burdens are not covered by an existing OMB-approved form, we provided burden estimates.

Regulation sections and description	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.612; 404.1710; 416.315; 416.1510—Principal representatives may sign and file applications with SSA on beneficiaries' behalf.	—	—	—	1 (placeholder).
404.909; 404.910; 404.1740; 416.1409; 416.1410; 416.1540—Disability claimants who wish to request a reconsideration must do so in writing within 60 days after notice of initial determination is received (unless SSA grants a time extension). Parties filing on their own behalf or using non-professional representatives may use SSA's Internet Web site to submit the request; professional representatives are required to do so.	—	—	—	1 (placeholder).
404.933; 404.934; 416.1433; 416.1434—Disability claimants who wish to request a hearing before an administrative law judge must do so in writing within 60 days after notice of the previous determination/decision is received (unless SSA grants a time extension). Parties filing on their own behalf or using non-professional representatives may use SSA's Internet Web site to submit the request; professional representatives are required to do so.	—	—	—	1 (placeholder).
404.1740; 416.1540—Professional representatives for disability claimants must always use an SSA-approved form on SSA's Internet site to request a reconsideration or a hearing before an administrative law judge.	—	—	—	1 (placeholder).
404.1705; 404.1707; 404.1712; 416.1505; 416.1507; 416.1512; 408.1101—Procedures for beneficiary to appoint, change, revoke, or reappoint a representative and for representatives to accept appointment as representative or withdraw as representative.	—	—	—	1 (placeholder).
404.1705; 404.1713; 404.1730; 416.1505; 416.1530; 416.1513—Representative must register with SSA to receive payment.	—	—	—	1 (placeholder).
404.1712; 404.1720; 404.1725; 404.1730; 416.1512; 416.1520; 416.1525; 416.1530—Procedures for representative to sign fee petition; and Representative must file a request with us to charge or receive a fee; and to obtain approval of a fee representative must file a written request with SSA.	—	—	—	1 (placeholder).
404.1715; 416.1515—Principal representatives are responsible for informing other representatives of the beneficiary about any information SSA sent to the principal representative.	56,000	5	2	9,333.
404.1728; 416.1528—If representatives provide services to beneficiaries in connection with a hearing/court proceeding before SSA and wants to charge for those services, they must file a request and provide necessary documentation.	—	—	—	1 (placeholder).
404.1732; 415,1532—Representatives may waive the right to charge and collect a fee, direct payment, or both.	—	—	—	1 (placeholder).
404.1740; 416.1540—Procedures requiring representatives to maintain hard copy of certain forms with signatures and dates of signing.	—	—	—	1 (placeholder).
404.1755; 416.1555—If SSA files charges against a representative, the representative may contest these charges.	(1)	—	—	—
404.1780; 416.1580—If a party files a brief or other written statement with the Appeals Council, the party should send a copy to the opposite party and certify that they did so.	(1)	—	—	—
404.1799; 416.1599—Representatives who were suspended or disqualified should submit any evidence they want the Appeals Council to consider along with their request to be reinstated as a representative.	(1)	—	—	—

Regulation sections and description	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
422.515—When SSA references “forms” for withdrawal, reconsideration, other appeals, and appointment of representatives, this refers to traditional printed forms, computer screens completed by SSA employees, or electronically submitted forms.	—	—	—	1 (placeholder).

<sup>1</sup> Less than 10 respondents.

SSA submitted an Information Collection Request to OMB for clearance. 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. 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](mailto:OIRA_Submission@omb.eop.gov)

Social Security Administration, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, E-mail address: [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov).

You can submit comments on the paperwork burdens associated with this rule for up to 60 days after publication of this notice; however, they will be most useful if you send them to SSA within 30 days of publication. This does not affect the deadline for the public to comment to SSA on the proposed regulations. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Office using any of the above contact methods. We prefer to receive comments by e-mail or fax.

(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; 96.006, Supplemental Security Income; and 96.020, Special Benefits for Certain World War II Veterans)

**List of Subjects**

*20 CFR Part 404*

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

*20 CFR Part 408*

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social

Security, Supplemental Security Income (SSI), Veterans.

*20 CFR Part 416*

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

*20 CFR Part 422*

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: August 27, 2008.

**Michael J. Astrue,**  
*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend 20 CFR parts 404, 408, 416, and 422 as set forth below:

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

**Subpart G—[Amended]**

1. The authority citation for subpart G of part 404 continues to read as follows:

**Authority:** Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

2. Amend § 404.612 by adding paragraph (h) to read as follows:

**§ 404.612 Who may sign an application.**

\* \* \* \* \*

(h) Your principal representative (see §§ 404.1705 and 404.1707) may sign and file your application with us. If a principal representative signs an application on your behalf, you are responsible for the accuracy of the information you provide.

**Subpart J—[Amended]**

3. The authority citation for subpart J of Part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97-455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98-460, 98 Stat. 1802 (42

U.S.C. 421 note); sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

4. Amend § 404.901 by adding a definition in alphabetical order to read as follows:

**§ 404.901 Definitions.**

\* \* \* \* \*

*Initial disability claim* means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this subpart, the term “initial disability claim” does not include a continuing disability review or an age-18 redetermination.

\* \* \* \* \*

5. Amend § 404.903 by revising paragraph (g) to read as follows:

**§ 404.903 Administrative actions that are not initial determinations.**

\* \* \* \* \*

(g) Refusing to recognize, disqualifying, or suspending a person, as defined in § 404.1703, from acting as your representative in a proceeding before us (see §§ 404.1705 and 404.1745);

\* \* \* \* \*

6. Amend § 404.909 by revising the section heading and paragraphs (a) introductory text and (a)(2), and by removing the heading of paragraph (b), to read as follows:

**§ 404.909 How to request reconsideration in claims other than those that involve a denial of an initial disability claim based on medical factors.**

(a) We will reconsider an initial determination, other than one that involves a denial of your initial disability claim based on medical factors (see § 404.910), if you or any other party to the reconsideration files a written request—

\* \* \* \* \*

(2) At one of our offices, the Veterans Administration Regional Office in the Philippines, or an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry,

or at least five years of railroad service accruing after December 31, 1995.

\* \* \* \* \*

7. Add a new § 404.910 to read as follows:

**§ 404.910 How to request reconsideration in an initial disability claim that is denied based on medical factors.**

(a) If you file an initial disability claim, we will reconsider an initial determination that denies your claim based on medical factors if you or any other party to the reconsideration files a written request within 60 days after the date you receive notice of the initial determination and you make your request in accordance with paragraphs (b) or (c) (or within the extended time period if we extend the time as provided in paragraph (d)) of this section.

(b) If you have not appointed a representative, or if your representative is not a professional representative, as defined in § 404.1703, you may file your written request for reconsideration either through the electronic media we prescribe, at one of our offices, at the Veterans Administration Regional Office in the Philippines, or at an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry, or at least five years of railroad service accruing after December 31, 1995.

(c) If your representative is a professional representative, as defined in § 404.1703, your professional representative must file your written request for reconsideration with us through the electronic media that we prescribe, unless we waive this requirement.

(d) If you want a reconsideration of the initial determination that denies your initial disability claim based on medical factors, but do not request one in time, you may ask us for more time to request a reconsideration. Your request for an extension of time must be in writing and must give the reasons why the request for reconsideration was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 404.911. You must file the request for an extension of time according to the procedures in paragraphs (b) or (c) of this section.

8. Amend § 404.933 by revising the section heading and paragraphs (a) introductory text and (b)(2) to read as follows:

**§ 404.933 How to request a hearing before an administrative law judge in claims other than those that involve a denial of an initial disability claim based on medical factors.**

(a) *Written request.* You may request a hearing on your claim, other than one that involves a denial of your initial disability claim based on medical factors (see § 404.934), by filing a written request. You should include in your request—

\* \* \* \* \*

(b) \* \* \*

(2) At one of our offices, at the Veterans Administration Regional Office in the Philippines, or at an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry, or at least five years of railroad service accruing after December 31, 1995.

\* \* \* \* \*

9. Add a new § 404.934 to read as follows:

**§ 404.934 How to request a hearing before an administrative law judge in an initial disability claim that is denied based on medical factors.**

(a) If we deny your reconsidered initial disability claim based on medical factors, you may request a hearing by filing a written request. You should include in your request—

(1) The name and social security number of the wage earner;

(2) The reasons you disagree with the previous determination or decision;

(3) A statement of additional evidence to be submitted and the date you will submit it; and

(4) The name and address of any designated representative.

(b) Your request for a hearing must be filed within 60 days after the date you receive notice of the previous determination or decision (or within the extended time period if we extend the time as provided in paragraph (e) of this section).

(c) If you have not appointed a representative, or if your representative is not a professional representative, as defined in § 404.1703, you may file your written request for a hearing either through the electronic media we prescribe, at one of our offices, at the Veterans Administration Regional Office in the Philippines, or at an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry, or at least five years of railroad service accruing after December 31, 1995.

(d) If your representative is a professional representative, as defined in § 404.1703, your professional representative must file your written request for a hearing with us through

the electronic media that we prescribe, unless we waive this requirement.

(e) If you have a right to a hearing with respect to a determination or decision that denies your initial disability claim based on medical factors, but you do not request one in time, you may ask for more time to make your request. The request for an extension of time must be in writing and it must give the reasons why the request for a hearing was not filed within the stated time period. If you show that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 404.911. You must file the request for an extension of time according to the procedures in paragraphs (b) or (c) of this section.

**Subpart R—[Amended]**

10. The authority citation for subpart R of part 404 continues 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.

11. Amend § 404.1700 by revising the introductory text and paragraph (a) to read as follows:

**§ 404.1700 Introduction.**

You may appoint one or more individuals or entities to represent you in any of your dealings with us. This subpart explains, among other things—

(a) Who may be your representative and what your representative's qualifications must be;

\* \* \* \* \*

12. Revise § 404.1703 to read as follows:

**§ 404.1703 Definitions.**

As used in this subpart—

*Access registration* means supplying us with personal information that we use to identify you, your representative, or an individual working on behalf of your representative, to authenticate and authorize you, your representative, or an individual working on behalf of your representative to do business with us.

*Direct payment registration* means supplying to us personal, financial institution, and business affiliation information that we use to authorize a representative under certain circumstances to receive direct payment of representative fees via electronic funds transfer.

*Disqualify* refers to an action that prohibits a person from participating in or appearing before a Federal agency or Federal program, regardless of how long

the prohibition lasts or the specific terminology used.

*Electronic media* means the electronic media that we prescribe for providing us information, registering with us, and filing with us certain applications, forms, and other documents.

*Entity* means any business, firm, or other association, including but not limited to partnerships, corporations, for-profit organizations, and not-for-profit organizations.

*Federal agency* refers to any authority of the Executive branch of the Government of the United States.

*Federal program* refers to any program established by an Act of Congress or administered in whole or in part by a Federal agency.

*Fee petition* means a written statement signed by the claimant's representative requesting the fee the representative wants to charge and collect for services the representative provided in pursuing the claimant's benefit rights in proceedings before us.

*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; or
- (2) Interim benefits paid pursuant to section 223(h) of the Act.

*Person* means an individual or an entity.

*Principal representative* means an attorney who meets all of the requirements of § 404.1705(a), an individual other than an attorney who meets all of the requirements of § 404.1705(b), or an entity that meets all of the requirements under § 404.1705(b), who has been appointed to represent you in dealings with us and who is responsible for disseminating information and requests from us to you and your other representatives, if any.

*Professional representative* means any attorney, any individual other than an attorney, or any entity that holds itself out to the public as providing representational services (see § 404.1735) before us, regardless of whether the representative charges or collects a fee for providing the representational services.

*Representative* means an attorney who meets all of the requirements of

§ 404.1705(a), an individual other than an attorney who meets all of the requirements of § 404.1705(b), or an entity that meets all of the requirements of § 404.1705(b), whom you appoint to represent you in dealings with us. For purposes of §§ 404.1740 through 404.1799, the term *representative* also includes an attorney or a non-attorney whom you have not appointed as your representative under the previous sentence but who works for or on behalf of an appointed representative and helps represent you in your claim before us.

*We, our(s), or us* refers to the Social Security Administration.

*You or your(s)* refers to any individual claiming a right under the old-age, disability, dependents', or survivors' benefits program.

13. Amend § 404.1705 by removing the heading for paragraphs (a) and (b), revising paragraph (b) introductory text, and adding paragraphs (c) through (g) to read as follows:

**§ 404.1705 Who may be your representative.**

\* \* \* \* \*

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person—

\* \* \* \* \*

(c) We may refuse to recognize your appointed representative if the representative does not meet our requirements. We will notify you and your appointed representative if we do not recognize your appointed representative.

(d) You may appoint more than one representative to represent you at the same time.

(e) You must have a principal representative. When you appoint only one representative, that representative is your principal representative. When you appoint more than one representative you must select one of your appointed representatives as your principal representative. Your principal representative is responsible for disseminating information and requests from us to you and your other representatives, if any, and for providing us information from you and about your claim. You may have only one principal representative at a time.

(f) If at any point you are represented by more than one representative and you have not appointed or do not have a principal representative, we will name one of your appointed representatives as your principal representative. You may appoint a different principal representative than the one we name by filing the appropriate form.

(g) Each of your representatives, as well as individuals working on their behalf, must complete access registration with us in the manner we prescribe.

14. Revise § 404.1707 to read as follows:

**§ 404.1707 How you appoint and revoke the appointment of a representative.**

(a) You must use the version of the form we prescribe, electronic or paper, to appoint or revoke the appointment of a representative.

(1) If your representative is not a professional representative, and your representative does not want to deal with us through the electronic media we prescribe, we will recognize your appointment of a representative if—

- (i) Both you and your representative sign the paper form we prescribe;
- (ii) You choose a principal representative on the form we prescribe at the time of the appointment; and

(iii) You or your representative files the signed form with us at one of our offices if you have initially filed a claim or have requested reconsideration; with the hearing office if you have requested a hearing; or with the Appeals Council if you have requested a review of the administrative law judge's decision.

(2) If your representative is a professional representative, or if your representative is not a professional representative but wants to do business with us through the electronic media we prescribe, we will recognize your appointment of a representative if—

- (i) Your representative electronically signs the form we prescribe, prints the electronically signed form, and you sign the printed copy of the form;

(ii) You choose a principal representative on the form we prescribe at the time of the appointment; and

(iii) Your representative files the electronic form in the manner we prescribe.

(3) If we do not make the electronic form available or we prescribe that the electronic form is not required, then we will recognize your appointment of a professional representative according to the procedures in paragraph (a)(1) of this section.

(b) Each time you change your principal representative, you must file a new version of the form we prescribe.

(c) If at any point you are represented by more than one representative and you have not appointed or do not have a principal representative, we will name one of your appointed representatives as your principal representative. You may appoint a different principal representative than the one we name by filing the appropriate form.



(d) You must file the form we prescribe with us to revoke the appointment of a representative. The date of the revocation is the date on which you file the form with us. We will notify you and your representative that you revoked your representative's appointment.

15. Amend § 404.1710 by revising paragraphs (a) introductory text and (b) and adding paragraph (c) to read as follows:

**§ 404.1710 Authority of a representative.**

(a) Your representative may, on your behalf—

\* \* \* \* \*

(b) Your principal representative may also sign and file an application on your behalf for rights or benefits under title II of the Act, as described in § 404.612(h).

(c) If you appoint an entity as your representative, any document related to the claim that is signed by a registered employee of the entity is binding on that entity, even if the employee's association with the entity ends.

16. Add a new § 404.1712 to read as follows:

**§ 404.1712 When the appointment of your representative begins and ends.**

(a) The appointment of your representative begins on the date that you and your representative sign the form we prescribe appointing your representative as described in § 404.1707. However, we will not recognize your appointment of a representative or deal with your representative until you or your representative file(s) the signed form with us.

(b) If your appointed representative is an individual, the individual's authority continues until the earliest of the following actions occur—

(1) You file the prescribed form with us revoking the appointment of your representative;

(2) Your representative files the prescribed form with us withdrawing as your representative;

(3) We have made a final determination or decision on your claim and the claims of any auxiliary beneficiary, the period in which you or your representative could appeal our determination or decision has ended, and you or your representative, or the auxiliary beneficiary, if any, did not file an appeal before the end of that period;

(4) Your representative files a fee petition requesting our authorization to charge and collect a fee (see §§ 404.1720 and 404.1725);

(5) We have closed out any application that was started by you or

on your behalf but was not pursued within the time period we prescribe;

(6) We disqualify or suspend your representative; or

(7) Your representative dies.

(c) If your appointed representative is an entity, the entity's authority continues until the earliest of the following actions occur—

(1) You file the prescribed form with us revoking the appointment of your representative;

(2) Your representative files the prescribed form with us withdrawing as your representative.

(3) We have made a final determination or decision on your claim and the claims of any auxiliary beneficiary, the period in which you or your representative could appeal our determination or decision has ended, and you or your representative, or the auxiliary beneficiary, if any, did not file an appeal before the end of that period;

(4) Your representative files a fee petition requesting our authorization to charge and collect a fee (see §§ 404.1720 and 404.1725);

(5) We have closed out any application that was started by you or on your behalf but was not pursued within the time period we prescribe;

(6) We disqualify or suspend your representative;

(7) The entity goes out of business; or

(8) The entity changes ownership or changes the services it provides, such that it no longer represents claimants before us.

(d) You may reappoint a representative by properly filing a new prescribed form with us in accordance with §§ 404.1705 and 404.1707.

17. Add a new § 404.1713 to read as follows:

**§ 404.1713 Professional representatives.**

(a) Professional representatives must conduct business with us electronically at the times and in the manner that we prescribe.

(b) Professional representatives, and individuals working on behalf of professional representatives on claims before us, must make certain attestations we require to ensure that each individual knows, understands, and will comply with our rules and regulations. Each of these individuals will make these attestations one time during the access registration process.

18. Revise § 404.1715 to read as follows:

**§ 404.1715 Notice or request to a representative.**

(a) We will send to you, your principal representative, and your other representatives, if any, all notices

relating to the appointment of any of your representatives and the revocation or withdrawal of an appointment of any of your representatives. Notices sent in accordance with § 404.1730(c)(2)(i) will be sent to any representative who has not filed a written request for a fee in accordance with § 404.1730(c)(1).

(b) We will send only to your principal representative—

(1) Notices and copies of any administrative action, determination, or decision in your claim; and

(2) Requests for information or evidence in your claim.

(c) If your principal representative is an entity, we will send all notices, copies of any administrative action, determination, or decision in your claim, and requests for information to the individual who signed the appointment of representative form on behalf of the entity, until or unless the entity informs us of a different contact within the entity for this purpose.

(d) Your principal representative is responsible for informing other appointed representatives, if any, about any notices, administrative actions, determinations, decisions, or requests for information or evidence that we send to the principal representative. We will not send copies of notices, any administrative actions, determinations, decisions, or requests for information or evidence to any representative, except your principal representative.

(e) Any notice or request we send to your principal representative will have the same force and effect as if we sent it directly to you.

19. Amend § 404.1720 by revising paragraphs (a), (b)(1), (b)(3), (b)(4), (c) introductory text, (c)(3), the first two sentences of paragraph (d)(1), and the first sentence of paragraph (d)(2)(i) to read as follows:

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

(a) *General.* A representative may charge and receive a fee for providing you with services as a representative as provided in paragraph (b) of this section, or as provided in section 206(a)(2) of the Act.

(b) *Charging and receiving a fee under the fee petition process.* (1) A representative must file a written fee petition with us before the representative may charge or receive a fee for providing you with services.

\* \* \* \* \*

(3) A representative must not charge or receive any fee unless we have approved it, and a representative must not charge or receive any fee that is more than the amount we approve.

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

(c) *Notice of determination on the fee petition.* We will mail to both you and your representative at your last known address a written notice of what we decide about the fee petition. We will state in the notice—

\* \* \* \* \*

(3) That we are not responsible for paying the fee, except when we may pay an attorney, a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 404.1717, or an entity that meets the requirements in § 404.1730(f), from past-due benefits; and

\* \* \* \* \*

(d) *Review of fee petition determination—(1) Request filed on time.* We will review the decision we made about a fee petition if either you or your representative files a written request for the review through the electronic media we prescribe or at one of our offices within 30 days after the date of the notice of the fee determination. Either you or your representative, whoever requests the review, must mail a copy of the request to the other person. \* \* \*

(2) *Request not filed on time.* (i) If you or your representative requests a review of the decision we made about a fee, but does so more than 30 days after the date of the notice of the fee determination, whoever makes the request must state in writing why it was not filed within the 30-day period. \* \* \*

\* \* \* \* \*

20. Amend § 404.1725 by revising the section heading, paragraphs (a) introductory text, (a)(2) through (a)(6), the heading for paragraph (b), and paragraph (b)(1)(vii) to read as follows:

**§ 404.1725 Request for approval of a fee petition.**

(a) *Filing a written fee petition.* Unless your representative's fee is approved pursuant to section 206(a)(2) of the Act, in order for your representative to

obtain approval of a fee for services your representative performed in dealings with us, your representative must file a written fee petition through the electronic media we prescribe or at one of our offices. This should be done after the proceedings in which your representative represented you are completed. The request must contain—

(2) A list of the services your representative provided and the amount of time your representative spent on each type of service;

(3) The amount of the fee your representative wants to charge for the services;

(4) The amount of fee your representative wants to request or charge for representing you in the same matter before any State or Federal court;

(5) The amount of and a list of any expenses your representative incurred for which your representative has been paid or expects to be paid;

(6) A description of the special qualifications which enabled your representative, if not an attorney, to give valuable help in connection with your claim; and \* \* \*

(b) *Evaluating a request for approval of a fee petition.*

(1) \* \* \*

(vii) The amount of fee the representative requests for the representative's services, including any amount authorized or requested before, but not including the amount of any expenses the representative incurred.

\* \* \* \* \*

21. Amend § 404.1728 by revising paragraph (a) to read as follows:

**§ 404.1728 Proceedings before a State or Federal court.**

(a) *Representation of a party in court proceedings in fee petitions.* We will 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, the representative must specify what, if any, portion of the fee the representative wants to charge is for services performed in dealings with us. If the representative charges any fee for those services, the representative must file the request and furnish all of the information required by § 404.1725.

\* \* \* \* \*

22. Revise § 404.1730 to read as follows:

**§ 404.1730 Payment of fees.**

(a) *Fees allowed by a Federal court in fee petitions.* We will pay a

representative who is an attorney out of your past-due benefits the amount of the fee allowed by a Federal court in a proceeding under title II of the Act. This payment is subject to the limitations described in paragraph (b)(1) of this section.

(b) *Fees we may authorize for payment in fee petitions—(1) Attorneys, eligible non-attorneys, and eligible entities.* Except as provided in paragraphs (c) and (e) of this section, if we make a determination or decision in your favor and you were represented by an attorney, a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 404.1717, or an entity that meets the requirements in paragraph (f) of this section, and as a result of the determination or decision you have past-due benefits, we will pay the representative out of the past-due benefits, the smallest of the amounts in paragraphs (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) *Persons not eligible for direct payment.* If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project or an entity that is not eligible for direct payment of the fee, 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 petition to obtain direct payment.* (1) To receive direct payment of a fee from your past-due benefits, a representative who is an attorney, a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 404.1717, or an entity that meets the requirements in paragraph (f) of this section should file a request for approval of a fee or a written notice of the intent to file a request within 60 days of the date we mail the notice of the favorable determination or decision. The representative should file the request or written notice through the electronic media we prescribe or at one of our offices. Your representative must send you a copy of any request for approval of a fee, any written notice of the intent to file a request for approval of a fee, or any request for an extension of time filed with us.

(2)(i) If no request is filed within 60 days of the date we mail the notice of the favorable determination or decision, 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 showing good cause (see § 404.911), we will pay all the past-due benefits to you.

(ii) Your 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 we send under paragraph (c)(2)(i) of this section, or by the last day of any extension we approved, we will pay all past-due benefits to you. We must approve any fee your representative charges after that time, but the collection of any approved fee is a matter between you and your 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 404.278 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 in the **Federal Register** any increase in the maximum assessment amount and explain how the increase was determined.

(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) *Direct payment registration.* (1) To receive direct payment, the representative must first complete direct payment registration with us in the form and manner that we prescribe.

(2) We will only make direct payment of fees via electronic funds transfer.

(f) *Direct payment to entities.* We will only make direct payment to an entity that provides the following attestations in its request for direct payment of fees:

(1) The entity must attest that it is in possession of a signed statement from each attorney or non-attorney who has performed any representational services for the claim in question that includes the following:

(i) The attorney or non-attorney has performed all representational services on behalf of the entity,

(ii) Any fees paid pursuant to the services the attorney or non-attorney have provided should be paid directly to the entity, and

(iii) The attorney or non-attorney representative receives compensation for the services provided directly from the entity.

(2) The entity must attest that all individuals who have provided representational services on the claim in question are individuals who qualify for direct payment under the Act or the direct payment demonstration project, as defined in § 404.1717.

23. Add a new § 404.1732 to read as follows:

**§ 404.1732 Waiver of fee or direct payment, or both.**

(a) Your representative may choose to waive the right to charge and receive a fee. An otherwise eligible representative who wishes to charge and receive a fee may waive the right to direct payment. A representative who waives the right to direct payment does not automatically waive the right to charge and receive a fee.

(b) Your representative must file a form we prescribe to waive direct payment of the fee.

(c) A waiver of the right to charge and receive a fee or of direct payment, or both, will apply to fees approved by a Federal court, unless it is otherwise specifically noted on the form completed in accordance with paragraph (b) of this section.

(d) If you have appointed an entity as your representative, any registered employee of the entity may sign the form completed in accordance with paragraph (b) of this section to waive the fee or direct payment, or both, on behalf of the entity.

24. Amend § 404.1740 by revising the first sentence of paragraph (a)(1), paragraph (b) introductory text, paragraph (b)(3) introductory text, the third sentence of paragraph (b)(3)(i), and the second sentence of paragraph (b)(3)(ii), adding paragraphs (b)(3)(iii) and (b)(4), revising paragraphs (c)

introductory text, (c)(4), (c)(6), and (c)(7)(iii), and adding paragraphs (c)(8) through (c)(13) to read as follows:

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

(a) \* \* \* (1) All persons acting on behalf of a party seeking a statutory right or benefit must, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party.  
\* \* \*

(b) *Affirmative duties.* A representative must, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 404.1512 in disability and blindness claims):

\* \* \* \* \*

(3) Conduct the representative's dealings in a manner that furthers the efficient, fair, and orderly conduct of the administrative decision-making process, including duties to:

(i) \* \* \* This includes knowing the significant issue(s) in a claim and having a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations and the Rulings;

(ii) \* \* \* This includes providing prompt and responsive answers to requests from the Agency for information pertinent to processing of the claim; and

(iii) Maintain a paper copy of the form described in § 404.1707(a) that reflects the representative's and the claimant's signatures and respective signature dates appointing the representative, and maintain copies of the signed attestations described in § 404.1730(f), and provide paper copies to us on request.

(4) If the representative is a professional representative, conduct business with us electronically at the times and in the manner that we prescribe when submitting any written request for reconsideration or a hearing before an administrative law judge on an initial disability claim that was based on medical factors.

(c) *Prohibited actions.* A representative must not:

\* \* \* \* \*

(4) Through the representative's own actions or omissions, unreasonably delay or cause to be delayed, without good cause (see § 404.911(b)), the processing of a claim at any stage of the administrative decision-making process;

\* \* \* \* \*

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination or other administrative action by offering or granting a loan,

gift, entertainment or anything of value to a presiding official, Agency employee or witness who is or may reasonably be expected to be involved in the administrative decisionmaking process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence;

(7) \* \* \*

(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee which results in a disruption of the orderly presentation and reception of evidence;

(8) Violate any section of the Social Security Act for which a criminal or civil monetary penalty is prescribed;

(9) Refuse to comply with any of our rules or regulations;

(10) Suggest, assist, or direct another person to violate our rules or regulations;

(11) Advise any claimant or beneficiary not to comply with any of our rules and regulations;

(12) Assist another person whom we have suspended or disqualified; or

(13) Fail to comply with our decision regarding sanctions.

25. Amend § 404.1750 by revising paragraphs (a) and (d) to read as follows:

**§ 404.1750 Notice of charges against a representative.**

(a) The General Counsel (or other official the Commissioner may designate), or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

\* \* \* \* \*

(d) The General Counsel (or other official the Commissioner may designate), or his or her designee, may extend the 30-day period for good cause in accordance with § 404.911.

\* \* \* \* \*

26. Revise § 404.1755 to read as follows:

**§ 404.1755 Withdrawing charges against a representative.**

The General Counsel (or other official the Commissioner may designate), or his or her designee, may withdraw charges against a representative. We will do this if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative in dealings with us.

When we consider withdrawing charges brought under § 404.1745(d) or (e) based on the representative's assertion that, before or after our filing of charges, the

representative has been reinstated to practice by the court, bar, or Federal program or Federal agency that suspended, disbarred, or disqualified the representative, the General Counsel (or other official the Commissioner may designate), or his or her designee, will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the General Counsel, or his or her designee, is so satisfied, the General Counsel, or his or her designee, will withdraw those charges. The action of the General Counsel, or his or her designee, regarding withdrawal of charges is solely that of the General Counsel (or other official the Commissioner may designate), or his or her designee, and is not reviewable, or subject to consideration in decisions made under §§ 404.1770 and 404.1790. If we withdraw the charges, we will notify the representative by mail at the representative's last known address.

27. Amend § 404.1765 by revising paragraphs (a), (b)(1), and (e), the first sentence of paragraph (g)(2), and paragraphs (i), (l), and (m) to read as follows:

**§ 404.1765 Hearing on charges.**

(a) *Holding the hearing.* If the General Counsel (or other official the Commissioner may designate), or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

(b) *Hearing officer.* (1) The Deputy Commissioner for Disability Adjudication and Review (or other official the Commissioner may designate), or his or her designee, will assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

\* \* \* \* \*

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The General Counsel (or other official the Commissioner may designate), or his or her designee, will also be a party to the hearing.

\* \* \* \* \*

(g) *Conduct of the hearing.* \* \* \*

(2) If the representative did not file an answer to the charges, the representative

has no right to present evidence at the hearing. \* \* \*

\* \* \* \* \*

(i) *Witnesses.* Witnesses who testify at the hearing must do so under oath or affirmation. Either the representative or a person representing the representative may question the witnesses. The other party and that party's representative must also be allowed to question the witnesses. The hearing officer may also ask questions as considered necessary, and will rule upon any objection made by either party about whether any question is proper.

\* \* \* \* \*

(l) *Representation.* The representative, as the person charged, may appear in person and may be represented by an attorney or other representative. The General Counsel (or other official the Commissioner may designate), or his or her designee, will be represented by one or more attorneys from the Office of the General Counsel.

(m) *Failure to Appear.* If the representative or the other party to the hearing fails to appear after being notified of the time and place, the hearing officer may hold the hearing anyway so that the party present may offer evidence to sustain or rebut the charges. The hearing officer will give the other party who failed to appear an opportunity to show good cause for failure to appear. If the party fails to show good cause, the party is considered to have waived the right to be present at the hearing. If the party shows good cause, the hearing officer may hold a supplemental hearing.

\* \* \* \* \*

28. Amend § 404.1770 by revising paragraphs (a)(1), (a)(2), (a)(3) introductory text, (a)(3)(ii), (b)(2), and (b)(3) to read as follows:

**§ 404.1770 Decision by hearing officer.**

(a) *General.* (1) After the close of the hearing, the hearing officer will issue a decision or certify the case to the Appeals Council. The decision must be in writing, will contain findings of fact and conclusions of law, and be based upon the evidence of record.

(2) In deciding whether a person has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (e.g., failure to pay dues or to complete continuing legal education requirements), that will not disqualify the person from acting as

a representative before us. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (e.g., acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether a person should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension, or disqualification.

(3) If the hearing officer finds that the charges against the representative have been sustained, he or she will either—

(i) Disqualify the representative from acting as a representative in dealings with us until the representative may be reinstated under § 404.1799. Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which the representative was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

(b) *Effect of hearing officer's decision.*

(2) If the final decision is that a person is disqualified from being a representative in dealings with us, the representative will not be permitted to represent anyone in dealings with us until authorized to do so under the provisions of § 404.1799.

(3) If the final decision is that a person is suspended for a specified period of time from being a representative in dealings with us, the representative will not be permitted to represent anyone in dealings with us during the period of suspension unless authorized to do so under the provisions of § 404.1799.

29. Amend § 404.1780 by revising paragraph (b) to read as follows:

**§ 404.1780 Appeals Council's review of hearing officer's decision.**

(b) If a party files a brief or other written statement with the Appeals Council, the party must send a copy to the opposing party and certify that the copy has been sent.

30. Amend § 404.1799 by revising paragraphs (b), (c), (d)(2), (d)(3), and (e), to read as follows:

**§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.**

\* \* \* \* \*

(b) The suspended or disqualified person must submit any evidence the person wishes to have considered along with the request to be allowed to serve as a representative again.

(c) The General Counsel (or other official the Commissioner may designate), or his or her designee, upon notification of receipt of the request, will have 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council will make available to the suspended or disqualified person a copy of the report.

(d) \* \* \*

(2) If a person was disqualified because the person had been disbarred or suspended from a court or bar, the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that the person has been admitted (or readmitted) to and is in good standing with the court or bar from which the person had been disbarred or suspended.

(3) If a person was disqualified because the person had been disqualified from participating in or appearing before a Federal program or Federal agency, the Appeals Council will grant the request for reinstatement only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that the person is now qualified to participate in or appear before that Federal program or Federal agency.

\* \* \* \* \*

(e) The Appeals Council will mail a notice of its decision on the request for reinstatement to the suspended or disqualified person. It will also mail a copy to the General Counsel (or other official the Commissioner may designate), or his or her designee.

\* \* \* \* \*

**PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS**

**Subpart K—[Amended]**

31. The authority citation for subpart K of part 408 continues to read as follows:

**Authority:** Secs. 702(a)(5) and 810(a) of the Social Security Act (42 U.S.C. 902(a)(5) and 1010(a)).

32. Amend § 408.1101 by revising paragraphs (a) and (b)(3) to read as follows:

**§ 408.1101 Can you appoint someone to represent you?**

(a) *General rules.* You may appoint one or more individuals or entities to represent you in any of your dealings with us. For purposes of this part, the rules on representation of parties in §§ 416.1500–416.1505, 416.1507–416.1515 and 416.1540–416.1599 of this chapter apply except as noted in paragraph (b) of this section.

(b) *Exceptions.* \* \* \*

(3) In § 416.1507(a)(1)(iii), the words “one of our offices” are deemed to read “any of the offices listed in § 408.1009(b).”

\* \* \* \* \*

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

**Subpart C—[Amended]**

33. The authority citation for subpart C of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, and 1631(a), (d), and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382, and 1383(a), (d), and (e)).

34. Amend § 416.315 by adding paragraph (d) to read as follows:

**§ 416.315 Who may sign an application.**

\* \* \* \* \*

(d) Your principal representative (see §§ 416.1505 and 416.1507) may sign and file your application with us. If a principal representative signs an application on your behalf, you are responsible for the accuracy of the information you provide.

**Subpart N—[Amended]**

35. The authority citation for subpart N of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

36. Amend § 416.1401 by adding a definition in alphabetical order to read as follows:

**§ 416.1401 Definitions.**

\* \* \* \* \*

*Initial disability claim* means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based

on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this subpart, the term "initial disability claim" does not include a continuing disability review or an age-18 redetermination.

\* \* \* \* \*

37. Amend § 416.1403 by revising paragraph (a)(7) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) \* \* \*

(7) Refusing to recognize, disqualifying, or suspending a person, as defined in § 416.1503, from acting as your representative in a proceeding before us (see §§ 416.1505 and 416.1545);

\* \* \* \* \*

38. Amend § 416.1409 by revising the section heading and paragraph (a), and by removing the heading for paragraph (b), to read as follows:

**§ 416.1409 How to request reconsideration in claims other than those that involve a denial of an initial disability claim based on medical factors.**

(a) We will reconsider an initial determination, other than one that involves a denial of your initial disability claim based on medical factors (see § 416.1410), if you or any other party to the reconsideration files a written request within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (b) of this section at one of our offices, the Veterans Administration Regional Office in the Philippines, or an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry, or at least five years of railroad service accruing after December 31, 1995.

\* \* \* \* \*

39. Add a new § 416.1410 to read as follows:

**§ 416.1410 How to request reconsideration in an initial disability claim that is denied based on medical factors.**

(a) If you file an initial disability claim, we will reconsider an initial determination that denies your claim based on medical factors if you or any other party to the reconsideration files a written request within 60 days after the date you receive notice of the initial determination and you make your request in accordance with paragraphs (b) or (c) (or within the extended time period if we extend the time as provided in paragraph (d)) of this section.

(b) If you have not appointed a representative, or if your representative is not a professional representative, as

defined in § 416.1503, you may file your written request for reconsideration either through the electronic media we prescribe, at one of our offices, at the Veterans Administration Regional Office in the Philippines, or at an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry, or at least five years of railroad service accruing after December 31, 1995.

(c) If your representative is a professional representative, as defined in § 416.1503, your professional representative must file your written request for reconsideration with us through the electronic media that we prescribe, unless we waive this requirement.

(d) If you want a reconsideration of the initial determination that denies your initial disability claim based on medical factors, but do not request one in time, you may ask us for more time to request a reconsideration. Your request for an extension of time must be in writing and must give the reasons why the request for reconsideration was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 416.1411. You must file the request for an extension of time according to the procedures in paragraphs (b) or (c) of this section.

40. Amend § 416.1433 by revising the section heading and paragraphs (a) introductory text and (b) to read as follows:

**§ 416.1433 How to request a hearing before an administrative law judge in claims other than those that involve a denial of an initial disability claim based on medical factors.**

(a) *Written request.* You may request a hearing on your claim, other than one that involves a denial of your initial disability claim based on medical factors (see § 416.1434), by filing a written request. You should include in your request—

\* \* \* \* \*

(b) *When and where to file.* The request must be filed within 60 days after the date you receive notice of the previous determination or decision (or within the extended time period if we extend the time as provided in paragraph (c) of this section at one of our offices, at the Veterans Administration Regional Office in the Philippines, or at an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry, or at least five years

of railroad service accruing after December 31, 1995.

\* \* \* \* \*

41. Add a new § 416.1434 to read as follows:

**§ 416.1434 How to request a hearing before an administrative law judge in an initial disability claim that is denied based on medical factors.**

(a) If we deny your reconsidered initial disability claim based on medical factors, you may request a hearing by filing a written request. You should include in your request—

- (1) The name and Social Security number of the wage earner;
- (2) The reasons you disagree with the previous determination or decision;
- (3) A statement of additional evidence to be submitted and the date you will submit it; and
- (4) The name and address of any designated representative.

(b) Your request for a hearing must be filed within 60 days after the date you receive notice of the previous determination or decision (or within the extended time period if we extend the time as provided in paragraph (e) of this section).

(c) If you have not appointed a representative, or if your representative is not a professional representative, as defined in § 416.1503, you may file your written request for a hearing either through the electronic media we prescribe, at one of our offices, at the Veterans Administration Regional Office in the Philippines, or at an office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry, or at least five years of railroad service accruing after December 31, 1995.

(d) If your representative is a professional representative, as defined in § 416.1503, your professional representative must file your written request for a hearing with us through the electronic media that we prescribe, unless we waive this requirement.

(e) If you have a right to a hearing with respect to a determination or decision that denies your initial disability claim based on medical factors, but you do not request one in time, you may ask for more time to make your request. The request for an extension of time must be in writing and it must give the reasons why the request for a hearing was not filed within the stated time period. If you show that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 416.1411. You must file the request for an extension of time

according to the procedures in paragraphs (b) or (c) of this section.

#### Subpart O—[Amended]

42. The authority citation for subpart O of part 416 continues 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.

43. Amend § 416.1500 by revising the introductory text and paragraph (a) to read as follows:

#### § 416.1500 Introduction.

You may appoint one or more individuals or entities to represent you in any of your dealings with us. This subpart explains, among other things—

(a) Who may be your representative and what your representative's qualifications must be;

\* \* \* \* \*

44. Revise § 416.1503 to read as follows:

#### § 416.1503 Definitions.

As used in this subpart—

*Access registration* means supplying us with personal information that we use to identify you, your representative, or an individual working on behalf of your representative, to authenticate and authorize you, your representative, or an individual working on behalf of your representative to do business with us.

*Direct payment registration* means supplying to us personal, financial institution, and business affiliation information that we use to authorize a representative under certain circumstances to receive direct payment of representative fees via electronic funds transfer.

*Disqualify* refers to an action that prohibits a person from participating in or appearing before a Federal agency or Federal program, regardless of how long the prohibition lasts or the specific terminology used.

*Electronic media* means the electronic media that we prescribe for providing us information, registering with us, and filing with us certain applications, forms, and other documents.

*Entity* means any business, firm, or other association, including but not limited to partnerships, corporations, for-profit organizations, and not-for-profit organizations.

*Federal agency* refers to any authority of the Executive branch of the Government of the United States.

*Federal program* refers to any program established by an Act of Congress or administered in whole or in part by a Federal agency.

*Fee petition* means a written statement signed by the claimant's representative requesting the fee the representative wants to charge and collect for services the representative provided in pursuing the claimant's benefit rights in proceedings before us.

*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;

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

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

*Person* means an individual or an entity.

*Principal representative* means an attorney who meets all of the requirements of § 416.1505(a), an individual other than an attorney who meets all of the requirements of § 416.1505(b), or an entity that meets all of the requirements under § 416.1505(b), who has been appointed to represent you in dealings with us and who is responsible for disseminating information and requests from us to you and your other representatives, if any.

*Professional representative* means any attorney, any individual other than an attorney, or any entity that holds itself out to the public as providing representational services (see § 416.1535) before us, regardless of whether the representative charges or collects a fee for providing the representational services.

*Representative* means an attorney who meets all of the requirements of § 416.1505(a), an individual other than an attorney who meets all of the requirements of § 416.1505(b), or an entity that meets all of the requirements

of § 416.1505(b), whom you appoint to represent you in dealings with us. For purposes of §§ 416.1540 through 416.1599, the term *representative* also includes an attorney or a non-attorney whom you have not appointed as your representative under the previous sentence but who works for or on behalf of an appointed representative and helps represent you in your claim before us.

*We, our(s), or us* refers to the Social Security Administration.

*You or your(s)* refers to any individual or the eligible spouse of any individual claiming or receiving supplemental security income benefits.

45. Amend § 416.1505 by removing the heading for paragraphs (a) and (b), revising paragraph (b) introductory text, and adding paragraphs (c) through (g) to read as follows:

#### § 416.1505 Who may be your representative.

\* \* \* \* \*

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person—

\* \* \* \* \*

(c) We may refuse to recognize your appointed representative if the representative does not meet our requirements. We will notify you and your appointed representative if we do not recognize your appointed representative.

(d) You may appoint more than one representative to represent you at the same time.

(e) You must have a principal representative. When you appoint only one representative, that representative is your principal representative. When you appoint more than one representative you must select one of your appointed representatives as your principal representative. Your principal representative is responsible for disseminating information and requests from us to you and your other representatives, if any, and for providing us information from you and about your claim. You may have only one principal representative at a time.

(f) If at any point you are represented by more than one representative and you have not appointed or do not have a principal representative, we will name one of your appointed representatives as your principal representative. You may appoint a different principal representative than the one we name by filing the appropriate form.

(g) Each of your representatives, as well as individuals working on their behalf, must complete access

registration with us in the manner we prescribe.

46. Revise § 416.1507 to read as follows:

**§ 416.1507 How you appoint and revoke the appointment of a representative.**

(a) You must use the version of the form we prescribe, electronic or paper, to appoint or revoke the appointment of a representative.

(1) If your representative is not a professional representative, and your representative does not want to deal with us through the electronic media we prescribe, we will recognize your appointment of a representative if—

(i) Both you and your representative sign the paper form we prescribe;

(ii) You choose a principal representative on the form we prescribe at the time of the appointment; and

(iii) You or your representative files the signed form with us at one of our offices if you have initially filed a claim or have requested reconsideration; with the hearing office if you have requested a hearing; or with the Appeals Council if you have requested a review of the administrative law judge's decision.

(2) If your representative is a professional representative, or if your representative is not a professional representative but wants to do business with us through the electronic media we prescribe, we will recognize your appointment of a representative if—

(i) Your representative electronically signs the form we prescribe, prints the electronically signed form, and you sign the printed copy of the form;

(ii) You choose a principal representative on the form we prescribe at the time of the appointment; and

(iii) Your representative files the electronic form in the manner we prescribe.

(3) If we do not make the electronic form available or we prescribe that the electronic form is not required, then we will recognize your appointment of a professional representative according to the procedures in paragraph (a)(1) of this section.

(b) Each time you change your principal representative, you must file a new version of the form we prescribe.

(c) If at any point you are represented by more than one representative and you have not appointed or do not have a principal representative, we will name one of your appointed representatives as your principal representative. You may appoint a different principal representative than the one we name by filing the appropriate form.

(d) You must file the form we prescribe with us to revoke the appointment of a representative. The

date of the revocation is the date on which you file the form with us. We will notify you and your representative that you revoked your representative's appointment.

47. Amend § 416.1510 by revising paragraphs (a) introductory text and (b) and by adding paragraph (c) to read as follows:

**§ 416.1510 Authority of a representative.**

(a) Your representative may, on your behalf—

\* \* \* \* \*

(b) Your principal representative may also sign and file an application on your behalf for rights or benefits under title XVI of the Act, as described in § 416.315(d).

(c) If you appoint an entity as your representative, any document related to the claim that is signed by a registered employee of the entity is binding on that entity, even if the employee's association with the entity ends.

48. Add a new § 416.1512 to read as follows:

**§ 416.1512 When the appointment of your representative begins and ends.**

(a) The appointment of your representative begins on the date that you and your representative sign the form we prescribe appointing your representative as described in § 416.1507. However, we will not recognize your appointment of a representative or deal with your representative until you or your representative file(s) the signed form with us.

(b) If your appointed representative is an individual, the individual's authority continues until the earliest of the following actions occur—

(1) You file the prescribed form with us revoking the appointment of your representative;

(2) Your representative files the prescribed form with us withdrawing as your representative;

(3) We have made a final determination or decision on your claim of the period in which you or your representative could appeal our determination or decision has ended, and you or your representative did not file an appeal before the end of that period;

(4) Your representative files a fee petition requesting our authorization to charge and collect a fee (see §§ 416.1520 and 416.1525);

(5) We have closed out any application that was started by you or on your behalf but was not pursued within the time period we prescribe;

(6) We disqualify or suspend your representative; or

(7) Your representative dies.

(c) If your appointed representative is an entity, the entity's authority continues until the earliest of the following actions occur—

(1) You file the prescribed form with us revoking the appointment of your representative;

(2) Your representative files the prescribed form with us withdrawing as your representative.

(3) We have made a final determination or decision on your claim of the period in which you or your representative could appeal our determination or decision has ended, and you or your representative did not file an appeal before the end of that period;

(4) Your representative files a fee petition requesting our authorization to charge and collect a fee (see §§ 416.1520 and 416.1525);

(5) We have closed out any application that was started by you or on your behalf but was not pursued within the time period we prescribe;

(6) We disqualify or suspend your representative;

(7) The entity goes out of business; or

(8) The entity changes ownership or changes the services it provides, such that it no longer represents claimants before us.

(d) You may reappoint a representative by properly filing a new prescribed form with us in accordance with §§ 416.1505 and 416.1507.

49. Add a new § 416.1513 to read as follows:

**§ 416.1513 Professional representatives.**

(a) Professional representatives must conduct business with us electronically at the times and in the manner that we prescribe.

(b) Professional representatives, and individuals working on behalf of professional representatives on claims before us, must make certain attestations we require to ensure that each individual knows, understands, and will comply with our rules and regulations. Each of these individuals will make these attestations one time during the access registration process.

50. Revise § 416.1515 to read as follows:

**§ 416.1515 Notice or request to a representative.**

(a) We will send to you, your principal representative, and your other representatives, if any, all notices relating to the appointment of any of your representatives and the revocation or withdrawal of an appointment of any of your representatives. Notices sent in accordance with § 416.1530(c)(2)(i) will



be sent to any representative who has not filed a written request for a fee in accordance with § 416.1530(c)(1).

(b) We will send only to your principal representative—

(1) Notices and copies of any administrative action, determination, or decision in your claim; and

(2) Requests for information or evidence in your claim.

(c) If your principal representative is an entity, we will send all notices, copies of any administrative action, determination, or decision in your claim, and requests for information to the individual who signed the appointment of representative form on behalf of the entity, until or unless the entity informs us of a different contact within the entity for this purpose.

(d) Your principal representative is responsible for informing other appointed representatives, if any, about any notices, administrative actions, determinations, decisions, or requests for information or evidence that we send to the principal representative. We will not send copies of notices, any administrative actions, determinations, decisions, or requests for information or evidence to any representative, except your principal representative.

(e) Any notice or request we send to your principal representative will have the same force and effect as if we sent it directly to you.

51. Amend § 416.1520 by revising paragraphs (a), (b)(1), (b)(3), (b)(4), (c) introductory text, (c)(3) introductory text, the first two sentences of paragraph (d)(1), and the first sentence of paragraph (d)(2)(i) to read as follows:

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

(a) *General.* A representative may charge and receive a fee for providing you with services as a representative as provided in paragraph (b) of this section or as provided in sections 206(a)(2) and 1631(d)(2) of the Act.

(b) *Charging and receiving a fee under the fee petition process.* (1) The representative must file a written fee petition with us before the representative may charge or receive a fee for providing you with services.

(3) A representative must not charge or receive any fee unless we have approved it, and a representative must not charge or receive any fee that is more than the amount we approve.

(4) If the representative is an attorney, a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 416.1517, or an entity that meets the requirements in § 416.1530(f) and the

claimant is entitled to past-due benefits, we will pay the authorized fee, or a part of the authorized fee, directly to the attorney, eligible non-attorney, or eligible entity out of the past-due benefits, subject to the limitations described in § 416.1530(b)(1). If the representative is not an attorney, eligible non-attorney, or eligible entity, we assume no responsibility for the payment of any fee that we have authorized.

(c) *Notice of determination on the fee petition.* We will mail to both you and your representative at your last known addresses a written notice of what we decide about the fee petition. We will state in the notice—

(3) That we are not responsible for paying the fee, except when we may pay an attorney, a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 416.1517, or an entity that meets the requirements in § 416.1530(f), from past-due benefits; and—

(d) *Review of fee petition determination—(1) Request filed on time.* We will review the decision we made about a fee petition if either you or your representative files a written request for the review through the electronic media we prescribe or at one of our offices within 30 days after the date of the notice of the fee determination. Either you or your representative, whoever requests the review, must mail a copy of the request to the other person. \* \* \*

(2) *Request not filed on time.* (i) If you or your representative requests a review of the decision we made about a fee, but does so more than 30 days after the date of the notice of the fee determination, whoever makes the request must state in writing why it was not filed within the 30-day period. \* \* \*

52. Amend § 416.1525 by revising the section heading, paragraphs (a) introductory text, (a)(2) through (a)(6), the heading for paragraph (b), and paragraph (b)(1)(vii) to read as follows:

**§ 416.1525 Request for approval of a fee petition.**

(a) *Filing a written fee petition.* Unless your representative's fee is approved pursuant to sections 206(a)(2) and 1631(d)(2) of the Act, in order for your representative to obtain approval of a fee for services your representative performed in dealings with us, your representative must file a written fee petition through the electronic media we prescribe or at one of our offices. This should be done after the

proceedings in which your representative represented you are completed. The request must contain—

(2) A list of the services your representative provided and the amount of time your representative spent on each type of service;

(3) The amount of the fee your representative wants to charge for the services;

(4) The amount of fee your representative wants to request or charge for representing you in the same matter before any State or Federal court;

(5) The amount of and a list of any expenses your representative incurred for which your representative has been paid or expects to be paid;

(6) A description of the special qualifications which enabled your representative, if not an attorney, to give valuable help in connection with your claim; and

(b) *Evaluating a request for approval of a fee petition.*

(1) \* \* \*

(vii) The amount of fee the representative requests for the representative's services, including any amount authorized or requested before, but not including the amount of any expenses the representative incurred.

53. Amend § 416.1528 by revising paragraph (a) to read as follows:

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

(a) *Representation of a party in court proceedings in fee petitions.* We will 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, the representative must specify what, if any, portion of the fee the representative wants to charge is for services performed in dealings with us. If the representative charges any fee for those services, the representative must file the request and furnish all of the information required by § 416.1525.

54. Revise § 416.1530 to read as follows:

**§ 416.1530 Payment of fees.**

(a) *Fees allowed by a Federal court in fee petitions.* We will pay a representative who is an attorney out of your past-due benefits, the amount of the fee allowed by a Federal court in a proceeding under title XVI of the Act.

This payment is subject to the limitations described in paragraph (b)(1) of this section.

(b) *Fees we may authorize for payment in fee petitions*—(1) *Attorneys, eligible non-attorneys, and eligible entities.* Except as provided in paragraphs (c) and (f) of this section, if we make a determination or decision in your favor and you were represented by an attorney, a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 416.1517, or an entity that meets the requirements in paragraph (g) of this section, and as a result of the determination or decision you have past-due benefits, 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, 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, and after any applicable reductions under section 1127 of the Act; or

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

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

(c) *Time limit for filing request for approval of fee petition to obtain direct payment.* (1) To receive direct payment of a fee from your past-due benefits, a representative who is an attorney, a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 416.1517, or an entity that meets the requirements in paragraph (g) of this section should file a request for approval of a fee or a written notice of the intent to file a request within 60 days of the date we mail the notice of the favorable determination or decision.

The representative should file the request or written notice through the electronic media we prescribe or at one of our offices. Your representative must send you a copy of any request for approval of a fee, any written notice of the intent to file a request for approval of a fee, or any request for an extension of time filed with us.

(2)(i) If no request is filed within 60 days of the date we mail the notice of the favorable determination or decision, 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 showing good cause (see § 416.1411), we will pay all the past-due benefits to you.

(ii) Your 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 we send under paragraph (c)(2)(i) of this section, or by the last day of any extension we approved, we will pay all past-due benefits to you. We must approve any fee your representative charges after that time, but the collection of any approved fee is a matter between you and your 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 in the **Federal Register** any increase in the maximum assessment amount and explain how that increase was determined.

(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.

(f) *Direct payment registration.* (1) To receive direct payment, the representative must first complete direct payment registration with us in the form and manner that we prescribe.

(2) We will only make direct payment of fees via electronic funds transfer.

(g) *Direct payment to entities.* We will only make direct payment to an entity that provides the following attestations in its request for direct payment of fees:

(1) The entity must attest that it is in possession of a signed statement from each attorney or non-attorney who has performed any representational services for the claim in question that includes the following:

(i) The attorney or non-attorney has performed all representational services on behalf of the entity,

(ii) Any fees paid pursuant to the services the attorney or non-attorney have provided should be paid directly to the entity, and

(iii) The attorney or non-attorney representative receives compensation for the services provided directly from the entity.

(2) The entity must attest that all individuals who have provided representational services on the claim in question are individuals who qualify for direct payment under the Act or the direct payment demonstration project, as defined in § 416.1517.

55. Add a new § 416.1532 to read as follows:

**§ 416.1532 Waiver of fee or direct payment, or both.**

(a) Your representative may choose to waive the right to charge and receive a fee. An otherwise eligible representative who wishes to charge and receive a fee may waive the right to direct payment. A representative who waives the right to direct payment does not automatically waive the right to charge and receive a fee.

(b) Your representative must file a form we prescribe to waive direct payment of the fee.

(c) A waiver of the right to charge and receive a fee or of direct payment, or both, will apply to fees approved by a Federal court, unless it is otherwise specifically noted on the form completed in accordance with paragraph (b) of this section.

(d) If you have appointed an entity as your representative, any registered employee of the entity may sign the form completed in accordance with paragraph (b) of this section to waive the fee or direct payment, or both, on behalf of the entity.

56. Amend § 416.1540 by revising the first sentence of paragraph (a)(1), paragraph (b) introductory text, paragraph (b)(3) introductory text, the third sentence of paragraph (b)(3)(i), and the second sentence of paragraph (b)(3)(ii), adding paragraphs (b)(3)(iii) and (b)(4), revising paragraphs (c) introductory text, (c)(4), (c)(6), and (c)(7)(iii), and adding paragraphs (c)(8) through (c)(13) to read as follows:

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

(a) \* \* \* (1) All persons acting on behalf of a party seeking a statutory right or benefit must, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party.

(b) *Affirmative duties.* A representative must, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 416.912 in disability and blindness claims):

(3) Conduct the representative's dealings in a manner that furthers the efficient, fair, and orderly conduct of the administrative decision-making process, including duties to:

(i) \* \* \* This includes knowing the significant issue(s) in a claim and having a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations and the Rulings;

(ii) \* \* \* This includes providing prompt and responsive answers to requests from the Agency for information pertinent to processing of the claim; and

(iii) Maintain a paper copy of the form described in § 416.1507(a) that reflects the representative's and the claimant's signatures and respective signature dates appointing the representative, and maintain copies of the signed attestations described in § 416.1530(g), and provide paper copies to us on request.

(4) If the representative is a professional representative, conduct

business with us electronically at the times and in the manner that we prescribe when submitting any written request for reconsideration or a hearing before an administrative law judge on an initial disability claim that was based on medical factors.

(c) *Prohibited actions.* A representative must not:

(4) Through the representative's own actions or omissions, unreasonably delay or cause to be delayed, without good cause (see § 416.1411(b)), the processing of a claim at any stage of the administrative decision-making process;

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination or other administrative action by offering or granting a loan, gift, entertainment or anything of value to a presiding official, Agency employee or witness who is or may reasonably be expected to be involved in the administrative decisionmaking process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence;

(7) \* \* \*  
(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee which results in a disruption of the orderly presentation and reception of evidence;

(8) Violate any section of the Social Security Act for which a criminal or civil monetary penalty is prescribed;

(9) Refuse to comply with any of our rules or regulations;

(10) Suggest, assist, or direct another person to violate our rules or regulations;

(11) Advise any claimant or beneficiary not to comply with any of our rules and regulations;

(12) Assist another person whom we have suspended or disqualified; or

(13) Fail to comply with our decision regarding sanctions.

57. Amend § 416.1550 by revising paragraphs (a) and (d) to read as follows:

**§ 416.1550 Notice of charges against a representative.**

(a) The General Counsel (or other official the Commissioner may designate), or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

(d) The General Counsel (or other official the Commissioner may

designate), or his or her designee, may extend the 30-day period for good cause in accordance with § 416.1411.

\* \* \* \* \*  
58. Revise § 416.1555 to read as follows:

**§ 416.1555 Withdrawing charges against a representative.**

The General Counsel (or other official the Commissioner may designate), or his or her designee, may withdraw charges against a representative. We will do this if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative in dealings with us.

When we consider withdrawing charges brought under § 416.1545(d) or (e) based on the representative's assertion that, before or after our filing of charges, the representative has been reinstated to practice by the court, bar, or Federal program or Federal agency that suspended, disbarred, or disqualified the representative, the General Counsel (or other official the Commissioner may designate), or his or her designee, will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the General Counsel, or his or her designee, is so satisfied, the General Counsel, or his or her designee, will withdraw those charges. The action of the General Counsel, or his or her designee, regarding withdrawal of charges is solely that of the General Counsel (or other official the Commissioner may designate), or his or her designee, and is not reviewable, or subject to consideration in decisions made under §§ 416.1570 and 416.1590. If we withdraw the charges, we will notify the representative by mail at the representative's last known address.

59. Amend § 416.1565 by revising paragraphs (a), (b)(1), and (e), the first sentence of paragraph (g)(2), and paragraphs (i), (l), and (m) to read as follows:

**§ 416.1565 Hearing on charges.**

(a) *Holding the hearing.* If the General Counsel (or other official the Commissioner may designate), or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

(b) *Hearing officer.* (1) The Deputy Commissioner for Disability Adjudication and Review (or other official the Commissioner may designate), or his or her designee, will assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

\* \* \* \* \*

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The General Counsel (or other official the Commissioner may designate), or his or her designee, will also be a party to the hearing.

\* \* \* \* \*

(g) *Conduct of the hearing.* \* \* \*

(2) If the representative did not file an answer to the charges, the representative has no right to present evidence at the hearing. \* \* \*

\* \* \* \* \*

(i) *Witnesses.* Witnesses who testify at the hearing must do so under oath or affirmation. Either the representative or a person representing the representative may question the witnesses. The other party and that party's representative must also be allowed to question the witnesses. The hearing officer may also ask questions as considered necessary, and will rule upon any objection made by either party about whether any question is proper.

\* \* \* \* \*

(l) *Representation.* The representative, as the person charged, may appear in person and may be represented by an attorney or other representative. The General Counsel (or other official the Commissioner may designate), or his or her designee, will be represented by one or more attorneys from the Office of the General Counsel.

(m) *Failure to Appear.* If the representative or the other party to the hearing fails to appear after being notified of the time and place, the hearing officer may hold the hearing anyway so that the party present may offer evidence to sustain or rebut the charges. The hearing officer will give the other party who failed to appear an opportunity to show good cause for failure to appear. If the party fails to show good cause, the party is considered to have waived the right to be present at the hearing. If the party shows good cause, the hearing officer may hold a supplemental hearing.

\* \* \* \* \*

60. Amend § 416.1570 by revising paragraphs (a)(1), (a)(2), (a)(3) introductory text, (a)(3)(ii), (b)(2), and (b)(3) to read as follows:

**§ 416.1570 Decision by hearing officer.**

(a) *General.* (1) After the close of the hearing, the hearing officer will issue a decision or certify the case to the Appeals Council. The decision must be in writing, will contain findings of fact and conclusions of law, and be based upon the evidence of record.

(2) In deciding whether a person has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (e.g., failure to pay dues or to complete continuing legal education requirements), that will not disqualify the person from acting as a representative before us. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (e.g., acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether a person should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension, or disqualification.

(3) If the hearing officer finds that the charges against the representative have been sustained, he or she will either—

\* \* \* \* \*

(ii) Disqualify the representative from acting as a representative in dealings with us until the representative may be reinstated under § 416.1599. Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which the representative was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

\* \* \* \* \*

(b) *Effect of hearing officer's decision.* \* \* \*

(2) If the final decision is that a person is disqualified from being a representative in dealings with us, the representative will not be permitted to represent anyone in dealings with us until authorized to do so under the provisions of § 416.1599.

(3) If the final decision is that a person is suspended for a specified period of time from being a representative in dealings with us, the representative will not be permitted to represent anyone in dealings with us during the period of suspension unless authorized to do so under the provisions of § 416.1599.

61. Amend § 416.1580 by revising paragraph (b) to read as follows:

**§ 416.1580 Appeals Council's review of hearing officer's decision.**

\* \* \* \* \*

(b) If a party files a brief or other written statement with the Appeals Council, the party must send a copy to the opposing party and certify that the copy has been sent.

62. Amend § 416.1599 by revising paragraphs (b), (c), (d)(2), (d)(3), and (e), to read as follows:

**§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.**

\* \* \* \* \*

(b) The suspended or disqualified person must submit any evidence the person wishes to have considered along with the request to be allowed to serve as a representative again.

(c) The General Counsel (or other official the Commissioner may designate), or his or her designee, upon notification of receipt of the request, will have 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council will make available to the suspended or disqualified person a copy of the report.

(d) \* \* \*

(2) If a person was disqualified because the person had been disbarred or suspended from a court or bar, the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that the person has been admitted (or readmitted) to and is in good standing with the court or bar from which the person had been disbarred or suspended.

(3) If a person was disqualified because the person had been disqualified from participating in or appearing before a Federal program or Federal agency, the Appeals Council will grant the request for reinstatement only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that the person is now qualified to participate in

or appear before that Federal program or Federal agency.

\* \* \* \* \*

(e) The Appeals Council will mail a notice of its decision on the request for reinstatement to the suspended or disqualified person. It will also mail a copy to the General Counsel (or other official the Commissioner may designate), or his or her designee.

\* \* \* \* \*

## PART 422—ORGANIZATION AND PROCEDURES

### Subpart C—[Amended]

63. The authority for subpart C of part 422 continues to read as follows:

**Authority:** Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

64. Amend § 422.203 by revising paragraph (b)(1) to read as follows:

#### § 422.203 Hearings.

\* \* \* \* \*

(b) *Request for hearing.* (1) A request for a hearing under paragraph (a) of this section may be made on Form HA-501, "Request for Hearing," Form HA-501.1, "Request for Hearing, part A Hospital Insurance Benefits," electronically at the times and in the manner that we prescribe (see §§ 404.933, 404.934, 416.1433, and 416.1434 of this chapter), or by any other writing requesting a hearing. The request must be filed at an office of the Social Security Administration, usually a district office or a branch office, or at the Veterans Administration Regional Office in the Philippines (except in title XVI cases), or at a hearing office of the Office of Disability Adjudication and Review, or with the Appeals Council. A qualified railroad retirement beneficiary may, if (s)he prefers, file a request for a hearing under part A of title XVIII with the Railroad Retirement Board. Form HA-501 may be obtained from any Social Security district office or branch office.

\* \* \* \* \*

### Subpart F—[Amended]

65. The authority citation for subpart F of part 422 continues to read as follows:

**Authority:** Sec. 1140(a)(2)(A) of the Social Security Act. 42 U.S.C. 1320b-10(a)(2)(A) (Pub. L. 103-296, Sec. 312(a)).

66. Amend § 422.515 by adding a second sentence to the introductory text to read as follows:

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

\* \* \* Prescribed forms include our traditional pre-printed forms, forms completed on computer screens based on information you give us, or SSA-approved forms completed and submitted using SSA's Internet Web site.

\* \* \* \* \*

[FR Doc. E8-20500 Filed 9-5-08; 8:45 am]

BILLING CODE 4191-02-P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3001

[Docket No. RM2008-2; Order Nos. 99 and 102]

#### Periodic Reporting Rules

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rule; availability of rulemaking petition.

**SUMMARY:** Under a new law, the Postal Service must file an annual compliance report with the Postal Regulatory Commission on costs, revenues, rates, and quality of service associated with its products. It has filed documents with the Commission to change some of the methods it uses to compile the fiscal year 2008 report. In the Commission's view, these documents constitute a rulemaking petition. Therefore, it has established a rulemaking docket to allow the public to comment on potential changes in periodic reporting rules.

**DATES:** 1. Technical conference: August 27, 2008 at 10 a.m.

2. Initial comments: September 8, 2008.

3. Reply comments: September 15, 2008.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** On August 11, 2008, the Commission received Request of the United States Postal Service for Commission Order Amending the Established Costing Methodologies for Purposes of Preparing the FY 2008 Annual Compliance Report (Request). In the Request, the Postal Service states that it has eight changes that it would like to make to the methods by which it compiles the FY

2008 version of the annual report that is required by 39 U.S.C. 3652 to provide to the Commission each year. It cites 39 U.S.C. 3652(a)(1), which gives the Commission the responsibility to prescribe methods that are used to produce the information that is compiled in the annual report. Request at 2. Among other things, the information supplied in the annual report is used by the Commission to prepare the Annual Compliance Determination (ACD) that is required by 39 U.S.C. 3653.

The Postal Service references pages 9-10 of the most recent Commission ACD. FY 2008 Annual Compliance Determination, March 27, 2007 (FY 2007 ACD). There, numerous commenters recommended that the Postal Service not change methods for collecting and analyzing cost data unless interested persons have had an opportunity to evaluate and comment on them. The Commission concurred, stating that it intended to issue regulations governing periodic reports generally (including the Postal Service's annual report) that would vet proposed changes in analytical methods through informal rulemakings in advance of the filing of the report. FY 2007 ACD at 10.

#### I. Procedural Expedition

The Postal Service notes that it is already preparing its annual report for FY 2008. Given the lead time that is required, it observes that it is unlikely that the regulations that the Commission described in its FY 2007 ACD can be issued, and public scrutiny of particular changes in analytical methods could be completed under those regulations, in time to be incorporated in its FY 2008 annual report. It therefore asks that an alternative, expedited procedure be used to vet its proposed changes in analytical methods.

In the Postal Service's view, none of its proposed methodological changes "are of sufficient complexity to hinder relatively straightforward evaluation by both the parties and the Commission." Request at 2. It therefore proposes that its filing be treated as a rule 21 motion for a Commission order approving its proposed changes to current baseline methods used to analyze costs. *Id.*, n.2. The Postal Service notes that its Request includes the rationale for each of the eight methodological changes that it proposes, and estimates the impact of each change on the costs borne by mail classes. Equipped with this information, it suggests, the public could provide input in the form of answers supporting or opposing the motion. It recognizes, however, that the 7-day period that rule 21 allows for answers to motions should