

Addendum to the Supporting Statement for Form SSA-1696-U4
Appointment of Representative
20 CFR 404.1707, 404.1720, 408.1101, 416.1507, and 416.1520
OMB No. 0960-0527

Revisions to the Collection Instrument

GENERAL

Claimants can use Form SSA-1696-U4 to appoint an attorney or non-attorney to represent them in matters before the Social Security Administration (SSA).

On September 23, 2009, we published 74 FR 48381. This Federal Notice revised sections 20 CFR 404.1720 and 20 CFR 416.1520 to state that representatives no longer need SSA authorization of their fee if the fee is paid by a third-party entity and the claimant and any auxiliaries are free of direct or indirect liability for paying the representative's fee. We are modifying the instructions on Form SSA-1696-U4 to reflect these changes. We also revised Part III of the form and distinguished the different fee waivers. For example, representatives may choose to waive direct payment of their fee or waive their fee altogether. The distinction is critical because of the differing policies and system coding involved in the authorization of the representative's fee.

We merged Part IV with Part III for brevity and incorporated a statement that we require when a third-party entity pays a representative's fee. With this statement, the representative certifies that the claimant and auxiliary beneficiaries are relieved of any liability, directly or indirectly, to pay any fee to the representative. We continue to require such statements in all situations where the representative is waiving payment by the claimant or auxiliary beneficiaries but the parties are using an "equivalent statement" and not Form SSA-1696 for the appointment.

Section 1101 of the *Social Security Protection Act* (SSPA, Public Law 108-203) defines "person" as an individual, or an entity, business or corporation. In our new rules, we further define "entity" to mean any for-profit or nonprofit organization (20 CFR 404.1703 and 20 FR 416.1503). Currently, however, we only recognize individuals as representatives. We are replacing the word "person" with the word "individual" to clarify that we cannot recognize all "persons" as representatives and thus claimants may not appoint an entity as their representative.

H.R. 4532 signed by the President in February 2010, made permanent the provisions of the demonstration project, required by section 303 of the SSPA; to reflect this, we are eliminating any references to the words "project" and "demonstration."

We also replaced the term "approve" with "authorize" in several places because we authorize rather than approve fees.

Finally, we have made a few other minor, non-substantive changes, in punctuation and type format, and we are eliminating extra spaces where they exist to improve readability.

Upon approval of these revisions, we will destroy prior editions of the form. We have listed all the specific changes to the form, section-by-section, below. The mock up form shows the revisions in highlight.

Specific Revisions to Form SSA-1696-U4

Revisions in the Instructions

COMPLETING THIS FORM TO APPOINT A REPRESENTATIVE

Privacy Act Statement

(Title)

Old language: “Privacy Act Notice”

New language: “Privacy Act Statement/Collection and Use of Personal Information”

(Text)

Old language: “Sections 206(a) and 1631(d) of the Social Security Act authorize the collection of information on this form. Providing the information is voluntary.... “With your permission, your representative may designate an associate or other party to request and receive information from your claim file on your representative's behalf.” “If your representative has your permission to designate an associate, such as a clerk, other party, or entity, such as a copying service, to receive information for him or her from us about your claim(s), check the block to authorize this release.”

New language: “Sections 206(a) and 1631(d) of the Social Security Act, as amended, authorize us to collect this information. We will use the information you provide on this form to verify your appointment of an individual as your representative and his or her acceptance of the appointment. Completion of this form is voluntary...With your permission your representative may designate an associate or other party to request or receive information from your claim file on your representative’s behalf.

Justification: We updated the language to conform to Federal requirements and to improve clarity and readability.

How to Complete this Form

(First sentence)

Old language: “Please print or type.”

New Language: “Please print or type your answers on this form. At the top of the form provide...”

Justification: We revised for clarity and readability.

(Last sentence)

Old language: “If you appoint more than one person. . .”

New language: “If you appoint more than one individual. . .”

Justification: Section 1101 of the SSPA defines “person” as an individual or an entity or corporation (42 USC 1301). Because we currently only recognize individuals as representatives, we are changing the term.

Part I Appointment of Representative

(First paragraph)

Old language: “Give the name and address of the person(s) you are appointing. You may appoint an attorney or any other qualified person to represent you. You also may appoint more than one person, but see "What Your Representative(s) May Charge" on the back of the "Claimant's Copy" of this form. You can appoint one or more persons in a firm. . .”

New language: “Give the name and address of the individual(s) you are appointing. You may appoint an attorney or any other qualified individual to represent you. You also may appoint more than one individual, but please refer to the “Information for Claimants” section, “What your Representative(s) may Charge,” for more information about payment of fees. You can appoint one or more individuals in a firm. . .”

Justification: As above, we revised the language to distinguish between “person” and “individual” and for readability.

(Second paragraph)

New language: “Title XVIII (SVB), if your claim concerns entitlement to Special Veterans Benefits.”

Justification: We added a fourth bullet to show Title XVIII (SVB) because it appeared on the form but not in the instructions.

(Third paragraph)

Old language: “If your representative has your permission to designate an associate, such as a clerk, other party or entity, such as a copying service, to receive information for him or her from us about your claim(s). . .”

New language: “When you give your permission your representative may designate an associate (e.g. a clerk), or other party or entity (e.g. a copying service) to receive information from your claim file on your representative’s behalf for the duration of your claim. If you want to give your representative permission to do that. . .”

Justification: We revised the language for clarity.

(Fourth paragraph)

Old language: “If you will have more than one representative, check the appropriate block and give the name of the person . . .”

New language: “If you will have more than one representative, check the block and give the name of the individual. . .”

Justification: We revised the language for clarity.

(Fifth paragraph)

Old language: “Sign your name, but print or type your address, your area code and telephone number, and the date.”

New language: “You must sign and date the form. Print or type your address, area code and telephone number.”

Justification: We revised the language for readability.

Part II Acceptance of Appointment

(First and second sentences)

Old language: “Each person you appoint (named in Part I) completes this part, preferably in all cases. If the person is not an attorney, he or she must . . .”

New language: “Each individual you appoint in Part I should also complete Part II. If the individual is not an attorney, he or she must. . .”

Justification: We revised the language for readability and underlined the word “must” for emphasis.

Part III (Optional) Waiver of Fee

(Title)

Old language: “Waiver of Fee”

New language: “Fee Arrangement”

(Text)

Old language: “Your representative may complete this part if he or she will not charge any fee...”

New language: “To help in processing benefits and fee payments timely, you and your representative should complete this section... These circumstances include where a Court has awarded a fee based on your representative’s actions as a legal guardian or court-appointed representative, or where a business (such as an insurance company), other organization or government agency will pay your representative’s fee and you and your beneficiaries have no liability to pay any fees or expenses.”

Justification: We made significant revisions to this section. Our new rules published on September 23, 2009 (72 FR 48381) eliminated the need to authorize a representative’s fee when a third-party entity is paying it and certain other criteria are met. To reflect this change and make the form more concise, we revised Part III. We also included language that representatives usually provide to us on separate waiver statements to certify that a claimant is free of liability to pay a fee, to eliminate the need for additional statements. Finally, we deleted all references to the “demonstration project” because H.R. 4532 eliminated this project and made its provisions permanent.

Part IV (Optional) Waiver of Direct Payment by an Attorney or a Non-Attorney Participating in the Direct Payment Project

We eliminated this part because it is no longer necessary.

References

Old language: Did not include the following citation

New language: “26 U.S.C. §§ 6041 and 6045(f)”

Justification: We included the additional citation that we omitted from the earlier version of the form. We also deleted citations to Social Security Rulings 88-10c and 85-3 because we rescinded them.

INFORMATION FOR CLAIMANTS

What Your Representative May Do

(Title)

Old language: “What a Representative May Do”

New language: “What Your Representative May Do”

Justification: For consistency with the other headers.

(Second bullet—parenthetical)

Old language: “By signing this form, you are providing your permission for your representative to designate such associates, partners, and/or contractual parties.”

New language: “(by checking the appropriate block and signing this form, you are providing your permission for your representative to designate such associates, partners, and/or contractual parties),”

Justification: We strengthened the language to clarify that, only by checking this block, the claimant gives permission for release of information.

(Fourth paragraph)

New language: We added the following sentence: “We will inform you if we suspend your representative.”

Justification: We added the above language for clarity.

What Your Representative May Charge

(First paragraph)

Old language: “...To charge you a fee for services, your representative must get our approval. (Even when someone else will pay the fee for you, for example, an insurance company, your representative usually must get our approval)”

New language: “To charge you a fee for services, your representative must get our authorization if you or another individual will pay the fee. However, as described in Part III “Fee Arrangement” section of this form, under certain circumstances, we do not have to authorize the representative’s fee. To request a fee, your representative must file a fee agreement or a fee petition. . .”

Justification: We do not have to authorize a fee when certain conditions are met by the representative pursuant to our new rules. We also replaced the word “approve” with “authorize” throughout the entire document for accuracy. We “authorize” a fee rather than “approve” it.

Filing a Fee Petition

(First bullet, first paragraph)

Old language: “Your representative may ask for approval of a fee by giving us a fee petition when his or her work on your claim(s) is complete. This written request describes in detail the amount of time he or she spent on each service provided you. . . .”

New language: “Your representative may file a fee petition when his or her work on your claim(s) is complete. This written request describes in detail the amount of time your representative spent on each service he or she provided you. . . .”

Justification: We deleted the bullet format and revised the language for readability and clarity.

(Second paragraph, second sentence)

Old language: “. . . amount of the fee we approve.”

New language: “. . . amount of the fee we authorize.”

Justification: As stated above, we do not approve a fee. Rather, we authorize it.

Filing a Fee Agreement

(Second bullet, first paragraph)

Old language: Maximum fee was “\$5,300”

New language: Maximum fee is “\$6,000”

Justification: On February 4, 2009, the Commissioner raised the maximum dollar fee limit in the fee agreement process from \$5,300 to \$6,000 (74 FR 6080). We also deleted the bullet format in the title and instead bulleted the fee agreement criteria for approval.

(Second paragraph)

Old language: “If we do not approve the fee agreement, we will tell you and your representative in writing. Then your representative must...”

New language: “If we do not approve the fee agreement, we will tell you and your representative in writing. If your representative wishes to charge and collect a fee, he or she must file a fee petition.

Justification: We revised the language for clarity and readability.

How Much You Pay

(First sentence)

Old language: “...fee we approve...”

New language: “...fee we authorize...”

Justification: As previously stated, we authorize a fee.

(Fourth bullet)

Old language: “...an attorney or a non-attorney participating in the direct fee payment project”

New language: “...an attorney or a non-attorney whom we have determined to be eligible to receive direct payment of fees”

Justification: As we previously stated, the demonstration project is now permanent.

(Third paragraph)

Old language: “The rest of the fee you owe—if the amount of the fee is more than any amount(s) your representative held for you in a trust or escrow account and we withheld and paid your representative for you...”

New language: “**the rest of the fee you owe**, if the amount of the authorized fee is more than the money we withheld and paid to your representative for you plus any amount your representative held for you in a trust or escrow account...”

Justification: We revised the language for clarity and readability.

INFORMATION FOR REPRESENTATIVES

Fees for Representation

(First paragraph, first sentence)

Old language: “...attorney or other person...”

New language: “...attorney or other individual...”

Justification: As we stated previously, we changed “person” to “individual” throughout the document.

Old language: “The only exceptions are if the fee is for services provided:

- when a nonprofit organization or government agency will pay the fee and any expenses from government funds and the claimant incurs no liability, directly or indirectly, for the cost(s);
- in an official capacity such as legal guardian, committee, or similar court-appointed office and the court has approved the fee in question; or
- in representing the claimant before a court of law. A representative who has provided services in a claim before both the Social Security Administration and a court of law may seek a fee from either or both, but neither tribunal has the authority to set a fee for the other.”

New language: “...The only exceptions are if:

- certain requirements are met and a third-party entity, such as a business, an insurance carrier, a for profit, or nonprofit organization or a government agency will pay the fee and any expenses from its own funds and the claimant and auxiliary beneficiaries incur no liability, directly or indirectly, for the cost(s); or
- a Federal court awarded a fee based on the representative’s activities as the claimant’s legal guardian or court-appointed representative;
- a Federal court awarded a fee for representational services provided before the court. In those cases neither the Federal court nor SSA can authorize a fee for the other.”

Justification: We updated the language to reflect the recent changes in our rules and for accuracy and clarity.

Obtaining Approval of a Fee

(Title)

Old language: “Obtaining Approval of a Fee”

New language: “Obtaining Authorization of a Fee”

Fee Petition Process

Old language: “You may ask for approval of a fee by giving us a fee petition when you have completed your services to the claimant. This written request must describe in detail the amount of time you spent on each service provided and the amount of the fee you are requesting.”

New language: “You may file a fee petition after you complete your services to the claimant. This written request must describe in detail the amount of time you spent on each service provided and the amount of the fee you are requesting. In order to directly pay you under a fee petition, you must either file a fee petition or notify us within 60 days after we decide the claim of your intent to file a fee petition.”

Justification: We revised the language for clarity and readability.

Fee Agreement Process

Old language: “Either of you must give it to us before we decide the claim(s). We usually will approve the agreement if you both signed it; the fee you agreed on is no more than 25 percent of past-due benefits, or \$5,300...”

New language: “If you and the claimant have a written fee agreement, one of you must give it to us before we decide the claim(s). We usually will approve the agreement if:

- you both signed it;
- the fee you agreed on is no more than 25 percent of past-due benefits, or \$6,000 (or a higher amount we set and announce in the Federal Register), whichever is less;
- we approve the claim(s); and
- the claim results in past-due benefits.

Justification: We bulleted the section for clarity and readability. We also revised and updated the language to make the section consistent with the previous similar section and to reflect the new fee maximum amount.

Collecting a Fee

(First and second bullet)

Old language: “...more than the fee we approve...”

New language: “...more than the fee we authorize...” We also added the sentence “Our authorization is not needed for such expenses.”

Justification: We revised the language for clarity and changed “approve” to “authorize”

(Second paragraph)

Old language: “. . . and you are not participating in the direct fee demonstration project, you must collect the approved fee from the claimant. If you are interested in participating in the

demonstration project, you can find information on the procedures for becoming eligible to participate...”

New language: “...and you are ineligible to receive direct payment, you must collect the authorized fee from the claimant. If you are interested in becoming eligible to receive direct payment, you can find more information about this on our “Representing Claimants” website: <http://www.ssa.gov/representation/>.”

Justification: As we stated previously, we adjusted the language to reflect recent changes in the law.

(Third paragraph)

Old language: “...or a non-attorney participating in the direct payment project and you register with SSA for direct payment, as described below...”

New language: “...or a non-attorney whom SSA has found eligible to receive direct payment and you register with SSA, as described below...”

Justification: We eliminated the references to the demonstration project and changed the word “approve” to “authorize” for reasons previously stated.

(Third paragraph—bulleted text)

Old language: “You must collect from the claimant: if the amount of the fee is more than the amount of money we withheld and paid you for the claimant...”

New language: “...You will need to collect from the claimant:

- **the rest of the fee he or she owes**, if the amount of the authorized fee is more than the amount of money we withheld and paid you for the claimant, plus any amount you held for the claimant in a trust or escrow account.
- **all of the fee he or she owes**, if we did not withhold past-due benefits, (for example, because there are no past-due benefits; you waived direct payment or did not register for direct payment; the claimant discharged you or you withdrew from representing before we issued a favorable decision); or we withheld past-due benefits, but you did not ask us to authorize a fee or tell us that you planned to ask for a fee within 60 days after the date of the notice of award and we released the withheld amount to the claimant.”

Justification: We bulleted this section and revised the language for consistency and clarity.

Registering for Direct Payment

New language: “If you are eligible and want to receive direct payment you must register with us before we effectuate a favorable decision on the claim. To register, you must submit a Form SSA-1699 (Registration of Individuals and Staff for Appointed Representative Services) once and a Form SSA-1695 (Identifying Information for Possible Direct Payment of Authorized Fees) with each appointment. We will use the information you provide on these forms to issue you a Form 1099-MISC if we pay you aggregate fees of \$600 or more in a calendar year. The Internal Revenue Code requires that we do this. For information on the registration process, see our “Representing Claimants” website.”

Justification: We added the paragraph that we previously erroneously deleted because we still require representatives to register if they wish to receive direct payment.

Conflict of Interest and Penalties

(Third bullet)

Old language: “Charging or collecting an unauthorized fee or too much for services provided...”

New language: “Charging or collecting an unauthorized fee, or charging or collecting too much for services provided...”

Justification: We revised the language for clarity and readability.

References

Change: We deleted citations to Social Security Ruling 88-10c and 85-3.

Justification: Both have been rescinded.

Revisions to the Form SSA-1696-U4

PART II - ACCEPTANCE OF APPOINTMENT

(First paragraph)

Old language: “...for the representation, even if a third party will pay the fee, unless it has been approved...”

New language: “...from the claimant, his or her auxiliaries, or a third party individual unless it has been authorized...”

Justification: As previously explained, we authorize rather than approve a fee.

(Second checkbox)

Old language: “I am a non-attorney who is participating in the direct fee payment demonstration project...”

New language: “I am a non-attorney eligible for direct payment under SSA law.”

(Third checkbox)

Old language: “I am a non-attorney. I am not participating in the direct fee payment demonstration project”

New language: “I am a non-attorney not eligible for direct payment”

Justification: As previously stated, we adjusted the language to reflect changes in the law.

(Fourth and fifth checkboxes)

Old language: “I have been disbarred or suspended from a court...”

New language: “I am now or have previously been disbarred or suspended from a court...” and “I am now or have previously been disqualified from participating in or appearing before a Federal program or agency.”

Justification: We revised the language and added two additional checkboxes so that we may capture more accurately and efficiently the information provided for sanctioning purposes and record keeping.

PART III - WAIVER OF FEE

We changed the title of this section to “FEE ARRANGEMENT.”

Old language: “I waive my right to charge and collect a fee under sections 206 and 1631(d)(2) of the Social Security Act...”

New language: See form for the addition of several options for the fee arrangement.

Justification: We consolidated parts III and IV of the current version of the form for efficiency. We listed all of the waivers to better capture the information representatives provide to us. Finally, we included a statement so that representatives can certify on the form that the claimant and auxiliary beneficiaries will be free of any direct or indirect liability to pay any fee in connections with the particular appointment. This eliminates the need for a separate statement if the parties use this form for the appointment.

PART IV – WAIVER OF DIRECT PAYMENT

Old language: “I waive only my right to direct payment of a fee from the withheld past-due benefits...”

New language: We incorporated this section to Part III and removed its contents.

Justification: We consolidated parts III and IV of the current version of the form for efficiency. We listed all of the waivers to better capture the information representatives provide to us. Finally, we included a statement so that representatives can certify on the form that the claimant and auxiliary beneficiaries will be free of any direct or indirect liability to pay any fee in connections with the particular appointment. This eliminates the need for a separate statement if the parties use this form for the appointment.