

**Supporting Statement for Changes to the Administrative Rules for Claimant
Representation and Provisions for Direct Payment to Entities (Marasco Decision)
20 CFR 404.1707, 404.1720, 404.1730, 404.1735, 416.1507, 416.1520, 416.1530, and 416.1535
OMB No. 0960-NEW**

A. Justification

1. Introduction/Authoring Laws and Regulations

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

In 2017, Marasco & Nesselbush, LLP, a law firm, brought an action in Federal court alleging, among other things, that the law firm's employees had no direct right to authorized fees and that their salaries do not depend on the amount of fees generated by the disability cases in which they act as representatives. On July 16, 2021, the First Circuit issued a decision instructing us to find a reasonably reliable means for law firms to receive direct payment of fees we authorize to their salaried employees while correctly reporting the income to the Internal Revenue Service (IRS).

SSA published the Notice of Proposed Rule Making for the Changes to the Administrative Rules for Claimant Representation and Provision for Direct Payment to Entities which will revise our regulations to enable us to directly pay entities fees we may authorize to their employees, as required by the decision of the United States Court of Appeals for the First Circuit (First Circuit) in *Marasco & Nesselbush, LLP v. Collins*.

Under this proposed rule, to comply with the *Marasco* decision, we would allow representatives to assign their right to receive direct payment of an authorized fee to an entity. If the entity meets applicable conditions explained below, we will accept an assignment and certify payment of the authorized fee to the entity. We would make these changes to our regulations in *20 CFR 404.1720 and 416.1520*.

For some sections in the proposed rule, we previously accounted for the public reporting burdens under the following OMB approved information collections: 0960-0527 (SSA-1696, Appointment of Representative, which allows an individual to appoint a representative, and requires the representative's agreement to serve as representative), 0960-0731 (SSA-1694, Request for Business Entity Taxpayer Information, which requests specific taxpayer data from representatives requesting a fee), and 0960-0732 (SSA-1699, Registration for Appointed Representative Services and Direct Payment, which requires the representatives to prove eligibility when they register with SSA and allows them to request a fee). However, the proposed rule also introduces new public

reporting burdens under sections *20 CFR 404.1707, 404.1720, 404.1730, 404.1735, 416.1507, 416.1520, 416.1530, and 416.1535*. Therefore, we are accounting for those new burdens under this information collection request. The proposed rule will also require all representatives to register with SSA under sections *20 CFR 404.1705 and 416.1505*, which will increase the burden for the SSA-1699 (0960-0732). Upon OMB's approval of the final rule, we will incorporate these new burdens under the current OMB approvals for the associated information collections.

2. Description of Collection

As mentioned above, under sections *20 CFR 404.1705 and 416.1505* of this rule, we propose to require all representatives to register with us prior to being appointed on any claim. We expect that this requirement will allow us to conduct business more efficiently because it would allow us to automate more notices, minimize manual errors, properly track transactions and related communications, and improve our sanctions process. We expect that this increased automation would also make the processing of appointments and fee payments more efficient by reducing errors associated with manual actions. In addition, the registration requirement would enable us to better track all representatives' actions and conduct on their cases, rather than just those who choose to register with us, and it would extend access to our electronic services to more representatives. It would also enable all registered representatives to access our Electronic Records Express (ERE) system to do business with us. We will use our current Form SSA-1699, Registration for Appointed Representative Services and Direct Payment (OMB No. 0960-0732) to register all appointed representatives.

The proposed rule for the Changes to the Administrative Rules for Claimant Representation and Provision for Direct Payment to Entities also contains the following new public reporting burdens:

- **20 CFR 404.1707 and 416.1507** – SSA revised these sections to include a requirement for the claimant and their representative to complete and sign SSA's prescribed appointment form. Previously, we did not require the claimant or the representative to use the prescribed appointment form for this action, rather they could submit a written request of their own. We will update the SSA-1696 (OMB No. 0960-0527) with this new requirement.
- **20 CFR 404.1720 and 416.1520** – SSA revised these sections to allow a representative who is eligible for direct payment of an authorized fee to assign the authorized fee to an entity that is eligible for direct payment. Previously, SSA did not allow the representative to assign the authorized fee to another entity. We will update the SSA-1696 (OMB No. 0960-0527) with this new requirement.
- **20 CFR 404.1730 and 416.1530** – SSA revised these sections to allow a representative to rescind an assignment before the date on which SSA notifies them of the first favorable determination or decision. We will update the SSA-1696 (OMB No. 0960-0527) with this new requirement.

- **20 CFR 404.1735 and 416.1535** – SSA revised these sections to explain the requirements for an entity’s eligibility for direct payment. The new requirements under which an entity is eligible for direct payment under these revised sections are as follows:
 - (a) has an Employment Identification Number,
 - (b) is registered with us in the manner we prescribe, has not been found ineligible for direct payment,
 - (c) designates and maintains an employee who is a registered representative as a point of contact to speak and act on the entity’s behalf,
 - (d) accepts payment via electronic transfer and conforms to our rules.We will update the SSA-1694 (OMB No. 0960-0731) with this new requirement.

Respondents are applicants for, or recipients of, Social Security disability benefits (SSDI); SSI payments; or anyone pursuing a benefit or invoking a right under SSA programs, who are notifying SSA they have appointed someone to represent them in their dealings with SSA; any non-attorney representatives who need to sign the form; as well as individuals revoking their appointment of representative, and their representatives’ withdrawal of their acceptance of an appointment.

3. Use of Information Technology to Collect the Information

We use the Internet to collect the information on these forms when possible. Specifically, we collect the information from the SSA-1694 (0960-0731) through our Business Services Online system accessible through the representative’s mySSA account; we collect the information from the SSA-1696 (0960-0527) through an Internet-accessible, submittable PDF; and we collect the information from the SSA-1699 (0960-0732) via our ERE system (approved under 0960-0753). We discuss these electronic modalities in more detail under the specific OMB documentation for each of these information collections.

4. Why We Cannot Use Duplicate Information

The nature of the information we collect and the manner in which we collect it precludes duplication. SSA does not use another collection instrument to obtain similar data.

5. Minimizing Burden on Small Respondents.

This collection does not significantly affect small businesses or other small entities.

6. Consequence of Not Collecting Information or Collecting it Less Frequently

If we did not collect the information on the SSA-1699 (0960-0732), SSA would have no means of authenticating representatives; allowing them direct access to beneficiary records; facilitating direct payment of authorized fees to representatives; or issuing the necessary IRS forms. In addition, if SSA does not collect the information identifying each recipient’s representative on the SSA-1696 (0960-0527), SSA could not fulfill its obligations under the *Act* and regulations to recognize an attorney, or other qualified individual, a recipient named as a representative. Finally, if we did not use form SSA-1694 (0960-0731), the appointed representative would be unable to obtain information reported on a form 1099-MISC or on a form 1099-NEC. Because we collect

the information on an as needed basis, we cannot collect it less frequently. There are no technical or legal obstacles to burden reduction.

7. Special Circumstances

There are no special circumstances that would cause SSA to conduct this information collection in a manner inconsistent with 5 CFR 1320.5.

8. Solicitation of Public Comment and Other Consultations with the Public

SSA published a notice of proposed rulemaking (NPRM) in the Federal Register on August 4, 2023, at 88 FR 51747. If we receive any public comments pertaining to our time estimate or the collection of this information, we will share them with OMB.

9. Payment or Gifts to Respondents

SSA does not provide payments or gifts to the respondents.

10. Assurances of Confidentiality

SSA protects and holds confidential the information it collects in accordance with 42 U.S.C. 1306, 20 CFR 401 and 402, 5 U.S.C. 552 (Freedom of Information Act), 5 U.S.C. 552a (Privacy Act of 1974), and OMB Circular No. A-130.

11. Justification for Sensitive Questions

These information collections do not contain any questions of a sensitive nature.

12. Estimates of Public Reporting Burden

The chart below shows the updated burden information for the revised and new public reporting requirements for the proposed rule:

Regulation Section	Description of Public Reporting Requirement	Number of Respondents (annually)	Frequency of Response	Average Burden Per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)**	Total Annual Opportunity Cost (dollars)***
404.1705(c) 416.1505(c) SSA-1699 (0960-0732)	Your representative(s) must be registered with us in the manner we prescribe before you submit the appointment(s)	15,382	1	20	5,127	\$ 73.86**	\$378,680***
404.1707(a) 416.1507(a)	You [claimant] complete and sign our	1,100,000	1	7	128,333	\$12.81**	\$1,643,946***

SSA-1696 (0960-0527)	prescribed appointment form, and						
404.1707(a) 416.1507(a) SSA-1696 (0960-0527)	Your representative completes and signs our prescribed appointment form, and	1,100,000	1	5	91,667	\$73.86**	\$6,770,525***
404.1720(f) 416.1520 (f) SSA-1696 (0960-0527)	A representative who is eligible for direct payment of an authorized fee may assign direct payment of the authorized fee to an entity that is eligible for direct payment.	500,000	1	5	41,667*	\$73.86**	\$3,077,525***
404.1730(e) (2) 416.1530(e) (2) SSA-1696 (0960-0527)	A representative may rescind an assignment before the date on which we notify you of our first favorable determination or decision.	150,000	1	3	7,500	\$73.86**	\$553,950***
404.1735 416.1535 SSA-1694 (0960-0731)	An entity is eligible for direct payment if the entity: (e) has an Employment Identification Number, (f) is	7,000	1	18	2,100	\$73.86**	\$155,106***

	registered with us in the manner we prescribe, (g) has not been found ineligible for direct payment, (h) designates and maintains a registered representative as a point of contact to speak and act on the entity's behalf, (i) accepts payment via electronic transfer, and conforms to our rules						
Totals		2,872,382			276,394		\$12,579,756***

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

** We based these figures on average Legal Service hourly salary, as reported by Bureau of Labor Statistics data (<https://www.bls.gov/oes/current/oes231011.htm>) and the average DI payments based on SSA's current FY 2023 data (<https://www.ssa.gov/legislation/2023factsheet.pdf>).

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

We base our burden estimates on current management information data, which includes

data from actual interviews, as well as from years of conducting this information collection, as well as anticipated changes due to the proposed rule. Per our management information data, we believe that the burdens per response for each form shown on the chart above accurately show the average burden per response for learning about the program; receiving notices as needed; reading and understanding instructions; gathering the data and documents needed; answering the questions and completing the information collection instrument; scheduling any necessary appointment or required phone call; consulting with any third parties (as needed); and waiting to speak with SSA employees (as needed). Based on our current management information data, the current burden information we provided is accurate. The total burden for this ICR is **296,394** burden hours (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$12,579,756**. SSA does not charge respondents to complete our applications.

As noted above, upon OMB approval of the final rule, we will update the burden figures in the associated information collections under 0960-0527, 0960-0731, and 0960-0732 to reflect these revised burdens.

13. Annual Cost to the Respondents (Other)

These collections do not impose a known cost burden on the respondents.

14. Annual Cost To Federal Government

We estimated the annual cost to the Federal government for these forms under their individual OMB numbers. We list no cost here, as we do not want to double count the cost to the government.

15. Program Changes or Adjustments to the Information Collection Request

The new proposed rule decreases the overall public reporting burden for these information collections. See question #12 for updated burden figures. As noted in #12 above, upon OMB approval of the final rule, we will update the burden figures in the associated information collections under 0960-0527, 0960-0731, and 0960-0732 to reflect these revised burdens.

16. Plans for Publication Information Collection Results

SSA will not publish the results of the information collection.

17. Displaying the OMB Approval Expiration Date

For the **paper Forms** SSA-1694, SSA-1696, and SSA-1699, we will not publish the OMB approval expiration date. OMB granted SSA an exemption from the requirement to print the OMB expiration date on its program forms. SSA produces millions of public-use forms with life cycles exceeding those of an OMB approval. Since SSA does not periodically revise and reprint its public-use forms (e.g., on an annual basis), OMB granted this exemption so SSA would not have to destroy stocks of otherwise useable forms with expired OMB approval dates, avoiding Government waste.

For the **Internet versions** of Forms SSA-1696-APP, and the ERE submission for the

SSA-1699, SSA is not requesting an exception to the requirement to display the OMB approval expiration date

18. Exceptions to Certification Statement

SSA is not requesting an exception to the certification requirements at 5 *CFR* 1320.9 and related provisions at 5 *CFR* 1320.8(b)(3).

B. Collections of Information Employing Statistical Methods

SSA does not use statistical methods for this information collection.