

additional time to overcome any technical difficulties in implementing the rules.

In delaying the effective date for these requirements, the Department is balancing the benefit of having these protections in place for consumers as soon as practical with the capability of airlines to comply with the additional requirements being imposed upon them in a reasonable timeframe. We believe the January 24, 2012, date will provide the airlines adequate time to comply with the requirements.

## Regulatory Analyses and Notices

### A. Administrative Procedure Act

Section 553(b) of the Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency “for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Because August 23, 2011 (the effective date for the April 2011 final rule) is fast approaching, the Department finds good cause that this action delaying the effective date should take effect immediately. Today’s final rule makes no substantive changes to the rule, but simply delays the effective date of certain provisions until January 24, 2012.

### B. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action is not a significant regulatory action under Executive Order 12866 and the Department of Transportation’s Regulatory Policies and Procedures. Accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

### C. Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DOT certifies that this action will not have a significant impact on a substantial number of small entities. This action imposes no duties or obligations on small entities.

### D. Executive Order 13132 (Federalism)

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government, and therefore will not have federalism implications.

### E. Executive Order 13084

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because the provisions for which we are delaying the effective date would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

### F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DOT has determined that there are no new information collection requirements associated with this action. The action merely postpones the effective date of a regulatory provision whose paperwork impact has already been analyzed by the Department, and consequently no additional OMB approval is necessary.

### G. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Issued this 20th day of July 2011, in Washington, DC.

**Susan Kurland,**

*Assistant Secretary for Aviation and International Affairs.*

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**BILLING CODE 4910-9X-P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA-2010-0025]

RIN 0960-AH21

### Revisions to Direct Fee Payment Rules

**AGENCY:** Social Security Administration.

**ACTION:** Interim final rules with request for comments.

**SUMMARY:** We are revising our rules to implement amendments to the Social Security Act (Act) made by the Social

Security Disability Applicants’ Access to Professional Representation Act of 2010 (PRA). We are making permanent the direct fee payment rules for eligible non-attorney representatives under titles II and XVI of the Act and for attorney representatives under title XVI of the Act. We also are revising some of our eligibility policies for non-attorney representatives under titles II and XVI of the Act.

**DATES:** These rules are effective August 29, 2011.

**Comment Date:** To ensure we consider your comments, we must receive them by September 26, 2011.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2010-0025 so that we may associate your comments with the correct regulation.

**Caution:** You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. **Internet:** We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function to find docket number SSA-2010-0025. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. **Fax:** Fax comments to (410) 966-2830.

3. **Mail:** Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

### FOR FURTHER INFORMATION CONTACT:

Joann S. Anderson, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-6716. 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:

##### Background

Claimants may use representatives to help them with their claims for benefits before us. Prior to March 2, 2004, the Act authorized us to withhold 25% of a claimant's past-due benefits under title II of the Act when the claimant hired an attorney representative and to pay the attorney's fees directly from the withheld amounts.<sup>1</sup> The Social Security Protection Act of 2004 (SSPA) amended section 1631(d)(2) of the Act and authorized us for five years to withhold 25% of a claimant's past-due benefits in claims filed under title XVI of the Act and pay any approved fee directly to the claimant's attorney.<sup>2</sup> The SSPA also authorized a five-year demonstration project during which we could similarly withhold 25% of the past-due benefits for claims filed under titles II and XVI of the Act and pay fees directly to non-attorney representatives who met specific requirements.<sup>3</sup> Both SSPA provisions were set to expire on February 28, 2010.<sup>4</sup>

The SSPA specified five requirements that a non-attorney representative had to meet to be eligible for direct fee payment. The representative had to:

(1) Have a bachelor's degree from an accredited institution of higher education or have been determined by us to have equivalent qualifications derived from training and work experience;

(2) Pass an examination that we wrote and administered, which tested knowledge of the relevant provisions of the Act and the most recent developments in Social Security Administration (SSA) and court decisions affecting titles II and XVI of the Act;

(3) Secure professional liability insurance, or equivalent insurance, which we determined to be adequate to protect claimants in the event of malpractice by the representative;

(4) Undergo a criminal background check to ensure the representative's fitness to practice before us; and

(5) Demonstrate ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which were designed to enhance professional knowledge in

matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of the Act. The SSPA required that the continuing education courses, and the instructors providing the education courses, meet our prescribed standards.<sup>5</sup>

The SSPA also gave us the discretion to add requirements and authorized us to assess reasonable fees to cover our cost of administering the demonstration project requirements.<sup>6</sup>

We published several notices in the **Federal Register** that solicited public input and described the policies we would use to implement these requirements and the fee assessment.<sup>7</sup> Using our discretion, we also added a sixth requirement—representational experience. We describe in more detail below how we implemented these requirements under the SSPA.

We also published interim final rules and final rules to include information in our regulations about the SSPA, such as the demonstration project, the withholding and direct fee payment provisions for non-attorney representatives, direct fee payment to attorney representatives under title XVI of the Act, and the SSPA's five-year sunset date of February 28, 2010.<sup>8</sup>

##### The PRA

On February 27, 2010, Congress enacted the PRA and revised the Act in two main ways.<sup>9</sup> First, it permanently extended our authority to withhold 25% of a claimant's past-due benefits and directly pay any authorized fees to attorney representatives for claims filed under title XVI of the Act.<sup>10</sup> To accommodate this change, we are revising our rules in final sections 416.1530 to remove the sunset date and making other conforming changes.

Second, the PRA permanently extended our authority to withhold 25% of past-due benefits and directly pay any authorized fees to eligible non-attorney representatives under titles II and XVI of the Act.<sup>11</sup> The PRA includes nearly identical language to the SSPA about the five mandatory requirements for direct fee payment, our discretion to add requirements, and our ability to assess representatives a reasonable fee

to cover the cost of administration. Based upon our experience with the demonstration project, in these interim final rules we are modifying how we implement these provisions to help non-attorney representatives more easily understand and comply with our requirements and process.

The following information explains how we have been implementing the SSPA's requirements, how we will implement the PRA, and the revisions we are making to our rules.

##### Application Process

To implement the requirements of the SSPA, we required non-attorneys who wanted to receive direct fee payment to apply with us. We held one application period per year through 2009, except for the first year when we held two application periods. We required any non-attorney representative who wanted to be eligible to receive direct fee payment to complete an application, submit the required documentation, and pay the application fee. We required applicants to postmark their applications by the last day of the application period. We also gave applicants who timely paid the application fee 6 weeks to cure defects in an incomplete application. After we verified that all other requirements had been met, we permitted the applicant to take our written examination.

We allowed an applicant who did not complete the application in a timely manner, pay the application fee, or pass the examination, to reapply during any subsequent application period. However, we required the applicant to complete an application, pay an application fee, and meet the requirements each time he or she reapplied to take the examination.

We have decided to change two of our procedures in order to streamline the application process. As explained above, we previously verified that each applicant met the education or equivalent qualifications, insurance, and criminal background check requirements before we permitted him or her to take the examination. Under these rules, an applicant must indicate that he or she meets the education or equivalent qualification requirement and pass the criminal background check before we permit the applicant to take the examination. However, we will not request documentation or verify that an applicant meets the education or equivalent qualifications and insurance requirements until after he or she takes and passes the examination. This change will help us save resources because we will not need to verify information about applicants whom we

<sup>5</sup> Section 303(b) of the SSPA.

<sup>6</sup> Sections 303(b) and (c) of the SSPA.

<sup>7</sup> 69 FR 50431 (Aug. 16, 2004), 69 FR 77307 (Dec. 27, 2004), 70 FR 2447 (Jan. 13, 2005), 70 FR 14490 (Mar. 22, 2005); 70 FR 41250 (July 18, 2005), and 72 FR 46121 (Aug. 16, 2007).

<sup>8</sup> See 72 FR 16720 (Apr. 5, 2007), 72 FR 44765 (Aug. 9, 2007), and 20 CFR 404.1717(a) and (c), 416.1517(a) and (c), and 416.1530(e).

<sup>9</sup> Public Law 111-142.

<sup>10</sup> Section 2 of the PRA.

<sup>11</sup> Section 3 of the PRA.

<sup>1</sup> 42 U.S.C. 406.

<sup>2</sup> Public Law 108-203, section 302. The authority began February 28, 2005.

<sup>3</sup> Section 303 of the SSPA.

<sup>4</sup> Sections 302(c)(2) and 303(e)(2) of the SSPA.

determine, based on information in their applications, to be ineligible to take the examination, or who do not pass the examination.

Second, instead of the 6-week time period we currently give an applicant to cure defects in his or her application, we will make this process consistent with our protest procedures and give an applicant 10 calendar days from the date we notify him or her that there is a defect in the application to correct the problem. We will permit only an applicant who both timely submits the application and timely pays the application fee to cure defects in his or her application. We are making this change because we will require an applicant to provide less documentation before he or she passes the examination under these rules.

We are adding these requirements in final sections 404.1717(a)(1), (b), and (f) and 416.1517(a)(1), (b), and (f).

#### Application Fee

Both the SSPA and the PRA allow us to assess reasonable fees to cover the cost of administering the requirements for non-attorney representative eligibility for direct fee payment, such as the cost of administering the written examination and conducting criminal background checks.<sup>12</sup> After Congress enacted the SSPA, we published two notices in the **Federal Register** that explained how we administered the application fee process.<sup>13</sup>

We set the fee at \$1,000 per applicant, specified the means of payment, and required applicants to pay the fee when they submitted their applications. We would refund or apply the fee to a subsequent application period in two circumstances:

- If the contractor who administered the demonstration project for us was at fault for failing to administer an examination and an applicant did not take the rescheduled examination; or
- If circumstances beyond the applicant's control, such as a death in the applicant's immediate family, a documented illness of the applicant, or a transportation problem that could not have been reasonably anticipated and planned for, prevented an applicant from taking a scheduled examination.

We assessed whether the applicant's circumstances warranted a refund, considering basic principles of fairness and sound management.

We would not refund or credit a fee to a subsequent application if an applicant:

- Took and failed the examination; or
- Failed to arrive on time for an examination because of circumstances within the applicant's control, such as a traffic problem or a child-care problem of a type that could have been anticipated and planned for.

Our action about whether to provide a refund or apply a fee to a future application period was final and not subject to further review.

Most of these requirements have worked well, and we are adding them in final sections 404.1717(a)(2) and (c) and 416.1517(a)(2) and (c).

However, we are making three changes to our current procedures. First, we will refund the application fee instead of applying the fee to a subsequent application if: (1) We fail to administer a scheduled examination and an applicant is unable to take the rescheduled examination, or (2) we agree that circumstances beyond the applicant's control that could not have been reasonably anticipated and planned for prevented the applicant from taking a scheduled examination. This change will give applicants use of the money until they apply again, and it will help us administer the direct fee payment program more efficiently. Second, we are no longer going to use the "principles of fairness and sound management" test to determine when to refund an application fee. Instead, we will consider an applicant's individual circumstances. Examples of circumstances that we may consider to be beyond an applicant's control that cannot reasonably be anticipated or planned for include a death in the applicant's immediate family or the documented illness of the applicant or the applicant's immediate family member. However, we will not refund the application fee if: (1) An applicant took and failed the examination, or (2) an applicant failed to arrive on time for the examination because of circumstances within the applicant's control that could have been anticipated and planned for. Finally, these interim final rules do not specify the application fee amount. If we decide to change the current application fee of \$1,000, we will notify the public through appropriate methods and may announce the changes on our Web site: <http://www.socialsecurity.gov/representation>. We will notify applicants of any change in the application fee amount in the application package.

#### Education or Equivalent Qualifications

For a non-attorney representative to receive direct fee payment, the SSPA and the PRA both require either that a representative have "a bachelor's degree

from an accredited institution of higher education," or that we determine that the representative has "equivalent qualifications derived from training and work experience."<sup>14</sup> After the SSPA, we published a notice in the **Federal Register** that explained how we would administer this requirement.<sup>15</sup> We stated how we would determine that an applicant who did not have a qualifying bachelor's degree could meet the equivalent qualifications requirement by using a formula that balanced the applicant's years of education and his or her relevant professional experience:

- If the applicant did not have a bachelor's degree, but had three years or more of undergraduate study at an accredited institution of higher learning, the applicant must have had at least one year of relevant professional experience, at least six months of which must have involved claims for benefits under title II or XVI of the Act;

- If the applicant had at least two, but less than three years of undergraduate study at an accredited institution of higher learning, the applicant must have had at least two years of relevant professional experience, at least one year of which must have involved claims for benefits under title II or XVI of the Act;

- If the applicant had at least one, but less than two years of undergraduate study at an accredited institution of higher learning, the applicant must have had at least three years of relevant professional experience, at least two years of which must have involved claims for benefits under title II or XVI of the Act; or

- If the applicant had less than one year of undergraduate study at an accredited institution of higher learning, or no undergraduate education, the applicant must have received a high school diploma or a General Educational Development (GED) certificate and have had at least four years of relevant professional experience, at least two years of which must have involved claims for benefits under title II or XVI of the Act.<sup>16</sup>

We also considered relevant professional experience to be work through which the applicant demonstrated familiarity with medical reports and the ability to describe and assess mental or physical limitations. We stated that applicants could gain

<sup>14</sup> Section 303(b)(1) of the SSPA and section 3(a) of the PRA.

<sup>15</sup> 70 FR at 2448–49.

<sup>16</sup> 70 FR at 2448–2449. Applicants who possessed a juris doctor degree could only participate in the demonstration project if they did not qualify to receive direct fee payment as attorneys under 42 U.S.C. 406 and 1383.

<sup>12</sup> Section 303(c) of the SSPA and section 3(a) of the PRA.

<sup>13</sup> 70 FR 2448 and 70 FR at 41252.

this kind of experience in fields such as teaching, counseling or guidance, social work, personnel management, public employment service, nursing, or health care professions. We also considered relevant professional experience to include work involving claims for benefits under title II or XVI of the Act. We asked applicants to show that they met this requirement before they took the examination.

We have found it cumbersome to administer this formula for balancing years of education and relevant professional experience. To help simplify the application process, we have decided not to use this formula. Instead, we will now require applicants to demonstrate that they have either:

- A bachelor's degree from an accredited institution of higher learning, or
- At least four years of relevant professional experience and either a high school diploma or GED certificate.

We will continue to consider relevant professional experience to be work through which the applicant demonstrates familiarity with medical reports and the ability to describe and assess mental or physical limitations. As in the past, an applicant may gain this kind of experience in fields such as teaching, counseling or guidance, social work, personnel management, public employment service, nursing, or health care professions. We will also continue to consider relevant professional experience to include work involving claims for benefits under title II or XVI of the Act.

We will ask for proof of an applicant's education, appropriate training, or work experience after the applicant passes the examination. The kinds of proof we may accept include, but are not limited to, copies of an official education transcript, copies of an Internal Revenue Service Form W-2 (Wage and Tax Statement), or letters from an applicant's employer verifying the length and type of employment.

We are adding these requirements in final sections 404.1717(a)(3) and 416.1517(a)(3).

#### Written Examination

For a non-attorney representative to receive direct fee payment, the SSPA and the PRA both require the representative to pass an examination that we write and administer that "tests [a representative's] knowledge of the relevant provisions of [the] Act and the most recent developments in [SSA] and

court decisions affecting [titles II and XVI of the Act]."<sup>17</sup>

After the SSPA, we published a notice in the **Federal Register** that explained how we would administer this requirement.<sup>18</sup> We said that we would administer written examinations that included 40–50 multiple-choice questions in English only. We offered two examinations during the first year of the demonstration project. From 2006 through 2009, we offered the test once per year on a weekday. The test-takers had open-book access to reference materials that we supplied, such as the most recent edition of the *Compilation of the Social Security Laws, Volume 1*, and our regulations in 20 CFR chapter III. We based the examinations on situations arising from the subject areas in the reference materials and considered a score of 70 to be passing. We allowed an applicant who failed the examination to reapply to take the examination during a subsequent application period and provided an applicant with the opportunity to protest a failing score.

We are adding the requirement that a non-attorney representative take and pass our written examination in final sections 404.1717(a)(5) and 416.1517(a)(5). However, we will specify the details of how we administer the examination, the contents of the examination, and our scoring procedures through other means of communication, such as on our Web site.

While we do not anticipate changing how we administer the examination requirement at this time, we may change this process in the future without publishing a notice in the **Federal Register**. We will notify the public and applicants of any relevant changes through alternate methods, such as through our Web site: <http://www.socialsecurity.gov/representation>.

#### Liability Insurance

For a non-attorney representative to receive direct fee payment, both the SSPA and the PRA require that the representative "secure[] professional liability insurance, or equivalent insurance, which [we determine] to be adequate to protect claimants in the event of malpractice by the representative."<sup>19</sup>

In the **Federal Register** notices that we published after Congress passed the SSPA, we explained how we would

administer this requirement.<sup>20</sup> At first, we required applicants to have a minimum total annual amount of coverage of \$1 million (for all incidents in that year), plus coverage of \$250,000 per incident for coverage of errors and omissions committed by the non-attorney representative. We later reduced the per-incident minimum coverage to \$100,000 per incident and decided to consider business liability insurance as professional liability insurance. For professional liability insurance, we also changed the minimum annual aggregate amount to \$500,000. For business liability insurance, we set the minimum annual aggregate amount in accordance with the following schedule:

<i>Number of covered employees</i>	<i>Minimum aggregate amount</i>
1 to 10 .....	\$500,000.
11 to 25 .....	\$1 million.
26 to 50 .....	\$2 million.
51 to 100 .....	\$3 million.
101 to 200 .....	\$4 million.
201 or more .....	\$5 million.

We believed that these insurance coverage amounts would adequately protect claimants in the event of malpractice by non-attorney representatives, while increasing the ability of non-attorney representatives who wished to participate in the demonstration project to obtain insurance. We also stated that these amounts were consistent with insurance agency practices and standards, which emphasized the per-incident coverage and relied on graduated schedules in increasing minimum aggregate amounts.

Under these procedures, a non-attorney representative must use a firm licensed to provide insurance in the State in which the non-attorney representative conducts business to underwrite the insurance policy. We also required the policy to provide coverage for liability insurance claims made in those States in which the non-attorney representative represents claimants before us. We required an applicant to submit proof that he or she had the required insurance coverage before the application period closed to be able to take the examination. We also required non-attorney representatives who established eligibility to participate in the demonstration project to maintain their insurance coverage to continue to be eligible to receive direct fee payment.

We have found some of the current requirements to be ineffective because some representatives have canceled

<sup>17</sup> Section 303(b)(2) of the SSPA and section 3(a) of the PRA.

<sup>18</sup> 70 FR at 2450.

<sup>19</sup> Section 303(b)(3) of the SPA and section 3 of the PRA.

<sup>20</sup> 70 FR at 2449 and 70 FR at 41251.

their insurance coverage without informing us. To help ensure that non-attorney representatives maintain adequate liability insurance, we are revising how we will apply this requirement.

We will now require non-attorney representatives who want to receive direct fee payment to provide their initial proof of insurance coverage after passing the examination. We will, at various times, request that representatives provide proof that they have maintained professional or business liability insurance coverage in amounts we prescribe. If we find that a representative has not maintained continuous coverage since our last verification, the representative will be ineligible for direct fee payment for at least 6 full calendar months. We provide more details about this in the *Ineligibility and Protest Procedures* section, below.

We are revising our rules to require that each eligible non-attorney representative “[p]rovides proof of and maintains continuous liability insurance coverage in an amount we prescribe” in final sections 404.1717(a)(6) and 416.1517(a)(6). We will specify the amount of required insurance coverage in our subregulatory instructions and periodically adjust the required coverage amounts to protect claimants adequately. We are continuing to require representatives to have professional or business liability insurance coverage in the same amounts listed earlier. However, we may change these amounts each year. If we change them in the future, we will announce the changes by the end of any examination application period for that year. We will notify the public of any relevant changes through alternate methods, such as through our Web site: <http://www.socialsecurity.gov/representation>.

### Criminal Background Check

For a non-attorney representative to receive direct fee payment, the SSPA and the PRA both require that a “representative has undergone a criminal background check to ensure the representative’s fitness to practice before [us].”<sup>21</sup>

After the SSPA, we published a notice in the **Federal Register** that explained how we would administer this requirement.<sup>22</sup> Under those procedures, we would reject any applicant who:

- Had been suspended or disqualified from practice before us;

- Had a judgment or lien assessed against him or her by a civil court for malpractice or fraud;

- Had a felony conviction;
- Engaged in substantial misrepresentation in submitting his or her application or supporting materials for the application;

- Failed to pass our administrative records check (check of SSN, *etc.*); or
- Failed to provide documentation as requested by our contractor to perform the criminal background investigation.

We will continue to follow most of these requirements. However, we are not continuing with the disqualifying standard: “Engages in substantial misrepresentation in submitting his or her application or supporting materials for the application.” Instead, we will require an applicant to attest under penalty of perjury that he or she “[h]as not misrepresented information provided on his or her application or supporting materials for the application.”

We are making this change to clarify that we will not accept even minor misrepresentations by applicants. We also are not stating that a contractor will conduct the criminal background investigation because we may not use a contractor in the future. We are clarifying that a representative must continue to meet the criteria in the criminal background check at all times to remain eligible to receive direct fee payment. All other current requirements will remain in effect.

We are adding these requirements in final sections 404.1717(a)(4) and 416.1517(a)(4), 404.1714(d) and 416.1517(d).

### Continuing Education

For a non-attorney representative to receive direct fee payment, both the SSPA and the PRA require that a “representative demonstrate[] ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under [titles II and XVI of the Act. The] continuing education, and the instructors providing such education, [must] meet [the] standards [that we] prescribe.”<sup>23</sup>

After the SSPA, we published a notice in the **Federal Register** that explained how we would administer this requirement.<sup>24</sup> We stated that we would

generally defer to organizations providing courses as to the subject matter, the requirements for receiving credit for an hour of instruction, and the qualifications of instructors. However, we reserved the right to reject specific courses or instructors if we determined that a course or instructor was unacceptable. We created a framework in which we required certain hours of continuing education requirements during certain time periods, depending on how long a representative participated in the demonstration project and whether the representative was a course instructor. We required eligible non-attorney representatives to report their continuing education information to us, and we specified which information to report.

We have found the framework that balanced hours and length of participation to be unnecessarily complex for representatives to follow and for us to administer. We also believe that some of the continuing education courses lacked sufficient substance. To help ensure that non-attorney representatives receive pertinent and adequate continuing education, we are revising our rules to require that each non-attorney representative who is eligible to receive direct fee payment “[c]ompletes and provides proof that he or she has completed all continuing education courses that we prescribe by the deadlines we prescribe” in final sections 404.1717(a)(7) and 416.1517(a)(7). We will no longer follow our prior formula to calculate continuing education hour requirements. Instead, we will prescribe which courses representatives must take, and we will select courses that we deem necessary to enhance the representative’s professional knowledge in matters such as those related to entitlement to benefits, ethics, the Listing of Impairments,<sup>25</sup> and other disability topics under titles II and XVI of the Act. We will also prescribe when representatives must complete the courses and how representatives will certify that they have completed the courses. We will notify the public and eligible non-attorney representatives about specific course requirements. We will notify the public of any relevant changes through alternate methods, such as through our Web site: <http://www.socialsecurity.gov/representation>.

If a representative does not take the prescribed continuing education courses or provide us with the necessary proof

<sup>21</sup> Section 303(b)(4) of the SSPA and section 3 of the PRA.

<sup>22</sup> 70 FR at 2449.

<sup>23</sup> Section 303(b)(5) of the SSPA and section 3 of the PRA.

<sup>24</sup> 70 FR 41250–41251.

<sup>25</sup> 20 CFR part 404 subpart P appendix 1, which also applies to title XVI of the Act under 20 CFR 416.925.

that he or she has completed the prescribed courses, the representative will be ineligible for direct fee payment for at least 6 full calendar months. We provide more details about this in the *Ineligibility and Protest Procedures* section, below.

### Representational Experience

The SSPA gave us discretion to establish additional requirements for non-attorneys to receive direct fee payment.<sup>26</sup> We published two notices in the **Federal Register** in which we explained an additional requirement that non-attorney representatives have certain minimum representational experience.<sup>27</sup> We stated that each applicant must show that he or she represented at least five claimants before us within a 24-month period within the 60 months before the month in which the applicant filed the application. We also described the types of work that would qualify, and we provided examples of how we would calculate the 24- and 60-month periods.

Although the PRA also gives us discretion to establish additional requirements,<sup>28</sup> we have decided not to continue with the representational experience requirement. We found that this requirement unnecessarily complicated the application process without adding significant benefit. In our experience administering the demonstration project, we found that passing the written examination is a better barometer to assess representatives' knowledge and skills.

### Ineligibility and Protest Procedures

Both the SSPA and the PRA require that non-attorney representatives meet the requirements listed above before we determine that they are eligible to receive direct fee payment.<sup>29</sup> Once we determine that a non-attorney representative is eligible to receive direct fee payment, he or she must continue to meet all of the requirements.

After the SSPA, we published a notice in the **Federal Register** that explained how an applicant could protest our action finding that he or she was ineligible to take the examination or receive direct fee payment.<sup>30</sup> We stated that we would notify non-attorney representatives in these situations.

If an applicant timely paid the application fee but submitted an incomplete application, we would notify the applicant and give him or her

6 weeks after the close of the application period to cure the defects. If we determined that an applicant was not qualified to take the examination for reasons other than failure to pay the application fee, such as failing the criminal background investigation, we also would notify the applicant. The applicant could protest our action within 10 calendar days of the date of our notice and use the protest period to correct the defects in his or her application. We also allowed an applicant to file a protest with us if he or she failed the examination.

As stated above, we required eligible non-attorney representatives to continue to meet the requirements to continue to receive direct fee payment.

If we notified an eligible representative that we proposed to suspend direct fee payment because he or she failed to meet our continuing education requirement, we gave the representative 10 calendar days to protest our action and show that he or she met this requirement. If there was no protest, the suspension began on the first day of the month following the month in which the protest period ended. If there was a protest and we still found that the representative was ineligible, we began suspending direct fee payment on the first day of the month following the month in which we notified the representative about our action in response to the protest. We would end the suspension the month after the month we determined that he or she completed all of the unmet requirements.

Similarly, if we notified an eligible representative that we proposed to suspend direct fee payment because he or she failed to meet our insurance coverage requirements, we gave the representative 15 calendar days to protest our action and show that he or she met this requirement. If there was no protest, the suspension began on the first day of the month following the month in which the protest period ended. If there was a protest and we decided that the representative was ineligible, we began suspending direct fee payment on the first day of the month following the month in which we notified the representative about our action in response to the protest. We would end the suspension on the first day of the month following the month in which we notified the representative that he or she again met our requirements.

We stated that every protest must include supporting facts and complete documentation. Our action in response to a protest was final and not subject to further review. We also said that we

would not withhold or make direct fee payment to a non-attorney representative in any case in which we effectuated a determination or decision while the suspension is in effect.

In these interim final rules, we are also adding rules about how we handle protests when we determine that a non-attorney representative is not eligible to receive direct fee payment. Our experience administering the demonstration project showed that we could improve upon our protest procedures to make them easier to understand, follow, and administer.

Because it is easier to administer a uniform process, we will now require that a representative submit his or her protest in writing, and we will limit all protests to 10 calendar days from the date he or she receives notice of our action finding him or her ineligible. Our action in response to a protest will remain final and will not be subject to further review.

We will no longer allow applicants to protest failing examination scores. We use several checks to verify the accuracy of scores. Our experience shows that we confirmed all previously protested test scores as being accurate; therefore, we denied all test score protests that applicants filed. As stated earlier, we will allow a representative who fails the examination to reapply during a subsequent application period, but a representative must complete a new application and pay the application fee each time he or she reapplies.

If an applicant does not attest that he or she meets our education or equivalent qualifications requirement and we find that the applicant is ineligible to take the examination because this requirement is not met, we will continue to allow the applicant to protest this finding. If an applicant files a protest and we confirm our earlier finding, we will not allow the applicant to sit for the examination. We will allow the applicant to reapply in a subsequent application period. As stated earlier, an applicant must complete a new application and pay the application fee each time he or she reapplies. As also stated earlier, we will now verify the education or equivalent qualifications requirement after applicants take and pass the examination.

If an applicant takes and passes the examination, but we find that the applicant provided false or misleading information about his or her education or equivalent qualification, we will find that the applicant is ineligible to receive direct fee payment. We will provide the representative with the opportunity to protest our finding. If the representative does not protest, we will make the

<sup>26</sup> Section 303(b) of the SSPA.

<sup>27</sup> 70 FR at 2449 and 70 FR at 41252.

<sup>28</sup> Section 3(a) of the PRA.

<sup>29</sup> Section 303(b) of the SSPA and section 3(a) of the PRA.

<sup>30</sup> 70 FR at 41252.

representative permanently ineligible to receive direct fee payment. If the representative protests and we confirm our earlier finding, we will make the representative permanently ineligible to receive direct fee payment. We may also refer the information to our Office of the General Counsel so it can decide if we should bring sanctions against the representative.

If we find that an applicant does not meet our criminal background check (including a check of our administrative records) and is ineligible to take the examination, we will allow the applicant to protest this finding. If an applicant files a protest and we confirm our earlier finding, we will not allow the applicant to take the examination.

An applicant who passes our written examination will only become eligible to receive direct fee payment when he or she provides proof of sufficient liability insurance in an amount we prescribe and provides proof of education or equivalent qualifications. We will not allow an applicant to protest our finding that he or she has not yet provided this documentation. In this situation, an applicant will become eligible to receive direct fee payment once he or she provides this proof, assuming that he or she continues to meet all other eligibility requirements.

We will continue to monitor whether eligible non-attorney representatives meet our requirements and remain eligible to receive direct fee payment. We may find a representative is ineligible to receive direct fee payment if he or she: (1) Provided false or misleading information about his or her bachelor's degree or equivalent qualifications; (2) would fail our criminal background check if conducted today; (3) has not provided sufficient proof of maintaining continuous liability insurance; or (4) has not completed or provided documentation of the required continuing education courses. As stated above, we will send a notice to the representative that states what action we will take and the applicable protest procedures.

If we find that an eligible non-attorney representative provided false or misleading information about his or her bachelor's degree or equivalent qualifications, or would fail our criminal background check if conducted today, we will provide the representative with the opportunity to protest our finding. If the representative does not protest, we will make the representative permanently ineligible to receive direct fee payment beginning with the month after the month the protest period ends. If the representative protests and we confirm our earlier

finding, we will make the representative permanently ineligible to receive direct fee payment the month after the month we uphold our finding. We may also refer the information to our Office of the General Counsel so it can decide if we should bring sanctions against the representative.

If we find that an eligible non-attorney representative has not completed or provided documentation of the required continuing education courses, we will also provide the representative with the opportunity to protest our finding. If the representative does not protest, the representative will be ineligible for direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the representative protests and the action we take in response to the protest confirms our earlier finding, we will make the representative ineligible for direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. After the 6-month suspension period is over, we will resume direct fee payment to the representative in the first month after the month we find that he or she demonstrates that he or she meets our continuing education requirements. A representative may submit this required documentation at any time during or after the end of the 6-month suspension.

We will also provide an eligible representative with the opportunity to protest our action if we find that a non-attorney representative has not provided sufficient proof that he or she had maintained the continuous liability insurance coverage. If the representative does not protest, the representative will be ineligible for direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the representative protests and the action we take in response to the protest confirms our earlier finding, we will make the representative ineligible for direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. The non-attorney representative may provide us with documentation that he or she maintains the required liability insurance coverage no earlier than in the sixth month of the suspension. After the 6-month suspension period is over, we will resume direct fee payment to the representative in the first month after the month we find that the non-attorney representative again maintains the required liability insurance coverage.

We are adding these requirements in final sections 404.903, 404.1717(d) and (e), 416.1403, and 416.1517(d) and (e).

#### **Currently Ineligible Non-Attorney Representatives**

Some non-attorney representatives who became eligible for direct fee payment during the demonstration project are currently suspended from eligibility because they did not maintain the required liability insurance coverage or meet our continuing education requirements. Prior to the effective date of these interim final rules, we may end their suspensions under the current requirements if they provide the necessary proof to us. After the effective date of these interim final rules, we will notify those non-attorney representatives who did not provide sufficient proof and inform them of our new requirements. We will allow these representatives to protest their suspensions under the protest procedures explained in these rules.

Because we are not changing the amount of insurance coverage we currently require, a representative who protests our finding that he or she failed to maintain the required liability insurance must provide documentation showing proof of coverage in the amount listed above. A representative who protests our finding that he or she did not meet our continuing education requirements must provide documentation showing that he or she met our requirements under the demonstration project prior to the effective date of these rules. If the action we take in response to the protest confirms our earlier finding, we will make the representative ineligible for direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding.

#### **Other Changes**

We are adding a definition for "eligible non-attorney" in final sections 404.1703 and 416.1503 and defining this term to mean "a non-attorney representative who we determine is qualified to receive direct payment of his or her fee under [20 CFR 404.1717(a) or 416.1517(a)]." We are also adding a definition for "date we notify him or her" in final sections 404.1703 and 416.1503 and defining this phrase to mean "5 days after the date on the notice, unless the recipient shows us that he or she did not receive it within the 5-day period." We also clarify in final sections 404.1717 and 416.1517 that an individual who is a licensed attorney or is suspended or disbarred from the practice of law in any jurisdiction cannot be an eligible non-



attorney. Finally, we are making conforming changes to final sections 404.1720, 404.1730, 416.1520, and 416.1530 for clarity.

### Regulatory Procedures

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

With regard to these rules, we find that good cause exists under 5 U.S.C. 553(b)(B) to issue these regulatory changes as interim final rules without prior public comment. Congress enacted the PRA on February 27, 2010, and the statute required us to “provide for full

implementation \* \* \* not later than March 1, 2010.”<sup>31</sup> Our regulations about withholding for direct fee payment to attorneys and eligible non-attorney representatives under title XVI of the Act and direct fee payment to eligible non-attorney representatives under titles II and XVI of the Act expired on February 28, 2010. In light of the effective date of the changes contained in the PRA, we find it is impracticable not to have implementing regulations while we initiate notice and comment rulemaking proceedings. However, we are inviting public comment on the changes made by these interim final rules and will consider any responsive comments received within 60 days of publication.

### Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these interim final rules

meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

### Regulatory Flexibility Act

We certify that these interim final rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

### Paperwork Reduction Act

These final rules contain public reporting requirements in the regulation sections listed below. We are seeking approval for these regulation sections under OMB Control Number 0960-0699, which we will use to collect the information required by these sections. Below we provide burden estimates for the public reporting requirements.

Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden *
404.1717(a)(5); 416.1517(a)(5) .....	New Respondents Examination ...	200	1	120	400
404.1717(a)(3); 416.1517(a)(3) .....	New Respondents—Submission of proof of Bachelor's Degree or Equivalent Qualifications.	200	1	10	33
404.1717(a)(7); 416.1517(a)(7) .....	New and Existing Respondents—CE Submission via e-mail/mail/ or FAX of training courses taken as prescribed by SSA.	710	1	20	237
404.1717(a)(6); 416.1517(a)(6) .....	New and Existing Respondents—Proof of Continuous Professional or Business Liability Insurance Coverage (Scan and E-mail).	672	1	10	112
404.1717(a)(6); 416.1517(a)(6) .....	New and Existing Respondents—Proof of Continuous Professional or Business Liability Insurance Coverage (Copy and Mail).	38	1	15	10
404.1717(d); 416.1517(d) .....	New and Existing Respondents—Written Protests.	45	1	45	34
Totals .....	.....	1,865	.....	.....	826

We submitted an Information Collection Request for clearance to OMB. 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 ways to minimize the burden on respondents, including the use of automated 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, 6401 Security Blvd, Baltimore, MD 21235-0001. *Fax Number:* 410-965-6400. *E-mail:* [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov).

You can submit comments until September 26, 2011, which is 60 days

after the publication of these rules. However, your comments will be most useful if you send them to us by August 29, 2011, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer 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—

<sup>31</sup> Section 3(c) of the PRA.



Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

## List of Subjects

### 20 CFR Part 404

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

### 20 CFR Part 416

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

Dated: July 21, 2011.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404 subparts J and R and part 416 subparts N and O as set forth below:

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

### Subpart J—[Amended]

- 1. 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).

- 2. Amend § 404.903 by adding new paragraph (bb) to read as follows:

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

\* \* \* \* \*

(bb) Determining whether a non-attorney representative is eligible to receive direct fee payment as described in § 404.1717 of this part.

### Subpart R—[Amended]

- 3. The authority citation for subpart R of part 404 is revised 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).

- 4. Revise § 404.1703 by adding definitions for “date we notify him or her” and “eligible non-attorney” in alphabetical order to read as follows:

#### § 404.1703 Definitions.

\* \* \* \* \*

*Date we notify him or her* means 5 days after the date on the notice, unless the recipient shows us that he or she did not receive it within the 5-day period.

*Eligible non-attorney* means a non-attorney representative who we determine is qualified to receive direct payment of his or her fee under § 404.1717(a).

\* \* \* \* \*

- 5. Revise § 404.1717 to read as follows:

#### § 404.1717 Direct payment of fees to eligible non-attorney representatives.

(a) *Criteria for eligibility.* An individual who is a licensed attorney or who is suspended or disbarred from the practice of law in any jurisdiction may not be an eligible non-attorney. A non-attorney representative is eligible to receive direct payment of his or her fee out of your past-due benefits if he or she:

(1) Completes and submits to us an application as described in paragraph (b) of this section;

(2) Pays the application fee as described in paragraph (c) of this section;

(3) Demonstrates that he or she possesses:

(i) A bachelor’s degree from an accredited institution of higher learning; or

(ii) At least four years of relevant professional experience and either a high school diploma or a General Educational Development certificate;

(4) Passes our criminal background investigation (including checks of our administrative records), and attests under penalty of perjury that he or she:

(i) Has not been suspended or disqualified from practice before us and is not suspended or disbarred from the practice of law in any jurisdiction;

(ii) Has not had a judgment or lien assessed against him or her by a civil court for malpractice or fraud;

(iii) Has not had a felony conviction; and

(iv) Has not misrepresented information provided on his or her application or supporting materials for the application;

(5) Takes and passes a written examination we administer;

(6) Provides proof of and maintains continuous liability insurance coverage in an amount we prescribe; and

(7) Completes and provides proof that he or she has completed all continuing education courses that we prescribe by the deadline we prescribe.

(b) *Application.* An applicant must timely submit his or her completed application form during an application period that we prescribe. The

application must be postmarked by the last day of the application period. If an applicant timely submits the application fee and a defective application, we will give the applicant 10 calendar days after the date we notify him or her of the defect to correct the application.

(c) *Application fee.* An applicant must timely submit his or her application fee during the application period. We will set the fee annually.

(1) We will refund the fee if:

(i) We do not administer an examination, and an applicant was unable to take the rescheduled examination; or

(ii) Circumstances beyond the applicant’s control that could not have been reasonably anticipated and planned for prevent an applicant from taking a scheduled examination.

(2) We will not refund the fee if:

(i) An applicant took and failed the examination; or

(ii) An applicant failed to arrive on time for the examination because of circumstances within the applicant’s control that could have been anticipated and planned for.

(d) *Protest procedures.*

(1) We may find that a non-attorney representative is ineligible to receive direct fee payment at any time because he or she fails to meet any of the criteria in paragraph (a) of this section. A non-attorney representative whom we find to be ineligible for direct fee payment may protest our finding only if we based it on the representative’s failure to:

(i) Attest on the application or provide sufficient documentation that he or she possesses the required education or equivalent qualifications, as described in paragraph (a)(3) of this section;

(ii) Meet at all times the criminal background investigation criteria, as described in paragraph (a)(4) of this section

(iii) Provide proof that he or she has maintained continuous liability insurance coverage, as described in paragraph (a)(6) of this section, after we previously determined the representative was eligible to receive direct fee payment; or

(iv) Complete continuing education courses or provide documentation of the required continuing education courses, as described in paragraph (a)(7) of this section.

(2) A non-attorney representative who wants to protest our finding under paragraph (d)(1) of this section must file a protest in writing and provide all relevant supporting documentation to us within 10 calendar days after the date we notify him or her of our finding.

(3) A representative may not file a protest for reasons other than those listed in paragraph (d)(1) of this section. If a representative files a protest for reasons other than those listed in paragraph (d)(1) of this section, we will not process the protest and will implement our finding as if no protest had been filed. Our finding in response to the protest is final and not subject to further review.

(e) *Ineligibility and suspension.*

(1) If an applicant does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding. If an applicant protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding.

(2) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month we uphold our finding.

(3) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(6) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has acquired and maintains the required liability insurance coverage described in

paragraph (a)(6) of this section, no earlier than the sixth month of the ineligibility. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation that the non-attorney representative meets the requirements of paragraph (a)(6) of this section.

(4) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(7) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has satisfied the criteria in paragraph (a)(7) of this section at any time. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation, but not earlier than the month following the end of the 6 month ineligibility period.

(f) *Reapplying.* A representative may reapply to become eligible to receive direct fee payment under paragraph (a) of this section during any subsequent application period if he or she:

(1) Did not meet the initial criteria for eligibility in paragraphs (a)(1), (a)(2), (a)(3), or (a)(5) of this section in a prior application period; or

(2) Failed to timely correct a defective application in a prior application period, as described in paragraph (b) of this section.

■ 6. Amend § 404.1720 by revising paragraph (b)(4) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(4) If your representative is an attorney or an eligible non-attorney, and you are entitled to past-due benefits, we will pay the authorized fee, or a part of the authorized fee, directly to the attorney or eligible non-attorney out of the past-due benefits, subject to the limitations described in § 404.1730(b)(1). If the representative is

a non-attorney who is ineligible to receive direct fee payment, we assume no responsibility for the payment of any fee that we have authorized.

\* \* \* \* \*

■ 7. Amend § 404.1730 by revising the first sentence of paragraph (a), heading and introductory text of paragraph (b)(1), heading and the first sentence of paragraph (b)(2), heading of paragraph (c), and paragraph (c)(1) to read as follows:

**§ 404.1730 Payment of fees.**

(a) *Fees allowed by a Federal court.* We will pay an attorney representative 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.

\* \* \*

(b) *Fees we may authorize—*

(1) *Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney, 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 smaller of the amounts in paragraph (b)(1)(i) or (ii) of this section, less the amount of the assessment described in paragraph (d) of this section.

\* \* \* \* \*

(2) *Non-attorneys ineligible for direct payment.* If the representative is a non-attorney who is ineligible to receive direct payment of his or her fee, we assume no responsibility for the payment of any fee that we authorized.

\* \* \*

\* \* \* \* \*

(c) *Time limit for filing request for approval of fee to obtain direct payment.* (1) To receive direct fee payment from your past-due benefits, a representative who is an attorney or an eligible non-attorney should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices, or electronically at the times and in the manner that we prescribe if we give notice that such a method is available, within 60 days of the date we mail the notice of the favorable determination or decision.

\* \* \* \* \*

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

**Subpart N—[Amended]**

■ 8. 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).

■ 9. Amend § 416.1403 by adding new paragraph (a)(26) to read as follows:

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

(a) \* \* \*

(26) Determining whether a non-attorney representative is eligible to receive direct fee payment as described in § 416.1517 of this part.

\* \* \* \* \*

■ 10. The authority citation for subpart O of part 416 is revised 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)).

■ 11. Revise § 416.1503 by adding definitions for “date we notify him or her” and “eligible non-attorney” in alphabetical order to read as follows:

**§ 416.1503 Definitions.**

\* \* \* \* \*

*Date we notify him or her* means 5 days after the date on the notice, unless the recipient shows us that he or she did not receive it within the 5-day period.

*Eligible non-attorney* means a non-attorney representative who we determine is qualified to receive direct payment of his or her fee under § 416.1517(a).

\* \* \* \* \*

■ 12. Revise § 416.1517 to read as follows:

**§ 416.1517 Direct payment of fees to eligible non-attorney representatives.**

(a) *Criteria for eligibility.* An individual who is a licensed attorney or who is suspended or disbarred from the practice of law in any jurisdiction may not be an eligible non-attorney. A non-attorney representative is eligible to receive direct payment of his or her fee out of your past-due benefits if he or she:

(1) Completes and submits to us an application as described in paragraph (b) of this section;

(2) Pays the application fee as described in paragraph (c) of this section;

(3) Demonstrates that he or she possesses:

(i) A bachelor's degree from an accredited institution of higher learning; or

(ii) At least four years of relevant professional experience and either a high school diploma or a General Educational Development certificate;

(4) Passes our criminal background investigation (including checks of our

administrative records), and attests under penalty of perjury that he or she:

(i) Has not been suspended or disqualified from practice before us and is not suspended or disbarred from the practice of law in any jurisdiction;

(ii) Has not had a judgment or lien assessed against him or her by a civil court for malpractice or fraud;

(iii) Has not had a felony conviction; and

(iv) Has not misrepresented information provided on his or her application or supporting materials for the application;

(5) Takes and passes a written examination we administer;

(6) Provides proof of and maintains continuous liability insurance coverage in an amount we prescribe; and

(7) Completes and provides proof that he or she has completed all continuing education courses that we prescribe by the deadline we prescribe.

(b) *Application.* An applicant must timely submit his or her completed application form during an application period that we prescribe. The application must be postmarked by the last day of the application period. If an applicant timely submits the application fee and a defective application, we will give the applicant 10 calendar days after the date we notify him or her of the defect to correct the application.

(c) *Application fee.* An applicant must timely submit his or her application fee during the application period. We will set the fee annually.

(1) We will refund the fee if:

(i) We do not administer an examination, and an applicant was unable to take the rescheduled examination; or

(ii) Circumstances beyond the applicant's control that could not have been reasonably anticipated and planned for prevent an applicant from taking a scheduled examination.

(2) We will not refund the fee if:

(i) An applicant took and failed the examination; or

(ii) An applicant failed to arrive on time for the examination because of circumstances within the applicant's control that could have been anticipated and planned for.

(d) *Protest procedures.*

(1) We may find that a non-attorney representative is ineligible to receive direct fee payment at any time because he or she fails to meet any of the criteria in paragraph (a) of this section. A non-attorney representative whom we find to be ineligible for direct fee payment may protest our finding only if we based it on the representative's failure to:

(i) Attest on the application or provide sufficient documentation that

he or she possesses the required education or equivalent qualifications, as described in paragraph (a)(3) of this section;

(ii) Meet at all times the criminal background investigation criteria, as described in paragraph (a)(4) of this section

(iii) Provide proof that he or she has maintained continuous liability insurance coverage, as described in paragraph (a)(6) of this section, after we previously determined the representative was eligible to receive direct fee payment; or

(iv) Complete continuing education courses or provide documentation of the required continuing education courses, as described in paragraph (a)(7) of this section.

(2) A non-attorney representative who wants to protest our finding under paragraph (d)(1) of this section must file a protest in writing and provide all relevant supporting documentation to us within 10 calendar days after the date we notify him or her of our finding.

(3) A representative may not file a protest for reasons other than those listed in paragraph (d)(1) of this section. If a representative files a protest for reasons other than those listed in paragraph (d)(1) of this section, we will not process the protest and will implement our finding as if no protest had been filed. Our finding in response to the protest is final and not subject to further review.

(e) *Ineligibility and suspension.*

(1) If an applicant does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding. If an applicant protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding.

(2) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph

(d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month we uphold our finding.

(3) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(6) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has acquired and maintains the required liability insurance coverage described in paragraph (a)(6) of this section, no earlier than the sixth month of the ineligibility. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation that the non-attorney representative meets the requirements of paragraph (a)(6) of this section.

(4) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(7) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has satisfied the criteria in paragraph (a)(7) of this section at any time. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation, but not earlier than the month following the end of the 6 month ineligibility period.

(f) *Reapplying.* A representative may reapply to become eligible to receive direct fee payment under paragraph (a)

of this section during any subsequent application period if he or she:

(1) Did not meet the initial criteria for eligibility in paragraphs (a)(1), (2), (3), and (5) of this section in a prior application period; or

(2) Failed to timely correct a defective application in a prior application period as described in paragraph (b) of this section.

■ 13. Amend § 416.1520 by revising paragraph (b)(4) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(4) If your representative is an attorney or an eligible non-attorney, and you are entitled to past-due benefits, we will pay the authorized fee, or a part of the authorized fee, directly to the attorney or eligible non-attorney out of the past-due benefits, subject to the limitations described in § 416.1530(b)(1). If the representative is a non-attorney who is ineligible to receive direct fee payment, we assume no responsibility for the payment of any fee that we have authorized.

\* \* \* \* \*

■ 14. Amend § 416.1530 by revising the first sentence of paragraph (a), heading and introductory text of paragraph (b)(1), heading and the first sentence of paragraph (b)(2), heading of paragraph (c), and paragraph (c)(1) to read as follows:

**§ 416.1530 Payment of fees.**

(a) *Fees allowed by a Federal court.* We will pay an attorney representative 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.

\* \* \*

(b) *Fees we may authorize—*

(1) *Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney, 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.

\* \* \* \* \*

(2) *Non-attorneys ineligible for direct payment.* If the representative is a non-attorney who is ineligible to receive direct payment of his or her fee, we assume no responsibility for the

payment of any fee that we authorized.

\* \* \*

\* \* \* \* \*

(c) *Time limit for filing request for approval of fee to obtain direct payment.* (1) To receive direct fee payment from your past-due benefits, a representative who is an attorney or an eligible non-attorney should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices, or electronically at the times and in the manner that we prescribe if we give notice that such a method is available, within 60 days of the date we mail the notice of the favorable determination or decision.

\* \* \* \* \*

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## DEPARTMENT OF STATE

### 22 CFR Parts 120, 122, 123, and 129

RIN 1400-AC74

[Public Notice 7538]

### International Traffic in Arms Regulations: Electronic Payment of Registration Fees

AGENCY: Department of State.

ACTION: Final rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to change the method of payment to electronic submission of registration fees. The institution of the electronic submission of registration fees will simplify the collection and verification of payments, eliminate the need to manually process and collect returned payments, and eliminate the possibility of lost payments. Definitions for “Foreign Ownership” and “Foreign Control” are also added.

**DATES:** *Effective Date:* This rule is effective September 26, 2011.

**FOR FURTHER INFORMATION CONTACT:** Lisa V. Aguirre, Director, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Department of State, 2401 E Street, NW., SA-1, Room H1200, Washington, DC 20522-0112; telephone 202-632-2798 or fax 202-632-2878; or e-mail through [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov), with the subject line, “Electronic Payment of Registration Fees.”

**SUPPLEMENTARY INFORMATION:** The Directorate of Defense Trade Controls (DDTC) is responsible for the collection of registration fees from persons in the business of manufacturing, exporting,