

NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)

560 Sylvan Avenue • Englewood Cliffs, NJ 07632

Telephone: (201) 567-4228 • Fax: (201) 567-1542 • Email: nosscr@nosscr.org

Executive Director
Barbara Silverstone

December 22, 2017

Nancy Berryhill
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Submitted on www.regulations.gov

Re: Agency Information Collection Activities: Proposed Request and Comment Request, 82 Fed. Reg. 55707 (November 22, 2017), Docket ID Number [SSA-2017-0064]

Dear Acting Commissioner Berryhill:

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR). NOSSCR is a specialized bar association for attorneys and advocates who represent Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claimants throughout the adjudication process. Since 1979, NOSSCR has been providing continuing legal education to its thousands of members, and public policy advocacy on behalf of its members and the people with disabilities they represent. NOSSCR's mission is to advocate for improvements in Social Security disability programs and to ensure that individuals with disabilities applying for SSDI and SSI benefits have access to highly qualified representation and receive fair decisions.

Thank you for the opportunity to comment on these agency activities, specifically the new SSA-1693, "Fee Agreement for Representation Before the Social Security Administration," and SSA-4321, "Statement of Interpreter."

SSA-1693

NOSSCR appreciates the creation of an optional, uniform fee agreement that representatives may use to simplify the fee agreement evaluation process. We have the following suggestions for

Government Affairs Office: 1025 Connecticut Avenue, NW Suite 709 • Washington, DC 20036

Telephone: (202) 457-7775 • Fax: (202) 457-7773

improving the proposed fee agreement form. Additionally, we made spelling, grammar, and format corrections via “Track Changes” that is attached to this document.

INSTRUCTIONS FOR COMPLETING FORM SSA-1693

Privacy Act Statement Collection and Use of Personal Information

NOSSCR questions the statement that SSA uses the information provided on this form only “to verify [the claimant’s] appointment of an individual as [his/her] representative and his or her acceptance of the appointment.” This language appears to be more applicable and appropriate for the Form SSA-1696, “Appointment of Representative.” In contrast, the information provided on the Form SSA-1693 is used to permit fee authorization for services provided in a proceeding before the Social Security Administration.

Fee Agreement for Representation Before the Social Security Administration

The top right corner of each page of the fee agreement form asks for the “Appointed Representative’s Rep ID.” We appreciate SSA’s use of the Rep ID rather than the representative’s SSN. However, recognizing that there may be several appointed representatives who sign the same fee agreement, as anticipated on page 3 of 3 of this form, we believe asking for the *principal* appointed representative’s Rep ID would be more accurate, as illustrated on the “Track Changes” document below.

GENERAL INFORMATION

We like the use and emphasis of permissive language in this form showing that claimants and representatives are not required to use it under the fee agreement process (e.g. “You **may** use this form...”). We encourage SSA to stress to ALJs and other adjudicators in their training materials that this is a purely optional form and that personalized fee agreements that meet the statutory requirements for approval must continue to be approved.

As shown in the attached “Track Changes” document, we suggest adding language that clarifies that the authorized fee is calculated based on the total amount of past-due benefits paid to the claimant *and any of his/her eligible auxiliaries or dependents* (we also added this language to the “**What you have to pay**” section of the form’s instructions). We believe this addition is a necessary clarification of the fee authorization and payment rules for claimants, who are not familiar with the provisions of § 206(a)(2)(A) of the Social Security Act. As such, we also believe that this added language is more consistent with the requirements of the Plain Writing Act of 2010.

For the same reasons, we highly suggest adding the (current) specific dollar figure (\$6,000) in this section (and to the earlier “**What you have to pay**” section of the form’s instructions as well as the later “**STANDARD FEE AGREEMENT**” section on page 2 of 3 of the fee agreement) after stating that there is a statutory maximum dollar amount that can be authorized under the fee agreement process. The form’s instructions indicate that it is written with the claimant as the intended audience (e.g. “*you*” means the claimant, beneficiary, auxiliary beneficiary or

spouse.”), yet lacks critical details that most claimants do not know. Although this added language will require this form to be revised whenever the statutory maximum fee amount is increased, inclusion of the specific dollar figure is crucial to promoting claimants’ understanding and minimizing the risk of confusion.

REPRESENTATIVE’S INFORMATION & CLAIMANT’S INFORMATION

We see no reason to again ask for the representative’s Rep ID and the claimant’s SSN, which is already included at the top of this page, as it is required on every page of this 3-page form.

We also do not understand the need to ask for mailing addresses (both the representative’s and the claimant’s), which SSA already has on file and could easily locate based on the representative’s Rep ID and the claimant’s SSN, especially since we assume any change of address would need to be reported to SSA separately.

STANDARD FEE AGREEMENT

In addition to adding the specific dollar figure of \$6,000 after stating that there is a statutory maximum dollar amount that can be authorized under the fee agreement process to this section, as discussed above, we recommend expanding upon who may request administrative review of the authorized fee under the fee agreement process. The current language of this section fails to explain that the claimant is not the only party who can protest the authorized fee: the claimant, an affected auxiliary beneficiary under Title II, an eligible spouse under Title XVI, an appointed representative, and the decisionmaker in certain circumstances may also request administrative review. The current language of this section also fails to include the time limits for filing a request for administrative review under §§ 206(a)(3) and 1631(d)(2)(A) of the Social Security Act and HALLEX I-1-2-44. We have added proposed language in the “Track Changes” document below that fully and accurately explains who may file a request for administrative review and when.

We also added language to this section emphasizing the claimant’s understanding that “out-of-pocket” expenses, such as costs for copies of medical records, are not included in the authorized fee and must be paid separately by the claimant. Although this is noted in the “**What you have to pay**” section of the form’s instructions, given the importance of this distinction, we believe reiterating it on the fee agreement form itself (not just the instructions) will decrease the potential for any misunderstanding with more prominent placement.

TWO-TIERED AGREEMENT

As shown on the attached “Track Changes” document, we added a sentence explaining that even if the fee agreement is void because the claim is favorably decided above a certain administrative level, the fee sought under the fee petition process must still be authorized by SSA.

ESCROW/TRUST ACCOUNTS OR THIRD-PARTY PAYMENTS

This section is confusing because it refers to two different types of payments. The escrow/trust account is funded by the claimant, which may later be used towards paying the authorized fee or any incurred expenses. In this scenario, the representative is not waiving his/her right to charge and collect a fee or direct fee payment (including fee withholding). In contrast, a fee paid by another party frees the claimant and any auxiliary beneficiaries from any and all responsibility for paying any fee or expenses, thereby waiving direct payment, which means no past-due benefits should be withheld for fee payment purposes. We added language that explicitly states that the claimant has no financial liability for paying the authorized fee under the applicable third-party payment option in this section, which comports with HALLEX I-1-2-12.C.2.

SSA-4321

NOSSCR has some concerns about the proposed “Statement of Interpreter” form to be used when an individual requiring an interpreter prefers to provide his/her own interpreter during an interview or conversation with SSA or DDS employees, specifically as it refers to the interpreter as a witness and unreasonably expects the interpreter to have unnecessary knowledge about the claimant’s disability claim.

STATEMENT OF INTERPRETER

We see no reason to require the interpreter to certify that he/she is acting as both a witness and an interpreter. The role of an interpreter is to translate each party’s statements verbatim so that the claimant can understand the questions and the SSA or DDS employee can understand the answers. The interpreter is not a witness in the sense that he/she should not be independently questioned about anything pertaining the claimant’s case. If the certification statement intends to say that the interpreter is also acting as a witness to the conversation, then we suggest replacing the word “witness” with “observer” to avoid any confusion.

Acknowledgement Statements

We are concerned with the eighth acknowledgement statement, which requires the interpreter to attest to the validity of the interpreted statements under penalty of fine or imprisonment. The interpreter may not know whether the claimant’s statements are true and complete and should not be adding or withholding any of the claimant’s statements. Instead, the interpreter should only be translating the claimant’s literal statements. If the interpreter has translated the claimant’s statements fully and accurately, he/she should not be subject to a fine or imprisonment if those statements are false or incomplete unbeknownst to the interpreter.

We also find the ninth acknowledgement statement troubling, which requires that the interpreter have no personal stake in the interview, its outcome, or in any other communications with SSA or DDS that he/she is interpreting. This requirement is very unrealistic, given that this form is only used when an individual wants to use his/her own interpreter instead of an unknown, qualified interpreter. Consequently, in many cases, the interpreter completing this form will be the claimant’s friend or family member. Unlike a professional interpreter, the claimant’s friend or family member may have a personal interest in the outcome of the conversation with SSA or DDS to some extent, which should not be an automatic bar to serving as an interpreter.

Interestingly, the eighth and ninth acknowledgement statements are contradictory, as the eighth requires that the interpreter know enough personal information about the claimant to attest to the validity and completeness of his/her statements, yet the ninth requires that the interpreter have no personal stake or interest in the outcome of the conversation.

Conclusion

NOSSCR appreciates the opportunity to comment on the optional fee agreement form, which we hope will streamline the fee agreement process, and the proposed statement of interpreter. In regards to our comments on the fee agreement form, there are additional comments on the “Track Changes” document (e.g. spelling and grammar corrections) that may not have been discussed in detail, but should still be reviewed with equal importance.

Thank you for considering our comments.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Silverstone". The signature is written in black ink and is positioned above the typed name and title.

Barbara Silverstone
Executive Director

INSTRUCTIONS FOR COMPLETING FORM SSA-1693

Keep a copy of this form for your records.

File form **SSA-1693** only if you are submitting or have submitted a Notice of Appointment (i.e., a **SSA-1696** or equivalent writing) on an active claim or issue pending decision with us.

In this document, "**you**" means the claimant, beneficiary, auxiliary beneficiary or spouse.

Requesting a fee for representational services

Your representative may ask for a fee for the services he or she provided in your claim. Not all representatives ask for a fee, and some only charge a fee if they win your case. To charge you a fee for services related to your claim(s), your representative generally must obtain our approval. Your representative can do that by submitting a fee agreement (you may use this form) or a fee petition. You and your representative choose which of these two processes to use. For more information on fees, fee processes and our rules, visit our website at www.ssa.gov/representation.

Registration

Representatives who seek direct payment of their fee must first register with us. For more information on representative registration, visit us on-line at www.socialsecurity.gov/ar, contact us at 1-800-772-1213 (TTY 1-800-325-0778), or contact your local Social Security office.

When to file a fee agreement

Your representative must file your fee agreement before we decide your case. If you or your representative submit the fee agreement after our decision, we will disapprove your fee agreement.

What you have to pay

Under the terms of a fee agreement, you ~~can will~~ pay any amount up to ~~twenty-five~~25 percent of ~~theyour~~ past-due benefits owed to you and your eligible auxiliaries or dependents, or an amount set by us (currently \$6,000), whichever is less. You must pay the fee we authorize. You *may* also have to pay:

- Fees authorized by a Federal court for services your representative provided during the court proceedings, and
- Any "out-of-pocket" expenses your representative may incur (e.g., costs for making copies of a doctor's or hospital's records). *Note: These fees and expenses do not require our authorization.*

Two-tiered fee agreements

Although representatives may only use either a fee agreement or a fee petition in each case (they are mutually exclusive), you and your representatives can limit the effect of a fee agreement to a certain appeal level. Representatives can file a fee petition if your case is appealed beyond the specified administrative level. You and your representative can choose this option on the attached form.

Trust and escrow accounts or third-party agreements

Your representative may accept money from you ~~before we authorize a fee in advance~~ as long as he or she holds it in a trust or escrow account according to our rules and policy. It is your choice whether to enter into the trust or escrow agreement with your representative and willingly deposit the money in the trust or escrow account.

We collect information on payments your representative may receive from a third party for services he or she provided to you during the administrative proceedings. These fees may be in lieu of your fee payment, or may be in addition to your payment. We may consider these payments during our authorization process to determine if we need to authorize these fees under our rules. All statutory and regulatory rules continue to apply in situations involving third-party payments.

Withholding of funds and direct payment to your representative

If your representative is eligible under our rules to receive an authorized fee directly from us, we usually withhold 25 percent of past-due (retroactive) benefits for direct payment of that fee. However, you must pay your representative thean authorized fee directly if:

- the amount of the fee we approve is more than the amount held for you in a trust or escrow account, or more than the amount we can pay to your representative from your past-due benefits,
- we did not withhold past-due benefits,
- your claim did not result in past-due benefits,
- your representative is not eligible under our rules for direct payment of the fee from us,
- you ended the appointment of the representative before we issued a favorable decision,
- your representative withdrew from representing you before we issued a favorable decision,
- we withheld but later released your past-due benefits to you because your representative did not:
 - ask for our approval of a fee until 60 days after the date of your notice of award, or
 - timely tell us that he or she planned to ask for a fee.

Signatures

You and your representative must sign and date this form. If you are appointing multiple representatives, all of your representatives who intend to seek a fee for services provided on your claim must sign on a single fee agreement for the fee agreement to be approved.

Privacy Act Statement Collection and Use of Personal Information

Sections 206(a) and 1631(d) of the Social Security Act, as amended, authorize us to collect this information. We will use the information you provide on this form to verify your appointment of an individual as your representative and his or her acceptance of the appointment.

We rarely use the information you supply for any purpose other than to verify your appointment of an individual as your representative and his or her acceptance of the appointment. However, we may use the information for the administration of our programs including sharing information:

1. To comply with Federal laws requiring the release of information from our records (e.g., to the Government Accountability Office and Department of Veterans Affairs); and,
2. To facilitate statistical research, audits, or investigative activities necessary to assure the integrity and improvement of our programs (e.g., to the Bureau of the Census and to private entities under contract with us).

A complete list of when we may share your information with others, called routine uses, is available in our Privacy Act System of Records Notice entitled, Appointed Representative File, 60-0325. Additional information about this and other system of records notices and our programs is available from our Internet website at www.socialsecurity.gov or at your local Social Security office. We may share the information you provide with other health agencies through computer matching programs. Matching programs compare our records with records kept by other Federal, state, or local government agencies. We use the information from these programs to establish or verify a person's eligibility for federally funded or administered benefit programs and for repayment of incorrect payments or delinquent debts under these programs.

Paperwork Reduction Act Statement - This information collection meets the clearance requirements of 44 U.S.C. 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. We estimate that it will take about 7 minutes to read the instructions, gather the facts, and answer the questions. You may send us comments on our time estimate to: **SSA, 6401 Security Boulevard, Baltimore, MD 21235-6401. Send only comments relating to our time estimate to this address, not the completed form.**

References

- 18 U.S.C. §§ 203, 205, and 207
- 26 U.S.C. §§ 6041 and 6045(f)
- 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)2)
- 20 CFR §§ 404.1700 et. seq. and 416.1500 et. seq.

Claimant's SSN
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Principal Appointed Representative's Rep ID
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ADDITIONAL SIGNATURES

This page is optional - Use only if multiple appointed representatives want to sign ~~on~~ the same fee agreement.

Additional appointed representative's names and signatures

Rep ID

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Print Name

Signature

Rep ID

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