



NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS'
REPRESENTATIVES
ESTABLISHED 1979

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Faye Lipsky, Federal Register Liaison
Office of Legislation and Congressional Affairs, Social Security Administration
3253 Altmeyer, 6401 Security Boulevard
Baltimore, Maryland 21235-6401

Submitted via Regulations.gov

RE: Changes to the Administrative Rules for Claimant Representation and Provisions for Direct Payment to Entities (Docket Number SSA–2023–0018)

Dear Director Lipsky:

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR), 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 and in federal court. While we support the agency's efforts to modernize its payment system to enable direct payments to entities, we note several aspects of the proposed changes that require additional clarification. Further, we are concerned that portions of the proposed changes remain inconsistent with the holding of the First Circuit Court of Appeals in *Marasco & Nesselbush, LLP v. Collins*.

I. Assignment

The First Circuit Court of Appeals, in *Marasco & Nesselbush, LLP v. Collins*, held that SSA "must provide a reasonably reliable means for law firms to obtain directly from claimants' past-due benefits the fees payments that, pursuant to existing SSA and federal tax rules, would be recognized as income to the firms." 6 F.4th 150, 178 (1st Cir. 2021).

In response, SSA proposes to "allow representatives to assign their right to receive direct payment of an authorized fee to an entity on each claim." SSA defines "Assignment to mean the transfer of the right to receive direct payment of an authorized fee to an entity" (Part I, Paragraph 2). The need for this "transfer" appears to contradict the holding in *Marasco & Nesselbush* that the "law firms...may receive direct payment." 6 F.4th 150 at 179. These proposed rules appear to require an additional step of assignment instead of simply allowing for direct payment to the entity. We encourage SSA to simplify this process (or clarify the language) to ensure that no unnecessary middle step is involved that contradicts the First Circuit Court of Appeals' ruling. We also request clarification regarding the method by which this assignment will be made.

II. Rescission

We are also concerned that the language allowing for the "rescission of assignment" is too broad. *Marasco & Nesselbush* held that "SSA must adjust its rules...to ensure that the law firms that employ salaried

associates to represent SSA claimants may receive direct payment of the attorney's fees to which the firms' associates are entitled for representation performed while employed by those law firms." 6 F.4th 150, 179. However, SSA's proposed rules indicate that "We would allow a representative to withdraw an assignment...provided that the representative does so before the date we notify the claimant of our first favorable determination or decision."

By allowing a representative to withdraw the assignment at any time prior to the award of the claim, SSA is creating the possibility that salaried employees can leave a firm and take with them the fees to which the firm was clearly entitled. We request clarification regarding how SSA will ensure that entities are paid for work performed by their salaried employees when that work was performed as a part of the representative's employment.

III. Invalidation of Assignment

The proposed rule fails to provide the required specificity regarding circumstances that would invalidate an assignment. The language vaguely offers "some reasons" that would invalidate assignment but fails to clarify all the reasons that would invalidate assignment. For example, what is the impact of the death of a representative who assigned fees to an entity prior to his death?

IV. Retroactivity

For the thousands of claims that are already being processed, will it be possible to amend all appointments to assign fees to an entity? What if the representative has already left the entity? The proposed rule indicates that "upon the effective date of any final rule based on this proposal, we would begin certifying payment of fees directly to entities." However, it is not clear if this is only for new appointments and assignments after the date of this final rule, or if the assignments can be made retroactively. If they can be made retroactively, what would be the process? We seek clarity on this point.

V. Representative

SSA seeks to "redefine *Representative*" to mean, in part, "an individual who provides representational services." We fear this language is too broad and will unintentionally prevent individuals from providing filing assistance for friends and family. We ask that SSA clarify what "*Representative*" clearly is *not* so that this change in definition does not prevent claimants from utilizing the assistance of a trusted friend or family member when filing.

VI. Registration

SSA is proposing to define "registration" as "a process by which a representative or entity provides the information we require to conduct business with us." SSA further indicates that "we propose to require all representatives to register with us prior to being appointed on any claim." While we continue to applaud the agency's efforts to modernize and streamline processes, we are concerned by the lack of specificity regarding the processing time for these registrations. We ask that SSA clearly denote their intended processing times so that representatives are aware of the lead time required before they can be appointed. In the alternative, we suggest that SSA alter this language to indicate that the representative must have *started* the registration process prior to appointment.

VII. Signatures

The proposed rule indicates that “we also would require a signature by all representatives, whether the representative is an attorney or a non-attorney.” While we appreciate that the intention of this sentence is to ensure that all representatives are providing signatures, we fear that the wording of the sentence is overly broad and could be misconstrued to mean that every representative who is appointed on a single claim must sign the same SSA-1696 form. We request a rewording of this sentence to indicate the true intention that every representative, whether attorney or non-attorney, must sign their own appointment of representative form.

VIII. Point of Contact vs. Principal Representative

Currently, the SSA-1696 form allows for the appointment of multiple representatives, including a “principal representative,” who retains the ARS/ERE access for the claim. Will this “principal representative” language remain on the 1696? Is the “principal representative” required to be the same person as the “point of contact” for the entity? We encourage the rule writers to clarify these points to ensure that there is streamlined online access for entities with multiple employees working for claimants.

IX. Fee Agreements

The proposed rule fails to specify the required format for fee agreements. Currently, SSA requires all representatives who jointly represent one claimant to sign the same fee agreement. HALLEX I-1-1-10(C). Will this requirement continue, or will one fee agreement with the entity’s point of contact suffice for all representatives who assign to the entity?

X. Fee Waivers

Currently, many salaried employees who join claims as secondary representatives waive their fees with the intent that the principal representative receives all fees as denoted in the original SSA-1696 and fee agreement. HALLEX I-1-1-10(C). If there is a point of contact assigned and a principal representative who does not waive fees, what impact will a fee waiver by a later appointed representative have on the payment to the entity?

XI. Fee Petitions

We are concerned by the proposed rule’s silence on fee petitions. When SSA does not withhold a fee in a claim, and a fee petition is required, will SSA allow the entity (or point of contact) to submit one fee petition on behalf of all the representatives who were salaried employees of the entity and assigned fees to the entity during the period of representation? We request clarification.

Thank you for your consideration of these comments.

Sincerely,



David Camp
NOSSCR Interim CEO