To Whom It May Concern:

The Commissioner increased the fee cap from $7,200 to $9,200 for fee agreements approved on or after November 30, 2024 (*See* 89 Fed. Reg. 40523 (May 10, 2024)). Your award calculation erroneously applied the old cap of $7,200, and we ask for an immediate correction in accord with [POMS GN 03940.041A](https://secure.ssa.gov/poms.nsf/lnx/0203940041).

The controlling date for applying the increased fee cap is the date of the approved decision (not the date on a signed agreement)—and this claim was approved on or after November 30, 2024. Regardless of the number listed on the fee agreement document, a representative is entitled to the increased $9,200 cap if the fee agreement contains “escalator” language, allowing for an increase in the maximum fee (*See* [POMS GN 03920.006A](https://secure.ssa.gov/poms.nsf/lnx/0203920006)).

Our fee agreement in the above named claim included the proper escalator language allowing for the $9,200 cap, and yet your calculation incorrectly provides for the old $7,200 cap. Please note that [POMS GN 03940.041A](https://secure.ssa.gov/poms.nsf/lnx/0203940041) requires that when SSA applies an incorrect fee cap and the representative or claimant informs SSA of the mistake, **SSA must correct the error without further delay**.

Because the lower fee cap was incorrectly applied, please immediately rectify this error following the procedures in [POMS GN 03940.041B.1](https://secure.ssa.gov/poms.nsf/lnx/0203940041). Thank you.

Best regards,

**Additional language and accompanying citations you can use:**

* The statutory authority for the fee cap increase can be found at 89 Fed. Reg. 40523 (May 10, 2024):
	+ “Beginning November 30, 2024, decision makers may approve a fee agreement up to the new dollar limit if the fee agreement meets the statutory conditions for approval, no exceptions to the fee agreement process exist, and the favorable determination or decision is issued on or after this date.”
	+ See also [POMS GN 03920.006A](https://secure.ssa.gov/poms.nsf/lnx/0203920006):
		- “The parties to a fee agreement (i.e., the claimant and representative(s)) may include language to permit an adjustment of the agreed fee to the maximum statutory fee limit in effect as of the day of our favorable determination or decision.”
	+ And [POMS GN 03940.003B.3](https://secure.ssa.gov/poms.nsf/lnx/0203940003):
		- “We accept language in a fee agreement that permits an adjustment for the statutory fee limit in effect as of the day we approve the fee agreement.”
* Neither the date the fee agreement was signed nor the date the fee agreement was submitted is controlling for purposes of the increased fee cap:
	+ See NOTE 1 in [HALLEX I-1-2-12A.3](https://www.ssa.gov/OP_Home/hallex/I-01/I-1-2-12.html), “The increased limit is effective as of the day of our favorable determination or decision, not on the date the fee agreement was signed or filed.”
* The increased fee cap applies to all fee agreements containing language that permits an adjustment to the maximum fee limit in effect as of the date of the favorable decision (an “escalator” clause):
	+ [POMS GN 03940.003B.3](https://secure.ssa.gov/poms.nsf/lnx/0203940003), “The fee requested in the fee agreement cannot exceed the lesser of 25 percent of the past-due benefits or the fee limit set by the Commissioner under the authority provided by section of the Act 206(a)(2)(A)(ii) (II).”
* While the current limit is $9,200, citing an example of the prior $7,200 cap in the fee agreement does not invalidate the escalator clause’s applicability and does not cap the maximum payment to $7,200 when such language is present:
	+ [POMS GN 03920.006C](https://secure.ssa.gov/apps10/poms.nsf/lnx/0203920006), “[SSA] will recognize an otherwise valid fee agreement that contains language to allow an increase in the maximum statutory fee agreed to by the parties (i.e., the claimant and representative(s)). If the fee cap increases on or before the date of a favorable determination or decision, [SSA] will consider the new fee cap when authorizing the fee.”
* And here's another sample paragraph you can use to plug-in your case details:
	+ The [payment center or field office] failed to authorize, withhold, and pay the applicable increased fee cap in this case, which was favorably decided on [X date], even though the fee agreement contained an escalator clause permitting an adjustment to the maximum fee limit in effect as of the date of the favorable decision. According to POMS GN 03940.041A, “When SSA applies an incorrect fee cap and the representative or claimant advises SSA of the mistake, SSA will correct the error.”