

(A) Name of the money market fund and class;

(B) SEC file number of the money market fund;

(C) Net asset value per share used to effect shareholder transactions;

(D) Most recent market-based net asset value (including the value of any capital support agreement);

(E) Most recent market-based net asset value (excluding the value of any capital support agreement);

(F) Date as of which the most recent market-based net asset value was calculated;

(G) Total assets of the fund;

(H) Total net assets of the fund; and

(I) Number of shares outstanding; and

(ii) With respect to each security held by the money market fund:

(A) Name of the security;

(B) CUSIP number (if any);

(C) Principal amount;

(D) Maturity date as determined under § 270.2a-7;

(E) Final maturity date, if different from the maturity date as determined under § 270.2a-7;

(F) Categorization of the security's status as a "First Tier Security," "Second Tier Security" or a security that is no longer an "Eligible Security" under § 270.2a-7;

(G) The most recent market-based price (including the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute;

(H) The most recent market-based price (excluding the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute;

(I) The amortized cost value; and

(J) In the case of a tax-exempt security, whether there is a demand feature, as defined in § 270.2a-7(a)(8).

(c) *Nonpublic information.*

Information provided to the Commission pursuant to this section shall be nonpublic to the extent permitted by law.

(d) *Expiration.* This section will expire on September 17, 2010.

By the Commission.

Dated: September 18, 2009

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-22900 Filed 9-18-09; 4:15 pm]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2008-0030]

RIN 0960-AG82

Authorization of Representative Fees

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising our rules to allow representatives, in certain instances, to charge and receive a fee from third-party entities without requiring our authorization. We are also eliminating the requirement that we authorize fees for legal guardians or court-appointed representatives who represent claimants before us if a court has already authorized the fees. We are revising our rules to reflect changes in representatives' business practices and in the ways claimants obtain representation, and to improve the efficiency of our representative fee process.

DATES: This final rule is effective on October 23, 2009.

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:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Explanation of Changes

Authority

We may issue regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1). We also have authority to issue regulations allowing attorneys and non-attorneys to represent claimants before us and to set the maximum fees for those services. 42 U.S.C. 406(a)(1) and 1383(d)(2). Based on this authority, we are revising our current regulations on fees paid to claimant representatives found in part 404 subpart R and part 416 subpart O.

Background

Generally, representatives must obtain our authorization before charging or

receiving a fee for representing claimants before us. 20 CFR 404.1720 and 416.1520. We also prohibit representatives from charging or receiving fees that are more than the amount we authorize regardless of whether the fee is charged to, or received from, the claimants or someone else. 20 CFR 404.1720(b)(3) and 416.1520(b)(3). However, if certain criteria are met, we do not need to authorize a fee if a nonprofit organization or a government agency pays the fee out of funds provided or administered by a government entity. Social Security Ruling (SSR) 85-3.

Changes

This final rule allows representatives, in certain cases, to be paid fees for representing claimants before us without requiring our authorization. The primary reason that we set maximum fees is to protect claimants and auxiliary beneficiaries. Nevertheless, when certain third parties are responsible for paying the representative for his or her services, there is no risk that the claimant or auxiliary beneficiaries will be charged an unreasonable fee. Third-party entities, such as insurance companies, often provide representation to claimants and pay the representatives' fees at no cost to the claimants or auxiliary beneficiaries. We do not believe that we need to authorize fee arrangements between representatives and third-party entities if claimants and auxiliary beneficiaries are not responsible for paying fees or expenses directly or indirectly.

Similarly, there is no reason to require legal guardians or court-appointed representatives to obtain our authorization for their fees if a court has already authorized the fees. In our experience, we have found court-authorized fees reasonable. Before it authorizes a fee, a court considers an individual's best interests when it reviews and approves a legal guardian's or representative's accounting. Therefore, when a court authorizes a fee, we do not need to duplicate the court's analysis.

In the notice of proposed rulemaking (NPRM) that we published on August 26, 2008, we stated that we did not need to authorize fees if "a business entity independent of your representative" paid the fees. 73 FR 50260. However, we did not define that phrase in the NPRM. For clarity and in response to public comments, we are using only the term "entity" and are defining "entity" to include "any business, firm, or other association, including but not limited to partnerships, corporations, for-profit

organizations, and not-for-profit organizations” in final sections 404.1703 and 416.1503.¹ We also expressly state that we do not need to authorize a fee if an “entity or a Federal, State, county, or city government agency uses its funds to pay the representative fees and expenses” and certain other criteria are met. We revised the language in final sections 404.1720(e)(1) and 416.1520(e)(1) to reflect these changes.

We are also clarifying the proposed definition of the phrase “legal guardian or court-appointed representative” in final sections 404.1703 and 416.1503. We define the phrase as “a court-appointed person, committee, or conservator who is lawfully responsible for taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs.”

To ensure that we continue to protect claimants and auxiliary beneficiaries, we will waive the requirement that we review fee arrangements only when the following criteria are met: (1) The fees are paid by an entity or a Federal, State, county, or city government agency; (2) neither the claimant nor any auxiliary beneficiaries are liable for fees or expenses; and, (3) the representative waives the right to charge and collect a fee from the claimant or any auxiliary beneficiary. Final sections 404.1720(e) and 416.1520(e). As previously noted, we do not need to authorize the fee of a legal guardian or court-appointed representative when a court has already authorized the fee. Based on our experience, we believe that these criteria protect claimants and auxiliary beneficiaries from unreasonable representative fees.

This change will allow us to better serve the public by freeing resources for other workloads. It should also give representatives more time to devote to claimants because they will not need to file fee petitions with us in these instances.

We are making minor conforming changes to 20 CFR 404.1720(b)(3) and 416.1520(b)(3). For clarity, we are making nonsubstantive changes to the paragraph headings we proposed in sections 20 CFR 404.1720(e) and 416.1520(e), the language about auxiliary beneficiaries we proposed in 20 CFR 404.1720(e)(1)(i) and (ii) and 416.1520(e)(1)(ii), and the language about court authorization we proposed in 20 CFR 404.1720(e)(2) and 416.1520(e)(2). We are also using the

term “authorize” instead of “approve” in final sections 404.1720(b)(3) and 416.1520(b)(3) for clarity and consistency with our other rules. We are also rescinding SSR 85–3 today in a separate notice in the **Federal Register** because we are codifying the policies from SSR 85–3 into this final rule.

Public Comments

We published an NPRM in the **Federal Register** on August 26, 2008, and we gave the public 60 days to comment. 73 FR 50260. We received five public comments, and we carefully considered all of them. Because some of the comment letters were quite detailed, we have condensed, summarized, and paraphrased them in our responses below.

Comment: Two commenters wanted us to clarify what we meant by “a business entity independent of your representative” in proposed 20 CFR 404.1720(e) and 416.1520(e).

Response: We agree with these commenters that the proposed term was unclear, and we made two changes to the final rule. First, we now state that we do not need to authorize a fee if “[a]n entity or a Federal, State, county, or city government agency pays from its funds the representative fees and expenses” and certain other conditions apply. Final sections 404.1720(e)(1) and 416.1520(e)(1). Second, we added a definition for “entity” to final sections 404.1703 and 416.1503. As noted earlier, we used the same definition in our proposed rules on “Revisions to Rules on Representation of Parties.” 73 FR 51963.

Comment: Some of the commenters asserted that representatives who are associated with an entity would have an inherent conflict of interest. They expressed concern that a representative would be incapable of advising and advocating for a claimant in certain situations when the advice would be against the interest of the entity paying the representative’s fee. One commenter asserted that we should not rely upon entities to protect claimants’ interests because of “multiple” lawsuits against long-term disability insurance carriers for bad faith or lack of compliance with their standards of conduct.

Response: For many years, entities have employed or contracted with representatives to represent claimants before us. We have no evidence that these kinds of representatives advocate for their clients less effectively than other representatives, and we do not expect these representatives to act differently in the future. We hold all representatives to the same rules of conduct and standards of responsibility

regardless of who pays their fees. For example, our current rules already require that representatives acting on behalf of a party faithfully execute their duties as agents and fiduciaries of that party. 20 CFR 404.1740(a) and 416.1540(a). Our current rules also state that “[a] representative shall not knowingly charge, collect or retain, or make any arrangement to charge, collect or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation.” 20 CFR 404.1740(c)(2) and 416.1540(c)(2). We will continue to expect representatives to adhere to our rules of conduct and standards of responsibility when they represent claimants before us, and we will continue to take appropriate action when they do not.

Moreover, we proposed additional changes to strengthen our rules of conduct and standards of responsibility for representatives in our proposed rules on “Revisions to Rules on Representation of Parties.” We will rely upon our rules to protect claimants’ interests. We believe the changes we are making to our regulations will benefit claimants, representatives, and us.

Comment: One commenter noted that language in the preamble of the NPRM was unclear as to whether a third-party could be an individual.

Response: We resolved this issue by using the term “entities” and by defining that term to exclude individuals. We will still need to authorize any representative’s fee paid by a third-party individual.

We distinguish between fees paid by an entity and those paid by an individual to provide additional safeguards to claimants and auxiliary beneficiaries. We believe that allowing individuals, such as relatives or friends of a claimant, to pay representative fees without our prior authorization would make it easier to circumvent the requirement that the claimant or auxiliary beneficiary not be responsible “directly or indirectly” for the payment of the fees. For example, if a claimant believes that we will process his or her disability claim more quickly if we do not need to authorize a representative’s fee, the claimant might ask a relative to pay the representative an excessive fee, which the claimant would then repay to the relative after we approve the claim. We must continue to authorize a fee in this type of situation to prevent the possibility that a claimant may be charged an unreasonable fee.

Comment: Some commenters were concerned that our proposed rules would permit claimants to pay fees in certain cases. Two commenters

¹ This definition is identical to the definition of the term “entity” that we used in the proposed rules on “Revisions to Rules on Representation of Parties,” which we published on September 8, 2008. 73 FR 51963.

expressed concern that our proposed rules would allow representatives or entities, such as long-term disability insurance companies, to execute contracts with claimants that would require claimants to pay certain fees, such as time spent on an unsuccessful claim or for retainer fees. One commenter stated that our proposed rules would allow an entity, such as a long-term disability insurance company, to require that an insured claimant repay benefits that the company paid while the claimant awaited our final decision on his or her application for disability benefits. The other commenter was concerned that an entity could circumvent our proposed rules by defining a “fee” paid to a representative as a “benefit” that the insured claimant would need to repay if we approved his application for disability benefits.

Response: This final rule prohibits a representative from recovering any fee, whether directly or indirectly, from a claimant or an auxiliary beneficiary for the representative’s services in a claim before us without our prior authorization or a court’s prior authorization. This prohibition applies regardless of any contractual language between a claimant and an entity. For example, our rules allow a representative to collect a retainer fee for his or her time spent on a claim without our authorization only if the criteria in this final rule are met. If it comes to our attention that a representative is attempting to circumvent our rules, we may investigate the situation and sanction the representative as appropriate.

Comment: One commenter wanted to know how representatives would notify us that we would not need to authorize a representative’s fee. The commenter also wanted us to change our current forms that allow representatives to waive charging and receiving fees from claimants. The commenter suggested that we provide an electronic means to allow representatives to waive a fee.

Response: In the proposed rules on “Revisions to Rules on Representation of Parties” published on September 8, 2008, we proposed to require that a representative use a form that we prescribe to waive a fee or direct payment of a fee. We are currently considering comments received in response to that NPRM and are reviewing potential changes that we can make to this process. However, we have modified final sections 404.1720(e)(1)(i) and 416.1520(e)(1)(i) to change the word “form” to a “writing in a form and manner that we prescribe” because we anticipate expanding our electronic process in the future.

Comment: One commenter suggested we not add the words “fee petition” in the paragraph headings for 20 CFR 404.1720(b) and 416.1520(b). The commenter asserted that the paragraphs should apply to both fee agreements and fee petitions and that this change limited the scope of the paragraphs.

Response: We agree with this comment and are not changing the paragraph headings in these sections. We proposed several changes about fee petitions in our proposed rules, “Revisions to Rules on Representation of Parties.” We will address these specific language changes as part of that rulemaking proceeding.

Comment: One commenter wanted us to amend our proposed definition of “legal guardian or court-appointed representative” to incorporate States’ definitions of these terms, instead of using the definition of the terms that we proposed.

Response: The definition of “legal guardian or court-appointed representative” that we proposed applies only to matters relating to representative fees in part 404 subpart R and part 416 subpart O. 20 CFR 404.1703 and 416.1503. Given the scope of our programs and our need to administer our programs on a uniform national basis, we believe that it is more appropriate to adopt a single definition of the term for purposes of this rule, rather than relying on a definition that may vary on a State-by-State basis. Adopting the commenter’s suggestion would make the final rule significantly more difficult to administer.

Comment: One commenter said that we should not rely upon courts to determine the reasonableness of fees charged by legal guardians who are acting as a claimant’s representative because judges in some courts are not attorneys and may not have the expertise to make informed decisions about our rules.

Response: We disagree with this comment. In the years since we issued SSR 85–3, we have not found that courts authorize excessive fees for representatives, regardless of whether the judge is an attorney. Courts are mindful of the best interests of a claimant and exercise diligence and due care. Our experience does not support the commenter’s concern.

Comment: One commenter suggested that we not adopt this rule because regulation of fees is our method of ensuring that representatives are diligent, competent, and ethical in their representation.

Response: We are not relinquishing our authority or oversight over representatives who practice before us.

Our rules of conduct and standards of responsibility for representatives ensure that representatives are diligent, competent, and ethical. Much of the policy that we have codified in this final rule has been in effect for over twenty years. During that time, we have found that representatives are generally principled and competent. We do not expect that this final rule will affect representatives’ conduct. As stated above, the necessary rules are in place to allow us to take appropriate action against representatives who violate our rules.

Implementation of This Final Rule

We will apply these new rules to all relevant fee authorization requests that we have not yet authorized as of the effective date, regardless of the date on which representatives filed the requests. We will notify representatives whose requests are affected by this final rule.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866. Therefore, it was reviewed by OMB.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule does not place significant costs on a substantial number of small entities because it will relieve some small entities of the need to obtain our authorization to charge a fee. We anticipate that the cost to small entities will either be minimal, or the result will be some cost savings from increased efficiency. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-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; Penalties; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

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

Dated: September 16, 2009.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending 20 CFR parts 404 and 416 as set forth below:

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

Subpart R—[Amended]

■ 1. The authority citation for subpart R of part 404 continues 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); sec. 303, Public Law 108–203, 118 Stat. 493.

■ 2. Amend § 404.1703 by adding two definitions in alphabetical order to read as follows:

§ 404.1703 Definitions.

* * * * *

Entity means any business, firm, or other association, including but not limited to partnerships, corporations, for-profit organizations, and not-for-profit organizations.

Legal guardian or court-appointed representative means a court-appointed person, committee, or conservator who is responsible for taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs.

* * * * *

■ 3. Amend § 404.1720 by revising paragraph (b)(3) and by adding paragraph (e) to read as follows:

§ 404.1720 Fee for a representative's services.

* * * * *

(b) * * *

(3) Subject to paragraph (e) of this section, a representative must not charge or receive any fee unless we have authorized it, and a representative must not charge or receive any fee that is more than the amount we authorize.

* * * * *

(e) *When we do not need to authorize a fee.* We do not need to authorize a fee when:

(1) An entity or a Federal, State, county, or city government agency pays

from its funds the representative fees and expenses and both of the following conditions apply:

(i) You and your auxiliary beneficiaries, if any, are not liable to pay a fee or any expenses, or any part thereof, directly or indirectly, to the representative or someone else; and

(ii) The representative submits to us a writing in the form and manner that we prescribe waiving the right to charge and collect a fee and any expenses from you and your auxiliary beneficiaries, if any, directly or indirectly, in whole or in part; or

(2) A court authorizes a fee for your representative based on the representative's actions as your legal guardian or a court-appointed representative.

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

Subpart O—[Amended]

■ 4. The authority citation for subpart O of part 416 continues 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)); sec. 303, Public Law 108–203, 118 Stat. 493.

■ 5. Amend § 416.1503 by adding two definitions in alphabetical order to read as follows:

§ 416.1503 Definitions.

* * * * *

Entity means any business, firm, or other association, including but not limited to partnerships, corporations, for-profit organizations, and not-for-profit organizations.

Legal guardian or court-appointed representative means a court-appointed person, committee, or conservator who is responsible for taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs.

* * * * *

■ 6. Amend § 416.1520 by revising paragraph (b)(3) and by adding paragraph (e) to read as follows:

§ 416.1520 Fee for a representative's services.

* * * * *

(b) * * *

(3) Subject to paragraph (e) of this section, a representative must not charge or receive any fee unless we have authorized it, and a representative must not charge or receive any fee that is more than the amount we authorize.

* * * * *

(e) *When we do not need to authorize a fee.* We do not need to authorize a fee when:

(1) An entity or a Federal, State, county, or city government agency pays from its funds the representative fees and expenses and both of the following conditions apply:

(i) You are not liable to pay a fee or any expenses, or any part thereof, directly or indirectly, to the representative or someone else; and

(ii) The representative submits to us a writing in the form and manner that we prescribe waiving the right to charge and collect a fee and any expenses from you directly or indirectly, in whole or in part; or

(2) A court authorizes a fee for your representative based on the representative's actions as your legal guardian or a court-appointed representative.

[FR Doc. E9–22842 Filed 9–22–09; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0359–200915(c); FRL–8960–1]

Approval and Promulgation of Implementation Plans; Revisions to the Alabama State Implementation Plan; Birmingham and Jackson County; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: On March 26, 2009 (71 FR 13118), EPA published a document approving a revision to the Birmingham and Jackson County portions of the Alabama State Implementation Plan (SIP). This action adds Table (c), which was inadvertently omitted, to Alabama's Identification of Plan section of the Code of Federal Regulations (CFR).

DATES: This action is effective September 23, 2009.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.