

amended. Thus, it was reviewed by OMB.

#### *Regulatory Flexibility Act*

We certify that this interim final rule will not have a significant economic impact on a substantial number of small entities as it affects only States and individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### *Paperwork Reduction Act*

This rule will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

#### *Federalism Impact and Unfunded Mandates Impact*

We have reviewed this rule under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. This rule does not affect the roles of the State, local, or tribal governments. However, the rule takes administrative notice of existing statutes governing the roles and relationships of the State agencies and SSA with respect to disability determinations under the 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; 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; Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: May 22, 2007.

**Michael J. Astrue,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are amending subpart J part 404 and subpart N of part 416 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 § 404.942 by revising the first sentence of paragraph (a) and paragraph (g) to read as follows:

#### **§ 404.942 Prehearing proceedings and decisions by attorney advisors.**

(a) *General.* After a hearing is requested but before it is held, an attorney advisor may conduct prehearing proceedings as set out in paragraph (c) of this section. \* \* \*

\* \* \* \* \*

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 10, 2009, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

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

#### **Subpart N—[Amended]**

■ 3. The authority citation for subpart N 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).

■ 4. Amend § 416.1442 by revising the first sentence of paragraph (a) and paragraph (g) to read as follows:

#### **§ 416.1442 Prehearing proceedings and decisions by attorney advisors.**

(a) *General.* After a hearing is requested but before it is held, an attorney advisor may conduct prehearing proceedings as set out in paragraph (c) of this section. \* \* \*

\* \* \* \* \*

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 10, 2009, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

[FR Doc. E7–15422 Filed 8–8–07; 8:45 am]

**BILLING CODE 4191–02–P**

### **SOCIAL SECURITY ADMINISTRATION**

#### **20 CFR Parts 404 and 416**

[Docket No. SSA 2006–0097]

RIN 0960–AG35

#### **Temporary Extension of Attorney Fee Payment System to Title XVI; 5-Year Demonstration Project Extending Fee Withholding and Payment Procedures to Eligible Non-Attorney Representatives; Definition of Past-Due Benefits; and Assessment for Fee Payment Services**

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are issuing these final rules to adopt without change the interim final rules published on April 5, 2007 to reflect in our regulations three self-implementing statutory provisions in the Social Security Protection Act of 2004 (SSPA) and three related self-implementing provisions in earlier legislation. These earlier provisions are in the Omnibus Budget Reconciliation Act of 1990 (OBRA), the Social Security Independence and Program Improvements Act of 1994 (SSIPIA), and the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA).

**DATES:** The interim rule published on April 5, 2007, is confirmed as final effective August 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Marg Handel, Supervisory Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 239 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4639. 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>.

##### **Background**

Sections 206(a) and 1631(d) of the Social Security Act (Act) direct the Commissioner of Social Security (Commissioner) to determine the maximum fees representatives may charge claimants for services that they perform in claims before the Social Security Administration (SSA) under title II or title XVI of the Act. For claims under title II in which the claimant is

found entitled to past-due benefits, section 206 of the Act further authorizes the Commissioner to pay attorneys' fees, approved by the Commissioner or by a Federal court, out of a portion of the past-due benefits in the case. Prior to enactment of the SSPA (Pub. L. 108-203), we were not authorized to withhold and pay fees approved for attorneys in title XVI cases or for non-attorney representatives in cases under either title of the Act.

#### **Direct Payment of Attorneys' Fees in Title XVI**

Section 302 of the SSPA amended section 1631(d)(2) of the Act to extend the attorney fee withholding and direct payment procedures to claims under title XVI of the Act. The amendments made by section 302 apply with respect to attorney fees that were first required to be paid from title XVI past-due benefits on or after February 28, 2005, and we began paying fees directly to attorneys in cases effectuated on or after that date. Section 302 includes a sunset provision. Under that provision, the amendments made by section 302 will not apply to claims for benefits with respect to which the claimant and the representative enter into the agreement for representation after February 28, 2010.

#### **Direct Payment of Fees to Eligible Non-Attorney Representatives**

Section 303 of the SSPA directs the Commissioner to carry out a 5-year nationwide demonstration project to determine the potential results of extending the fee withholding and direct payment procedures that apply to attorneys under titles II and XVI of the Act, to non-attorney representatives who meet certain minimum prerequisites specified in section 303 and any additional prerequisites that the Commissioner may prescribe. Under the prerequisites specified in section 303, individuals applying to participate in the demonstration project must have a bachelor's degree or equivalent education, possess liability insurance or equivalent insurance adequate to protect claimants in the event of malpractice by the representative, pass a criminal background check ensuring fitness to practice before SSA, pass an examination testing knowledge of the relevant provisions of the Act and the most recent developments in Agency and court decisions, and demonstrate ongoing completion of qualified continuing education courses. In addition, the Commissioner has required that individuals applying to participate in the demonstration project show that they have sufficient prior

experience representing claimants before SSA. More detailed information about these prerequisites may be found in the **Federal Register** notices published at the start of the demonstration project in 2005 (70 FR 2447, January 13, 2005; 70 FR 14490, March 22, 2005; and 70 FR 41250, July 18, 2005).

The 5-year demonstration project on direct payment of fees to eligible non-attorneys under section 303 of the SSPA commenced on February 28, 2005. We began making direct payment to non-attorneys under the demonstration project on July 28, 2005, the date on which we determined that the initial group of applicants had satisfied the prerequisites for participation in the project. The demonstration project established by SSPA section 303 applies to claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010. In these final rules, we are amending our regulations to reflect the fact that non-attorney representatives participating in the demonstration project may have their approved fees withheld from their clients' past-due benefits and paid directly to them.

#### **Definition of "Past-Due Benefits"**

The amount of "past-due benefits" is important in calculating the fees of representatives and in determining the maximum amount we can pay directly for representation. Since we last defined the term "past-due benefits" in our regulations, there have been several legislative enactments that affect the definition of past-due benefits. In section 5106 of the OBRA (Pub. L. 101-508), section 321(f) of the SSIPIA (Pub. L. 103-296), and section 302 of the SSPA, the Act was amended to exclude from past-due benefits any continued benefits paid pursuant to § 404.1597a of part 404, any interim benefits paid pursuant to section 223(h) of the Act, any continued benefits paid pursuant to § 416.996 of part 416, any continued benefits paid pursuant to § 416.1336(b) of part 416, and any interim benefits paid pursuant to section 1631(a)(8) of the Act; to specify how a reduction under section 1127 of the Act (for receipt of benefits for the same period under both title II and title XVI) affects the past-due benefit computation; and to address the effect of interim assistance reimbursement payments. We are amending our regulations to reflect these statutory changes.

#### **Assessment on Direct Payment of Fees**

Section 406 of the TWWIIA (Pub. L. 106-170) amended section 206 of the

Act by adding section 206(d), which imposed an assessment on attorneys for the services we provide in determining and paying fees directly to attorneys from the benefits due claimants under title II of the Act. When that provision took effect on February 1, 2000, the amount of the assessment was 6.3 percent of the direct payment amount, with a provision allowing the Commissioner to determine for future years the percentage (not to exceed 6.3 percent) necessary to achieve full recovery of the costs of determining and paying fees to attorneys. Effective September 1, 2004, section 301 of the SSPA revised section 206(d) to cap the assessment at the lesser of the amount calculated using the percentage rate determined by the Commissioner or \$75, and to provide for annual adjustment of the \$75 cap based on the cost-of-living computation in section 215(i)(2)(A)(ii) of the Act. Sections 302 and 303 of the SSPA extended this assessment to the direct payment of fees to attorneys under title XVI and to the direct payment of fees to non-attorney representatives participating in the demonstration project authorized by section 303.

#### **Explanation of Changes**

We are amending our regulations on representation in 20 CFR parts 404 and 416 to reflect the legislative changes to sections 206, 1127 and 1631(d) of the Act that were enacted under section 5106 of OBRA, section 321(f) of the SSIPIA, section 406 of the TWWIIA, and sections 301 and 302 of the SSPA. In addition, we are revising the regulations to reflect the provisions of section 303 of the SSPA. We are making only those substantive changes necessary to conform our regulations to these currently applicable statutory provisions. In these changes we are:

- Amending § 404.1703 to revise the definition of "past-due benefits" to explain that we determine past-due benefits before any applicable reduction for receipt of benefits for the same period under title XVI and that past-due benefits do not include continued payment of disability benefits during appeal or interim benefits in cases of delayed final decision.
- Adding to § 416.1503 the definition of "past-due benefits" for title XVI benefits to explain that when we determine the amount of past-due benefits, we subtract the amount of any reduction under section 1127 for the concurrent receipt of benefits for the same period under both title II and title XVI, regardless of whether the actual reduction was applied to the title II benefits or to the title XVI benefits, and

that past-due benefits do not include continued benefits or interim benefits.

- Adding new §§ 404.1717 and 416.1517 to reflect the demonstration project extending benefit withholding and direct fee payment to non-attorneys under title II and title XVI. These sections also define “eligible to participate in the direct payment demonstration project” and describe the claims to which the demonstration project applies.

- Amending § 404.1720 to revise paragraph (b)(4) to provide that we make direct fee payments from title II past-due benefits both to attorneys and to non-attorney representatives eligible to participate in the direct payment demonstration project, and that we assume no responsibility for the payment of any fee that we have authorized to a non-attorney if the representative is not eligible to participate in the demonstration project. We are also revising paragraph (c)(3) to provide that our notice of a fee determination will state whether we are responsible for paying the representative’s fee from past-due benefits.

- Amending § 416.1520 to add a new paragraph (b)(4) stating that we make direct payment of fees from past-due benefits under title XVI to attorneys and to non-attorneys eligible to participate in the direct payment demonstration project, and that we assume no responsibility for the payment of any fee that we have authorized to a non-attorney if the representative is not eligible to participate in the demonstration project. We are revising paragraph (c)(3) to state that our notice of fee determination will state whether we are responsible for paying the fee, rather than that we are not responsible for paying the fee. We are also revising paragraph (d)(3) to state that we assume no responsibility for fee payment based on a revised determination if the representative does not file the request for administrative review timely.

- Revising § 416.1528 to place the existing text in a newly designated paragraph (a) having the heading, “Representation of a party in court proceedings” and to add a new paragraph (b) that has the heading “Attorney fee allowed by a Federal court.” Paragraph (b) states that the court may allow a reasonable fee to an attorney as part of its favorable judgment in a proceeding under title XVI of the Act and that we may pay the attorney the amount of the fee out of, but not in addition to, the amount of the past-due benefits payable to the claimant by reason of the court judgment.

- Amending § 404.1730 to insert a previously omitted “the” in paragraph (a), to add a cross-reference to the definition of “past-due benefits” in § 404.1703, and to reflect in paragraphs (b) and (c) the extension of the direct payment of fees from past-due benefits under title II to non-attorneys eligible to participate in the direct payment demonstration project. We are also adding a new paragraph (d) to reflect that we impose an assessment on the representative when we pay a fee directly to the representative; to explain how we calculate the assessment; and to state that the representative may not, directly or indirectly, request or otherwise obtain reimbursement of the amount of the assessment from the claimant.

- Adding new § 416.1530 to state that direct payment of fees under title XVI extends to attorneys for fees we authorize and for fees a Federal court allows, and extends to non-attorneys eligible to participate in the direct payment demonstration project for fees we authorize. This section also describes the maximum amount we will pay to the representative; shows that we impose an assessment on the representative when we pay a fee directly to the representative; explains how we calculate the assessment; and states that the representative may not, directly or indirectly, request or otherwise obtain reimbursement of the amount of the assessment from the claimant.

In addition to these substantive changes, we are revising §§ 404.1720(b)(4) and 404.1730(a), (b) and (c) to refer to the person claiming a right under the old-age, disability, dependents’, or survivors’ benefits program in the second person, and thus make the language in these sections consistent with the use of the second person throughout the regulations.

#### Interim Final Rule

On April 5, 2007 (72 FR 16720), we published interim final rules with request for comments. The interim final rules were effective on that date. We received no public comments on the interim final rules. Thus, we are adopting them without change.

#### Regulatory Procedures

##### *Executive Order 12866, as amended*

The Office of Management and Budget (OMB) earlier determined that the interim final rules we published on April 5, 2007, met the criteria for a significant regulatory action under Executive Order 12866, as amended. Accordingly, those interim final rules

were subject to OMB review. Because these final rules merely adopt the provisions of the earlier interim final rules without change, however, OMB determined that it did not need to review these rules again. We also have determined that these rules meet the plain language requirement of Executive Order 12866, as amended.

##### *Regulatory Flexibility Act*

We certify that these final rules will not have a significant economic impact on a substantial number of small entities. Also, these final rules simply reflect legislation already in effect. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

##### *Paperwork Reduction Act*

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in §§ 404.1717, 404.1730(c)(1), 404.1730(c)(2)(i), 404.1730(c)(2)(ii), 416.1517, 416.1528(a), 416.1530(c)(1), 416.1530(c)(2)(i), and 416.1530(c)(2)(ii) of these final rules. The OMB Control Number for this (these) collection(s) is 0960-0745, expiring 06/30/2010.

(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, Reporting and recordkeeping requirements, Social Security.

##### *20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: July 31, 2007.

**Michael J. Astrue,**

*Commissioner of Social Security.*

■ Accordingly, the interim final rules amending subpart R of part 404 and subpart O of part 416 of chapter III of title 20 of the Code of Federal Regulations, which were published at

72 FR 16720 on April 5, 2007, are adopted as final rules without change.

[FR Doc. E7-15242 Filed 8-8-07; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA29

#### Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Financial Crimes Enforcement Network is issuing this final rule to implement the enhanced due diligence requirements for correspondent accounts for certain foreign banks set forth in section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56. Section 312 requires U.S. financial institutions to establish due diligence and, where necessary, enhanced due diligence, policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts established or maintained by U.S. financial institutions for non-U.S. persons. We issued final rules implementing the due diligence requirements for correspondent accounts and the due diligence and enhanced due diligence requirements for private banking accounts for non-U.S. persons on January 4, 2006. This final rule completes the section 312 rulemaking process.

**DATES:** This final rule is effective September 10, 2007.

**Applicability Dates:** On February 5, 2008, the enhanced due diligence provisions of this final rule will apply to correspondent accounts for certain foreign banks established on or after such date. On May 5, 2008, the enhanced due diligence provisions of this final rule will apply to correspondent accounts for certain foreign banks established before February 5, 2008. See 31 CFR 103.176(f) of this final rule.

**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs

Division, Financial Crimes Enforcement Network, (800) 949-2732.

#### SUPPLEMENTARY INFORMATION

##### I. Background

Section 312 of the USA PATRIOT Act amended the Bank Secrecy Act<sup>1</sup> to add new subsection (i) to 31 U.S.C. 5318. This provision requires each U.S. financial institution that establishes, maintains, administers, or manages a correspondent account or a private banking account in the United States for a non-U.S. person to subject such accounts to certain anti-money laundering measures. In particular, a covered financial institution<sup>2</sup> must establish appropriate, specific and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through these accounts.

On May 30, 2002, we published a notice of proposed rulemaking in the **Federal Register**, proposing to implement the requirements of section 312 in their entirety.<sup>3</sup> In that proposal, we set forth a series of specific measures that covered financial institutions could, and in some instances would be required to, apply to correspondent accounts and private banking accounts established or maintained for non-U.S. persons. We received comments on that proposal raising concerns about the definitions in the proposal, the scope of the requirements contained in the proposed rule text, and the types of financial institutions that would be subject to the proposal's requirements.

To have adequate time to review the comments we received in response to the proposal, to determine the appropriate resolution of the issues raised, and to give direction to financial institutions that would be subject to section 312,<sup>4</sup> we issued an interim final rule on July 23, 2002.<sup>5</sup> In the interim final rule, we exercised our authority under 31 U.S.C. 5318(a)(6) to defer temporarily the application of section

312 to certain financial institutions.<sup>6</sup> For those financial institutions that were not subject to the deferral,<sup>7</sup> we provided interim guidance for compliance with the statute by generally describing the scope of coverage, duties, and obligations under that provision, pending issuance of a final rule.

Thereafter, on January 4, 2006, we issued final rules implementing section 312, excepting the enhanced due diligence provisions for correspondent accounts established or maintained for certain foreign banks.<sup>8</sup> Also on January 4, we published a second notice of proposed rulemaking (Second Proposed Rule or proposed rule),<sup>9</sup> seeking comment on a new approach to implementing the enhanced due diligence provisions of section 312 with respect to correspondent accounts established or maintained for certain statutorily designated foreign banks ("respondent banks").<sup>10</sup>

As required by section 312, the enhanced due diligence measures proposed would apply to correspondent accounts maintained for a foreign bank operating under an offshore banking license,<sup>11</sup> under a license issued by a country that has been designated as being non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative to the group or organization concurs,<sup>12</sup> or under a license issued by a country designated by the Secretary of the Treasury

<sup>6</sup> Pursuant to the interim final rule, banks, savings associations, and credit unions had to comply with the correspondent account and private banking account provisions of section 312. Securities broker-dealers, futures commission merchants, and introducing brokers had to comply with the private banking account provisions of section 312. We deferred the application of section 312 to all other financial institutions.

<sup>7</sup> See *id.*

<sup>8</sup> *Anti-Money Laundering Programs; Special Due Diligence for Certain Foreign Accounts*, 71 FR 496 (January 4, 2006).

<sup>9</sup> *Anti-Money Laundering Programs; Special Due Diligence for Certain Foreign Accounts*, 71 FR 516 (January 4, 2006).

<sup>10</sup> Section 312 contains enhanced due diligence provisions for both correspondent accounts and private banking accounts for non-U.S. persons. Unless otherwise provided in this release, the term "enhanced due diligence provisions" relates exclusively to the correspondent account provisions of section 312.

<sup>11</sup> See 31 U.S.C. 5318(i)(4)(A) and 31 CFR 103.175(k) (defining "offshore banking license").

<sup>12</sup> The Financial Action Task Force (FATF) is the only intergovernmental organization of which the United States is a member that has designated countries as non-cooperative with international anti-money laundering principles (no such countries currently are designated). The United States has concurred with all FATF designations to date.

<sup>1</sup> Bank Secrecy Act, Pub. L. No. 91-508 (codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332).

<sup>2</sup> 31 CFR 103.175(f) (defining a "covered financial institution" as any one of a number of specific U.S. financial institutions, including banks, broker-dealers, futures commission merchants, and mutual funds).

<sup>3</sup> *Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts*, 67 FR 37736 (May 30, 2002) (First Proposed Rule).

<sup>4</sup> Section 312(b)(2) of the Act provides that section 5318(i) of the Bank Secrecy Act would take effect on July 23, 2002, whether or not final rules had been issued by that date.

<sup>5</sup> *Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts*, 67 FR 48348 (July 23, 2002).