

Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

“(4) The representative has undergone a criminal background check to ensure the representative’s fitness to practice before the Commissioner.

“(5) The representative demonstrates ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of such Act. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

“(c) ASSESSMENT OF FEES.—

“(1) IN GENERAL.—The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisites described in subsection (b).

“(2) DISPOSITION OF FEES.—Fees collected under paragraph (1) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner of Social Security determines appropriate.

“(3) AUTHORIZATION OF APPROPRIATIONS.—The fees authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended for administering the prerequisites described in subsection (b).

“(d) NOTICE TO CONGRESS AND APPLICABILITY OF FEE WITHHOLDING PROCEDURES.—Not later than 1 year after the date of enactment of this Act [Mar. 2, 2004], the Commissioner shall complete such actions as are necessary to fully implement the requirements for full operation of the demonstration project and shall submit to each House of Congress a written notice of the completion of such actions [Such notices submitted Feb. 28, 2005.]. The applicability under this section to non-attorney representatives of the fee withholding procedures and assessment procedures under sections 206 and 1631(d)(2) of the Social Security Act [42 U.S.C. 406, 1383(d)(2)] shall be effective with respect to fees for representation of claimants in the case of claims for benefits with respect to which the agreement for representation is entered into by such non-attorney representatives during the period beginning with the date of the submission of such notice by the Commissioner to Congress and ending with the termination date of the demonstration project.

“(e) REPORTS BY THE COMMISSIONER; TERMINATION.—

“(1) INTERIM REPORTS.—On or before the date which is 1 year after the date of enactment of this Act [Mar. 2, 2004], and annually thereafter, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the demonstration project carried out under this section, together with any related data and materials that the Commissioner may consider appropriate.

“(2) TERMINATION DATE.—The termination date of the demonstration project under this section is the date which is 5 years after the date of the submission of the notice by the Commissioner to each House of Congress pursuant to subsection (d). The authority under the preceding provisions of this section shall not apply in the case of claims for benefits with respect to which the agreement for representation is entered into after the termination date.”

GAO STUDY REGARDING THE FEE PAYMENT PROCESS FOR CLAIMANT REPRESENTATIVES

Pub. L. 108-203, title III, § 304, Mar. 2, 2004, 118 Stat. 523, directed the Comptroller General of the United

States to study and evaluate the appointment and payment of attorney and non-attorney claimant representatives appearing before the Commissioner of Social Security in connection with benefit claims under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) and to report to the appropriate committees of Congress not later than 3 years after the date of the submission by the Commissioner of Social Security to Congress pursuant to section 303(d) of Pub. L. 108-203 (set out above) of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of Pub. L. 108-203.

GAO STUDY AND REPORT

Pub. L. 106-170, title IV, § 406(c), Dec. 17, 1999, 113 Stat. 1912, directed the Comptroller General of the United States to conduct a study, and to submit a report on the study’s results to the appropriate committees of Congress not later than 1 year after Dec. 17, 1999, that examined the costs incurred by the Social Security Administration in administering 42 U.S.C. 406(a)(4), (b)(1) and itemized the components of such costs; identified efficiencies that the Administration could implement to reduce such costs; examined the feasibility and advisability of linking the payment of, or the amount of, the assessment under 42 U.S.C. 406(d) to the timeliness of the payment of the fee to the attorney as certified by the Commissioner of Social Security pursuant to 42 U.S.C. 406(a)(4), (b)(1); determined whether 42 U.S.C. 406(a)(4), (b)(1) should be applied to claimants under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.); determined the feasibility and advisability of stating fees under 42 U.S.C. 406(d) in terms of a fixed dollar amount as opposed to a percentage; determined whether the dollar limit specified in 42 U.S.C. 406(a)(2)(A)(i)(II) should be raised; and determined whether the assessment on attorneys required under 42 U.S.C. 406(d) impaired access to legal representation for claimants.

§ 407. Assignment of benefits

(a) In general

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes

Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person’s representative payee.

(Aug. 14, 1935, ch. 531, title II, § 207, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1372; Pub. L. 98-21, title III, § 335(a), Apr. 20, 1983, 97 Stat. 130; Pub. L. 105-277, div. J, title IV, § 4005(a), Oct. 21, 1998, 112 Stat. 2681-911.)

Editorial Notes

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (b), “April 20, 1983” substituted for “the date of the enactment of this section”, which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-277 added subsec. (c).

1983—Pub. L. 98-21 designated existing provisions as subsec. (a) and added subsec. (b).

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of former section 408 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-21, title III, §335(c), Apr. 20, 1983, 97 Stat. 130, provided that: “The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [42 U.S.C. 301 et seq.] on or after the date of the enactment of this Act [Apr. 20, 1983].”

EFFECTIVE DATE OF 1939 AMENDMENT

Act Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 408. Penalties**(a) In general**

Whoever—

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this subchapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact

in any application for any payment or for a disability determination under this subchapter; or

(3) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it;