

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

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## SOCIAL SECURITY ADMINISTRATION

### Demonstration Project on Direct Payment of Fees to Non-Attorney Representatives

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice.

**SUMMARY:** This notice provides information about the continuing education requirement that non-attorney representatives must satisfy to participate in the 5-year demonstration project on direct payment of fees to non-attorneys under section 303 of the Social Security Protection Act of 2004 (SSPA). The notice also announces that we have lowered the liability insurance requirements for participants and determined that applicants will be given an opportunity to correct defects in their applications to participate in the demonstration project, in certain circumstances; to protest a denial of their applications for any reason; and, where warranted, to have their paid application fee refunded or applied to satisfy the fee requirement for a subsequent application. The notice also clarifies the requirement regarding experience in representing claimants before SSA.

**FOR FURTHER INFORMATION CONTACT:** Michael Zambonato, Social Security Administration, Office of Income Security Programs, 1450 RRCC, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-5419.

#### SUPPLEMENTARY INFORMATION:

##### Continuing Education Requirement

Section 303(b)(5) of the SSPA requires that participants in the demonstration project on direct payment of fees to non-attorneys demonstrate ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, that 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 the Social Security Act (the Act). That section also provides that the continuing education courses and instructors shall meet such standards as we shall prescribe.

Courses provided by an accredited college or university, a State bar association, an organization accredited by a State bar, a professional organization that (in whole or in part) specializes in representing claimants before governmental agencies (e.g., the American Bar Association, the National Organization of Social Security Claimants' Representatives, and the National Association of Disability Representatives, Inc.), or a governmental agency may be used to meet the continuing education requirement. Generally, we will defer to the organization providing the course as to the subject matter, the requirements for receiving credit for an hour of instruction, and the qualifications of the instructor, though we reserve the right to reject specific courses or instructors if we determine that the course or the instructor is unacceptable.

We have determined that participants in the demonstration project will be required to complete at least 12 hours of qualifying continuing education courses in the 18-month period beginning 6 months prior to the month in which we notify the individual that he or she has passed the examination. After this initial 18-month period, the representative will be required to complete 24 hours of instruction in each subsequent, 2-year period. For example, if we notify an individual that he or she passed the examination in July 2005, the initial, 18-month period begins January 1, 2005, and runs through June 30, 2006. The first 2-year period begins July 1, 2006, and the next begins July 1, 2008.

In each continuing education period, participants must take at least one hour of continuing education on ethics and professional conduct for representatives and at least one hour of continuing education regarding entitlement to, or eligibility for, benefits under titles II and XVI of the Act. Participants are otherwise free to determine the mix of course hours from these two categories.

In recognition of the additional work involved in teaching a continuing education course, a participant may receive 2 hours of credit per 1 course hour, up to a maximum of 6 hours, if the participant was an instructor in the course. The 2 for 1 credit applies only with respect to a course hour during which the applicant was an instructor. For example, if the applicant was an instructor during 2 hours of a 3-hour course, the applicant would be credited with 5 continuing education hours.

Continuing education is credited on the day the course is completed, and is credited to the continuing education period in which the course completion date occurs, unless it is used to

complete an unmet continuing education requirement from the prior period. Thus, for example, for a non-attorney representative who has 18-month and 24-month continuing education periods as described above, all of the hours in an 8-hour class that begins on June 30, 2006, and ends on July 1, 2006, would be credited to the 24-month period beginning July 1, 2006, unless one or more of those hours is used to complete an unmet continuing education requirement for the period ending June 30, 2006. Hours earned in one continuing education period may be used to satisfy an unmet requirement for the prior period only for the purpose of ending a suspension that has gone into effect, not to prevent the occurrence of a suspension. Any continuing education hours allocated to a prior continuing education period in this manner may not also be counted toward the continuing education requirement in the current period. Thus, for example, if 1 hour of an 8-hour course completed in the current period is used to satisfy an unmet continuing education requirement for the prior period, only 7 of the 8 education hours from the course would be credited toward satisfaction of the continuing education requirement for the current period.

A participant in the demonstration project who fails to timely meet the continuing education requirement will be suspended from receiving direct payment of fees in the demonstration project until we determine that the requirement has been met and we end the suspension. A suspension takes effect in the continuing education period after the period in which the participant failed to meet the continuing education requirement. We will not withhold or make direct payment of fees to the representative in any case we effectuate while the suspension is in effect. For this purpose, the date of effectuation is the date on which an authorized SSA employee first certifies that the evidence necessary to make payment in a case is present.

Prior to suspending a participant, we will notify him or her that we propose to suspend eligibility for direct payment of fees unless he or she protests within 10 calendar days of the date of notice of proposed suspension and shows us that the requirement was timely met. If there is no protest, the suspension will be effective the first day of the month following the month in which the protest period ends. If there is a protest and we determine that the continuing education requirement was not timely met, the suspension will be effective the first day of the month following the month in which we notify the

participant that we have denied the protest. In either case, we will notify the participant of the date on which the suspension will take effect. The participant's suspended status will be posted to the internal computerized system we use to track the eligibility of non-attorney representatives to receive direct payment of fees as of the first day of the suspension.

We will terminate a suspension if the suspended individual notifies us of the completion of the outstanding course work and we determine that the previously unmet requirement has been satisfied. A suspension ends effective with the first day of the month following the month in which we determine that the non-attorney representative has satisfied the unmet continuing education requirement from the prior period, unless we make that determination in the first month of the current period. In the latter event, in order to ensure that failure to timely meet the continuing education requirement results in an actual suspension, considering our rules for when a suspension begins and ends, the suspension ends effective with the first day of the second month following the month in which we determine that the previously unmet requirement has been satisfied. We will notify a participant in advance of the date on which a suspension will end. We will also modify our tracking site as of that date to reflect the representative's renewed eligibility to receive direct payment of fees. Favorably decided cases that are effectuated (see above) on the day the suspension ends will be subject to benefit withholding and direct payment of fees.

Periods in which a participant in the demonstration project is ineligible for direct payment of fees because of failure to meet the continuing education requirement will not extend the continuing education periods that apply with respect to the participant. Thus, for example, if an individual whose 18-month and 24-month education periods begin on, respectively, January 1, 2005, and July 1, 2006, becomes ineligible to participate in the project for the months of August and September of 2006 because of failure to meet the continuing education requirement for the prior period ending June 30, 2006, the individual's continuing education period of July 1, 2006, through June 30, 2008, would not be extended. The individual must still complete the required 24 hours of continuing education courses for that latter period by June 30, 2008.

Participants will be required to report continuing education to CPS Human

Resource Services (CPS), the private contractor we are using to assist us in administering the prerequisites process (see below for additional information concerning CPS). CPS will make available, on its Web site at <http://www.cps.ca.gov/ssa/signin.asp>, an electronic template upon which participants may upload their continuing education information. Participants also may submit the information by completing a paper form available from CPS. Participants must include the following information on each course: (1) Name of the course; (2) name of the organization providing the course; (3) dates of the course, including the course completion date; (4) number of hours completed, as determined by the organization providing the course; (5) course description provided by that organization; (6) subject category (*i.e.*, either ethics and professional conduct or benefit entitlement/eligibility based on disability under title II or title XVI of the Act); (7) whether a certificate was received for taking the course; (8) name of the course instructor(s); (9) information for contacting the instructor and the organization; and (10) whether the project participant was an instructor in the course and, if so, the number of course hours during which the participant was an instructor.

**Changes to the Insurance Requirements**

Under section 303(b)(3) of the SSPA, non-attorney representatives who apply to participate in the demonstration project must have professional liability insurance or equivalent insurance adequate to protect claimants in the event of malpractice by the representative. On January 13, 2005, we announced that applicants would be required to have professional liability insurance for coverage of errors and omissions in the minimum total annual amount of \$1 million (for all incidents in the year) plus coverage of \$250,000 per incident (70 FR 2447, 2449). After further consideration, and based on experience gained in the first application period, which began on March 7, 2005, we have decided to reduce the per-incident minimum coverage from \$250,000 to \$100,000, and consider business liability insurance to constitute insurance equivalent to professional liability insurance provided the business insurance provides coverage that satisfies the required minimum per-incident and aggregate amounts. We have also decided to change the minimum annual aggregate coverage amount for an individual's professional liability insurance to \$500,000 and the minimum annual aggregate amount

under a business liability policy to the amount determined in accordance with the following schedule—

Number of covered employees	Minimum aggregate amount
1 to 10 .....	\$500,000
11 to 25 .....	1,000,000
26 to 50 .....	2,000,000
51 to 100 .....	3,000,000
101 to 200 .....	4,000,000
201 or more .....	5,000,000

We believe that these insurance coverage amounts will adequately protect claimants in the event of malpractice by non-attorney representatives, while increasing the ability of non-attorney representatives who wish to participate in the demonstration project to obtain insurance. These amounts are consistent with insurance agency practices and standards, which emphasize the per-incident coverage and rely on graduated schedules in increasing minimum aggregate amounts.

When we determine that a participant has failed to maintain the required insurance coverage, we will notify the individual that his or her eligibility for direct payment of fees will be suspended unless proof that the required insurance coverage is in force is submitted within 15 calendar days of the date of our notice. We will send the individual an additional notice following that period to advise the individual whether eligibility for direct payment will be suspended.

A suspension for failure to maintain the required insurance coverage takes effect on the first day of the month following the month in which we notify the individual that eligibility will be suspended. A suspension for failure to maintain required insurance coverage ends effective with the first day of the month following the month in which we notify the individual that we have determined that the required insurance coverage is again in force. We will not withhold or make direct payment of fees to the representative in any case we effectuate while the suspension is in effect.

**Opportunity To Cure Defective Applications**

In the **Federal Register** notice of January 13, 2005, we indicated that applicants who failed to have their completed application materials postmarked within the 4-week application period would have their applications rejected and would be required, if they wanted to participate in the demonstration project, to file a new

application and again pay the \$1000 application fee in a subsequent application period (70 FR 2447, 2448). Based on experience gained during the first application period (*i.e.*, the 4-week period that began on March 7, 2005), we have determined that applicants experienced significant difficulties in submitting, within such a short time, proof of satisfaction of the prerequisites concerning insurance, education or equivalent experience, and representational experience before SSA. Therefore, we have decided to allow applicants who have submitted their application and paid their application fee of \$1000 an additional period in which they may perfect an otherwise incomplete application package before we make a determination on their application. For example, applicants may perfect their applications by substituting the names and SSNs of additional clients that they have represented within a requisite period if their original submissions in support of the representational requirement cannot be verified, or by obtaining appropriate liability coverage if the coverage originally submitted is found to be inadequate. The period for perfecting the application, which applies only where the application fee has been timely paid, ends 6 weeks after the close of the 4-week application period.

#### **Opportunity To Protest Denial of Application**

Based on experience gained during the first application period, we have also decided to give individuals who have submitted an application that we deny for any reason, including failure of the examination, an opportunity to protest our denial of the application. A denied applicant may protest by filing a protest within 10 calendar days of the date of our notice denying his or her application. It is the responsibility of the applicant to provide any factual information and documentation to support the protest. If we have denied the individual an opportunity to sit for the examination, the individual has a further opportunity during the protest period following our denial notice to correct defects in his or her application, other than failure to timely pay the application fee. Our action in response to the protest is final and not subject to further review.

#### **Refund or Credit for Application Fee**

We have further determined based on experience in the first application period that applicants who timely pay their application fee, but do not take the examination, will have an opportunity, upon request and where warranted, to

have the fee payment either refunded or applied to satisfy the fee requirement of a subsequent application (the other requirements of which must be satisfied in the subsequent application period). In deciding whether to refund a fee payment, to credit the payment to a subsequent application period, or neither to refund or provide a credit for the payment, we will assess whether the particular circumstances of an individual's case warrant that action, considering basic principles of fairness and sound management. Our determination in response to an applicant's request to have a fee payment refunded or applied to a subsequent application period is final and not subject to review. We will not consider refunding or crediting a fee payment to a subsequent application under any circumstances where an individual has taken and failed the prerequisite examination.

In considering requests for fee relief in cases in which the examination has not been taken, we consider all the circumstances of the particular case. An example of circumstances in which we could find that a fee refund is warranted include those in which an illness diagnosed before we complete processing of the application to determine eligibility to sit for the examination will prevent the applicant from serving as a claimant's representative. Examples of circumstances in which we could decide to credit a fee payment to a subsequent application include those in which an applicant is prevented from taking a scheduled examination by circumstances beyond the applicant's control, such as a death in the applicant's immediate family, a documented illness of the applicant, or a transportation problem that could not have been reasonably anticipated and planned against. We will also consider refunding or crediting a paid fee in cases in which we or CPS provide the applicant erroneous information or information that is not sufficient to inform the applicant adequately regarding the rules of the demonstration project. An example of a situation in which we would not grant fee relief would be that in which an applicant fails to arrive on time for an examination because of circumstances not beyond the applicant's control, such as a traffic problem or a child-care problem of a type that could have been anticipated and planned against.

#### **Clarification of Requirement Regarding Representational Experience**

The **Federal Register** notice of January 13, 2005, announced that

applicants would be required to show that they had provided representational services as the appointed representative for 5 claimants before SSA within a 24-month period occurring within the 60 months in which the application was filed, and that the representational experience could include representing the claimant at the time at which SSA decided the case at any administrative level or, in cases that have not yet been decided, at a hearing before an SSA Administrative Law Judge (ALJ). (70 FR 2447, 2449.) We are in this current notice clarifying this requirement by specifying that it cannot be satisfied except on the basis of having served as the appointed representative of 5 claimants at one (or more) of these specified times. Representing a claimant before SSA can count toward satisfaction of the representational requirement only if the applicant was serving as the claimant's appointed representative at the time at which SSA decided the case at any administrative level (*i.e.*, the initial, reconsideration, ALJ hearing, or Appeals Council level) or, if the case has not been decided while the applicant was the appointed representative, the applicant appeared as the claimant's appointed representative at a hearing before an ALJ.

#### **Additional Information**

Additional information on the demonstration project is available on our Representing Claimants Web site at <http://www.ssa.gov/representation/>. CPS can be reached by:

- Mail, sent to: CPS Human Resource Services, SSA Non-Attorney Representative Demonstration Project, 241 Lathrop Way, Suite A, Sacramento, CA 95815-4242.
- E-mail, sent to [SSA@cps.ca.gov](mailto:SSA@cps.ca.gov).
- Telephone, toll free at 1-800-376-5728. The local number in Sacramento is 916-263-3600.

(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)

Dated: July 14, 2005.

#### **Fritz Streckewald,**

*Assistant Deputy Commissioner for Program Policy for Disability and Income Security Programs.*

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