

adding in their place the words “section 2(c)(2)(B)(i)(II)(ff) of the Act”; and

■ b. Removing from paragraph (c)(2) the words “section 1a(10) of the Act” and adding in their place the words “section 1a(26) of the Act”.

#### § 5.11 [Amended]

■ 5. Section 5.11 is amended by:

■ a. Removing from paragraph (a)(1) introductory text the words “Section 2(c)(2)(B)(i)(II)(gg) of the Act” and adding in their place the words “section 2(c)(2)(B)(i)(II)(ff) of the Act”; and

■ b. Removing from paragraph (a)(2) introductory text the words “section 2(c)(2)(B)(i)(II)(gg) of the Act” and adding in their place the words “section 2(c)(2)(B)(i)(II)(ff) of the Act”; and

■ c. Removing from paragraph (d)(2) the words “section 1a(10) of the Act” and adding in their place the words “section 1a(26) of the Act”.

#### § 5.18 [Amended]

■ 6. Section 5.18 is amended by removing from paragraph (a)(1)(ii) the words “section 1a(20) of the Act” and adding in their place the words “section 1a(28) of the Act”.

Issued in Washington, DC, on September 2, 2011, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011-23155 Filed 9-9-11; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA-2011-0015]

RIN 0960-AH31

#### Requiring Use of Electronic Services by Certain Claimant Representatives

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are revising our rules to require that claimant representatives use our electronic services as they become available on matters for which the representatives request direct fee payment. In the future, we will publish a notice in the **Federal Register** when we require representatives who request direct fee payment on a matter to use our available electronic services. We are also adding the requirement to use our available electronic services on matters for which the representative requests direct fee payment as an affirmative duty in our representative conduct rules. These revisions reflect the increased use of technology in representatives' business practices. We

expect that the use of electronic services will improve our efficiency by allowing us to manage our workloads more effectively. These rules do not require claimants to use our available electronic services directly; they only require their representatives to use the services on matters for which the representatives request direct fee payment.

**DATES:** These final rules are effective on October 12, 2011.

#### 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:

##### Background

We may issue rules and regulations to administer the Social Security Act (Act), 42 U.S.C. 405(a), 902(a)(5), 810(a), and 1383(d)(1).

On September 8, 2008, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled *Revisions to Rules on Representation of Parties*, and we gave the public 60 days to comment. 73 FR 51963.

In the NPRM, we proposed to add an affirmative duty that would have required professional representatives to conduct business with us electronically at the times and in the manner that we prescribe. We proposed to define a professional representative as “any attorney, any individual other than an attorney, or any entity that holds itself out to the public as providing representational services \* \* \* before us, regardless of whether the representative charges or collects a fee for providing the representational services.” Proposed sections 404.1703 and 416.1503. We received several comments that opposed our broad definition of professional representative and our proposal that all professional representatives must conduct business with us electronically at the times and in the manner we prescribe.

After careful consideration of these comments, we decided to require some, and encourage all, representatives to use our electronic services as much as possible.

Therefore, we are adding sections 404.1713 and 416.1513 and revising sections 404.1740(b)(4) and 416.1540(b)(4) to require that representatives conduct business with us electronically at the times and in the

manner we prescribe on matters for which they request direct fee payment. This means that a representative will be required to use our available electronic services in conducting business with us on any matter for which he or she has or will request direct fee payment.

We continue to consider the rest of the regulatory changes we proposed in the NPRM, and we may publish additional final rules to address them.

#### Requiring Use of Our Electronic Services

We employ comprehensive usability testing, which includes inviting members of the public to test our electronic services and provide feedback, to ensure that our electronic services work well before we make them publicly available. Even after we make electronic services publicly available, we use customer satisfaction surveys and request user feedback to improve them. In accordance with our usual practice, we intend to employ usability testing and solicit user feedback for any electronic services we may require representatives to use under these final rules. Once we determine that we should make a particular electronic service publicly available because it works well, we will publish a notice in the **Federal Register**. The notice will contain the new requirement(s) and a list of all established electronic service requirements.

If we discover that a representative who has an affirmative duty to use the available electronic services is not complying with our rules, we may investigate to determine if the representative is purposefully violating this duty or attempting to circumvent our rules. We will use our existing rules in sections 20 CFR 404.1740-404.1799 and 416.1540-416.1599 to address potential violations.

We will not penalize the claimant if the representative disregards his or her affirmative duty to use our electronic services. We will not reject or delay a claimant's request or process it differently if a representative fails to comply with this rule, but we may decide to pursue sanctions against the representative in appropriate cases.

We also proposed to add sections 404.1713 and 416.1513, in addition to the affirmative duty in proposed sections 404.1740 and 416.1540. We are adopting, with minor changes, only the provisions of sections 404.1713(a) and 416.1513(a) that we proposed, and we are adopting, with minor changes, our proposed affirmative duty in final sections 404.1740 and 416.1540. We are also making other conforming changes.

## Public Comments

We published an NPRM in the **Federal Register** on September 8, 2008, and we gave the public 60 days to comment on our proposed rules. 73 FR 51963. We received comments from 66 individuals and organizations during this period. We carefully read and considered each of them. The comments are available for public viewing at <http://www.regulations.gov>.

The comments we received were detailed and insightful, and they were extremely helpful to our deliberations. These final rules contain a number of changes from our NPRM and reflect the commenters' thoughtful input. Below we discuss and respond to the significant comments related to mandating the use of electronic services. We did not address some technical comments or comments beyond the NPRM's scope. We also did not address comments about the proposed regulatory changes that we are still considering and may adopt in future final rules.

*Comment:* One commenter thought that the Act prohibits us from creating separate procedures and appeal rights for represented and unrepresented claimants. Another commenter asserted that the Constitution's principles of equal protection prohibit us from creating different standards for different categories of representatives, such as principal representatives and professional representatives.

*Response:* We did not propose to create separate procedures and appeal rights for represented and unrepresented claimants. Both represented and unrepresented claimants retain the right to file their own appeals using paper forms.

These final rules do not violate the equal protection component of the Due Process Clause of the Fifth Amendment to the Constitution. The final rules do not impose different standards on similarly situated representatives or otherwise categorize representatives based on their characteristics. We also give representatives the choice whether to receive their fees directly from us. On matters for which a representative requests direct fee payment, he or she must use certain electronic services that we prescribe. Nothing in constitutional principles of equal protection is inconsistent with the rules that we are adopting here.

*Comment:* We received several comments on our proposed definition for professional representative. Some commenters found the term vague, unnecessary, and confusing.

*Response:* We agree with these commenters. We are not adopting our proposed rules for professional representatives. Instead, we are requiring that representatives use certain electronic services only on matters for which they request direct fee payment.

*Comment:* A few commenters opposed our electronic services requirement for professional representatives because they said some representatives do not have full electronic access, proper skills, or computer support staff.

*Response:* We disagree with these comments. We are not mandating that all representatives use our electronic services, but only those who request direct fee payment on a matter. When representatives do not request direct fee payment on a matter due to ineligibility or personal preference, they can continue to use our paper processes and forms.

*Comment:* A few commenters asserted that the Regulatory Flexibility Act, as amended, requires us to complete a regulatory flexibility analysis because we proposed to require certain representatives to use electronic services, which could impose costs on small businesses.

*Response:* We disagree with these comments. We certify below that these final rules will not have a significant economic impact on a substantial number of small entities. These final rules give a representative the option of continuing to use paper forms and submitting them to our field offices when the representative does not request direct fee payment. Representatives will decide for themselves whether to use our electronic services. Because representatives make this decision, we do not require any small business to incur any additional costs to do business with us. Therefore, the Regulatory Flexibility Act, as amended, does not require us to perform a regulatory flexibility analysis.

*Comment:* One commenter opposed our proposed affirmative duty that required professional representatives to conduct business with us electronically at the times and in the manner we prescribe. The commenter claimed that some situations may require representatives to use paper forms, such as when we experience systems problems. Another commenter asked us to explain which due process rights a representative would have if we brought a sanction proceeding based on a circumstance outside of the representative's control.

*Response:* As stated earlier, we will require that representatives use our electronic services on matters for which they request direct fee payment. We are adopting our proposed affirmative duty for those representatives in final sections 404.1740(b)(4) and 416.1540(b)(4), and we will monitor the representatives' compliance with it. If we find that a representative is not using the required electronic services, or if we receive a complaint that a representative is not following our rules, we will deal with each complaint on an individual basis. If we find that a representative has not used our required electronic services, we will provide him or her with an opportunity for a hearing before an ALJ, who will decide whether to disqualify or suspend the representative.

## Regulatory Procedures

*Executive Order 12866, as Supplemented by Executive Order 13563*

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

## Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities. These final rules permit representatives to continue using paper forms on matters for which the representatives do not request direct fee payment. Representatives will make this choice and decide for themselves whether to use our electronic services. Because representatives make this decision, we are not requiring any small business to incur any additional costs to work with us. These final rules do not disadvantage small entities or limit their ability to compete with larger competitors. Additionally, these final rules do not place significant costs on small entities. We anticipate that small entities that decide to use our electronic services may find slight cost savings because of increased efficiency. Therefore, the Regulatory Flexibility Act, as amended, does not require us to perform a regulatory flexibility analysis.

## Paperwork Reduction Act

These final rules reference public reporting burdens subject to the Paperwork Reduction Act in 20 CFR 404.1713, 404.1740(b)(4), 416.1513, and 416.1540(b)(4). In these final rules, we are codifying the requirement for

representatives to conduct business with us electronically at the times and in the manner we prescribe on matters for which the representatives request direct fee payment. However, we are not yet requiring them to use the electronic versions of specific OMB-approved collections. We will adjust the burden for affected OMB-approved collections before requiring representatives to use the collections' electronic versions.

(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).

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

For the reasons set out in the preamble, we are amending 20 CFR part 404 subpart R and part 416 subpart O 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 is revised 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).

■ 2. Add § 404.1713 to read as follows:

**§ 404.1713 Mandatory use of electronic services.**

A representative must conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (See § 404.1740(b)(4)).

■ 3. Amend § 404.1740 by revising the second sentence of paragraph (b)(2)(vi) and the second sentence of paragraph (b)(3)(ii), and adding paragraph (b)(4), to read as follows:

**§ 404.1740 Rules of conduct and standards of responsibility for representatives.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) \* \* \* In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors;

(3) \* \* \*

(ii) \* \* \* This includes providing prompt and responsive answers to our requests for information pertinent to processing of the claim; and

(4) Conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (See § 404.1713).

\* \* \* \* \*

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

**Subpart O—[Amended]**

■ 4. The authority citation for subpart O of part 416 is revised 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)).

■ 5. Add § 416.1513 to read as follows:

**§ 416.1513 Mandatory use of electronic services.**

A representative must conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (See § 416.1540(b)(4)).

■ 6. Amend § 416.1540 by revising the second sentence of paragraph (b)(2)(vi) and the second sentence of paragraph (b)(3)(ii), and adding paragraph (b)(4), to read as follows:

**§ 416.1540 Rules of conduct and standards of responsibility for representatives.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) \* \* \* In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors;

(3) \* \* \*

(ii) \* \* \* This includes providing prompt and responsive answers to our requests for information pertinent to processing of the claim; and

(4) Conduct business with us electronically at the times and in the manner we prescribe on matters for

which the representative requests direct fee payment. (See § 416.1513).

\* \* \* \* \*

[FR Doc. 2011-23232 Filed 9-9-11; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

[Docket No. FWS-R7-SM-2011-0004; 70101-1261-0000L6]

RIN 1018-AX52

**Subsistence Management Regulations for Public Lands in Alaska—Subpart B, Federal Subsistence Board**

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations concerning the composition of the Federal Subsistence Board (Board). On October 23, 2009, the Secretary of the Interior announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska. The review focused on how the program is meeting the purposes and subsistence provisions of Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and how the program is serving rural subsistence users. The review proposed several administrative and regulatory changes to strengthen the program and make it more responsive to rural subsistence users. This rule expands the Federal Subsistence Board by two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska. This action will afford additional stakeholder input to the process.

**DATES:** This rule is effective October 12, 2011.

**ADDRESSES:** The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, Alaska 99503, on <http://www.regulations.gov> at Docket No. FWS-R7-SM-2011-0004, or on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/index.cfm>).