

“(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.”

INCLUSION OF SELF-EMPLOYMENT INCOME IN RECORDS OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Pub. L. 89-97, title III, § 331(c), July 30, 1965, 79 Stat. 402, provided that: “Notwithstanding any provision of section 205(c)(5)(F) of the Social Security Act [42 U.S.C. 405(c)(5)(F)], the Secretary of Health, Education, and Welfare [now Health and Human Services] may conform, before April 16, 1970, his records to tax returns or statements of earnings which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(5) of such Code [section 1402(e)(5) of Title 26, Internal Revenue Code].”

Pub. L. 86-778, title I, § 101(e), Sept. 13, 1960, 74 Stat. 928, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The provisions of section 205(c)(5)(F) of the Social Security Act [42 U.S.C. 405(c)(5)(F)], insofar as they prohibit inclusion in the records of the Secretary of Health, Education, and Welfare [now Health and Human Services] of self-employment income for a taxable year when the return or statement including such income is filed after the time limitation following such taxable year, shall not be applicable to earnings which are derived in any taxable year ending before 1960 and which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(3)(B) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 1402(e)(3)(B) or (5) of Title 26].”

§ 405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering State and local employees; effective date

Notwithstanding any other provision of law, no regulation and no modification of any regulation, promulgated by the Secretary of Health and Human Services, after January 2, 1976, shall become effective prior to the end of the eighteen-month period which begins with the first day of the first calendar month which begins after the date on which such regulation or modification of a regulation is published in the Federal Register, if and insofar as such regulation or modification of a regulation pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 418(e)¹ of this title.

(Pub. L. 94-202, § 7, Jan. 2, 1976, 89 Stat. 1137; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Subsec. (e) of section 418 of this title, referred to in text, which related to payments and reports by States, was repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99-509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

CODIFICATION

Section was not enacted as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Wel-

fare” in text pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

TIME FOR MAKING SOCIAL SECURITY CONTRIBUTIONS WITH RESPECT TO COVERED STATE AND LOCAL EMPLOYEES

Pub. L. 96-265, title V, § 503(c), June 9, 1980, 94 Stat. 471, provided that: “The provisions of section 7 of Public Law 94-202 [42 U.S.C. 405a] shall not be applicable to any regulation which becomes effective on or after July 1, 1980, and which is designed to carry out the purposes of subsection (a) of this section [amending section 418 of this title].”

§ 406. Representation of claimants before Commissioner

(a) Recognition of representatives; fees for representation before Commissioner

(1) The Commissioner of Social Security may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security. Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe. The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any such person, agent, or attorney who refuses to comply with the Commissioner’s rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Commissioner of Social Security may, by rule and regulation, pre-

¹ See References in Text note below.

scribe the maximum fees which may be charged for services performed in connection with any claim before the Commissioner of Social Security under this subchapter, and any agreement in violation of such rules and regulations shall be void. Except as provided in paragraph (2)(A), whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this subchapter, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.

(2)(A) In the case of a claim of entitlement to past-due benefits under this subchapter, if—

(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Commissioner of Social Security prior to the time of the Commissioner's determination regarding the claim,

(ii) the fee specified in the agreement does not exceed the lesser of—

(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1320a-6(a) of this title), or

(II) \$4,000, and

(iii) the determination is favorable to the claimant,

then the Commissioner of Social Security shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Commissioner of Social Security may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 415(i) of this title since such date. The Commissioner of Social Security shall publish any such increased amount in the Federal Register.

(B) For purposes of this subsection, the term "past-due benefits" excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title.

(C) In any case involving—

(i) an agreement described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this subchapter and a claim of entitlement to past-due benefits under subchapter XVI of this chapter, and

(ii) a favorable determination made by the Commissioner of Social Security with respect to both such claims,

the Commissioner of Social Security may approve such agreement only if the total fee or fees specified in such agreement does not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).

(D) In the case of a claim with respect to which the Commissioner of Social Security has

approved an agreement pursuant to subparagraph (A), the Commissioner of Social Security shall provide the claimant and the person representing the claimant a written notice of—

(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1320a-6(a) of this title) and the dollar amount of the past-due benefits payable to the claimant,

(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

(iii) a description of the procedures for review under paragraph (3).

(3)(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D)—

(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or

(ii) the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Commissioner of Social Security to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Commissioner of Social Security determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Commissioner of Social Security for such purpose.

(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Commissioner of Social Security or by an administrative law judge or other person (other than such adjudicator) who is designated by the Commissioner of Social Security.

(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

(4) Subject to subsection (d) of this section, if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall, notwithstanding section 405(i) of this title, certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1320a-6(a) of this title) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1320a-6(a) of this title).

(5) Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this subchapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Commissioner of Social Security shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both. The Commissioner of Social Security shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Commissioner of Social Security, of the identity of any person representing such claimant in accordance with this subsection.

(b) Fees for representation before court

(1)(A) Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may, notwithstanding the provisions of section 405(i) of this title, but subject to subsection (d) of this section, certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(B) For purposes of this paragraph—

(i) the term “past-due benefits” excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title, and

(ii) amounts of past-due benefits shall be determined before any applicable reduction under section 1320a-6(a) of this title.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) of this subsection is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500, or imprisonment for not more than one year, or both.

(c) Notification of options for obtaining attorneys

The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

(d) Assessment on attorneys

(1) In general

Whenever a fee for services is required to be certified for payment to an attorney from a claimant's past-due benefits pursuant to subsection (a)(4) or (b)(1) of this section, the Commissioner shall impose on the attorney an assessment calculated in accordance with paragraph (2).

(2) Amount

(A) The amount of an assessment under paragraph (1) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be so certified by subsection (a)(4) or (b)(1) of this section before the application of this subsection, by the percentage specified in subparagraph (B), except that the maximum amount of the assessment may not exceed the greater of \$75 or the adjusted amount as provided pursuant to the following two sentences. In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003¹ take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.

(B) The percentage specified in this subparagraph is—

(i) for calendar years before 2001, 6.3 percent, and

(ii) for calendar years after 2000, such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and certifying fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(3) Collection

The Commissioner may collect the assessment imposed on an attorney under paragraph (1) by offset from the amount of the fee otherwise required by subsection (a)(4) or (b)(1) of

¹ See References in Text note below.

this section to be certified for payment to the attorney from a claimant's past-due benefits.

(4) Prohibition on claimant reimbursement

An attorney subject to an assessment under paragraph (1) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(5) Disposition of assessments

Assessments on attorneys collected under this subsection shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate.

(6) Authorization of appropriations

The assessments authorized under this section 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 administrative expenses in carrying out this subchapter and related laws.

(e) Extension of fee withholding and assessment procedures to qualified non-attorney representatives

(1) The Commissioner shall provide for the extension of the fee withholding procedures and assessment procedures that apply under the preceding provisions of this section to agents and other persons, other than attorneys, who represent claimants under this subchapter before the Commissioner.

(2) Fee-withholding procedures may be extended under paragraph (1) to any nonattorney² representative only if such representative meets at least the following prerequisites:

(A) The representative has been awarded a bachelor's degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

(B) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of this chapter and the most recent developments in agency and court decisions affecting this subchapter and subchapter XVI.

(C) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

(D) The representative has undergone a criminal background check to ensure the representative's fitness to practice before the Commissioner.

(E) 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

this subchapter and subchapter XVI. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

(3)(A) The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisites described in paragraph (2).

(B) Fees collected under subparagraph (A) 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 determines appropriate.

(C) The fees authorized under this paragraph 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 paragraph (2).

(Aug. 14, 1935, ch. 531, title II, §206, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1372; Aug. 28, 1950, ch. 809, title I, §109(b)(1), 64 Stat. 523; Pub. L. 85-840, title III, §309, Aug. 28, 1958, 72 Stat. 1034; Pub. L. 89-97, title III, §332, July 30, 1965, 79 Stat. 403; Pub. L. 90-248, title I, §173, Jan. 2, 1968, 81 Stat. 877; Pub. L. 101-239, title X, §10307(a)(1), (b)(1), Dec. 19, 1989, 103 Stat. 2484, 2485; Pub. L. 98-369, div. B, title VI, §2663(l)(1), July 18, 1984, 98 Stat. 1171; Pub. L. 101-508, title V, §5106(a)(1), Nov. 5, 1990, 104 Stat. 1388-266; Pub. L. 103-296, title I, §107(a)(4), title III, §321(f)(3)(B)(i), (4), Aug. 15, 1994, 108 Stat. 1478, 1541, 1542; Pub. L. 106-170, title IV, §406(a), (b), Dec. 17, 1999, 113 Stat. 1911, 1912; Pub. L. 108-203, title II, §205, title III, §301(a), Mar. 2, 2004, 118 Stat. 512, 519; Pub. L. 111-142, §3(a), Feb. 27, 2010, 124 Stat. 38.)

REFERENCES IN TEXT

Section 301 of the Social Security Protection Act of 2003, referred to in subsec. (d)(2)(A), probably means section 301 of the Social Security Protection Act of 2004, Pub. L. 108-203, which amended this section and enacted provisions set out as a note below.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111-142 added subsec. (e).

2004—Subsec. (a)(1). Pub. L. 108-203, §205, inserted “Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner

²So in original. Probably should be “non-attorney”.

may prescribe.” after “claimants before the Commissioner of Social Security.”.

Subsec. (d)(2)(A). Pub. L. 108-203, §301(a), inserted “, except that the maximum amount of the assessment may not exceed the greater of \$75 or the adjusted amount as provided pursuant to the following two sentences” after “subparagraph (B)” and inserted at end “In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.”

1999—Subsec. (a)(4). Pub. L. 106-170, §406(a)(2)(A), (b), struck out “(A)” after “(4)”, substituted “subsection (d) of this section” for “subparagraph (B)”, and struck out subpar. (B) which read as follows: “The Commissioner of Social Security shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.”

Subsec. (b)(1)(A). Pub. L. 106-170, §406(a)(2)(B), inserted “, but subject to subsection (d) of this section” after “section 405(i) of this title”.

Subsec. (d). Pub. L. 106-170, §406(a)(1), added subsec. (d).

1994—Subsec. (a)(1), (2)(A). Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “before the Commissioner” for “before him” in two places, “Commissioner’s” for “Secretary’s” in two places, and “the Commissioner shall, if the” for “he shall, if the” in par. (1).

Subsec. (a)(2)(C). Pub. L. 103-296, §321(f)(4)(A)(ii), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 103-296, §107(a)(4), in subpar. (C) as added by Pub. L. 103-296, §321(f)(4)(A)(ii), substituted “Commissioner of Social Security” for “Secretary” in two places.

Subsec. (a)(2)(D). Pub. L. 103-296, §321(f)(4)(A)(i), redesignated subpar. (C) as (D).

Pub. L. 103-296, §107(a)(4), in subpar. (D) as redesignated by Pub. L. 103-296, §321(f)(4)(A)(i), substituted “Commissioner of Social Security” for “Secretary” in two places in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 103-296, §321(f)(4)(B), substituted “paragraph (2)(D)” for “paragraph (2)(C)” in introductory provisions.

Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

Subsec. (a)(3)(B), (4), (5). Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

Subsec. (b)(1). Pub. L. 103-296, §321(f)(3)(B)(i), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(1)(A). Pub. L. 103-296, §107(a)(4), in subpar. (A) as designated by Pub. L. 103-296, §321(f)(3)(B)(i), substituted “Commissioner of Social Security” for “Secretary”.

Subsec. (c). Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” in two places.

1990—Subsec. (a). Pub. L. 101-508 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2)(A), whenever” for “Whenever” in fifth sentence, substituted pars. (2) to (4) for “If as a result of such determination, such claimant is entitled to past-due benefits under this subchapter, the Secretary

shall, notwithstanding section 405(i) of this title, certify for payment (out of such past-due benefits) to such attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such past-due benefits, (B) the amount of the attorney’s fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney’s services.”, and inserted “(5)” before “Any person who”.

1989—Subsec. (a). Pub. L. 101-239, §10307(a)(1), inserted at end “The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this subsection.”

Subsec. (c). Pub. L. 101-239, §10307(b)(1), added subsec. (c).

1984—Pub. L. 98-369 substituted “Secretary” and “Secretary’s” for “Administrator” and “Administrators”, respectively, wherever appearing.

1968—Subsec. (a). Pub. L. 90-248 provided for fixing of attorneys fees for claimants and for certification of amount for payment out of past-due benefits.

1965—Pub. L. 89-97 designated existing provisions as subsec. (a) and added subsec. (b).

1958—Pub. L. 85-840 struck out provisions which required attorneys to file a certificate of their right to practice.

1950—Act Aug. 28, 1950, substituted “Administrator” for “Board” and “Administrator’s” for “Board’s”.

1939—Act Aug. 10, 1939, substituted the provisions of this section for former provisions relating to overpayments during life, now covered by section 404 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-142, §3(c), Feb. 27, 2010, 124 Stat. 39, provided that: “The Commissioner of Social Security shall provide for full implementation of the provisions of section 206(e) of the Social Security Act [42 U.S.C. 406(e)] (as added by subsection (a)) and the amendments made by subsection (b) [amending section 1383 of this title and provisions set out as a note under this section] not later than March 1, 2010.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-203, title III, §301(b), Mar. 2, 2004, 118 Stat. 519, provided that: “The amendments made by this section [amending this section] shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act [42 U.S.C. 406] on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act [Mar. 2, 2004].”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title IV, §406(d), Dec. 17, 1999, 113 Stat. 1913, provided that: “The amendments made by this section [amending this section and enacting provisions set out as a note under this section] shall apply in the case of any attorney with respect to whom a fee for services is required to be certified for payment from a claimant’s past-due benefits pursuant to subsection (a)(4) or (b)(1) of section 206 of the Social Security Act [42 U.S.C. 406] after the later of—

“(1) December 31, 1999, or

“(2) the last day of the first month beginning after the month in which this Act is enacted [Dec. 1999].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

Amendment by section 321(f)(3)(B)(i), (4) of Pub. L. 103-296 effective as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, to which such amendment relates, except that amendment by section 321(f)(3)(B)(i) applicable with re-

spect to favorable judgments made after 180 days after Aug. 15, 1994, see section 321(f)(5) of Pub. L. 103-296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101-508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title X, § 10307(a)(3), Dec. 19, 1989, 103 Stat. 2485, provided that: "The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect June 1, 1991."

Pub. L. 101-239, title X, § 10307(b)(3), Dec. 19, 1989, 103 Stat. 2485, provided that: "The amendments made by this subsection [amending this section and section 1383 of this title] shall apply with respect to adverse determinations made on or after January 1, 1991."

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.

NATIONWIDE DEMONSTRATION PROJECT PROVIDING FOR EXTENSION OF FEE WITHHOLDING PROCEDURES TO NON-ATTORNEY REPRESENTATIVES

Pub. L. 108-203, title III, § 303, Mar. 2, 2004, 118 Stat. 521, as amended by Pub. L. 111-142, § 3(b)(2), Feb. 27, 2010, 124 Stat. 39, provided that:

"(a) IN GENERAL.—The Commissioner of Social Security (hereafter in this section referred to as the "Commissioner") shall develop and carry out a nationwide demonstration project under this section with respect to agents and other persons, other than attorneys, who represent claimants under titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] before the Commissioner. The demonstration project shall be designed to determine the potential results of extending to such representatives the fee withholding procedures and assessment procedures that apply under sections 206 and section [sic] 1631(d)(2) of such Act [42 U.S.C. 406, 1383(d)(2)] to attorneys seeking direct payment out of past due benefits under such titles and shall include an analysis of the effect of such extension on claimants and program administration.

"(b) STANDARDS FOR INCLUSION IN DEMONSTRATION PROJECT.—Fee-withholding procedures may be extended under the demonstration project carried out pursuant to subsection (a) to any non-attorney representative only if such representative meets at least the following prerequisites:

"(1) The representative has been awarded a bachelor's degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

"(2) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of the Social Security Act [42 U.S.C. 301 et seq.] and the most recent developments in agency and court decisions affecting titles II and XVI of such Act [42 U.S.C. 401 et seq., 1381 et seq.].

"(3) The representative has secured professional liability insurance, or equivalent insurance, which the 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 comple-

tion 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)(ii)(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.)

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.

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