

the Comptroller General of the United States to conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge such fees and to transmit a report to the appropriate committees of Congress by July 1, 1992.

STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS

Pub. L. 101-508, title V, §5105(a)(4), Nov. 5, 1990, 104 Stat. 1388-262, required the Secretary of Health and Human Services, as soon as practicable after Nov. 5, 1999, to conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees and to transmit study results to the appropriate committees of Congress by July 1, 1992.

STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES

Pub. L. 101-508, title V, §5105(b)(2), Nov. 5, 1990, 104 Stat. 1388-263, required the Secretary of Health and Human Services, as soon as practicable after Nov. 5, 1990, to conduct a study of the need for a more stringent accounting system for high-risk representative payees than was otherwise generally provided under 42 U.S.C. 405(j)(3) or 42 U.S.C. 1383(a)(2)(C), and to report to the appropriate committees of Congress the results of the study and any recommendations by July 1, 1992.

DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES

Pub. L. 101-508, title V, §5105(b)(3), Nov. 5, 1990, 104 Stat. 1388-264, required the Secretary of Health and Human Services, as soon as practicable after Nov. 5, 1990, to implement a demonstration project to make available to the State agencies responsible for regulating care facilities or providing for child and adult protective services a list of addresses where benefits under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) were received by five or more individuals, and to report to the appropriate committees of Congress by July 1, 1992, on the feasibility and desirability of legislation implementing the programs established pursuant to section 5105(b)(3) of Pub. L. 101-508 on a permanent basis.

COUNTERFEITING OF SOCIAL SECURITY ACCOUNT NUMBER CARDS

Pub. L. 99-603, title I, §101(f), Nov. 6, 1986, 100 Stat. 3373, directed the Comptroller General of the United States to investigate technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting and to report to the appropriate committees of Congress not later than one year after Nov. 6, 1986.

CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES

Pub. L. 97-455, §5, Jan. 12, 1983, 96 Stat. 2500, provided that: "The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act [42 U.S.C. 405(b)(2)] (as added by section 4 of this Act). For this purpose the Secretary shall—

"(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

"(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] [former 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-

¹ See References in Text note below.

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-

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)(i)(II).

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