

**NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)**

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Executive Director
Barbara Silverstone

September 5, 2018

Nancy Berryhill
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Submitted on www.regulations.gov

Re: Agency Information Collection Activities: Proposed Request and Comment Request, 83
Fed. Reg. 31987 (July 10, 2018), Docket ID Number [SSA-2018-0030]

Dear Acting Commissioner Berryhill:

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR). NOSSCR is a specialized bar association for attorneys and advocates who represent Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claimants throughout the adjudication process. Since 1979, NOSSCR has been providing continuing legal education to its thousands of members, and public policy advocacy on behalf of its members and the people with disabilities they represent. NOSSCR's mission is to advocate for improvements in Social Security disability programs and to ensure that individuals with disabilities applying for SSDI and SSI benefits have access to highly qualified representation and receive fair decisions.

Thank you for the opportunity to comment on these agency activities, specifically the revised SSA-1696-U4, "Appointment of Representative." NOSSCR has the following suggestions for improving the proposed revisions to the SSA-1696.

[Instructions for Completing Form SSA-1696](#)

General Information About This Form

In the heading preceding this section, SSA explains that it intends for the word "you" throughout this form to refer to "the claimant, beneficiary, auxiliary or spouse" (herein "claimant"). As

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such, the use of “your” in the second sentence in the first bullet point of this section is incorrect (“For more information on who can qualify to be an appointed representative, **when your appointment begins or ends**... [emphasis added]”). We suggest changing the bold language to “when a representative’s authority begins or ends,” as we do not recommend using the term “appointment,” for reasons explained below.

NOSSCR also recommends removing the suggestion that claimants “look in [their] telephone directory under U.S. Government agencies” to locate their servicing field office in the last sentence in the first bullet point of this section. This suggestion is outdated given that printed phone books are no longer automatically delivered in most states and are not a convenient or popular way to find contact information for individuals, businesses, or agencies. Therefore, we recommend removing this suggestion and replacing it with the “Social Security Office Locator” website so it reads “You can also visit www.ssa.gov/locator, or call us, toll-free, at 1-800-772-1213.”

In the first sentence in the second bullet point of this section, we suggest using different language when explaining that this form may be used “to establish or end an appointment.” As noted above, the Form SSA-1696 states that the claimant is the intended audience for reading this form. As such, NOSSCR suggests simplifying the language in this section (and throughout this form) so that it can be more easily understood by claimants, who may not understand what establishing an appointment means or what an appointment is, which is also consistent with the Plain Writing Act of 2010 that requires federal agencies to communicate clearly in a way “the public can understand and use.” Therefore, we suggest changing the language at the end of this sentence so that it reads “You and your representative(s) may use this form to show us who is representing you.”¹

NOSSCR recommends that SSA add an additional bullet point in this section to explain that, under the applicable regulations (20 CFR §§ 404.1707(b) and 416.1507(b)), non-attorney representatives must sign the notice of appointment form and, while it is not required that attorneys sign the notice, SSA strongly encourages the practice.

Appointing a Representative

The proposed instructions in this section are confusing. We suggest including the following language: “You must complete Sections 1, 2, and 3 of this form. Your representative must complete Sections 4, 5, and 7. Section 6 may be completed by either you or your representative. Both you and your non-attorney representative must sign Section 8; if your representative is an attorney, he/she is not required to sign this form, but SSA strongly encourages the practice.”

The first sentence states that the claimant “must complete Sections 1, 2, 3 and 4” of the form, but the second sentence states that the claimant and representative must complete Section 4 together (“Your representative must complete Sections 5 and 6 of this form, and together you must complete Section 4.”). NOSSCR urges SSA to require that only the representative complete Section 4 of the SSA-1696 to avoid any mistakes in the information provided, and, more

¹ In the heading preceding this section, SSA explains that it intends for the word “us” throughout this form to refer to the Social Security Administration (SSA).

importantly, to ensure that the representative is aware of the appointment. Because the applicable regulations (20 CFR §§ 404.1707(b) and 416.1507(b)) only require non-attorney representatives to sign the notice of appointment, the claimant could appoint an attorney representative without his/her knowledge, as the attorney's signature would not be required on this form. This is also consistent with the instructions on page 6 of 7 of the revised form that Section 7 ("Fee Arrangement") be completed by the representative. Notably, this section of the form makes no mention as to who must complete Section 7, so we advise adding that the representative must complete that section, along with Sections 4 and 5.

This section also contains contradictory instructions as to who can complete Section 6 ("Claim Type"), as this section states that the representative must complete Section 6, but page 6 of 7 of the revised form states that Section 6 may be completed by either the claimant or representative. We see no reason to prohibit the claimant from completing Section 6. Our suggested instructions clarify who should complete each section of the SSA-1696.

NOSSCR recommends adding instructions on how and where this completed form must be submitted to the second to last sentence of this section (e.g., "You or your representative must submit the completed form to us by [insert how here] at [insert where here] before we will recognize the representative."). We suggest using the term "representative" instead of "appointment" to avoid potentially confusing claimants, who may not understand what recognizing an appointment means or what an appointment is, as previously explained.

Revocation of a Representative's Appointment and Withdrawal of a Representative

NOSSCR strongly urges SSA to create a separate form for revoking a representative's appointment and withdrawing as a representative. Although we appreciate the creation of such forms, there is no need or benefit to having the appointment and revocation/withdrawal forms combined and doing so poses a high risk of confusion, as claimants may not understand that this section should not be completed if they are only appointing a representative. Notably, there is nothing on page 7 that contains the revocation and withdrawal forms to signal to the claimant that he/she should stop completing the form for appointment purposes after page 6 of 7; on the contrary, it appears to be a required part of the appointment form, as the page number is continued from the appointment form (page 7 of 7) and there is nothing explicitly or conspicuously stating this page is non-applicable if solely appointing a representative. As such, placing the revocation/withdrawal forms at the end of the appointment form will only cause confusion and could result in mistaken withdrawals of a representative's appointment that a claimant just intended to make. It is also confusing to the claimant and the representative who wish to end an appointment to have these forms included at the end of the appointment form. Therefore, we highly recommend separating the revocation and withdrawal forms from the appointment form, and possibly even from each other to ensure representatives are accurately being appointed and only intentionally removed.

Section 2, 3 – Authorization for Disclosure and Principal Representative

We see no reason to combine these two sections, which have nothing to do with each other. As such, NOSSCR suggests separating them into two standalone sections with separate

headings/titles (e.g., “Section 2 – Authorization for Disclosure” and “Section 3 – Principal Representative”). We also recommend adding language to the “Principal Representative” section explaining that, if the claimant has multiple representatives, SSA will only communicate with and send copies of notices to the principal representative and not to any other representatives appointed to the claim, per the policy in POMS GN 03910.040D.

Section 4 – Representative’s Information

Since we advise allowing only the representative to complete Section 4, as explained above, the third sentence of this section instructing the claimant to ask his/her representative for the representative’s Rep ID if unknown to the claimant should be removed as a corresponding change.

Form SSA-1696 (XX-2018) UF - Claimant’s Appointment of a Representative

Number Holder’s Information

NOSSCR recommends adding language to the heading of this section to signal to the claimant that this section should only be completed if applicable, so it reads “**Number Holder’s Information** *(Completed by claimant **ONLY IF APPLICABLE**).*”

Section 3 – Principal Representative

Just as with the “Number Holder’s Information” section, NOSSCR suggests adding language to the heading of this section to signal to the claimant that this section should only be completed if applicable, so it reads “**Section 3 – Principal Representative** *(Completed by claimant **ONLY IF APPLICABLE**).*” The language in this section should also be clarified to state: “I have appointed before, or appoint now, more than one representative. I understand that SSA will communicate with, and send notices to, only this individual. My principal representative is:”

Section 4 – Representative’s Information

Since we advise allowing only the representative to complete Section 4, as explained above, the heading of this section should be changed to say “**Section 4 – Representative’s Information** *(Completed by representative)*” as a corresponding change.

Section 5 – Representative’s Status, Affiliations, and Certifications

Representative’s Status Part A – Type of Representative

For clarity and convenience, NOSSCR suggests adding the name of the specific form, Form SSA-1699, to the last sentence in parentheses of the first option if the attorney needs to update his/her information, so it reads “Use the Form SSA-1699 to update your information.”

To avoid confusion, NOSSCR suggests adding language to the end of the third option indicating that the non-attorney is not eligible for direct payment, so it reads “I am a non-attorney not

eligible for direct payment.” As is, a non-attorney representative eligible for direct fee payment would be correct to select both the second and third options, as the third option merely indicates that the non-attorney representative is not an attorney. Therefore, the language of the last option should be changed so that the options are mutually exclusive and serve SSA’s intended purpose of determining the representative’s eligibility for direct fee payments.

Section 5 – Continued

Representative’s Certification

In the last bullet point of the acceptance of appointment and certification section, SSA should add language explaining that if “the information on this form and on all accompanying statements or forms, including any information, attestations and certifications provided to SSA in registration” is not correct, the representative will promptly update the incorrect information by submitting an updated/corrected Form SSA-1699. If appropriate, SSA should add language here requiring that an updated/corrected Form SSA-1699 be submitted simultaneously with the appointment form.

In the next paragraph regarding direct payment of the authorized fee, SSA should change “intent” to “intend” to be grammatically correct, so it reads “If I intend to seek direct payment of the authorized fee on this claim...”

Section 6 – Claim Type

The first sentence incorrectly states that “the individual named in Section 1” is appointed to act as the claimant’s representative. This should be changed to correctly state that “the individual named in Section 4” is the appointed representative, as Section 1 contains the claimant’s own information.

Significantly, an option for SSI disability benefits under Title 16 is not listed as an option in this section. As such, a check box for “Claim/Appeal for Title 16/SSI Disability Benefits” should be added.

Section 7 – Fee Arrangement

NOSSCR strongly recommends dividing the third option, regarding fee waivers, into two separate options, like the options on the current SSA-1696 (03-2018 version), to clarify what the representative may charge and emphasize the important distinction between a “fee” and “out-of-pocket expenses.” Significantly, if the representative waives his/her right to charge and collect a fee from the claimant (and any auxiliary beneficiaries) because the representative’s fee will be paid by a third-party entity or government agency, the representative also waives his/her right to charge and collect any out-of-pocket expenses from the claimant (and any auxiliary beneficiaries), which can only be paid by the third-party along with the fee. However, if a representative waives the right to charge and collect a fee from any source, not just the claimant (and any auxiliary beneficiaries), he/she is not precluded by statute, regulation, or otherwise from collecting out-of-pocket expenses that the representative incurred during the course of

representation.² SSA does not authorize out-of-pocket expenses, which “are a matter for the representative and claimant to settle.”³ As such, it is imperative that the representative have a separate option for waiving fees from any source, which does not preclude collection of any out-of-pocket expenses, to ensure accuracy and avoid confusion and unnecessary issues with unauthorized fee collection that could potentially arise.

Claimant’s Revocation of the Appointment of a Representative

Although we highly suggest separating the revocation form (and the withdrawal form) from the appointment form altogether, we will take this opportunity to submit comments on this form (and the Representative’s Withdrawal of Acceptance of an Appointment form) as currently drafted.

NOSSCR recommends adding language to the revocation form explaining to the claimant that even if he/she revokes the representative’s appointment, the representative may request a reasonable fee for services provided to the claimant prior to the revocation. There should also be language instructing the claimant to send a copy of the revocation form to the representative or, if appropriate, an explanation that SSA will do so.

In the section of the revocation form asking for the name of the claimant’s new principal representative, “representative” is missing from the end of the first sentence, which should be added. Language should also be added here to explain that this section is optional and should only be completed if the claimant still has multiple representatives appointed to his/her claim.

Representative’s Withdrawal of Acceptance of an Appointment

NOSSCR recommends adding language to this form instructing the representative to send a copy of the withdrawal form to the claimant or, if appropriate, an explanation that SSA will do so.

Conclusion

NOSSCR appreciates the opportunity to comment on the proposed revisions to the SSA-1696 form.

Thank you for considering our comments.

Sincerely,



Barbara Silverstone
Executive Director

² Although POMS GN 03920.010A.5.c. states that if a representative waives all fees, “[t]his relieves the claimant of all liability to pay a fee **and expenses** for those services [emphasis added],” this appears to be an erroneous policy statement, as nothing in the Social Security Act or governing SSA regulations prohibits a representative from collecting out-of-pocket expenses if he/she is waiving the right to charge and collect a fee.

³ See POMS GN 03920.010C.