

will not be able to meet such obligations.

Issuers of general obligation debt may wish to consider, for example, the adverse effects, if any, Year 2000 issues may pose to their ability to assess and collect *ad valorem* taxes and allocate receipts and disbursements to proper funds in a timely manner to make debt service payments when due. In addition, while Year 2000 issues may not directly affect an issuer's ability to pay debt service, they may affect an issuer's general accounting and payment functions, which may be material to investors.

Revenue bond issuers may wish to consider, for example, any adverse effects Year 2000 issues may have on their ability to collect and administer the revenue stream securing their bonds and their ability to make timely payment of principal and interest on their obligations, as well as adverse effects to general accounting and payment functions, which may be material to investors.

Conduit borrowers, such as hospitals, universities and others, may wish to consider, for example, any adverse effects Year 2000 issues may have on their ability to deliver services, collect revenue and make timely payment on their obligations, including the obligation to pay debt service relating to municipal securities, which may be material to investors.

All issuers and conduit borrowers also may wish to consider the impact of Year 2000 problems facing third parties on their own ability to satisfy their responsibilities.

Other examples of suggested disclosure for consideration include, but are not limited to, the costs associated with fixing an issuer's Year 2000 problems, any loss associated with fixing an issuer's Year 2000 problems, any loss an issuer may incur because of Year 2000 problems, and any liabilities associated with an issuer's Year 2000 problems.

While not binding on issuers of municipal securities, issuers and persons assisting in preparing municipal issuer disclosure seeking further guidance may wish to review Sections III.A, B, and C of this release applicable to public companies.<sup>77</sup> The anti-fraud provisions of the federal securities law prohibit materially false and misleading statements or omissions, including those relating to the Year

2000 issues we have discussed in this release.

#### List of Subjects

17 CFR Parts 231, 241, and 276

Securities.

17 CFR Part 271

Investment companies, Securities.

#### Amendments to the Code of Federal Regulations

For the reasons set forth in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

#### PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

1. Part 231 is amended by adding Release No. 33-7558 and the release date of July 29, 1998, to the list of interpretative releases.

#### PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 241 is amended by adding Release No. 34-40277 and the release date of July 29, 1998, to the list of interpretative releases.

#### PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 271 is amended by adding Release No. IC-23366 and the release date of July 29, 1998, to the list of interpretative releases.

#### PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 276 is amended by adding Release No. IA-1738 and the release date of July 29, 1998, to the list of interpretative releases.

Dated: July 29, 1998.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-20749 Filed 8-3-98; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AD73

### Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Standards of Conduct for Claimant Representatives

AGENCY: Social Security Administration.

ACTION: Final rules.

**SUMMARY:** We are amending our rules governing representation of claimants seeking Social Security or supplemental security income (SSI) benefits under title II or XVI of the Social Security Act (the Act), as amended. The final rules establish standards of conduct and responsibility for persons serving as representatives and further define our expectations regarding their obligations to those they represent and to us. The final rules include statutorily and administratively imposed requirements and prohibitions.

**EFFECTIVE DATE:** This regulation is effective September 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Augustine, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-5121. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

#### SUPPLEMENTARY INFORMATION:

#### Background

Prior regulations governing representatives' conduct (§§ 404.1740, *et seq.* and 416.1540, *et seq.*) under titles II and XVI, of the Act, primarily reiterate various statutory provisions set forth in the Act. Sections 404.1745 and 416.1545 also provide that a representative may be suspended or disqualified from practice before the Social Security Administration (SSA) if he or she has violated those rules, been convicted of a violation of sections 206 or 1631(d)(2) of the Act, respectively, or "otherwise refused to comply with our rules and regulations on representing claimants in dealings with us." This is consistent with sections 206(a)(1) and 1631(d)(2) of the Act, which provide that the Commissioner of Social Security (the Commissioner) may "suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations \* \* \*" (Section 206(a)(1) is

<sup>77</sup> See also Proposed Governmental Accounting Standards Board Technical Bulletin No. 98-a, "Disclosures about Year 2000 Resources Committed," July 24, 1998. It can be found at <<http://www.rutgers.edu/accounting/raw/gasb/gasbhome.html>>.

incorporated into title XVI of the Act by section 1631(d)(2)(A) of the Act.) Since their inception, the regulations have reflected the Commissioner's (formerly the Secretary of Health and Human Services') broad authority over matters involving representatives' activities in their dealings with us.

These final rules are based on the notice of proposed rulemaking (NPRM) published in the **Federal Register** on January 3, 1997 (62 FR 352). Specifically, they provide enforceable standards governing aspects of practice, performance and conduct for all persons who act as claimants' representatives. The final rules also recognize the increased participation of compensated representatives in the adjudicative process, the special circumstances presented by SSA's nonadversarial administrative process including its hearings, and statutory changes, such as the anti-fraud provisions of the Social Security Independence and Program Improvements Act of 1994, Public Law (Pub. L.) 103-296. The prior regulations pertaining to representatives' conduct had been largely unchanged since their promulgation in 1980, and no longer adequately addressed our experience concerning the extensive participation of representatives in the claims process.

We take seriously our statutory responsibility to ensure that claimants are represented properly during the claims process. Therefore, we are publishing these rules to improve the efficiency of our administrative process and to ensure that claimants receive competent services from their representatives. While we recognize that most representatives do a conscientious job in assisting their clients, our experience has convinced us that there are sufficient instances of questionable conduct to warrant promulgation of additional regulatory authority. The prior regulations did not address a representative's responsibility to adequately prepare and present the claimant's case among other deficiencies. These final rules correct these omissions and are necessary to protect the claimant and the adjudicative process from those individuals who are incapable of providing, or unwilling to provide, meaningful assistance in expeditiously resolving pending claims.

Although there are disparities in the levels of skill, experience, education and professional status among those who serve as representatives, we believe all such individuals must be bound by the same set of rules. In determining the appropriate standards, we considered the requirements and intent of the Act and its implementing regulations,

administrative law principles applicable to adjudication and the American Bar Association's (ABA's) Model Rules of Professional Conduct and Model Code of Professional Responsibility.

There are comparable rules in part 410, subpart F (§§ 410.684, *et seq.*) governing representative conduct under the Black Lung benefits program. We are not revising those rules, however. Executive Order 12866, Regulatory Planning and Review, issued by the President on October 4, 1993 (58 FR 51735), provides that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need \* \* \*." Because we process a very small number of claims involving Black Lung benefits, and the concerns giving rise to these rules have not affected those claims, there is no compelling need to revise the Black Lung rules.

We expect that the final rules will further clarify the obligations of representatives to provide competent representation of their clients, in accordance with the procedural and evidentiary requirements of the claims process. Moreover, the final rules constitute official notice concerning our requirements and prohibitions.

In drafting the proposed rules, we obtained information from various sources to address the concerns of claimants and others with a stake or interest in the issue of claimant representation; for example, we conducted focus groups with claimants and beneficiaries as part of our disability process redesign initiative. Participants in the public dialogue conducted in conjunction with our redesign initiative frequently noted the lack of timely or effective assistance on the part of claimants' representatives. We also used information gathered in investigating nearly 600 complaints involving misconduct by representatives from 1988 to 1997. In light of complaints about the quality and effectiveness of representatives' services, the Disability Process Redesign Team included within its recommendations provisions aimed at representatives' performance.

In addition, in February 1995 we requested comments on a draft proposal from 33 separate groups and organizations drawn from the attorney and non-attorney claimant representative community. These groups included professional organizations, interest groups, think tanks, legal services organizations, and various private representative organizations. We received 92 responses to this informal request. Many were

supportive, especially regarding the need to provide standards for non-attorney representatives. Many, however, were opposed to more regulation of their professional conduct. We carefully considered all the views and concerns in formulating the proposed rules, which we published in the **Federal Register** on January 3, 1997. Similarly, we considered the public comments received on the proposed rules, in formulating these final rules.

### Regulatory Provisions

These final regulations revise §§ 404.1740, 404.1745, 404.1750, 404.1765, 404.1770, 404.1799, 416.1540, 416.1545, 416.1550, 416.1565, and 416.1599.

We revised §§ 404.1740(a) and 416.1540(a) to explain the purpose and scope of these rules which are intended to ensure that representatives provide competent services to their clients and comport themselves in accordance with our rules and standards. Accordingly, the rules set forth affirmative duties and prohibited actions that shall govern the relationship between the representative and the Agency.

We revised §§ 404.1740(b) and 416.1540(b) to include affirmative duties, which are certain obligations that a representative must actively perform in his or her representation of claimants in matters before us. We expect these affirmative duties to promote competence, diligence, and timeliness in assisting the claimant to meet the burden of proving eligibility for benefits.

We have not changed the regulations concerning our existing duties and responsibilities with regard to developing the record and obtaining evidence nor have we changed our expectations concerning what will be required of claimants (see §§ 404.1512 and 416.912 concerning disability and blindness claims). Therefore, we will continue to carry out our existing responsibilities in this regard. Under these rules, however, representatives will be expected to assist claimants in meeting their obligations with respect to submitting information and evidence and responding to our requests in conformity with our existing regulations.

New §§ 404.1740(b)(1) and 416.1540(b)(1) clarify that a representative should act with reasonable promptness to obtain and submit to us the information and evidence that the claimant wants the decision maker to consider in ruling on a claim. Based on the comments we received on the proposed rules we published, we revised the wording of

these sections to more closely track other existing regulatory requirements. In disability and blindness claims, the new provisions include the obligation to assist the claimant in complying with §§ 404.1512(a) and 416.912(a) which require claimants to bring information and evidence to our attention and to furnish medical and other evidence to us.

New §§ 404.1740(b)(2) and 416.1540(b)(2) require that the representative assist the claimant in complying, as soon as practicable, with our requests for information or evidence. In disability and blindness claims, this includes the obligation to assist the claimant in providing, upon our request, evidence pursuant to §§ 404.1512(c) and 416.912(c).

Based on the public comments we received, we deleted proposed §§ 404.1740(b)(2)(i) and 416.1540(b)(2)(i), which would have required that the representative provide, upon request, information regarding the claimant's medical treatment, vocational factors or other specifically identified matters, or provide notification that the claimant does not consent to release the information. We also deleted proposed §§ 404.1740(b)(2)(ii) and 416.1540(b)(2)(ii), which would have required that the representative provide, upon request, all evidence and documentation pertaining to specifically identified issues which the representative or claimant already has or may readily obtain. We deleted these proposed requirements to more closely track the existing regulatory requirements that explain a claimant's duties and responsibilities with regard to submitting evidence and providing information.

In new §§ 404.1740(b)(3) and 416.1540(b)(3), we set forth minimum requirements governing the competency, diligence and behavior of representatives in their dealings with us. Based on the comments we received, we revised these sections to more closely track the language of model codes concerning competency and diligence of representatives.

In new §§ 404.1740(b)(3)(i) and 416.1540(b)(3)(i), we establish an affirmative duty of competency. This includes the requirement that a representative know the significant issue(s) in a claim and have a working knowledge of the applicable provisions of the Act, the regulations and the Rulings. A representative should also know how to obtain and submit evidence regarding the claim.

In new §§ 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii), we require that the representative act with reasonable

diligence and promptness. This includes providing prompt and responsive answers to our requests and communications pertaining to the pending claim. A representative may not ignore official communications.

We deleted proposed §§ 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii), which would affirmatively have required cooperation in developing the record. We believe that cooperation is inherent in competency and diligence, and that representatives should cooperate with us in such matters as releasing medical records, scheduling consultative examinations and scheduling conferences or hearing dates. Therefore, a separate rule would be redundant.

In revised §§ 404.1740(c) and 416.1540(c), we describe prohibited actions, which are certain acts or activities that a representative must avoid. In part, the prohibited actions incorporate various statutory provisions set forth in the Act and other legislation.

We based new §§ 404.1740(c)(1) and 416.1540(c)(1) on the prohibitions (e.g., threatening or coercing a claimant) set forth in §§ 206(a)(5) and 1631(d)(2) of the Act, and these sections are self-explanatory. A representative's honest mistake would not be construed as knowingly misleading a claimant. In determining whether a representative knowingly misled a claimant, we will consider whether the action involved matters that the representative should have known were untrue.

We based new §§ 404.1740(c)(2) and 416.1540(c)(2) on the provisions of sections 206(a) and (b) and 1631(d)(2) of the Act which provide briefly that representatives are eligible for reasonable fees for representing a claimant, and these sections apply to all fee collections. With regard to section 206(a)(4) of the Act, we will assume, in the absence of evidence to the contrary, that work performed by support staff in a law office is performed under the supervision of an attorney, thereby permitting the attorney to validly claim direct payment from past-due benefits for those services in a title II claim. This assumption will not apply, however, when a person other than an attorney appears alone at a hearing to provide representation on behalf of a claimant. In those cases, the person appearing alone at the hearing shall be considered the representative and will be required to file a fee petition or fee agreement for his or her services, and will not be entitled to receive direct payment from past-due title II benefits for the representation at the hearing.

Generally, we based new §§ 404.1740(c)(3) and 416.1540(c)(3) on

the criminal prohibitions in 18 U.S.C. 1001 and the provisions governing civil monetary penalties and assessments set forth in section 1129 of the Act. These sections are self-explanatory.

New §§ 404.1740(c)(4) and 416.1540(c)(4) are directed against practices where improper acts or omissions by the representative, without good cause, have the effect of unreasonably delaying the disposition of a claim for benefits.

We based new §§ 404.1740(c)(5) and 416.1540(c)(5) on the provisions of section 1106 of the Act, which prohibit disclosure by any person of information obtained by the Agency in conjunction with a claim, except as may be authorized by regulations prescribed by us. The intent is to prohibit disclosure of information regarding a claimant without the claimant's consent.

In new §§ 404.1740(c)(6) and 416.1540(c)(6), we prohibit a representative from offering or giving anything of value to persons involved in the adjudication of a claim except as remuneration to a witness for legitimate expenses or for services rendered. The intent is to prevent the appearance of influencing, or attempting to influence, the disposition of a claim by bestowing gifts or favors on individuals in a position to materially affect the outcome of the adjudication of a claim.

New §§ 404.1740(c)(7) and 416.1540(c)(7) apply to conduct undertaken during the course of oral proceedings which is disruptive and detrimental to due process and the administration of justice.

In new §§ 404.1740(c)(7)(i) and 416.1540(c)(7)(i), we prohibit repeated absences from or persistent tardiness at scheduled proceedings without good cause because such conduct adversely affects claimants, diminishes the ability of the Agency to operate efficiently and harms other applicants by disrupting schedules and work flow.

In new §§ 404.1740(c)(7)(ii) and 416.1540(c)(7)(ii), we address deliberate acts which have the effect of disrupting the proceedings or diverting the attention of the participants from the purpose of the hearing to matters irrelevant to the merits of the case.

New §§ 404.1740(c)(7)(iii) and 416.1540(c)(7)(iii) are based in part on the provisions of sections 206(a)(5) and 1631(d)(2) of the Act, 18 U.S.C. 111 and 28 CFR 64.2(x) and (aa). These provisions prohibit threatening or intimidating conduct directed at the participants in an oral proceeding or the employees assigned to our offices, which has the effect of disrupting the proceeding. We will not tolerate actual or implied threats of violence.

In revised §§ 404.1745 and 416.1545, we explain that we may begin proceedings to suspend or disqualify a person who does not meet our qualifications for a representative or who violates our rules and standards governing representatives in their dealings with us.

We modified §§ 404.1750(a) and (d), 404.1765(a) and (e), 404.1799(c) and (e), 416.1550(a) and (d), 416.1565(a) and (e), and 416.1599(c) and (e), to reflect current Agency official titles and organizational changes.

We revised §§ 404.1765(g)(3) and 416.1565(g)(3) to remove the first word "not" from each paragraph. This corrects errors made when the regulations on representation of parties were reorganized, renumbered and republished on August 5, 1980 (45 FR 52078). When the original regulation was published as § 404.983(f) on April 26, 1969 (34 FR 6973, 6974), it provided that "[i]f the individual has filed an answer and if the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may at any time prior to the mailing of notice of the decision, or submittal of a recommended decision, reopen the hearing for the receipt of such evidence." This is consistent with the preceding language in § 404.983(f), which states that if a representative "has filed no answer he shall have no right to present evidence \* \* \*."

In the 1980 final rule, the former § 404.983(f) was renumbered as § 404.1765(f), with a parallel title XVI provision at § 416.1565(f). Paragraph (f)(2) addressed representatives who do not answer charges and paragraph (f)(3) addressed those who do. Paragraph (f)(3) (45 FR 52078, 52093, 52108) contained a misprint, however, which read, "If the representative did not file an answer to the charges \* \* \*." Thus, paragraphs (f)(2) and (f)(3) were inconsistent and conflicting. Subsequently, in 1991, paragraph (f) of §§ 404.1765 and 416.1565 was redesignated as paragraph (g) (56 FR 24129, 24131, 24132).

The 1980 misprint substantively changed the meaning of current paragraph (g)(3). As specifically explained in the preamble to the 1980 rules, however, SSA never intended to make any substantive changes to the regulations. The regulations were rewritten for the purpose of reorganizing and restating them more clearly in simpler language. The misprint has created confusion in the representative disciplinary process. Consequently, we are taking this opportunity to correct the

error to reflect the original intent of the regulations.

We also are correcting another minor misprint in the prior § 404.1765(g)(3) by making "decisions" singular for correctness and consistency with § 416.1565(g)(3).

Finally, we are amending § 404.1770, paragraphs (a)(3) and (b)(3), to correct a publication error that occurred after paragraph (a)(3) was revised in 1991. As correctly published in final rules on May 29, 1991 (56 FR 24129, 24132), paragraph (a)(3) was revised to show that the hearing officer shall mail a copy of the decision to the parties at their last known addresses. When codified in the 1992 volume of the Code of Federal Regulations, however, the revised language of paragraph (a)(3) was erroneously placed in paragraph (b)(3), superseding that existing language addressing the effect of a final decision imposing a suspension upon a representative. This correction accurately reflects the language and purpose of paragraphs (a)(3) and (b)(3) and brings § 404.1770 into conformity with its equivalent § 416.1570.

#### Public Comments

When we published the NPRM, we provided the public a 60-day comment period. We received comments from over 70 individuals and organizations. These included comments referred to us by members of Congress, and comments from legal services organizations, the American Bar Association (ABA), the National Organization of Social Security Claimants' Representatives (NOSSCR), the Association of Administrative Law Judges, Inc., and other associations of attorneys, and non-attorney representatives. We also received comments from individual attorneys, non-attorney representatives, Administrative Law Judges (ALJs) and other SSA employees.

Many of the commenters raised concerns that they or previous commenters raised informally with regard to our draft proposal in February 1995. Many commenters were opposed to our promulgating any additional regulations at all concerning representatives. However, we also received comments from individuals who believed that there is a need for clarifying regulations and who were supportive of our proposed rules. Other commenters expressed the idea that we should not regulate attorneys who practice before us, but should instead regulate non-attorneys. On the other hand, many non-attorney representatives supported the idea of uniform national standards for both

attorney and non-attorney representatives.

The greatest concern was with regard to our proposed requirements concerning the submission of evidence and responding to our requests for information. In response to these comments and as we have indicated below, we revised these requirements extensively to conform to other existing regulations. We have summarized and addressed these statements in the comments and responses below with the other substantive comments received.

The ABA expressed substantial reservations about our proposed standards. The ABA continued to believe, as it did in 1995, that some of the rules, especially those dealing with disclosure of medical information and the duty of advocacy for one's client, were far too broad and that enforcement would place the Agency in the troublesome position of attempting to override a lawyer's sworn duty to obey the Rules of Professional Conduct of the jurisdiction in which the lawyer is licensed to practice. The ABA believed that the proposed rules continued to include provisions that could give rise to serious ethical conflicts. The ABA voiced particular objections to our proposal to place duties on representatives to obtain and submit certain evidence by certain dates.

NOSSCR raised concerns involving the primacy of State bar rules for most attorneys, the duty to obtain specific evidence, the duty to submit evidence by certain dates, and the vagueness of the conduct deemed overzealous. NOSSCR also objected to what they interpreted as our attempt to close the record through the use of deadlines. NOSSCR believed that there was no sound basis for our proposed rules as drafted and that, in effect, they should not be promulgated. This was a position taken by other associations of attorneys and individual attorneys as well.

As we have explained below, in response to the ABA's and NOSSCR's comments and other comments we have received, we have revised the particular provisions that generated the most concern to make them track SSA's other existing regulations. We believe this removes the areas of greatest concern. For the reasons discussed below, we have not adopted the suggestion to refer complaints about attorneys to State bar licensing authorities for appropriate disposition. We have made other changes to address the objections with regard to wording of particular provisions and vagueness.

Because some of the comments were quite detailed, we had to condense, summarize or paraphrase them. We

have, however, tried to summarize the commenters' views accurately and respond to all of the significant issues raised by the commenters that are within the scope of the proposed rules. As we discuss below in responding to the comments, we have made revisions and additions to the proposed rules to clarify their intent.

*Comment:* Some commenters questioned our authority to promulgate these regulations. One commenter stated that the Act does not contemplate that SSA would impose standards such as these where such standards are already set out in State laws that regulate the conduct of attorneys and others who do business within those states. According to this commenter, there is no justification for ignoring the regional differences between states that are a necessary and direct result of our constitutional system. This commenter also stated that these regional differences are tolerated in other settings such as the Federal courts.

*Response:* The Commissioner has broad rulemaking authority under sections 205 and 1631 of the Act to promulgate necessary and appropriate rules, regulations and procedures to carry out the provisions of titles II and XVI and under sections 206 and 1631(d)(2) of the Act to "suspend or prohibit from further practice before him 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." It is the Commissioner who is ultimately responsible for providing decisionmaking that is timely and efficient and results in an accurate disposition of a claim. As stated above, these regulations are necessary to address actual and potential problems impacting the efficiency and integrity of the administrative process resulting from the participation of representatives in the claims process and to ensure that claimants' eligibility for benefits is not prejudiced by ineffective assistance of their representatives.

In *Sperry v. State of Florida*, 373 U.S. 379 (1963), Florida sought to enjoin a non-attorney registered to practice before the United States Patent Office from preparing and prosecuting patent applications in Florida because he was not a member of the Florida bar. The Supreme Court held that the Federal government has pre-emptive powers over states' legislative and judicial authorities when acting under valid Federal regulation.

Based on the Commissioner's broad rulemaking authority and the Federal government's pre-emptive powers, we

believe that we have the authority to promulgate these regulations on a nationwide basis, and they would supersede any inconsistent state or local rules.

*Comment:* Many commenters questioned the need for additional regulations governing the conduct of representatives.

*Response:* The goal of these regulations is to provide the public, especially claimants' representatives and claimants, with a uniform, clearly articulated set of rules that representatives are expected to follow in representing claimants before SSA. In so doing, we are informing the public of how we will carry out our statutory obligations in regard to claimant representation.

We carefully considered the need to provide enforceable standards governing the practice, performance, and conduct of all persons who act as claimants' representatives. Under the prior regulations, we were unable to address some conduct by claimants' representatives that we believed was inappropriate. For example, under the prior regulations, we could not address a representative's misconduct during a hearing or failure to adequately prepare and present the claimant's case. Moreover, various sources, including claimants, have complained to SSA and expressed concern about the quality and effectiveness of claimants' representation. Based on these needs, and our statutory duty to protect claimants from claimants' representatives who do not comply with Social Security laws and regulations, we believe that the standards of conduct for representatives are necessary and that such standards clearly are in the public interest.

*Comment:* The majority of responding attorneys, as well as the ABA and other organizations, complained that, since attorneys' conduct already is governed by their individual State bar codes of conduct and ethics rules, separate SSA standards of conduct are redundant and are an unnecessary infringement on State bar jurisdiction over attorneys. The ABA and several individuals suggested that SSA establish a system by which complaints can be referred to State bar disciplinary authorities when we suspect misconduct. The ABA supported SSA's concern that all representatives be held to certain standards of practice and conduct, but strongly advised that such standards comport with the ABA Model Rules, and that they be applied only to those representatives who would not otherwise be subject to the legal profession's rules of conduct. One

individual recognized that State bar rules are not applicable to representatives who are not attorneys, but opined that there are not enough non-attorney representatives to warrant standards of conduct for non-attorneys.

Some attorney commenters suggested that non-attorney representatives should be required to comply with State bar rules or the ABA Model Code. A few attorneys suggested that non-attorneys be barred from representing claimants before SSA. However, a few commenters specifically agreed with us that both attorneys and non-attorneys should have their conduct evaluated by the same criteria.

*Response:* Bar rules differ in language and format among the 50 States, the District of Columbia, Puerto Rico and the U.S. territories and island possessions. As the administrator of a national program, however, SSA should not be expected or required to apply local rules, or local interpretations of the rules, to problems that require national uniformity. If we applied local rules or local interpretations rather than a national standard, it is conceivable that attorneys in one area could be subject to discipline by SSA for conduct that another jurisdiction would not find actionable, or vice versa. We do not believe it benefits the attorneys, the claimants or SSA to have this type of inconsistency in carrying out the Commissioner's statutory obligation to regulate the conduct of representatives in administering a nationwide program.

Moreover, attorneys often represent claimants in jurisdictions other than those in which they are licensed to practice law. In those instances, it would be unclear which jurisdiction's rules would apply, which could lead to inconsistent application of the rules among attorneys practicing in the same geographical area.

Furthermore, non-attorney representatives are not subject to any rules of conduct for representatives similar to bar rules. Contrary to one comment, individual non-attorney representatives and representative organizations represent a substantial number of claimants. Within the last eight years, suspension/disqualification actions against non-attorneys comprised approximately 36 percent of SSA's representative disciplinary actions. Therefore, it is essential to provide rules that will govern the conduct of non-attorneys who practice before us. Moreover, it is only fair and equitable to hold all representatives who practice before us to the same standards.

In addition, applying our rules to only non-attorney representatives is incompatible with the Commissioner's

statutory obligation to regulate the conduct of all representatives in order to ensure that claimants are being represented competently and fairly. Finally, we note that contrary to the suggestion that non-attorneys be prohibited from acting as representatives, the Act allows such representation.

*Comment:* Some commenters stated that there should be testing or certification of representatives. Another commenter stated that SSA should publish standards concerning the character, background, and qualifications of non-attorney representatives.

*Response:* We have considered the possibility of testing or other formal certification procedures for non-attorney representatives, but we have determined that the idea is not feasible at this time. SSA currently has standards for non-attorney representatives in §§ 404.1705 and 416.1505.

Any individual who provides services as a representative for a fee shall be expected to demonstrate, in the performance of those services, sufficient knowledge of the claims process to be of assistance to the claimant. Ignorance of substantive provisions of law or procedural requirements shall not be considered a mitigating factor for acts or omissions which impede or disrupt the efficient and orderly disposition of a claim.

*Comment:* One commenter offered that since no other Federal agency has a code of conduct for representatives, it is unnecessary for SSA to have one.

*Response:* We disagree with the premise of the comment and the conclusion. The Internal Revenue Service has rules for practice before it. See 31 CFR, Part 10. We also note that on November 25, 1997, the Merit Systems Protection Board published an interim rule concerning misconduct by representatives (62 FR 62689) which was finalized recently at 63 FR 35499 (June 30, 1998). Furthermore, on January 20, 1998, the Department of Justice, Immigration and Naturalization Service and the Executive Office for Immigration Review, published an NPRM to change the rules and procedures concerning professional conduct for practitioners, which includes attorneys and representatives (63 FR 2901). Moreover, whether other agencies have codes of conduct should not be determinative. SSA has a responsibility to protect and preserve our administrative processes, and by law may take any reasonably necessary action in support of that obligation.

*Comment:* A few individuals commented on the issue of payment of

fees to non-attorneys and suggested that the prohibition against direct payment of fees to non-attorneys should be removed. One commenter suggested that non-attorneys should be required to sign retainer agreements prior to representing claimants and should also be required to submit itemized fee statements to SSA.

*Response:* These issues go beyond the purpose of these rules. The intent in drafting these regulations was not to change the existing statutory and regulatory provisions regarding payment of fees. However, as stated in the NPRM, SSA is currently considering separate regulations to address the issues of authorization, direct payment and administrative review of fees for representation.

*Comment:* Other commenters suggested that a representative engaging in prohibited or obstructive conduct be penalized by reduction in the amount of the fee authorized.

*Response:* This issue also is not the subject of these rules. We may address this issue in the separate regulations referred to in the previous response.

*Comment:* We received various comments regarding the number of complaints of misconduct by claimants' representatives investigated by the Office of Hearings and Appeals. Several commenters believed that the small number of complaints did not indicate a need for our proposed standards of conduct for representatives. Another commenter stated that our statistics underestimate the problem of inadequate representation of claimants.

*Response:* Although we realize that most representatives do a conscientious job in assisting their clients, we believe that there are sufficient instances of misconduct to justify these standards of conduct based on the referrals and complaints we have received. We also observe, however, that many of the complaints we receive involve misconduct by claimants' representatives that could not be addressed under the prior regulations but can be addressed under these standards of conduct. In addition, we anticipate that our standards of conduct will result in more referrals of representative misconduct to the Office of Hearings and Appeals.

*Comment:* Some commenters believed that SSA's decision to seek discipline of a claimant's representative will be based on the Agency's workload and will not be applied uniformly.

*Response:* Our decision to seek discipline of a claimant's representative will be based solely on a representative's misconduct, not SSA's workload. We also believe that the rules

provide a strong basis for uniform application of such actions and recognize our obligation to effectively implement them in an even-handed, consistent manner. Moreover, we believe that the rules clearly focus on the responsibilities of a claimant's representative, including avoiding unjustifiable delays that harm the processing of the claim. The rules apply to claimants' representatives in all stages of our process and all aspects of their representation before us.

*Comment:* Several commenters pointed out the delays in our administrative decisionmaking process. Generally, observing that SSA is under no time constraints in processing cases, they expressed the belief that the delays result from Agency actions rather than representative misconduct.

*Response:* The time it takes to decide claims in the administrative process is influenced by many factors. We believe that our new rules will enhance our efforts to improve the efficiency and timeliness of our adjudication process. At the same time, in fairness, we will not hold representatives accountable for matters solely within the control of the Agency.

*Comment:* A few individuals observed that the new regulations would put an unnecessary administrative burden on SSA and would create a new bureaucracy. Others suggested that the rules would also place an unwarranted burden on representatives and would have a chilling effect upon representation.

*Response:* Although, as noted previously, these regulations may result in our receiving additional complaints of misconduct, the complaints will be handled by the same staff and in the same manner as complaints filed under the prior regulations. As we have stated below in response to similar comments, we do not believe that these regulations place an unwarranted burden on representatives or discourage representation. Instead, we believe that these rules will improve the efficiency of our administrative process.

*Comment:* Several commenters complained about claimants' representatives' lack of access to claim files, lost records, lack of response from SSA to inquiries, and delay in obtaining records from SSA.

*Response:* We agree that these issues are relevant, but they are not directly related to the subject matter of these rules. We will, of course, consider such extenuating circumstances in deciding whether there was inappropriate delay or failure to adequately prepare and present the claimant's case. As noted below, we will not hold a representative

accountable for matters beyond his or her control.

*Comment:* Several commenters expressed concern that SSA employees, including ALJs, may abuse the process by improperly finding violations of the standards of conduct or by making unreasonable demands on representatives.

*Response:* We believe that the internal checks and balances within our operating procedures provide adequate safeguards against abuse of discretion and/or arbitrary action. Furthermore, we note that the determination on whether to file a complaint against a representative for violating these regulations will be made by the Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee (hereinafter Deputy Commissioner or designee), rather than by any other employee, including an ALJ. Even after a complaint is served, a representative is entitled to file an answer and petition for withdrawal of the complaint. Thereafter, the accused party has a right to a full evidentiary hearing, and a right to request review of the resulting decision. In view of these elaborate safeguards, administered at each step by independent decision makers, it is unlikely that an honest mistake or a reasonable misunderstanding on the part of a representative would result in sanctions.

*Comment:* Other commenters intimated that we are proposing these rules to punish representatives or decrease the rate of representation.

*Response:* SSA neither encourages nor discourages representation. Our sole purpose in proposing these regulations is to carry out our statutory obligation to ensure that representatives, when utilized, meet certain standards in their dealings with claimants and with us.

*Comment:* Other commenters suggested a code of conduct for SSA employees, including ALJs.

*Response:* The suggestion is outside the scope and purpose of these rules. All SSA employees, including ALJs, must conform their conduct to government-wide standards of conduct. Any member of the public who believes that any SSA employee has violated these standards should report these violations to us. Additionally, we also have existing procedures to address allegations of bias or misconduct on the part of ALJs.

*Comment:* Several individuals commented on the issue of SSA's ability to contact the claimant directly. One representative stated that the proposed standards of conduct fail to point out

what rules apply to SSA employees who contact and, according to this commenter, allegedly intimidate claimants although these claimants may be represented. One attorney stated that in other legal matters such as criminal or civil actions, it is improper to contact the client directly. Another commenter stated that it was not true that SSA may not contact a represented claimant directly. This individual stated that SSA may do so in cases of fraud or similar fault or to resolve discrepancies, and must do so to provide and explain rights and responsibilities in connection with the filing of a claim. Additionally, this individual observed that representatives should be aware that SSA can and will make such contacts.

*Response:* SSA's general policy is that SSA makes all contacts with a represented claimant in connection with prosecution of a claim through, or with the permission of, the appointed representative. However, SSA may contact the claimant directly: if the representative asks SSA to deal directly with the claimant; or if SSA's records indicate that the claimant is represented, but there is insufficient or conflicting information regarding who the claimant's representative is; or if an appointed representative's authority may have expired, but there is insufficient information in the file or on the system to make this determination accurately; or if the issue involves a possible violation by the representative or the claimant. Also, because an appointed representative's authority ordinarily does not extend to signing an application on behalf of a claimant, SSA frequently does have direct contact with a claimant during the claims-filing process. Contacts other than as explained above are not in accordance with our procedures, and we would certainly want to be told about employee improprieties, such as alleged intimidation.

*Comment:* Several ALJs in one hearing office and the Association of ALJs requested an additional rule dealing with withdrawal of representation by representatives shortly before or on the date of the hearing. They indicated that in no court may a representative withdraw from a case without leave of court and that the absence of such a requirement for SSA hearings results in additional delay and a waste of time and money. These commenters propose a rule requiring the representative to show good cause for withdrawal, or by allowing withdrawal no later than six days after notice of hearing is issued without having to show good cause.

*Response:* SSA's decisionmaking process is nonadversarial and informal, and claimants do not require representation. The decision to have a representative is the claimant's, and SSA neither encourages nor discourages representation. A claimant may revoke the appointment of a representative at any time. Likewise, a representative may withdraw from representing a claimant at any time. Any rule limiting the withdrawal of a representative would contravene SSA's basic policy on representation. If a claimant still desires representation after his or her representative withdraws, we will allow the individual time to secure a new representative before we adjudicate the claim.

*Comment:* One ALJ suggested that SSA by regulation, or Congress through statute, provide SSA ALJs with some form of limited contempt or sanction powers to control the conduct of representatives and claimants in addition to the proposed rules. The ALJ mentioned that recently enacted legislation gave immigration judges the authority to sanction by civil money penalty any action or inaction in contempt of the judge's proper exercise of authority. The ALJ also cited a proposal to give Department of Health and Human Services Departmental Appeals Board ALJs sanction powers in civil monetary penalty cases. Another commenter suggested that §§ 404.1740(b) and 416.1540(b) should place an affirmative duty on representatives to comply with prehearing orders. According to this commenter, the regulation should indicate that the ALJ has authority to issue and expect compliance with such prehearing orders.

*Response:* SSA ALJs do not have contempt powers or sanction authority, and we do not have legislation similar to that cited by the commenter. SSA ALJs, on their own initiative, will not have the authority to enforce these rules. Instead, as noted above, the determination on whether to file a complaint against a representative will be made by the Deputy Commissioner or designee. Finally, we believe that giving contempt or sanction authority to ALJs does not seem necessary or appropriate to SSA's informal, nonadversarial proceedings which deal primarily with disability and retirement issues.

*Comment:* A frequent comment concerning the February 1995 draft was that the proposed standards used terms that were too vague and ambiguous, such as "timely," "diligence," "as soon as possible" and "matters at issue." To be responsive to these concerns and further clarify our requirements in the

NPRM, we modified the language that was most often identified as ambiguous. However, we received comments on the NPRM that some of the language continued to be vague and ambiguous.

*Response:* We have made further revisions to address these concerns and, in some instances, have added language similar to that in model codes of conduct. Attorneys are familiar with model code language, and these codes have a long interpretive history of similar provisions and language which can be used as guidance for both attorneys and non-attorneys.

*Comment:* Some commenters found the entire substance of the proposed standards to be ambiguous, although one believed they were drawn too narrowly and should be expanded. Several argued that the proposals did not provide adequate notice to representatives of the exact types of conduct we would find to be in violation of these regulations.

*Response:* We believe that the rules, as revised, define with sufficient specificity the types of conduct subject to regulation. Similar to other standards of conduct (e.g., the ABA Model Rules), these regulations do not list every act or omission which might constitute a violation. Such a listing would be inappropriate to a regulation and would be virtually impossible to complete given the limitless factual situations involved in representing claimants. Rather, we intend to deal with each complaint on a case-by-case basis to determine whether, under the attending circumstances, a representative engaged in actionable misconduct. In making this determination we will evaluate whether a reasonable person, in light of all the circumstances, would consider the act or omission violative of the rule in question. Once it is determined that a formal complaint is warranted, the Deputy Commissioner or designee reviews the proposal independently from the investigative component and makes a decision whether to file a complaint. Moreover, the individual or individuals identifying the misconduct, whether an ALJ or other employee, will not be the sanctioning authority or initiate the formal complaint.

*Comment:* The majority of the commenters objected to the revised wording of proposed §§ 404.1740(b)(1) and 416.1540(b)(1) which required the representative to “[p]romptly obtain all information and evidence which the claimant wants to submit in support of the claim and forward the same for consideration as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown.” Many commenters believed

that this rule was overly broad and would put an undue burden on representatives. They also believe that these requirements and the ones contained in §§ 404.1740(b)(2) and 416.1540(b)(2) are procedural rules which are inappropriate for ethical standards governing the conduct of representatives.

Several representatives noted that they do not submit evidence until the case is at the ALJ level because, according to them, so few claims are allowed at the initial and reconsideration levels. Other commenters noted that rather than improving the efficiency of the process, this rule would add procedural barriers to the process by setting up vague, unspecified deadlines by which all evidence must be submitted.

A few commenters stated that “evidence which the claimant wants to submit in support of the claim” should be defined. One commenter noted that this requirement is impractical because claimants often want their representatives to obtain and submit evidence that is 15 or 20 years old or do not remember relevant information. Another commenter observed that evidence is often incrementally discovered over a period of time so that it is not reasonable to require that all evidence be submitted by a specific date. An additional commenter pointed out that because SSA is not required to complete any step of the administrative decisionmaking process by a set deadline, it would be impossible for the representative to decide when to request and submit the evidence that would give the best chance of obtaining an award of benefits.

A number of commenters objected to the requirement that evidence be submitted “as soon as practicable” or by the “due date” set by the Agency. They believe that these terms are vague and lack the specificity required in a rule governing conduct. One individual asked whether there was any way to state a specific event or method for determining due dates and noted that the proposed rules did not provide any direction to SSA personnel as to how to select due dates. Several commenters, including NOSSCR, stated that mandating due dates for submission of evidence is equivalent to closing the record in contravention of current law. One commenter noted that if the due date is prior to the date of the adjudicator’s determination, good cause would have to exist as a matter of law to allow submission of evidence related to the time period between the due date and the decision date. Otherwise the result would be to close the record prior

to the date of the determination. Several commenters also observed that the term “good cause” is undefined, and there is no mechanism for determining when good cause would apply.

*Response:* The claimant has a right to receive benefits under the Act only after establishing that he or she satisfies the underlying statutory and regulatory requirements. The NPRM envisioned that under the new disability process, claimants would be expected to take a more active role in establishing entitlement or eligibility for Social Security benefits. The representative, as the designated agent of the claimant, would likewise be called upon to play an even greater role in assisting the claimant in processing the claim.

However, because SSA has not yet fully evaluated changes in the role that the claimant will have to play, we have revised the language concerning the duty of representatives in this area to conform with the current regulatory requirements placed on claimants in general, and on disability claimants in particular in §§ 404.1512 and 416.912.

We note that in promulgating these rules, we have not changed our existing duties and responsibilities with regard to developing the record and obtaining the evidence necessary to adjudicate disability and blindness claims. See section 223(d)(5)(B) of the Act and §§ 404.1512 and 416.912 and 404.1614 and 416.1014. Moreover, we are not shifting the duty to claimants or representatives to develop the record. Instead, these rules are intended to ensure that a representative will assist the claimant in complying with his or her responsibilities to provide us information and evidence under our regulations. Although this requirement has not been previously included in the regulations, we believe that this assistance is an integral part of representation and has always been our expectation.

Accordingly, we have revised §§ 404.1740(b)(1) and 416.1540(b)(1) to clarify that the representative will be expected to assist the claimant in submitting the evidence that the claimant wishes to have considered by SSA. In deleting the requirement that the evidence be submitted by a specific due date, we have acknowledged the possible difficulties that claimants and representatives may face in obtaining evidence. Furthermore, although we did not intend the rules to have the effect of closing the record, some individuals have mistakenly interpreted the due date requirement as an improper attempt to achieve that goal. Therefore, deletion of the due date requirement

should remove any confusion regarding this issue.

Nevertheless, we expect the representative to assist the claimant in submitting evidence on a timely basis. This means that the representative should make a reasonable effort to promptly obtain and organize the available, supporting evidence and submit it to SSA for the earliest possible consideration. Every claimant is entitled to the earliest possible decision on as complete a record as possible at every stage of our process. SSA's commitment to claimant service relies on the availability of necessary evidence at the earliest possible stage in the process so that we can make an accurate and fair determination without delay caused by the need to obtain additional evidence.

In assessing any allegation raised against a representative regarding failure to assist the claimant under these rules, we will consider the efforts taken to assist the claimant in submitting evidence. The rules apply both to disability and nondisability claims, with additional rules applying to disability claims. A representative will be expected to make reasonable, not extraordinary, efforts to obtain and submit evidence on a timely basis. We recognize that in providing representational services to a claimant, the representative may advise the claimant concerning the need to submit particular evidence. Also, we recognize that some claimants may be unable to effectively consult with their representatives regarding what evidence should be submitted and that the representative may be required to act on the claimant's behalf to ensure that the relevant evidence is available to the adjudicator. In addition, we have added to these regulations a reference to "good cause" when a representative is unable to submit such evidence (as defined in §§ 404.911(b) and 416.1411(b)), to provide examples of situations in which good cause may exist. "Good cause" will be determined in the administrative proceeding initiated by the Deputy Commissioner or designee to consider whether there was misconduct by the representative.

*Comment:* The majority of commenters objected to the affirmative duties specified in §§ 404.1740(b)(2) and 416.1540(b)(2) on the basis that SSA was attempting to improperly delegate to claimants and representatives its own duty to develop the record, which could place representatives at the mercy of arbitrary or unreasonable SSA requests for information. Specifically, a number of commenters observed that this rule conflicts with SSA's duty to develop the record pursuant to sections 223(d)(5)(B)

and 1614(a)(3)(H) of the Act and §§ 404.1512 and 416.912. Other commenters cited possible conflicts with §§ 404.1519a and 416.919a, and one commenter cited a possible conflict with Social Security Ruling 96-2p. A few commenters observed that the duty to develop the record must remain with SSA because the proceedings are nonadversarial, and the focus is on claimants who are seeking benefits when they are vulnerable. Several commenters also pointed out that the language did not allow for discretion in situations involving uncooperative treating physicians and uncooperative or uneducated claimants.

Several commenters took exception to the statement in the NPRM that under the proposed redesigned disability process, claimants and representatives would be expected to take a more active role in developing the record. They believed that the proposed rules imposed new requirements on representatives when the duties placed on claimants themselves have not been changed. A few commenters also noted that applying different standards to represented and unrepresented claimants with regard to the rules for submission of evidence would violate equal protection.

Noting some improvement from the February 1995 draft, the ABA and other commenters nevertheless believed that the proposed rules were vague and overly broad and interpreted them as giving Agency staff the right to demand that the representative produce copies of almost any client information and records, at any time after the claim was filed, with no effort to limit the scope, the relevance or the frequency of the requests. The ABA and a number of other commenters noted that frequent demands for repeated updating of the medical information from each treating physician would cause unnecessary expense to claimants and inconvenience to the party from whom the information is sought. A few commenters expressed confusion about the meaning of the term "may readily obtain" and questioned whether representatives would also be required to obtain consultative examinations that are now obtained by SSA. Citing the time taken to decide claims in SSA's administrative process, a number of commenters observed that they may be forced to update evidence on a regular basis while waiting up to a year or more for a determination on the claim.

As with regard to §§ 404.1740(b)(1) and 404.1540(b)(1), a number of commenters objected to the requirements that evidence be submitted "as soon as practicable" or by

the "due date" set by the Agency on the basis that these terms are vague and undefined. They also believe that setting deadlines for submission of evidence requested by SSA would result in improper closure of the record.

*Response:* As we did with regard to §§ 404.1540(b)(1) and 416.912(b)(1) above, we have revised the language concerning the duty of representatives in this area to conform with our current regulatory requirements for both disability and nondisability claims in general, and in particular the requirements in disability and blindness claims placed on claimants in §§ 404.1512 and 416.912. Therefore, we have revised this rule to clarify that the representative is required to assist the claimant in complying, as soon as practicable, with our requests for information and evidence at any stage of the administrative decisionmaking process pursuant to §§ 404.1512(c) and 416.912(c). This includes the obligation to provide evidence regarding the items listed therein. In our view, the provisions of §§ 404.1740(b)(2) and 416.1540(b)(2) require the representative to comply with our requests made under statutory authority for full and accurate disclosure of material facts to the same extent that the claimant is required to do so.

As stated above, we have not changed our existing duties and responsibilities with regard to developing the record and obtaining the evidence necessary to adjudicate claims, nor are we shifting any duty to claimants or representatives to develop the record. These rules are intended to ensure that a representative will assist the claimant in complying with his or her responsibilities under our regulations.

As we did in §§ 404.1740(b)(1) and 416.1540(b)(1), we have deleted the requirement that the information and evidence be submitted by the "due date" designated by the Agency. However, as noted above, we do expect the representative to assist the claimant in submitting the evidence and information requested by SSA on a timely basis. This means that the representative should make a reasonable effort to obtain and organize the available evidence and submit it to SSA for the earliest possible consideration. This will facilitate our goal to ensure that we make a correct determination at the earliest stage of the process.

In assessing any allegation raised against a representative regarding failure to assist the claimant in complying with our request for information, we will consider the reasonableness of the request, the relevance of the information requested, and any factors that may

interfere with the procurement of requested information. For example, if a representative has made several attempts to obtain the requested information from the claimant or another source without receiving a response, we will likely determine that such efforts are in compliance with our rules.

*Comment:* Many commenters raised the issue of who must pay to obtain medical records. A number of individuals cited the high costs of obtaining medical records from physicians and hospitals and noted that many claimants would be unable to pay such costs. Some attorneys expressed concern that they may be required to advance funds for records and that this may be in contravention of State bar rules.

*Response:* We are not changing our existing rules concerning payment for evidence. We will continue to pay for the medical records that we need to adjudicate claims pursuant to our existing regulations.

*Comment:* Many of the attorney commenters on the February 1995 draft stated that compliance with proposed §§ 404.1740(b)(2) and 416.1540(b)(2), which in the February 1995 draft asked representatives to “[p]romptly comply, at every stage of the administrative review process, with our requests for information and evidence,” might place them in violation of their own State bar rules requiring zealous advocacy and protection of confidential client information. As stated in the NPRM, based on these preliminary comments, we modified proposed §§ 404.1740(b)(2) and 416.1540(b)(2) to permit representatives to protect a client’s confidentiality by notifying SSA that “the claimant does not consent to release of some or all of the [requested] material.” This language in the NPRM caused many commenters, including the ABA, to state that the proposed revision would “red flag” this evidence and permit ALJs and SSA to draw adverse inferences based on the statement of the claimant’s declination to release the material. The commenters believed that this issue raised serious ethical concerns and observed that notifying SSA of the claimant’s refusal to submit evidence could subject them to sanction by their State bar associations for failing to protect the confidences and secrets of their clients.

Specifically, one commenter noted that this provision would put attorneys at odds with the State Bar of Georgia’s Standard #28 which provides that “[a] lawyer may not reveal the secrets and confidences of a client.” Similarly, another commenter cited a conflict with

California Business and Professional Code section 6068 subsection (e), which requires an attorney “to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” Additionally, the ABA cited a potential conflict with Model Rule 1.6 which prohibits an attorney from revealing client information without the client’s consent.

Conversely, a number of commenters, notably ALJs, felt that the proposed revision would create a privilege from disclosure for claimants where none was intended and no privilege currently exists. The ALJs found this to be extremely troublesome and noted that it would result in decisions that are based on an incomplete evidentiary record.

Additionally, one commenter observed that it is unrealistic to expect a representative to engage in a consultation with the claimant in the short timeframe in which the claimant would be expected to exercise an informed decision on whether to release or withhold information. Other commenters noted that some medical and psychiatric reports are stamped with clear warnings that they should not be disclosed to the claimant. Therefore, it could be harmful if the representative was required to discuss such a report with the claimant to determine if the claimant would give consent for release.

*Response:* Because of the confusion and ethical concerns surrounding this proposed language, we have removed it from the final regulations and inserted language which reflects the currently existing regulatory requirements concerning the claimant’s and the representative’s obligations in terms of responding to our requests. As explained above, in disability and blindness claims, this language is in conformity with the existing requirements of §§ 404.1512 and 416.912.

*Comment:* Some commenters expressed concerns about how proposed §§ 404.1740(b)(3)(i) and 416.1540(b)(3)(i), which deal with a representative’s duty to be cognizant of the matters at issue, as well as evidentiary and procedural requirements, would be applied. They specifically posed questions about whether lack of knowledge of one procedural rule or disagreement with an ALJ over the application of a particular standard or rule would be enough to cause a complaint to be filed against a representative.

*Response:* We revised §§ 404.1740(b)(3)(i) and 416.1540(b)(3)(i) to clarify our expectations regarding the knowledge

and preparation required to represent claimants before us. We based this revision on ABA Model Rule 1.1 which requires competent representation. We also added language specifying that a representative should know the significant issue(s) in a claim and have a working knowledge of the applicable provisions of the Act, the regulations and the Rulings. However, this does not mean that a representative has to know every provision.

Furthermore, we will deal with each complaint on a case-by-case basis to determine whether a representative engaged in actionable conduct. We will determine whether a reasonable person, in light of all the circumstances, would consider the act or omission violative of the section of the regulation in question.

*Comment:* One commenter was confused about the meaning of §§ 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii) and asked whether “information pertinent to the processing of the claim” would require a representative to investigate issues such as whether the claimant was engaging in part-time work.

*Response:* We revised this section to clarify the requirement that the representative must promptly respond to our requests for information concerning the claim. We based this revision on ABA Model Rule 1.3 which requires reasonable diligence and promptness. In applying this rule, we will not expect the representative to investigate the claim or to obtain information that is not readily available. Instead, the rule is intended to ensure that representatives are responsive to our inquiries so that the processing of the claim will not be delayed pending a response from the representative on the claimant’s behalf. There is no time limit on when responses must be provided, but a representative should promptly respond. Furthermore, “information pertinent to processing the claim” means the information and evidence that the claimant, with the assistance of the representative, as required, should submit under the current statutory and regulatory requirements.

*Comment:* One commenter believed that §§ 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii) may raise an ethical problem for an attorney who may be put in the position between demonstrating good cause by showing that the claimant is unavailable and possibly uncooperative or risking a finding by SSA that the attorney is acting unethically.

*Response:* We deleted this section from the final regulations because we believe that cooperation by the

representative is inherent in the competent and diligent representation of a claimant. With regard to a showing of "good cause," this would occur in a proceeding separate from the claims process. Therefore, it would not impair the representative's ethical duty to his or her client.

*Comment:* The ABA commented that although §§ 404.1740(c) and 416.1540(c) were an improvement over the earlier draft and began to define the conduct that would be considered objectionable, the proposed rules were still vaguely worded.

*Response:* As discussed below, where appropriate, we have revised the provisions of these sections to clarify the conduct that we will consider to be inappropriate.

*Comment:* An ALJ expressed concern about misstatements of fact or occurrences by representatives in their arguments before the Appeals Council. The ALJ suggested that we add a provision to §§ 404.1740(c) and 416.1540(c) prohibiting a representative from making any incorrect statement about a proceeding or persons involved in a proceeding before SSA. The ALJ further suggested that this provision should make it clear that a "material fact within our jurisdiction" is to be read much more broadly than facts affecting the outcome of the case and should also include matters such as the conduct of the hearing, performance of the ALJ and other SSA personnel and the testimony of impartial witnesses.

*Response:* We decided not to adopt this suggestion. We believe that the language of §§ 404.1740(c)(3) and 416.1540(c)(3) adequately addresses our intent to prevent false statements concerning a claim at any stage in our process. Furthermore, if we added such a provision, we believe that SSA could be subject to disputes concerning the actual "correctness" of statements made about SSA personnel, including ALJs. In order to more closely track the statutory requirements, we revised this section to add a prohibition against "misleading" statements.

*Comment:* One commenter objected to §§ 404.1740(c)(1) and 416.1540(c)(1) on the basis that these sections conflict with §§ 404.1740(b)(2)(i) and 416.1540(b)(2)(i), which require the representative to ask for the client's consent to release the evidence needed for adjudication. The commenter believed that requesting the claimant's consent would be the equivalent of coercing the claimant by using the representative's relationship with the claimant to direct a decision or action by the claimant.

*Response:* For the reasons discussed in our response above, we have deleted §§ 404.1740(b)(2)(i) and 416.1540(b)(2)(i) from the final regulations. A representative would never have been required to coerce a claimant in order to comply with any of the affirmative duties specified in the rules, and our deletion of these sections should clarify the matter. We also note that §§ 404.1740(c)(1) and 416.1540(c)(1) are based on the prohibitions set forth in section 206(a)(5) of the Act and are self-explanatory.

*Comment:* We received comments which indicated the perception that §§ 404.1740(c)(2) and 416.1540(c)(2) would somehow change the statutory, regulatory and administrative authorities and requirements for submitting, evaluating and paying requests for approval of fees under the fee petition or fee agreement procedures.

*Response:* That is not the import or intent of these sections. As we stated in the NPRM, these sections are based on the provisions of sections 206(a) and (b) and 1631(d)(2) of the Act and apply to all fee collections.

*Comment:* With regard to §§ 404.1740(c)(4) and 416.1540(c)(4), the ABA and other commenters stated that while SSA should not tolerate improper delays, representatives should not be subjected to sanction while acting in good faith and for purposes other than delay. The ABA noted that this rule fails to set forth a standard by which to measure the reason for the delay. Other commenters noted that the use of the word "negligent" is inappropriate and could subject a representative to sanction for missing only one deadline or by missing a deadline by only one day. One individual suggested that we add language prohibiting conduct resulting in delay for a significant period of time. Another commenter noted that this section creates a prohibited action which is beyond the control of the representative because all time limits are under the exclusive control of SSA. One commenter suggested that we define good cause to include any basis upon which a representative negligently or inadvertently failed to complete a required action. Another commenter stated that the ALJ has the sole authority to determine whether good cause would apply. An additional commenter suggested that we include language from the preamble indicating how these sections will be applied to the final regulations.

*Response:* We revised these sections to clarify that representatives through

their own actions or omissions should not unreasonably delay the processing of a claim. In addition, we deleted "willfully or negligently" and added a reference to §§ 404.911(b) and 416.1411(b) which set forth examples of "good cause." Furthermore, we reiterate that SSA does not intend to penalize representatives for reasonable or justifiable delays or delays that may occur even when reasonable care is taken in preparing the claim.

In determining whether a representative has violated this rule, we will look at the gravity of the representative's conduct, the consequences to the claimant, whether the behavior represents a pattern or practice and other factual circumstances related to the matter. This section is intended to prohibit intentional conduct or conduct that evinces a failure to apply a reasonable standard of care in representing the claimant, e.g., conduct that results in an unreasonable delay, not a minor wait. We also note that representatives will not be held accountable for delays in our administrative decisionmaking process. Additionally, as stated above, the determination of whether to file a complaint for violation of this or any other regulation governing the conduct of representatives will be made by the Deputy Commissioner or designee.

*Comment:* A few individuals and the ABA expressed concern about the intent of §§ 404.1740(c)(5) and 416.1540(c)(5). The commenters questioned whether this rule would apply to information about the claimant or other persons and whether it would allow the representative to release the claimant's medical reports to the claimant's treating source. Another commenter believed that this rule was an attempt to interfere with the attorney-client relationship. The same individual also opined that this rule runs contrary to the provisions of the Privacy Act and the recent amendments to the Freedom of Information Act.

*Response:* Similar language was included in the prior regulations at §§ 404.1740(d) and 416.1540(d). This rule is based on section 1106 of the Act, which prohibits disclosure by any person of information obtained from the Agency in conjunction with a claim, except as may be authorized by our regulations or as otherwise determined by Federal Law. It is intended to prevent a representative from improperly disclosing information received from SSA, without the claimant's consent, in contravention of our regulations. We have deleted the reference to information about another person to clarify that disclosure is warranted only

with the consent of the claimant or as otherwise authorized by Statute or our regulations.

*Comment:* One commenter was confused about the meaning of §§ 404.1740(c)(6) and 416.1540(c)(6) and questioned whether these sections would prohibit actions such as a law firm's discussing possible employment opportunities with SSA employees or social interactions between ALJs and private attorneys outside of work hours.

*Response:* This rule is intended to prevent the fact or appearance of attempting to influence the disposition of a claim by offering or giving something of value to an individual in a position to materially affect the outcome of the case. It is not intended to apply to conduct unrelated to the adjudication of claims.

*Comment:* Several commenters, including the ABA and NOSSCR, objected to §§ 404.1740(c)(7) and 416.1540(c)(7) on the basis that these sections are vague and would interfere with an advocate's ability to zealously represent his or her client. The commenters believe that this rule does not provide an objective standard indicating what is permissible and what is not. The ABA also observed that the proposed limitations raised First Amendment concerns regarding freedom of speech.

A few commenters noted that it may be appropriate for an attorney to "threaten" to appeal an ALJ's decision and to point out errors made by the ALJ during the hearing. A few individuals also opined that a representative who points out matters of ignorance or impropriety by the ALJ may be subject to allegations of discourteous behavior by the same ALJ. Another commenter observed that this rule is unnecessary because in most cases, the parties act appropriately.

*Response:* In response to these concerns, we modified the language in §§ 404.1740(c)(7)(iii) and 416.1540(c)(7)(iii) to prohibit threatening or intimidating language or conduct "which results in a disruption of the orderly presentation and reception of evidence." We realize that zealous advocacy may require vigorous argument and that it may be appropriate for an advocate to point out errors during the proceeding or to take exception to the conduct of the proceeding. This rule is not intended to interfere with or limit an advocate's ability to argue the case on behalf of his or her client if done in a professional manner. Instead, this provision is intended to address blatantly offensive or disruptive conduct or language that prevents the adjudicator from

conducting the proceeding in a manner that results in a full examination of the evidence and the testimony presented. We must ensure that the proceeding is conducted in an appropriate manner and is not disrupted by individuals who engage in conduct or language which prevents the full consideration of the issues to be decided.

In determining whether a representative has violated this rule, we will look at the totality of the circumstances, including the egregiousness of the conduct, its impact on the claimant or the Agency, possible provocation and whether the behavior reflects a pattern or practice. By setting a threshold of disruption of the proceeding, we have set a standard high enough to avoid infringing on zealous, strong advocacy. Finally, to address concerns that ALJs or other individuals may improperly find violations of this provision, we again note that ALJs will not make the determination of whether to file a complaint against a representative and that instead, the decision will be made by the Deputy Commissioner or designee.

*Comment:* A few individuals asked questions such as whether a representative can request instructional advice from SSA to avoid violating these rules or question our determination to file a complaint.

*Response:* In order to ensure that representatives understand these rules and comply with them, we welcome requests for information and guidance from individual representatives. Furthermore, as under our current procedures, representatives will be given an opportunity to respond to charges that they have violated these rules. In many cases, we should be able to resolve the problem through informal means such as written or oral counselling of the representative, making a formal complaint unnecessary. In some cases, a representative may not be aware that his or her conduct has resulted in a violation of these regulations and once advised of the violation will conform with our rules. As under the current regulations, if the Deputy Commissioner or designee determines that a complaint should be filed against a representative, the Deputy Commissioner or designee will send the representative a notice containing a statement of the charges that constitute the basis for the proceeding. The representative will have 30 days to file an answer stating why he or she should not be disqualified from acting as a representative. The representative will also have the opportunity for a hearing on the charges.

Accordingly, for the reasons set out above, the proposed rules are being published as final rules with the revisions as noted.

### **Regulatory Procedures**

#### *Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

#### *Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. The provisions of the rules that involve entities were developed to allow them to provide representational services without generating any supplemental reporting requirements. These rules will not result in any increased legal, accounting or consulting costs to small businesses or small organizations, will not adversely affect competition in the marketplace, or create barriers to entry on the part of small entities. In fact, these rules may facilitate such entry into the representation sphere. The regulations will provide uniform standards applicable to all entities who engage in the business and tend to disqualify the unscrupulous and the incompetent practitioners, thereby expanding demand for others willing and able to perform the service. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### *Paperwork Reduction Act*

These regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(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; 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, Reporting and recordkeeping requirements, Social Security.

#### *20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI),

Reporting and recordkeeping requirements.

Dated: July 24, 1998.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

For the reasons set forth in the preamble, part 404, subpart R, and part 416, subpart O, chapter III of title 20 of the Code of Federal Regulations are amended 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 continues to read as follows:

**Authority:** Secs. 205(a), 206, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 406, and 902(a)(5)).

2. Section 404.1740 is revised to read as follows:

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

(a) *Purpose and scope.* (1) All attorneys or other persons acting on behalf of a party seeking a statutory right or benefit shall, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party. A representative shall provide competent assistance to the claimant and recognize the authority of the Agency to lawfully administer the process. The following provisions set forth certain affirmative duties and prohibited actions which shall govern the relationship between the representative and the Agency, including matters involving our administrative procedures and fee collections.

(2) All representatives shall be forthright in their dealings with us and with the claimant and shall comport themselves with due regard for the nonadversarial nature of the proceedings by complying with our rules and standards, which are intended to ensure orderly and fair presentation of evidence and argument.

(b) *Affirmative duties.* A representative shall, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 404.1512 in disability and blindness claims):

(1) Act with reasonable promptness to obtain the information and evidence that the claimant wants to submit in support of his or her claim, and forward the same to us for consideration as soon as practicable. In disability and blindness claims, this includes the obligations to assist the claimant in

bringing to our attention everything that shows that the claimant is disabled or blind, and to assist the claimant in furnishing medical evidence that the claimant intends to personally provide and other evidence that we can use to reach conclusions about the claimant's medical impairment(s) and, if material to the determination of whether the claimant is blind or disabled, its effect upon the claimant's ability to work on a sustained basis, pursuant to § 404.1512(a);

(2) Assist the claimant in complying, as soon as practicable, with our requests for information or evidence at any stage of the administrative decisionmaking process in his or her claim. In disability and blindness claims, this includes the obligation pursuant to § 404.1512(c) to assist the claimant in providing, upon our request, evidence about:

- (i) The claimant's age;
- (ii) The claimant's education and training;
- (iii) The claimant's work experience;
- (iv) The claimant's daily activities both before and after the date the claimant alleges that he or she became disabled;
- (v) The claimant's efforts to work; and
- (vi) Any other factors showing how the claimant's impairment(s) affects his or her ability to work. In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors; and

(3) Conduct his or her dealings in a manner that furthers the efficient, fair and orderly conduct of the administrative decisionmaking process, including duties to:

- (i) Provide competent representation to a claimant. Competent representation requires the knowledge, skill, thoroughness and preparation reasonably necessary for the representation. This includes knowing the significant issue(s) in a claim and having a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations and the Rulings; and
- (ii) Act with reasonable diligence and promptness in representing a claimant. This includes providing prompt and responsive answers to requests from the Agency for information pertinent to processing of the claim.

(c) *Prohibited actions.* A representative shall not:

(1) In any manner or by any means threaten, coerce, intimidate, deceive or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act;

(2) Knowingly charge, collect or retain, or make any arrangement to

charge, collect or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation;

(3) Knowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions or representations about a material fact or law concerning a matter within our jurisdiction;

(4) Through his or her own actions or omissions, unreasonably delay or cause to be delayed, without good cause (see § 404.911(b)), the processing of a claim at any stage of the administrative decisionmaking process;

(5) Divulge, without the claimant's consent, except as may be authorized by regulations prescribed by us or as otherwise provided by Federal law, any information we furnish or disclose about a claim or prospective claim;

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination or other administrative action by offering or granting a loan, gift, entertainment or anything of value to a presiding official, Agency employee or witness who is or may reasonably be expected to be involved in the administrative decisionmaking process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence; or

(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to:

(i) Repeated absences from or persistent tardiness at scheduled proceedings without good cause (see § 404.911(b));

(ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and

(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee which results in a disruption of the orderly presentation and reception of evidence.

3. Section 404.1745 is revised to read as follows:

**§ 404.1745 Violations of our requirements, rules, or standards.**

When we have evidence that a representative fails to meet our qualification requirements or has violated the rules governing dealings with us, we may begin proceedings to suspend or disqualify that individual from acting in a representational capacity before us. We may file charges

seeking such sanctions when we have evidence that a representative:

- (a) Does not meet the qualifying requirements described in § 404.1705;
- (b) Has violated the affirmative duties or engaged in the prohibited actions set forth in § 404.1740; or
- (c) Has been convicted of a violation under section 206 of the Act.

4. Section 404.1750 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 404.1750 Notice of charges against a representative.**

(a) The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

\* \* \* \* \*

(d) The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, may extend the 30-day period for good cause.

\* \* \* \* \*

5. Section 404.1765 is amended by revising paragraph (a), the second sentence of paragraph (e), and paragraph (g)(3) to read as follows:

**§ 404.1765 Hearing on charges.**

(a) *Scheduling the hearing.* If the Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

\* \* \* \* \*

(e) *Parties.* \* \* \* The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, shall also be a party to the hearing.

\* \* \* \* \*

(g) \* \* \*

(3) If the representative did file an answer to the charges, and if the hearing officer believes that there is material evidence available that was not presented at the hearing, the hearing officer may at any time before mailing notice of the hearing decision reopen the hearing to accept the additional evidence.

\* \* \* \* \*

6. Section 404.1770 is amended by revising the first sentence of paragraph

(a)(3) and paragraph (b)(3) to read as follows:

**§ 404.1770 Decision by hearing officer.**

(a) \* \* \*

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. \* \* \*

(b) \* \* \*

(3) If the final decision is that a person is suspended for a specified period of time from being a representative in dealings with us, he or she will not be permitted to represent anyone in dealings with us during the period of suspension unless authorized to do so under the provisions of § 404.1799.

7. Section 404.1799 is amended by revising the first sentence of paragraph (c) and the second sentence of paragraph (e) to read as follows:

**§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.**

\* \* \* \* \*

(c) The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, upon notification of receipt of the request, shall have 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification.

\* \* \*

\* \* \* \* \*

(e) \* \* \* It shall also mail a copy to the Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee.

\* \* \* \* \*

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

**Subpart O—[Amended]**

8. The authority citation for subpart O of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5) and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(d)).

9. Section 416.1540 is revised to read as follows:

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

(a) *Purpose and scope.* (1) All attorneys or other persons acting on behalf of a party seeking a statutory right or benefit shall, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party. A

representative shall provide competent assistance to the claimant and recognize the authority of the Agency to lawfully administer the process. The following provisions set forth certain affirmative duties and prohibited actions which shall govern the relationship between the representative and the Agency, including matters involving our administrative procedures and fee collections.

(2) All representatives shall be forthright in their dealings with us and with the claimant and shall comport themselves with due regard for the nonadversarial nature of the proceedings by complying with our rules and standards, which are intended to ensure orderly and fair presentation of evidence and argument.

(b) *Affirmative duties.* A representative shall, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 416.912 in disability and blindness claims):

(1) Act with reasonable promptness to obtain the information and evidence that the claimant wants to submit in support of his or her claim, and forward the same to us for consideration as soon as practicable. In disability and blindness claims, this includes the obligations to assist the claimant in bringing to our attention everything that shows that the claimant is disabled or blind, and to assist the claimant in furnishing medical evidence that the claimant intends to personally provide and other evidence that we can use to reach conclusions about the claimant's medical impairment(s) and, if material to the determination of whether the claimant is blind or disabled, its effect upon the claimant's ability to work on a sustained basis, pursuant to § 416.912(a);

(2) Assist the claimant in complying, as soon as practicable, with our requests for information or evidence at any stage of the administrative decisionmaking process in his or her claim. In disability and blindness claims, this includes the obligation pursuant to § 416.912(c) to assist the claimant in providing, upon our request, evidence about:

- (i) The claimant's age;
- (ii) The claimant's education and training;
- (iii) The claimant's work experience;
- (iv) The claimant's daily activities both before and after the date the claimant alleges that he or she became disabled;
- (v) The claimant's efforts to work; and
- (vi) Any other factors showing how the claimant's impairment(s) affects his or her ability to work, or, if the claimant is a child, his or her functioning. In

§§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors; and

(3) Conduct his or her dealings in a manner that furthers the efficient, fair and orderly conduct of the administrative decisionmaking process, including duties to:

(i) Provide competent representation to a claimant. Competent representation requires the knowledge, skill, thoroughness and preparation reasonably necessary for the representation. This includes knowing the significant issue(s) in a claim and having a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations and the Rulings; and

(ii) Act with reasonable diligence and promptness in representing a claimant. This includes providing prompt and responsive answers to requests from the Agency for information pertinent to processing of the claim.

(c) *Prohibited actions.* A representative shall not:

(1) In any manner or by any means threaten, coerce, intimidate, deceive or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act;

(2) Knowingly charge, collect or retain, or make any arrangement to charge, collect or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation;

(3) Knowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions or representations about a material fact or law concerning a matter within our jurisdiction;

(4) Through his or her own actions or omissions, unreasonably delay or cause to be delayed, without good cause (see § 416.1411(b)), the processing of a claim at any stage of the administrative decisionmaking process;

(5) Divulge, without the claimant's consent, except as may be authorized by regulations prescribed by us or as otherwise provided by Federal law, any information we furnish or disclose about a claim or prospective claim;

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination or other administrative action by offering or granting a loan, gift, entertainment or anything of value to a presiding official, Agency employee or witness who is or may reasonably be expected to be involved in the

administrative decisionmaking process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence; or

(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to:

(i) Repeated absences from or persistent tardiness at scheduled proceedings without good cause (see § 416.1411(b));

(ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and

(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee which results in a disruption of the orderly presentation and reception of evidence.

10. Section 416.1545 is revised to read as follows:

**§ 416.1545 Violations of our requirements, rules, or standards.**

When we have evidence that a representative fails to meet our qualification requirements or has violated the rules governing dealings with us, we may begin proceedings to suspend or disqualify that individual from acting in a representational capacity before us. We may file charges seeking such sanctions when we have evidence that a representative:

(a) Does not meet the qualifying requirements described in § 416.1505;

(b) Has violated the affirmative duties or engaged in the prohibited actions set forth in § 416.1540; or

(c) Has been convicted of a violation under section 1631(d) of the Act.

11. Section 416.1550 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 416.1550 Notice of charges against a representative.**

(a) The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

(d) The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or

her designee, may extend the 30-day period for good cause.

12. Section 416.1565 is amended by revising paragraph (a), the second sentence of paragraph (e), and paragraph (g)(3) to read as follows:

**§ 416.1565 Hearing on charges.**

(a) *Scheduling the hearing.* If the Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

(e) *Parties.* \* \* \* The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, shall also be a party to the hearing.

(g) \* \* \* (3) If the representative did file an answer to the charges, and if the hearing officer believes that there is material evidence available that was not presented at the hearing, the hearing officer may at any time before mailing notice of the hearing decision reopen the hearing to accept the additional evidence.

13. Section 416.1599 is amended by revising the first sentence of paragraph (c) and the second sentence of paragraph (e) to read as follows:

**§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.**

(c) The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, upon notification of receipt of the request, shall have 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification.

(e) \* \* \* It shall also mail a copy to the Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee.