

new sunset.<sup>71</sup> I am already anticipating fifth and sixth votes on exemptive relief.

### *Let's Figure Out the Best Way to Reach the Goal*

I support the Second Iteration because some certainty is better than no certainty. However, if the Commission is truly open to reconsidering its Dodd-Frank proposals—as some have indicated—the Second Iteration should have contained no arbitrary sunset. In the Second Iteration, the Commission displays a troubling willingness to adhere to prior convention.<sup>72</sup> By the fifth and sixth times I have to vote on temporary relief, I hope that the Commission will have agreed to grant market participants much-deserved certainty until applicable rulemakings become effective. Additionally, I hope that the Commission will have provided rulemaking and implementation schedules to market participants, so that they can plan to be in compliance when such rulemakings become effective. As Martin Luther King, Jr. has said: “We must accept finite disappointment, but never lose infinite hope.”

[FR Doc. 2011–32841 Filed 12–22–11; 8:45 am]

BILLING CODE 6351–01–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA–2011–0016]

RIN 0960–AH32

### Revisions to Rules of Conduct and Standards of Responsibility for Representatives

**AGENCY:** Social Security Administration.  
**ACTION:** Final rules.

<sup>71</sup> See comment letter from Nodal Exchange, LLC, dated November 23, 2011, to the proposed order on Effective Date for Swap Regulation, 76 FR 65999 (Oct. 25, 2011), available at: <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1102> (stating “[i]t appears highly unlikely that Nodal Exchange will be able to be either a registered DCM or SEF by July 16, 2012 because the rules for neither DCMs nor SEFs have been finalized. Furthermore, based on the proposed rules for DCMs, the 180-day statutory review period will probably govern the application review process. Without further guidance from the Commission \* \* \* the CFTC Proposed Release created unnecessary uncertainty for Nodal Exchange, its participants, its clearing house LCH.Clearnet, and the LCH.Clearnet clearing members for Nodal Exchange participants.”).

<sup>72</sup> According to the Office of Management and Budget, we have promulgated five final rulemakings that would each result in an annual effect on the American economy of more than \$100 million a year. If the Commission continues to adhere to its Dodd-Frank approach, without consideration of new and applicable facts, then the Commission may impose substantial and unnecessary costs on the American economy—costs that we all can ill-afford.

**SUMMARY:** We are revising our rules of conduct and standards of responsibility for representatives. These revisions further clarify our expectations regarding representatives’ obligations to competently represent their clients and constitute official notice concerning our requirements and procedures. We are also updating other rules about the representation of parties. These changes are necessary because our current regulations are insufficient to address some representative conduct that is inappropriate, but has technically fallen outside the scope of our regulations. These changes will allow us to better protect the integrity of our administrative process, ensure that claimants receive competent and effective representation, and further clarify representatives’ responsibilities in their dealings with us and with claimants.

**DATES:** These final rules are effective on January 23, 2012.

#### FOR FURTHER INFORMATION CONTACT:

Andrew Maunz, Office of the General Counsel, Social Security Administration, P.O. Box 17788, Baltimore, MD 21235–7788, (410) 965–3196. For information on eligibility or filing for benefits, call our national toll-free number, 1–(800) 772–1213 or TTY 1–(800) 325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

We may issue rules and regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 902(a)(5), 810(a), and 1383(d)(1). We may issue regulations to recognize agents or other persons, other than attorneys, as claimant representatives. 42 U.S.C. 406(a)(1) and 1383(d)(2). Under the cited authority, we are revising our rules of conduct and standards of responsibility for representatives and other rules about the representation of parties in 20 CFR part 404 subparts J and R and part 416 subparts N and O.

We published a notice of proposed rulemaking (NPRM), *Revisions to Rules on Representation of Parties*, in the **Federal Register** on September 8, 2008. 73 FR 51963. We gave the public 60 days to comment on the NPRM. In these final rules, we are finalizing some of our proposed regulatory changes. We continue to consider the rest of our proposed regulatory changes, and we may publish additional final rules that address them.

### Recognition of Representatives

We are revising our rules to state that we will notify a claimant and the person the claimant chooses to represent him or her if we decide not to recognize the person as a representative. We are also adding language to clarify our existing policy that we may refuse to recognize a person as a representative if he or she does not meet our requirements. We are adding this text in final 20 CFR 404.1705 and 416.1505.

We are also revising our rules in final 20 CFR 404.903(f) and 416.1403(f) to state that when we decide not to recognize a person as a representative, our action is not an initial determination that would allow the person the right to further administrative action and judicial review.

### New Rules of Conduct for Representatives

The vast majority of representatives conduct their business before us ethically and do a conscientious job in assisting their clients. Unfortunately, there are a few representatives whose behavior requires us to take action to prevent them from representing claimants before us. The number of representatives sanctioned each year is small when compared to the entire universe of representatives. For example, over 27,000 representatives were involved at the hearings level in Fiscal Year 2011, but we have sanctioned, on average, only 11 representatives per year since 2007. Nevertheless, our experience has convinced us that there are sufficient instances of questionable conduct to warrant additional regulatory authority to address representative conduct that is inappropriate.

In the NPRM, we proposed to revise our list of prohibited actions to include: (1) Violating any section of the Act for which a criminal or civil monetary penalty is prescribed; (2) refusing to comply with any of our rules or regulations; (3) suggesting, assisting, or directing another person to violate our rules or regulations; (4) advising any claimant or beneficiary not to comply with any of our rules or regulations; and (5) failing to comply with our decision about sanctions. We are adopting these revisions because they will help us ensure that representatives comply with our rules.

We are also adding an additional prohibited action: a representative may not help a suspended or disqualified person provide representational services. Specifically, the representative may not knowingly assist a suspended

or disqualified person to provide representational services in a proceeding under titles II or XVI of the Act or to exercise the authority of a representative described in 20 CFR 404.1710 and 416.1510. In response to public comments, we are adopting final regulatory language different from that which we proposed for 20 CFR 404.1740(c)(12) and 416.1540(c)(12).

We are including these rules in final 20 CFR 404.1740 and 416.1540.

### Delegations of Authority

To reflect an internal reorganization and a revised delegation of authority, we are also changing references to agency titles in several sections. These include changing the “Deputy Commissioner for Disability and Income Security Programs” to the “General Counsel” and the “Associate Commissioner for Hearings and Appeals” to the “Deputy Commissioner for Disability Adjudication and Review.” We are adding these revisions and making other technical changes in final 20 CFR 404.1750, 404.1755, 404.1765, 404.1799, 416.1550, 416.1555, 416.1565, and 416.1599.

### Other Changes

We are adding, moving, and revising three current definitions to final 20 CFR 404.1703 and 416.1503. These definitions are for: “Federal agency,” “Federal program,” and “representational services.” We revised the proposed definition for “representational services” in response to public comments.

Because we are adding the definition of “representational services” in final 20 CFR 404.1703 and 416.1503 from language in current 20 CFR 404.1735 and 416.1535, there would not be any regulatory text remaining in 20 CFR 404.1735 and 416.1535. Therefore, we are removing and reserving final 20 CFR 404.1735 and 416.1535.

Finally, we are making other minor conforming and nonsubstantive changes.

### Public Comments

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

The comments we received were detailed and insightful, and they were extremely helpful to our deliberations. This final rule contains a number of

changes from our NPRM and reflects the commenters’ thoughtful input. Below, we discuss and respond to the significant comments related to the proposals on the recognition of representatives and our standards of conduct. We did not address comments that were beyond the NPRM’s scope. We also did not address comments about the proposed regulatory changes that we are still considering and may adopt in future final rules.

### Rules of Conduct for Representatives

*Comment:* One commenter said that our proposed rules of conduct and standards of responsibility for representatives made our process adversarial.

*Response:* Our claims process is nonadversarial, but actions brought under our rules of conduct for representatives are adversarial. These final rules do not change this distinction.

*Comment:* A few commenters asked us to clarify what we meant in proposed 20 CFR 404.1740(c)(12) and 416.1540(c)(12), which stated that a representative may not “[a]ssist another person whom we have suspended or disqualified.” A few commenters wanted us to allow representatives to accept cases from persons whom we have suspended or disqualified. Another commenter wanted us to allow representatives to employ a suspended or disqualified person if the suspended or disqualified person does not have direct client contact.

*Response:* We clarified this language to explain more clearly the types of activities that will violate our rules of conduct. We are adopting final 20 CFR 404.1740(c)(12) and 416.1540(c)(12) to state that a representative may not knowingly assist a person whom we suspended or disqualified to provide representational services in a proceeding under titles II or XVI of the Act, or to exercise the authority of a representative described in 20 CFR 404.1710 and 416.1510.

This language permits a representative to employ a suspended or disqualified person if the suspended or disqualified person does not provide any of the noted services. For example, a suspended or disqualified person may provide clerical help to a representative. However, a representative will likely violate our rules if the representative knowingly permits the suspended or disqualified person to have substantive client contact or to work on the substantive aspects of a claim.

*Comment:* One commenter stated that our proposed additional rules of conduct for representatives would deter

potential representatives, such as attorneys, from representing claimants before us.

*Response:* We did not adopt this comment. Every representative has an interest in ensuring that only the most competent, knowledgeable, and principled individuals represent claimants before us. Individuals undertaking the responsibility of representing claimants before us should understand that we have an interest in protecting claimants and ensuring the integrity of our administrative process. Additional conduct rules should not deter these potential representatives.

*Comment:* A few commenters expressed concern that some of our regulatory language in proposed 20 CFR 404.1740 and 416.1540 was too vague. Some commenters mentioned specific language that they thought was too vague.

*Response:* We do not agree with these comments. Much of the language that the commenters cited is already part of our current rules, such as the terms “prompt and responsive answers,” “unreasonably delay,” and “threatening or intimidating language, gestures, or actions.” Current 20 CFR 404.1740(b)(3)(ii), (c)(4), (c)(7), 416.1540(b)(3)(ii), (c)(4), and (c)(7). We proposed changes to these sections only to clarify them. Because we did not propose other substantive changes to these rules, we do not believe that we should revise them now.

We believe that the remaining proposed regulatory language sufficiently describes and gives adequate notice of the types of actions that would violate our rules of conduct. These regulations are similar to other standards of conduct, such as the American Bar Association Model Rules, because they do not list every act or omission that might constitute a violation of the rules of conduct. Developing this type of list would be inappropriate and virtually impossible to complete because representing claimants involves limitless factual situations. Rather, we deal with each complaint on a case-by-case basis to determine whether a representative engaged in actionable misconduct under the attending circumstances. When we decide whether to bring an action against a representative, we consider whether a reasonable person, in light of all the circumstances, would consider the act or omission a violation of the relevant rule.

*Comment:* One commenter wanted our process to include a system of review and appeal.

*Response:* We already have an appeals process for actions brought under our

rules of conduct for representatives. Either party to a representative disqualification or suspension action may ask the Appeals Council to review the hearing officer's decision. Current 20 CFR 404.1775 and 416.1575. The Appeals Council will assign a panel of three administrative appeals judges to consider and rule on the request for review. Current 20 CFR 404.1776 and 416.1576. These final rules do not change our current rules on this issue.

*Comment:* Several commenters wanted us to add the word "knowingly" to our proposed prohibited actions for representatives in proposed 20 CFR 404.1740(c)(8)–(13) and 416.1540(c)(8)–(13). They argued that we should only disqualify or suspend representatives who knowingly violate our rules.

*Response:* After careful consideration, we have adopted this comment for final 20 CFR 404.1740(c)(12) and 416.1540(c)(12). A representative will violate the rules of conduct for representatives if he or she knowingly assists a person, whom we suspended or disqualified, to provide representational services or to exercise the authority of a representative.

However, we did not adopt this comment for final 20 CFR 404.1740(c)(8)–(11) and (13) and 416.1540(c)(8)–(11) and (13) because each remaining prohibited action requires knowledge on the part of the representative. For example, one cannot unknowingly "refuse to comply with any of our rules or regulations." Final 20 CFR 404.1740(c)(9) and 416.1540(c)(9). Moreover, the Act already states that only "knowing" violations will subject a representative to criminal and civil monetary penalties. See 42 U.S.C. 406(a)(5) and (b)(2), 408(a), 1011(a), 1307(a), and 1383a(a).

*Comment:* One commenter asked us to explain whether we will prohibit a representative from serving as a vocational expert or working for an insurance company if we deem them a "fiduciary" of a claimant in proposed 20 CFR 404.1740(a)(1) and 416.1540(a)(1).

*Response:* The term "fiduciary" exists in our current regulations. We proposed to clarify these sections in the NPRM. Our current rules do not specifically prohibit a representative from serving as a vocational expert or from working for an insurance company. However, we preclude a person from serving as a vocational expert in a claim in which the person is also the claimant's representative.

*Comment:* One commenter objected to our proposed language that required representatives to "provid[e] prompt and responsive answers to requests from

the Agency for information pertinent to processing of the claim." Proposed 20 CFR 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii). The commenter asserted that representatives may be unable to comply with this requirement because third-party medical providers sometimes do not respond to properly submitted information requests.

*Response:* We added this affirmative duty to our regulations in 1998. 63 FR 41404. Our current rule requires a representative to: "Act with reasonable diligence and promptness in representing a claimant. This includes providing prompt and responsive answers to [our] requests [ ] for information pertinent to processing of the claim." Current 20 CFR 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii). These final rules do not require a representative to give us documents that the representative, despite diligent effort, could not obtain. We are not imposing any new or enhanced duties on representatives.

In the NPRM, we proposed to change punctuation in proposed 20 CFR 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii) only to allow us to propose 20 CFR 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii) (a proposed affirmative duty for representatives to maintain a paper copy of our appointment form, with original signatures, and to provide it to us on request). Since we are still considering whether to add this affirmative duty, we are not revising the current regulatory text at this time.

*Comment:* A few commenters thought our prohibited action in proposed 20 CFR 404.1740(c)(9) and 416.1540(c)(9) to "[r]efuse to comply with any of our rules or regulations" was overbroad. These commenters wanted an exception that would allow a representative to not comply with our rules and regulations if the representative is challenging the validity or applicability of the rule or regulation. Another commenter said that we should limit our proposed prohibited action to situations where there are no non-frivolous bases for the action. The commenter suggested that we look to Oregon's Rule of Professional Conduct 3.1 (Meritorious Claims and Contentions), which states that a lawyer must have a non-frivolous legal and factual basis for any action and must be able to make a good faith argument for the action.

*Response:* This proposed prohibited action comes directly from the Act: "The Commissioner \* \* \* may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any[one] \* \* \* 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." 42 U.S.C. 406(a)(1). Additionally, our current regulations state, "When we have evidence that a representative \* \* \* 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." Current 20 CFR 404.1745 and 416.1545.

Therefore, representatives are already on notice that we require them to comply with all of our rules, and we continue to believe that this is a reasonable requirement for representatives who want to practice before us. Our NPRM merely proposed to insert this statement of an existing requirement into our rules of conduct and standards of responsibility for representatives in proposed 20 CFR 404.1740 and 416.1540. Where our regulations conflict with a representative's State bar rules, our rules take precedence in our administrative proceedings. However, a representative should comply with a State bar rule that is more restrictive than our requirements.

We expect all representatives to comply with our rules and regulations. We currently assess each conduct complaint on its own merits to determine whether a person engaged in actionable misconduct. These final rules will not change this practice. A person may tell us that he or she is contesting a regulation's applicability or validity. If the person has a good faith, non-frivolous basis for refusing to follow one or more of our rules and regulations, we will seriously evaluate that basis before we decide whether to bring a disqualification or suspension proceeding.

We are therefore not adopting the commenters' suggested change in the final regulatory language.

*Comment:* One commenter asserted that several of our proposed prohibited actions sought to regulate speech in violation of the First Amendment to the Constitution and attorney-client privilege. Specifically, the commenter stated that our proposed 20 CFR 404.1740(c)(9)–(11) and 416.1540(c)(9)–(11) would interfere with the content of advice that an attorney could give a client.

*Response:* We disagree with these comments. Congress specifically authorized us to promulgate rules and regulations to administer the Act and to prescribe rules and regulations governing the recognition of agents who represent "claimants before the

Commissioner of Social Security.” See 42 U.S.C. 405(a), 406(a), and 1383(d)(2). Congress further stated that, after receiving due notice and an opportunity for a hearing, the Commissioner may suspend or prohibit from further practice before the agency any representative 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.

Representatives may share their opinions and have frank discussions with their clients. Our rule will not limit the freedom of speech guaranteed in the First Amendment to the Constitution or interfere with the attorney-client relationship or client confidentiality. We are not asking anyone to disclose information protected by the attorney-client privilege or the attorney work-product doctrine. However, similar to a court’s responsibility to regulate admission to the practice of law before it, and as was recognized by Congress, we have a responsibility to regulate those persons who represent claimants before us. “Membership in the bar” and the ability to practice before an administrative agency “is a privilege burdened with conditions.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1066 (1991). The Supreme Court recently cited with approval ABA Model Rule of Professional Conduct 1.2(d), which states that a “lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.” *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324, 1337–38 (2010). See Model Rules of Professional Conduct R. 1.2(d) (2011). While our rules and regulations govern more than just lawyers, the same principles apply to all representatives.

We have broad rulemaking authority to decide what types of representation-related misconduct are unacceptable. We decided that representatives cannot practice before us if they refuse to comply with our rules and regulations or advise claimants not to comply with our rules and regulations. These rules further our interest in regulating representatives, ensuring compliance with our laws and rules, and administering our programs efficiently.

#### *Recognition of Representatives*

*Comment:* One commenter wanted to know if our refusal to recognize a

representative in one claim would apply to future cases in which a different claimant tries to appoint the same representative.

*Response:* As is our current process, we will reassess an individual’s qualifications each time a claimant requests that individual to be a representative. Once the individual meets our criteria in final 20 CFR 404.1705 and 416.1505, we will recognize him or her as a representative. Once we recognize a person as a representative, additional claimants may appoint the recognized representative to serve as a representative.

*Comment:* A few commenters want our rules to clarify that a representative can appeal our refusal to recognize an appointment because the representative did not meet our criteria. Another commenter asserted that we must give a representative due process, notice, and the opportunity to respond if we refuse to recognize a claimant’s appointment of a representative.

*Response:* The Act grants us authority to “prescribe rules and regulations governing the recognition of” non-attorney representatives. It also permits us to require representatives, before we recognize them, to “show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases.” 42 U.S.C. 406(a)(1) and 1383a(a).

If a claimant submits a request to appoint a person as his or her representative and that person has not previously represented claimants before us, we will not recognize the appointment if we know that the person does not meet our requirements. Current 20 CFR 404.1705 and 416.1505. However, if we have previously allowed the person to represent a claimant, we will continue to allow the person to represent claimants until we obtain a final decision disqualifying or suspending the person from further representation before us, following notice and an opportunity for a hearing. Current 20 CFR 404.1705 and 416.1505. We are clarifying this distinction by revising our proposed regulatory language in these sections.

Our decision not to recognize a person as a representative is not an initial determination that would allow the person the right to further administrative action and judicial review. Current 20 CFR 404.903(f) and 416.1403(f). If we do not recognize a person as a representative, we will

notify that person and the claimant of our action.

*Comment:* Two commenters thought our language in proposed 20 CFR 404.1705(c) and 416.1505(c) was confusing. One commenter asked which “requirements” we meant when we proposed: “We may refuse to recognize your appointed representative if the representative does not meet our requirements.” Another commenter proposed alternative regulatory language to clarify the persons whom we will notify of our refusal to recognize an appointment.

*Response:* We agree with the commenters that the proposed language was unclear. We revised these final sections to clarify that a claimant’s chosen representative must meet our requirements in 20 CFR 404.1705 and 416.1505 before we recognize the appointment. We also revised these final sections to clarify that a person whose appointment we do not recognize is not a “representative” under our rules and that we will notify the claimant and the person the claimant attempted to appoint if we do not recognize the appointment.

#### *Definitions*

*Comment:* One commenter opposed our proposal to move the definition of “disqualified” from current 20 CFR 404.1770(a)(2)(i) and 416.1570(a)(2)(i) to “disqualify” in proposed 20 CFR 404.1703 and 416.1503. The commenter said that this would cause confusion because our rules use the term in two different ways.

*Response:* We agree with this comment. We are keeping the definition in its current location in 20 CFR 404.1770(a)(2) and 416.1570(a)(2). However, we are adopting, with minor changes, our proposed definition for “disqualify” and are retaining our proposed language in 20 CFR 404.1770(a)(2) and 416.1570(a)(2).

#### **Regulatory Procedures**

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

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

##### *Regulatory Flexibility Act*

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only.

Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

#### *Paperwork Reduction Act*

These final rules contain information collection activities at 20 CFR 404.1755 and 404.1799. However, 44 U.S.C. 3518(c)(1)(B)(ii) exempts these activities from the OMB clearance requirements under the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

#### **List of Subjects**

##### *20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-age, survivors, and disability insurance, Penalties, Reporting and recordkeeping requirements, Social Security.

##### *20 CFR Part 416*

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending 20 CFR part 404 subparts J and R and part 416 subparts N and O as set forth below:

#### **PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)**

##### **Subpart J—[Amended]**

- 1. The authority citation for subpart J of Part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

- 2. Amend § 404.903 by revising paragraph (g) to read as follows:

##### **§ 404.903 Administrative actions that are not initial determinations.**

\* \* \* \* \*

(g) Refusing to recognize, disqualifying, or suspending a person from acting as your representative in a

proceeding before us (see §§ 404.1705 and 404.1745);

\* \* \* \* \*

##### **Subpart R—[Amended]**

- 3. The authority citation for subpart R of part 404 continues to read as follows:

**Authority:** Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6).

- 4. Amend § 404.1703 by adding definitions for “Federal agency”, “Federal program”, and “representational services” in alphabetical order to read as follows:

##### **§ 404.1703 Definitions.**

\* \* \* \* \*

*Federal agency* refers to any authority of the Executive branch of the Government of the United States.

*Federal program* refers to any program established by an Act of Congress or administered in whole or in part by a Federal agency.

\* \* \* \* \*

*Representational services* means services performed for a claimant in connection with any claim the claimant has before us, any asserted right the claimant may have for an initial or reconsidered determination, and any decision or action by an administrative law judge or the Appeals Council.

\* \* \* \* \*

- 5. Amend § 404.1705 by removing the heading for paragraphs (a) and (b), revising paragraph (b) introductory text, and adding paragraph (c) to read as follows:

##### **§ 404.1705 Who may be your representative.**

\* \* \* \* \*

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person—

\* \* \* \* \*

(c) We may refuse to recognize the person you choose to represent you if the person does not meet the requirements in this section. We will notify you and the person you attempted to appoint as your representative if we do not recognize the person as a representative.

- 6. Remove and reserve § 404.1735 to read as follows:

##### **§ 404.1735 [Reserved].**

- 7. Amend § 404.1740 by revising paragraphs (a)(1), (a)(2), (b) introductory text, (c) introductory text, (c)(6), and (c)(7)(iii), and adding paragraphs (c)(8) through (c)(13), to read as follows:

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

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

(2) All representatives must be forthright in their dealings with us and with the claimant and must 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 must, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 404.1512 in disability and blindness claims):

\* \* \* \* \*

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

\* \* \* \* \*

(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;

(7) \* \* \*

(iii) Threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence;

(8) Violate any section of the Act for which a criminal or civil monetary penalty is prescribed;

(9) Refuse to comply with any of our rules or regulations;

(10) Suggest, assist, or direct another person to violate our rules or regulations;

(11) Advise any claimant or beneficiary not to comply with any of our rules or regulations;

(12) Knowingly assist a person whom we suspended or disqualified to provide representational services in a proceeding under title II of the Act, or to exercise the authority of a representative described in § 404.1710; or

(13) Fail to comply with our sanction(s) decision.

■ 8. Amend § 404.1750 by revising paragraphs (a) and (d) to read as follows:

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

(a) The General Counsel or other delegated official will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

\* \* \* \* \*

(d) The General Counsel or other delegated official may extend the 30-day period for good cause in accordance with § 404.911.

\* \* \* \* \*

■ 9. Revise § 404.1755 to read as follows:

**§ 404.1755 Withdrawing charges against a representative.**

The General Counsel or other delegated official may withdraw charges against a representative. We will withdraw charges if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative. When we consider withdrawing charges brought under § 404.1745(d) or (e) based on the representative's assertion that, before or after our filing of charges, the representative has been reinstated to practice by the court, bar, or Federal program or Federal agency that suspended, disbarred, or disqualified the representative, the General Counsel or other delegated official will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the General Counsel or other delegated official is so satisfied, the General Counsel or other delegated official will withdraw those charges. The action of the General Counsel or other delegated official regarding withdrawal of charges is solely that of the General Counsel or other delegated official and is not

reviewable, or subject to consideration in decisions made under §§ 404.1770 and 404.1790. If we withdraw the charges, we will notify the representative by mail at the representative's last known address.

■ 10. Amend § 404.1765 by revising paragraphs (a) and (b)(1), the second sentence of paragraph (e), and paragraph (l) to read as follows:

**§ 404.1765 Hearing on charges.**

(a) *Holding the hearing.* If the General Counsel or other delegated official 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.

(b) *Hearing officer.* (1) The Deputy Commissioner for Disability Adjudication and Review or other delegated official will assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

\* \* \* \* \*

(e) \* \* \* The General Counsel or other delegated official will also be a party to the hearing.

\* \* \* \* \*

(l) *Representation.* The representative, as the person charged, may appear in person and may be represented by an attorney or other representative. The General Counsel or other delegated official will be represented by one or more attorneys from the Office of the General Counsel.

\* \* \* \* \*

■ 11. Amend § 404.1770 by revising the first sentence of paragraph (a)(1), paragraphs (a)(2), (a)(3) introductory text, and the second sentence of (a)(3)(ii) to read as follows:

**§ 404.1770 Decision by hearing officer.**

(a) *General.* (1) After the close of the hearing, the hearing officer will issue a decision or certify the case to the Appeals Council. \* \* \*

(2) In deciding whether a person has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or Federal agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (e.g., failure to pay dues or to complete continuing legal education requirements), that will not disqualify the person from acting as a representative before us. However, this exception to disqualification does not apply if the administrative action was

taken in lieu of disciplinary proceedings (e.g., acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether a person should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension, or disqualification. For purposes of determining whether a person has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or Federal agency, disqualified refers to any action that prohibits a person from participating in or appearing before any Federal program or Federal agency, regardless of how long the prohibition lasts or the specific terminology used.

(3) If the hearing officer finds that the charges against the representative have been sustained, he or she will either—

\* \* \* \* \*

(ii) \* \* \* Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which the representative was previously admitted to practice or disqualified from participating in or appearing before any Federal program or Federal agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

\* \* \* \* \*

■ 12. Amend § 404.1799 by revising paragraphs (b), (c), (d)(3), and (e) to read as follows:

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

\* \* \* \* \*

(b) The suspended or disqualified person must submit any evidence the person wishes to have considered along with the request to be allowed to serve as a representative again.

(c) The General Counsel or other delegated official, upon notification of receipt of the request, will 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. The Appeals Council will make available to the suspended or disqualified person a copy of the report.

(d) \* \* \*

(3) If a person was disqualified because the person had been

disqualified from participating in or appearing before a Federal program or Federal agency, the Appeals Council will grant the request for reinstatement only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that the person is now qualified to participate in or appear before that Federal program or Federal agency.

(e) The Appeals Council will mail a notice of its decision on the request for reinstatement to the suspended or disqualified person. It will also mail a copy to the General Counsel or other delegated official.

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

### **Subpart N—[Amended]**

■ 13. The authority citation for subpart N of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 14. Amend § 416.1403 by revising paragraph (a)(7) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) \* \* \*  
(7) Refusing to recognize, disqualifying, or suspending a person from acting as your representative in a proceeding before us (see §§ 416.1505 and 416.1545);

### **Subpart O—[Amended]**

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

**Authority:** Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6 and 1383(d)).

■ 16. Amend § 416.1503 by adding definitions for “Federal agency”, “Federal program”, and “representational services” in alphabetical order to read as follows:

**§ 416.1503 Definitions.**

*Federal agency* refers to any authority of the Executive branch of the Government of the United States.

*Federal program* refers to any program established by an Act of Congress or administered in whole or in part by a Federal agency.

*Representational services* means services performed for a claimant in connection with any claim the claimant has before us, any asserted right the claimant may have for an initial or reconsidered determination, and any decision or action by an administrative law judge or the Appeals Council.

■ 17. Amend § 416.1505 by removing the heading for paragraphs (a) and (b), revising paragraph (b) introductory text, and adding paragraph (c) to read as follows:

**§ 416.1505 Who may be your representative.**

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person—

(c) We may refuse to recognize the person you choose to represent you if the person does not meet the requirements in this section. We will notify you and the person you attempted to appoint as your representative if we do not recognize the person as a representative.

■ 18. Remove and reserve § 416.1535 to read as follows:

**§ 416.1535 [Reserved].**

■ 19. Amend § 416.1540 by revising paragraphs (a)(1), (a)(2), (b) introductory text, (c) introductory text, (c)(6), and (c)(7)(iii), and adding paragraphs (c)(8) through (c)(13), to read as follows:

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

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

(2) All representatives must be forthright in their dealings with us and with the claimant and must 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 must, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 416.912 in disability and blindness claims):

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

(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;

(7) \* \* \*  
(iii) Threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence;

(8) Violate any section of the Act for which a criminal or civil monetary penalty is prescribed;

(9) Refuse to comply with any of our rules or regulations;

(10) Suggest, assist, or direct another person to violate our rules or regulations;

(11) Advise any claimant or beneficiary not to comply with any of our rules and regulations;

(12) Knowingly assist a person whom we suspended or disqualified to provide representational services in a proceeding under title XVI of the Act, or to exercise the authority of a representative described in § 416.1510; or

(13) Fail to comply with our sanction(s) decision.

■ 20. Amend § 416.1550 by revising paragraphs (a) and (d) to read as follows:

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

(a) The General Counsel or other delegated official will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

(d) The General Counsel or other delegated official may extend the 30-day period for good cause in accordance with § 416.1411.



■ 21. Revise § 416.1555 to read as follows:

**§ 416.1555 Withdrawing charges against a representative.**

The General Counsel or other delegated official may withdraw charges against a representative. We will withdraw charges if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative. When we consider withdrawing charges brought under § 416.1545(d) or (e) based on the representative's assertion that, before or after our filing of charges, the representative has been reinstated to practice by the court, bar, or Federal program or Federal agency that suspended, disbarred, or disqualified the representative, the General Counsel or other delegated official will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the General Counsel or other delegated official is so satisfied, the General Counsel or other delegated official will withdraw those charges. The action of the General Counsel or other delegated official regarding withdrawal of charges is solely that of the General Counsel or other delegated official and is not reviewable, or subject to consideration in decisions made under §§ 416.1570 and 416.1590. If we withdraw the charges, we will notify the representative by mail at the representative's last known address.

■ 22. Amend § 416.1565 by revising paragraphs (a) and (b)(1), the second sentence of paragraph (e), and paragraph (l) to read as follows:

**§ 416.1565 Hearing on charges.**

(a) *Holding the hearing.* If the General Counsel or other delegated official 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.

(b) *Hearing officer.* (1) The Deputy Commissioner for Disability Adjudication and Review or other delegated official will assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

\* \* \* \* \*

(e) *Parties.* \* \* \* The General Counsel or other delegated official will also be a party to the hearing.

\* \* \* \* \*

(l) *Representation.* The representative, as the person charged, may appear in person and may be represented by an attorney or other representative. The General Counsel or other delegated official will be represented by one or more attorneys from the Office of the General Counsel.

\* \* \* \* \*

■ 23. Amend § 416.1570 by revising the first sentence of paragraph (a)(1), paragraphs (a)(2), (a)(3) introductory text, and the second sentence of (a)(3)(ii) to read as follows:

**§ 416.1570 Decision by hearing officer.**

(a) *General.* (1) After the close of the hearing, the hearing officer will issue a decision or certify the case to the Appeals Council. \* \* \*

(2) In deciding whether a person has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or Federal agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (e.g., failure to pay dues or to complete continuing legal education requirements), that will not disqualify the person from acting as a representative before us. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (e.g., acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether a person should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension, or disqualification. For purposes of determining whether a person has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or Federal agency, disqualified refers to any action that prohibits a person from participating in or appearing before any Federal program or Federal agency, regardless of how long the prohibition lasts or the specific terminology used.

(3) If the hearing officer finds that the charges against the representative have been sustained, he or she will either—

\* \* \* \* \*

(ii) \* \* \* Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which the representative was previously admitted to practice or disqualified from participating in or appearing before any Federal program or Federal agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

\* \* \* \* \*

■ 24. Amend § 416.1599 by revising paragraphs (b), (c), (d)(3), and (e) to read as follows:

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

\* \* \* \* \*

(b) The suspended or disqualified person must submit any evidence the person wishes to have considered along with the request to be allowed to serve as a representative again.

(c) The General Counsel or other delegated official, upon notification of receipt of the request, will 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. The Appeals Council will make available to the suspended or disqualified person a copy of the report.

(d) \* \* \*

(3) If a person was disqualified because the person had been disqualified from participating in or appearing before a Federal program or Federal agency, the Appeals Council will grant the request for reinstatement only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that the person is now qualified to participate in or appear before that Federal program or Federal agency.

\* \* \* \* \*

(e) The Appeals Council will mail a notice of its decision on the request for reinstatement to the suspended or disqualified person. It will also mail a copy to the General Counsel or other delegated official.

\* \* \* \* \*

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