



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2013-0044]

RIN 0960-AH63

Rules of Conduct and Standards of Responsibility for Appointed Representatives

AGENCY: Social Security Administration

ACTION: Final rules.

SUMMARY: We are revising our rules of conduct and standards of responsibility for representatives. We are also updating and clarifying the procedures we use when we bring charges against a representative for violating these rules and standards. These changes are necessary to better protect the integrity of our administrative process and to further clarify representatives' existing responsibilities in their conduct with us. The revisions should not be interpreted to suggest that any specific conduct was permissible under our rules prior to these changes; instead, we seek to ensure that our rules of conduct and standards of responsibility are clearer as a whole and directly address a broader range of inappropriate conduct.

DATES: These final rules will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sarah Taheri, Office of Appellate Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605-7100.

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

Although the vast majority of representatives conducting business before us on behalf of Social Security beneficiaries and claimants ethically and conscientiously assist their clients, we are concerned that some representatives are using our processes in a way that undermines the integrity of our programs and harms claimants. Accordingly, we are clarifying that certain actions are prohibited, and we are providing additional means to address representative actions that do not serve the best interests of claimants.

On August 16, 2016,¹ we published a Notice of Proposed Rulemaking (NPRM) in the Federal Register in which we proposed clarifications and revisions to our rules of conduct for representatives. To the extent that we adopt a proposed change as final without revision, and we already discussed at length the reason for and details of the proposal, we will not repeat that information here.

In response to the NPRM, we received 154 timely submitted comments that addressed issues within the scope of our proposed rules. Based on those comments, we are modifying some of our proposed changes to address concerns that commenters raised. We have also made editorial changes consistent with plain language writing requirements. We made conforming changes in other sections not originally edited in the NPRM. Finally, we made changes to ensure

¹ 81 FR 54520. <https://www.federalregister.gov/documents/2016/08/16/2016-19384/revisions-to-rules-of-conduct-and-standards-of-responsibility-for-appointed-representatives>.

correct paragraph punctuation in §§ 404.1740 and 416.1540; a nomenclature change to reflect the organization of our agency in §§ 404.1765(b)(1) and 416.1565(b)(1); and updated a cross-reference in §§ 404.1755 and 416.1555 that refers to §§ 404.1745 and 416.1545, sections reorganized and rewritten in the NPRM and codified in the final rule.

Public Comments and Discussion

Comment: Some commenters suggested that our proposed rules would deter potential representatives from representing claimants in Social Security matters.

Response: These rules reflect our interest in protecting claimants and ensuring the integrity of our administrative process, and they do not impose unreasonable standards of conduct. These additional rules of conduct should not deter competent, knowledgeable, and principled representatives.

Comment: Some commenters objected to the provision in proposed § 404.1705(b)(4) and 416.1505(b)(4), which includes “persons convicted of a felony (as defined by § 404.1506(c)), or any crime involving moral turpitude, dishonesty, false statements, misrepresentation, deceit, or theft” as examples of persons who lack “good character and reputation.” The commenters sometimes referred to this provision as involving a “lifetime ban” on representation. Commenters noted that a “lifetime ban” fails to consider multiple situations, such as overturned convictions. Some commenters suggested that we place the ban only on representatives with prior felony convictions but exempt those with past misdemeanor convictions, because claimants may have family members with misdemeanor convictions who are otherwise well-qualified to be representatives. Commenters opined that there is nothing

inherent about a felony conviction that would prohibit a person from providing competent representation. Finally, commenters suggested that this proposed regulation would decrease the pool of representatives, particularly for minorities, because, according to these commenters, some statistics show higher conviction rates in minority populations.

Response: We have broad rulemaking authority to decide who can serve as a non-attorney representative. We believe we can achieve our goal of protecting claimants from potentially fraudulent representatives by limiting the prohibition to individuals convicted of certain offenses that are more severe in nature or involve behavior that reflects poorly on an individual's ability to represent claimants. There is no evidence that this approach will decrease the pool of available, high quality representatives for any particular population. Accordingly, we determined that individuals are not qualified to practice before us if they have a felony conviction (as defined in our rules) or a conviction involving moral turpitude, dishonesty, false statements, misrepresentation, deceit, or theft. These criminal convictions reflect crimes that, by their nature, are more serious based on their categorization as felonies, or involve behavior that reflects poorly on an individual's honesty and moral judgment and, therefore, also reflects poorly on the individual's ability to represent claimants. This disqualification would not apply to convictions that have been overturned or other similar situations, which we have clarified in the final rules. The regulation does not specifically bar individuals with misdemeanor convictions from serving as representatives, unless the misdemeanor involved moral turpitude, dishonesty, false statements, misrepresentation, deceit, or theft, which are the misdemeanors that we believe reflect a lack of honesty and moral judgment, characteristics that we consider necessary in representatives. Further, even if individuals are unable to serve as appointed representatives due to these rules, they may still assist their family members with claims in an unofficial capacity.

Comment: Some commenters stated that claimants should be held harmless if they appoint a representative whom they later learn was not qualified (proposed §§ 404.1705(b)(4) and 416.1505(b)(4)).

Response: These rules do not suggest that we would impose any penalty on a claimant who appoints or attempts to appoint an unqualified representative. This regulatory section only identifies whom we will recognize as a representative.

Comment: Some commenters stated that proposed §§ 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii) should clarify that a list of potential dates and times that a representative will be available for a hearing is only required to be accurate at the time it is submitted. The comments explained that many representatives schedule hearings in multiple locations, and availability may change once they have other obligations scheduled.

Response: We understand that schedules change, and we do not expect representatives to hold open their schedules for all of the dates and times that they identify. We did not change the proposed regulatory text.

Comment: Commenters stated that the term “scheduled” is too vague (proposed §§ 404.1740(b)(3)(iv) and 416.1540(b)(3)(iv)).

Response: A hearing has been “scheduled” when a date and time have been set and we have notified all parties. We clarified the language in these sections.

Comment: Some commenters asserted that restricting a representative’s right to withdraw after a hearing is scheduled, except under “extraordinary circumstances,” is an overly

broad restriction that inhibits a representative's right to withdraw in circumstances where the representative knows that the client no longer has a viable case. Many commenters also argued that forcing representatives to divulge their reasons for withdrawal to justify extraordinary circumstances may violate the attorney-client privilege, if the withdrawal is based on the representative's knowledge that a client may be engaging in fraud. Other commenters stated that if a claimant does not want to attend a hearing but will not release the representative, and the representative cannot withdraw, the administrative law judge (ALJ) will not be able to dismiss the case and will have to hold a hearing, which wastes administrative time and resources. Finally, commenters noted that hearings are sometimes already scheduled by the time representatives are hired. Because representatives cannot view claimants' files until they are appointed, representatives may have to withdraw after reviewing the file even though a hearing has already been scheduled.

Response: The American Bar Association (ABA) Model Rules of Professional Conduct Rule (Model Rule) 1.16 includes requirements for withdrawal similar to this regulation. Some examples of "extraordinary circumstances" under which we may allow a withdrawal include 1) serious illness; 2) death or serious illness in the representative's immediate family; or 3) failure to locate a claimant despite active and diligent attempts to contact the claimant.

We are not seeking privileged communications between an attorney and client. If the representative cannot describe why he or she must withdraw without revealing privileged or confidential communications (and if no exceptions to the attorney-client privilege exist, such as the crime-fraud exception), the representative should state this fact, not disclose the privileged or confidential communication, and allow the ALJ to evaluate the request under these circumstances.

Comment: Commenters raised the issue of providing “prompt and timely communication” with claimants, stating that this is often difficult with homeless or indigent claimants (proposed §§ 404.1740(b)(3)(v) and 416.1540(b)(3)(v)). Some commenters suggested changing this language to “keep the client reasonably informed of the status of the case” in accordance with Model Rule 1.4. One commenter requested that we define “incompetent representation” and “reasonable and adequate representation.”

Response: Representatives are responsible for maintaining timely contact with their clients. We expect representatives to have working contact information for all of their clients, but we recognize that it may be difficult to locate homeless or indigent clients in some circumstances. We have changed the language of §§ 404.1740(b)(3)(v) and 416.1540(b)(3)(v) to take into account the difficulty in locating certain claimants despite a representative’s best efforts. We did not provide any definition of “incompetent representation” or “reasonable and adequate representation,” because these terms do not appear in the rule.

Comment: A number of commenters were concerned with proposed §§ 404.1740(b)(5) and 416.1540(b)(5), which require a representative to disclose certain things in writing when the representative submits a medical or vocational opinion to us. The commenters specifically raised concerns about the disclosure of physician referrals and the disclosure requirement when the medical or vocational opinion was “drafted, prepared, or issued” by an employee of the representative or an individual contracting with the representative for services. Commenters also stated that the term “prepared” is vague, and it is unclear whether disclosure would be required if a representative discusses the sequential evaluation process with a provider of an opinion or

supplies a questionnaire for a provider to complete. Some commenters further maintained that requiring disclosure of physician referrals would violate the attorney-client privilege and that such referrals are irrelevant to the representation of the case. Commenters also requested that the regulation clarify that opinions are entitled to the same weight regardless of whether the representative requested them. Finally, commenters argued that requiring disclosure will “chill” referrals for those claimants who need them most.

Response: When a representative submits a medical or vocational opinion to us, he or she has an affirmative duty to disclose to us in writing if the representative or one of the representative’s employees or contractors participated in drafting, preparing, or issuing the opinion. For clarity, we consider providing guidance or providing a questionnaire, template or format to fall within the parameters of this rule when the guidance, questionnaire, template or format is used to draft a medical or vocational opinion submitted to us. In response to the concern that the term “prepared” is vague, unless the context indicates otherwise, we intend the ordinary meaning of words used in our regulations. We intend the word “prepared” here to have its ordinary meaning. Representatives also have an affirmative duty to disclose to us in writing if the representative referred or suggested that the claimant be examined, treated, or assisted by the individual who provided the opinion evidence. However, we are not seeking privileged or confidential communications concerning legal advice between an attorney and client, nor are we requiring disclosure of detailed communications. We are only requiring that representatives disclose the fact that they made a referral or participated in drafting, preparing, or issuing an opinion. *See* Fed. R. of Civ. P. 26(b)(5)(A) (“When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must...describe the nature of the documents, communications, or

tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”) We explain what we mean by the attorney-client and attorney work product privileges more fully in §§ 404.1513(b)(2) and 416.913(b)(2) of our rules. We will interpret the affirmative duty in final §§ 404.1740(b)(5) and 416.1540(b)(5) in light of our interpretation of those privileges in §§ 404.1513(b)(2) and 416.913(b)(2). In response to the request that the regulation clarify that opinions are entitled to the same weight regardless of whether the representative requested them, we have other regulations that govern how we evaluate medical opinion evidence. *See* 20 CFR 404.1520c, 404.1527, 416.920c, and 416.927.

Comment: Some commenters stated that notifying us if a claimant is committing fraud (proposed §§ 404.1740(b)(6) and 416.1540(b)(6)) violates the attorney-client privilege and Model Rule 1.6. Commenters also suggested a more direct adoption of the provisions of Model Rule 3.3, Candor Toward the Tribunal.

Response: We do not believe that our final rule violates either the attorney-client privilege or Model Rule 1.6. Our final rule requires a representative to “[d]isclose to us immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against us.” Model Rule 1.6(b)(2)² includes an exception to confidentiality “to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services.” Furthermore, the crime-fraud exception to the attorney-client privilege allows a lawyer to disclose otherwise privileged

² Rule 1.6, Confidentiality of information. (2013). In American Bar Association, Center for Professional Responsibility, *Model Rules of Professional Conduct*. Retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information.html.

communications when they are in furtherance of a crime or fraudulent act. When a claimant uses a representative's services in furtherance of the claimant's fraud, there is a reasonable certainty that the fraud will cause substantial injury to the Social Security trust funds. Such fraud also undermines public confidence in our programs. Our proposed and final rules are fully consistent with the exception to confidentiality found in Model Rule 1.6(b)(2). The final rules also address the aim of Model Rule 3.3 to limit false or misleading statements, but within the unique context of the legal and procedural structure of the Social Security programs. Therefore, we are not changing the originally proposed language.

Comment: A few commenters asked us to clarify whether disbarment or disqualification will be an automatic bar to representation, or whether we will address each situation individually (proposed §§ 404.1740(b)(7)-(9) and 416.1540(b)(7)-(9)).

Response: We will address any disclosure made pursuant to §§ 404.1740(b)(7)-(9) and 416.1540(b)(7)-(9) on an individual basis.

Comment: Some commenters stated that proposed § 416.1540(b)(10) is too broad, because representatives often refer Supplemental Security Income (SSI) claimants to special needs trust attorneys, and the proposed language suggests that the representatives would be responsible for the conduct of the trust attorneys. Other commenters recommend that the regulation encompass only those people over whom representatives have supervisory authority.

Response: In response to these comments, we have revised the language in final §§ 404.1740(b)(10) and 416.1540(b)(10) to clarify that the affirmative duty applies "when the representative has managerial or supervisory authority over these individuals or otherwise has

responsibility to oversee their work.” Further, because this requirement is an affirmative duty, we moved language from proposed §§ 404.1740(c)(14) and 416.1540(c)(14) to §§ 404.1740(b)(10) and 416.1540(b)(10), which outlines the affirmative duty to take remedial action when: i) the representative’s employees, assistants, partners, contractors, or other individuals’ conduct violates these rules of conduct and standards of responsibility, and ii) the representative has reason to believe a violation of these rules of conduct and standards of responsibility will occur. We revised the language of final §§ 404.1740(c)(14) and 415.1540(c)(14) to prohibit representatives from failing to oversee other individuals working on the claims on which the representative is appointed when the representative has managerial or supervisory authority over these individuals or otherwise has responsibility to oversee their work.

Comment: Some commenters objected to proposed §§ 404.1740(c)(1) and 416.1540(c)(1), which prohibit “misleading a claimant, or prospective claimant or beneficiary, about the representative’s services and qualifications.” Commenters asked whether it would be misleading if a claimant refers to a non-attorney representative as an attorney, and the representative does not correct them.

Response: Not correcting a known misconception about the representative’s status as a non-attorney is “misleading a claimant,” as contemplated under this prohibition.

Comment: A few commenters objected to the language of proposed § 404.1740(c)(7)(ii)(B), which prohibits “[p]roviding misleading information or misrepresenting facts ... where the representative has or should have reason to believe the information was

misleading and the facts would constitute a misrepresentation.” These commenters stated that many claimants are mentally ill, and it is difficult to ascertain whether a client is providing accurate facts. The commenters also objected to the term “should,” stating that it is overly vague. A few commenters believe the standard “knowingly” should be added. Commenters also stated that this regulation conflicted with our rule on the submission of evidence, which requires representatives to submit all available evidence.

Response: Based on the comments, we have changed the “has or should have reason to believe” language of the proposed rule to “knows or should have known” in the final rule. Whether or not a claimant is mentally ill, a representative will violate the standard in the final rule if he or she presents information that he or she knows to be false or circumstances demonstrate that the representative should have known it to be false. This rule does not conflict with our rule requiring representatives to submit all evidence, because a false document is not evidence as contemplated under §§ 404.1513 and 416.913. Further, “should” is not an overly broad standard and is a commonly used term in Federal laws and regulations. *See, e.g.*, 42 U.S.C. 1320a-8a(a)(1).

Comment: A few commenters stated that proposed §§ 404.1740(c)(7)(ii)(C) and 416.1540(c)(7)(ii)(C) should clarify that representatives may contact SSA staff regarding matters such as case status, requests for critical case flags, Congressional inquiries, or when SSA staff ask the representative to contact them.

Response: We did not make any changes in response to these comments. The proposed and final rules specifically states that representatives should not communicate with agency staff “outside the normal course of business or other prescribed procedures in an attempt to

inappropriately influence the processing or outcome of a claim(s).” Matters such as case status inquiries, requests for critical case flags, and Congressional inquiries are not outside the normal course of business, nor would they be attempts to inappropriately influence the processing or outcome of a claim.

Comment: Some commenters asked whether a representative would be guilty of misleading an ALJ if an ALJ finds that a claimant’s statements are “not fully credible.” These commenters also recommend adding “knowingly” to proposed §§ 404.1740(c)(3) and 416.1540(c)(3). Other commenters stated that requiring representatives to disclose matters of which they do not have actual knowledge would “chill” advocacy.

Response: On March 16, 2016, we published Social Security Ruling (SSR) 16-3p, “Titles II and XVI: Evaluation of Symptoms in Disability Claims” in the Federal Register.³ In this SSR, we eliminated the use of the term “credibility” from our sub-regulatory policy, because our regulations do not use this term. In doing so, we clarified that subjective symptom evaluation is not an examination of an individual’s character. Instead, we will more closely follow our regulatory language regarding symptom evaluation. With respect to the commenters’ concerns, the regulations include a number of factors that must be considered when evaluating symptoms, but a representative will not be found to be misleading an ALJ based solely on the results of this evaluation. Acknowledging the concern about the standard we will use in evaluating this type of situation, we are changing the “has or should have reason to believe” language in the proposed rule to “knows or should have known” in the final rule. This provision addresses only situations where the representative knows or should have known that specific statements, evidence, assertions, or representations are false or misleading.

Comment: Commenters objected to the 14-day limit to respond to charges and proposed that the 30-day limit in the current rules should be maintained (proposed §§ 404.1750 and 416.1550).

Response: We did not adopt this suggestion, because we believe that 14 days allows for a more timely resolution of misconduct matters. The 14-day timeframe provides the representative with sufficient time to respond to charges, which typically consists only of affirming or denying various factual allegations. However, in response to the commenters’

³ 81 FR 14166 (March 16, 2016). <https://www.federalregister.gov/documents/2016/03/16/2016-05916/social-security-ruling-16-3p-titles-ii-and-xvi-evaluation-of-symptoms-in-disability-claims>. Corrected at 81 FR 15776 (March 24, 2016). <https://www.federalregister.gov/documents/2016/03/24/2016-06598/social-security-ruling-16-3p-titles-ii-and-xvi-evaluation-of-symptoms-in-disability-claims>.

concerns that the proposed rule did not give representatives adequate time to respond to the charges, we added the term “business” to clarify that the time limit is 14 business days.

Comment: One commenter suggested that representatives be suspended from representing clients until the sanction process is complete.

Response: The Social Security Act requires that we give a representative notice and opportunity for a hearing before we suspend or disqualify him or her from practicing before us. We have long allowed representatives to continue to practice before us until there is a final decision on the case. We will continue to impose sanctions only after the administrative sanctions process is completed.

Comment: Some commenters suggested that a representative should not have to show good cause for objecting to the manner of hearing (proposed §§ 404.1765(d) and 416.1565(d)). One commenter stated that a hearing should always be in person unless a party can demonstrate that there is no genuine dispute as to any material fact.

Response: The hearing officer is in the best position to decide how to conduct a particular hearing in the most effective and efficient manner. A “good cause” standard for objecting to the manner of the hearing ensures that any objection to this issue is well-founded.

Comment: A few commenters stated that 14 days is insufficient time to request review of a hearing officer’s decision (proposed §§ 404.1775 and 416.1575). The commenters requested that the rule clarify whether it refers to business or calendar days.

Response: In response to these and other related comments, we adopted this suggestion and added the word “business” to clarify that the 14-day period means 14 business days.

Comment: Some commenters stated that proposed §§ 404.1785 and 416.1585 shift the burden from the Appeals Council to representatives to obtain evidence. They stated that by changing the language from the Appeals Council “shall require that the evidence be obtained” to “the Appeals Council will allow the party with the information to submit the additional evidence,” the regulation relieves the Appeals Council of the responsibility for obtaining evidence and allows the Appeals Council to ignore evidence submitted by another party.

Response: We changed the language in §§ 404.1785 and 416.1585 for clarity. In the adversarial proceedings to sanction representatives, the obligation to provide evidence to the Appeals Council is, and has always been, on the party with the information. Accordingly, we are not changing the language proposed in the NPRM.

Comment: Some commenters asked that we clarify which decisions we will publish and when we will publish them (proposed §§ 404.1790(f) and 416.1590(f)). They also inquired as to whether the public will have access to the published decisions, and they expressed concern that the decisions might contain personally identifiable information.

Response: On June 16, 2017, the Administrative Conference of the United States (ACUS) adopted Recommendation 2017-1, “Adjudication Materials on Agency Websites.”⁴ ACUS recommended that “[a]gencies should consider providing access on their websites to decisions and supporting materials (e.g., pleadings, motions, briefs) issued and filed in

⁴ Administrative Conference of the United States, Recommendation 2017-1, *Adjudication Materials on Agency Websites*, 82 FR 31039 (July 5, 2017).

adjudicative proceedings.” ACUS also recommended that “[a]gencies that adjudicate large volumes of cases that do not vary considerably in terms of their factual contexts or the legal analyses employed in their dispositions should consider disclosing on their websites a representative sampling of actual cases and associated adjudication materials.” We will work with ACUS with respect to this recommendation, and we will provide details in sub-regulatory guidance of how we will publish decisions after these final rules become effective. In response to the commenters’ concerns about privacy, we take concerns regarding personally identifiable information seriously, and the final rule makes clear that we will remove or redact any personally identifiable information from the decisions.

Comment: One commenter stated that proposed § 404.1790 should use a “preponderance of the evidence” standard rather than the “substantial evidence standard.”

Response: The Appeals Council is an appellate body that generally reviews decisions using the substantial evidence standard.⁵ Therefore, we are not changing this language.

Comment: Some commenters stated that the word “may” should be changed to “will” in proposed §§ 404.1790(f) and 416.1590(f), which state, “Prior to making a decision public, we may remove or redact information from the decision.”

Response: We adopted this comment and changed “may” to “will.” We will redact any personally identifiable information from the decisions.

Comment: One commenter stated that the 3-year ban on reinstatement after suspension is too harsh.

⁵ 20 CFR 404.970(a)(3), 416.1470(a)(3).

Response: The 3-year prohibition is actually a 3-year wait to reapply for reinstatement and we believe it is appropriate, because our experience shows that when the Appeals Council denies a request for reinstatement, the representative typically has not taken appropriate action to remedy the violation or does not understand its severity. We are implementing this change to ensure more thoroughly supported requests for reinstatement.

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 and are subject to OMB review.

Executive Order 13771

This rule is not subject to the requirements of Executive Order 13771 because it is administrative in nature and results in no more than de minimis costs.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect 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 burdens in §§ 404.1740(b)(5) through (9) and 416.1540(b)(5) through (b)(9) that require OMB clearance under the Paperwork Reduction Act of 1995 (PRA). As the PRA requires, we submitted a clearance request to OMB for approval of these sections. We will publish the OMB number and expiration date upon approval.

Further, these final rules contain information collection activities at 20 CFR 404.1750(c) and (e)(2), 404.1765(g)(1), 404.1775(b), 404.1799(d)(2), 416.1550(c) and (e)(2), 416.1565(g)(1), 416.1575(b), and 416.1599(d)(2). 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.

We published an NPRM on August 16, 2016 at 81 FR 54520. In that NPRM, we solicited comments under the PRA on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We received no public comments relating to any of these issues. We will not collect the information referenced in these burden sections until we receive OMB approval.

(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, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

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

Nancy A. Berryhill,
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR chapter III, parts 404 and part 416, 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, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a-6).

2. Revise §404.1705(b) 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 —

- (1) Is capable of giving valuable help to you in connection with your claim;
- (2) Is not disqualified or suspended from acting as a representative in dealings with us;
- (3) Is not prohibited by any law from acting as a representative; and
- (4) Is generally known to have a good character and reputation. Persons lacking good character and reputation, include, but are not limited to, persons who have a final conviction of a

felony (as defined by §404.1506(c)) or any crime involving moral turpitude, dishonesty, false statements, misrepresentation, deceit, or theft.

* * * * *

3. Amend §404.1740 as follows:

a. Revise paragraphs (b)(2)(vii) and (b)(3);

b. Add paragraphs (b)(5) through (10);

c. Revise paragraphs (c)(1) through (6) and (c)(7)(ii);

d. Remove paragraph (c)(7)(iii);

e. Revise paragraphs (c)(8) through (13); and

f. Add paragraph (c)(14).

The revisions and additions read as follows:

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

* * * * *

(b) * * *

(2) ***

(vii) Any other factors showing how the claimant's impairment(s) affects his or her ability to work. In §§404.1560 through 404.1569a, we discuss in more detail the evidence we need when we consider vocational factors.

(3) Conduct his or her dealings in a manner that furthers the efficient, fair, and orderly conduct of the administrative decision-making 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. A representative must know the significant issue(s) in a claim, have reasonable and adequate familiarity with the evidence in the case, and have a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations, the Social Security Rulings, and any other applicable provisions of law.

(ii) 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.

(iii) When requested, provide us, in a manner we specify, potential dates and times that the representative will be available for a hearing. We will inform the representative how many potential dates and times we require to coordinate the hearing schedule.

(iv) Only withdraw representation at a time and in a manner that does not disrupt the processing or adjudication of a claim and that provides the claimant adequate time to find new representation, if desired. A representative should not withdraw after we set the time and place for the hearing (see §404.936) unless the representative can show that a withdrawal is necessary due to extraordinary circumstances, as we determine on a case-by-case basis.

(v) Maintain prompt and timely communication with the claimant, which includes, but is not limited to, reasonably informing the claimant of all matters concerning the representation, consulting with the claimant on an ongoing basis during the entire representational period, and

promptly responding to a claimant's reasonable requests for information. When we evaluate whether a representative has maintained prompt and timely communication with the claimant, we will consider the difficulty the representative has in locating a particular claimant (e.g., because the claimant is homeless) and the representative's efforts to keep that claimant informed.

* * * * *

(5) Disclose in writing, at the time a medical or vocational opinion is submitted to us or as soon as the representative is aware of the submission to us, if:

(i) The representative's employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion; or

(ii) The representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of, the individual providing opinion evidence.

(6) Disclose to us immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against us.

(7) Disclose to us whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice, including instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action). If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disbarment or suspension to us.

(8) Disclose to us whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, including instances in which

a Federal program or agency took administrative action to disqualify the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action).

If the disqualification occurs after the appointment of the representative, the representative will immediately disclose the disqualification to us.

(9) Disclose to us whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary. If the removal or suspension occurs after the appointment of the representative, the representative will immediately disclose the removal or suspension to us.

(10) Ensure that all of the representative's employees, assistants, partners, contractors, or any person assisting the representative on claims for which the representative has been appointed, comply with these rules of conduct and standards of responsibility for representatives, when the representative has managerial or supervisory authority over these individuals or otherwise has responsibility to oversee their work. This includes a duty to take remedial action when:

(i) The representative's employees, assistants, partners, contractors or other individuals' conduct violates these rules of conduct and standards of responsibility; and

(ii) The representative has reason to believe a violation of these rules of conduct and standards of responsibility occurred or will occur.

(c) * * *

(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. This prohibition includes misleading a claimant, or prospective claimant or beneficiary, about the representative's services and qualifications.

(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. This prohibition includes soliciting any gift or any other item of value, other than what is authorized by law.

(3) Make or present, or participate in the making or presentation of, false or misleading oral or written statements, evidence, assertions, or representations about a material fact or law concerning a matter within our jurisdiction, in matters where the representative knows or should have known that those statements, evidence, assertions, or representations are false or misleading.

(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 decision-making 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 any means prohibited by law, or 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 decision-making 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) * * *

(ii) Behavior that has the effect of improperly disrupting proceedings or obstructing the adjudicative process, including but not limited to:

(A) Directing threatening or intimidating language, gestures, or actions at a presiding official, witness, contractor, or agency employee;

(B) Providing misleading information or misrepresenting facts that affect how we process a claim, including, but not limited to, information relating to the claimant's work activity or the claimant's place of residence or mailing address in matters where the representative knows or should have known that the information was misleading and the facts would constitute a misrepresentation; and

(C) Communicating with agency staff or adjudicators outside the normal course of business or other prescribed procedures in an attempt to inappropriately influence the processing or outcome of a claim(s).

(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.

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

(14) Fail to oversee the representative's employees, assistants, partners, contractors, or any other person assisting the representative on claims for which the representative has been appointed when the representative has managerial or supervisory authority over these individuals or otherwise has responsibility to oversee their work.

4. Amend §404.1745 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

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

* * * * *

(d) Has been, by reason of misconduct, disbarred or suspended from any bar or court to which he or she was previously admitted to practice (see §404.1770(a));

(e) Has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency (see §404.1770(a)); or

(f) Who, as a non-attorney, has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

5. Amend §404.1750 by revising paragraphs (c), (d), (e)(2), and (f) to read as follows:

§404.1750 Notice of charges against a representative.

* * * * *

(c) We will advise the representative to file an answer, within 14 business days from the date of the notice, or from the date the notice was delivered personally, stating why he or she should not be suspended or disqualified from acting as a representative in dealings with us.

(d) The General Counsel or other delegated official may extend the 14-day period specified in paragraph (c) of this section for good cause, in accordance with §404.911.

(e) * * *

(2) File the answer with the Social Security Administration, at the address specified on the notice, within the 14-day time period specified in paragraph (c) of this section.

(f) If the representative does not file an answer within the 14-day time period specified in paragraph (c) of this section (or the period extended in accordance with paragraph (d) of this section), he or she does not have the right to present evidence, except as may be provided in §404.1765(g).

6. 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)

through (f) 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.

7. Amend §404.1765 by revising paragraphs (b)(1), (c), (d)(1) and (3), and (g)(1) and (3) to read as follows:

§404.1765 Hearing on charges.

* * * * *

(b) Hearing officer. (1) The Deputy Commissioner for the Office of Hearings Operations or other delegated official will assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(c) Time and place of hearing. The hearing officer will mail the parties a written notice of the hearing at their last known addresses, at least 14 calendar days before the date set for the hearing. The notice will inform the parties whether the appearance of the parties or any witnesses will be in person, by video teleconferencing, or by telephone. The notice will also include requirements and instructions for filing motions, requesting witnesses, and entering exhibits.

(d) Change of time and place for hearing. (1) The hearing officer may change the time and place for the hearing, either on his or her own initiative, or at the request of the representative or the other party to the hearing. The hearing officer will not consider objections to the manner of appearance of parties or witnesses, unless the party shows good cause not to appear in the prescribed manner. To determine whether good cause exists for extending the deadline, we use the standards explained in §404.911.

* * * * *

(3) Subject to the limitations in paragraph (g)(2) of this section, the hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing notice of the decision.

* * * * *

(g) Conduct of the hearing. (1) The representative or the other party may file a motion for decision on the basis of the record prior to the hearing. The hearing officer will give the representative and the other party a reasonable amount of time to submit any evidence and to file briefs or other written statements as to fact and law prior to deciding the motion. If the hearing officer concludes that there is no genuine dispute as to any material fact and the movant is

entitled to a decision as a matter of law, the hearing officer may grant the motion and issue a decision in accordance with the provisions of §404.1770.

* * * * *

(3) The hearing officer will make the hearing open to the representative, to the other party, and to any persons the hearing officer or the parties consider necessary or proper. The hearing officer will inquire fully into the matters being considered, hear the testimony of witnesses, and accept any documents that are material.

* * * * *

8. Revise §404.1775(b) to read as follows:

§404.1775 Requesting review of the hearing officer's decision.

* * * * *

(b) Time and place of filing request for review. The party requesting review will file the request for review in writing with the Appeals Council within 14 business days from the date the hearing officer mailed the notice. The party requesting review will certify that a copy of the request for review and of any documents that are submitted have been mailed to the opposing party.

9. Revise §404.1780(a) to read as follows:

§404.1780 Appeals Council's review of hearing officer's decision.

(a) Upon request, the Appeals Council will give the parties a reasonable time to file briefs or other written statements as to fact and law, and to request to appear before the Appeals Council to present oral argument. When oral argument is requested within the time designated

by the Appeals Council, the Appeals Council will grant the request for oral argument and determine whether the parties will appear at the oral argument in person, by video teleconferencing, or by telephone. If oral argument is not requested within the time designated by the Appeals Council, the Appeals Council may deny the request.

* * * * *

10. Revise §404.1785 to read as follows:

§404.1785 Evidence permitted on review.

(a) General. Generally, the Appeals Council will not consider evidence in addition to that introduced at the hearing. However, if the Appeals Council finds the evidence offered is material to an issue it is considering, it may consider that evidence, as described in paragraph (b) of this section.

(b) Individual charged filed an answer. (1) When the Appeals Council finds that additional evidence material to the charges is available, and the individual charged filed an answer to the charges, the Appeals Council will allow the party with the information to submit the additional evidence.

(2) Before the Appeals Council admits additional evidence into the record, it will mail a notice to the parties, informing them that evidence about certain issues was submitted. The Appeals Council will give each party a reasonable opportunity to comment on the evidence and to present other evidence that is material to an issue it is considering.

(3) The Appeals Council will determine whether the additional evidence warrants a new review by a hearing officer or whether the Appeals Council will consider the additional evidence as part of its review of the case.

(c) Individual charged did not file an answer. If the representative did not file an answer to the charges, the representative may not introduce evidence that was not considered at the hearing.

11. Amend §404.1790 by revising paragraph (a) and adding paragraph (f) to read as follows:

§404.1790 Appeals Council's decision.

(a) The Appeals Council will base its decision upon the evidence in the hearing record and any other evidence it may permit on review. The Appeals Council will affirm the hearing officer's decision if the action, findings, and conclusions are supported by substantial evidence. If the hearing officer's decision is not supported by substantial evidence, the Appeals Council will either:

- (1) Reverse or modify the hearing officer's decision; or
- (2) Return the case to the hearing officer for further proceedings.

* * * * *

(f) The Appeals Council may designate and publish certain final decisions as precedent for other actions brought under its representative conduct provisions. Prior to making a decision public, we will remove or redact personally identifiable information from the decision.

12. Amend §404.1799 by revising paragraphs (a), (d)(2), and (f) to read as follows:

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

(a) After more than one year has passed, a person who has been suspended or disqualified may ask the Appeals Council for permission to serve as a representative again. The Appeals Council will assign and process a request for reinstatement using the same general procedures described in §404.1776.

* * * * *

(d)* * *

(2) If a person was disqualified because he or she had been disbarred, suspended, or removed from practice for the reasons described in §404.1745(d) through (f), the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she has been admitted (or readmitted) to and is in good standing with the court, bar, Federal program or agency, or other governmental or professional licensing authority from which he or she had been disbarred, suspended, or removed from practice.

* * * * *

(f) If the Appeals Council decides not to grant the request, it will not consider another request before the end of 3 years from the date of the notice of the previous denial.

Part 416 – SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND
DISABLED

Subpart O - [Amended]

13. 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)).

14. Revise §416.1505(b) 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 —

- (1) Is capable of giving valuable help to you in connection with your claim;
- (2) Is not disqualified or suspended from acting as a representative in dealings with us;
- (3) Is not prohibited by any law from acting as a representative; and

(4) Is generally known to have a good character and reputation. Persons lacking good
character and reputation, include, but are not limited to, persons who have a final conviction of a
felony (as defined by §404.1506(c) of this chapter), or any crime involving moral turpitude,
dishonesty, false statement, misrepresentations, deceit, or theft.

* * * * *

15. Amend §416.1540 follows:

- a. Revise paragraphs (b)(2)(vii) and (b)(3);
- b. Add paragraphs (b)(5) through (10);
- c. Revise paragraphs (c)(1) through (6) and (c)(7)(ii);
- d. Remove paragraph (c)(7)(iii);
- e. Revise paragraphs (c)(8) through (13); and
- f. Add paragraph (c)(14).

The revisions and additions read as follows:

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

* * * * *

(b) * * *

(2) * * *

(vii) Any other factors showing how the claimant's impairment(s) affects his or her ability to work. In §§416.960 through 416.969a, we discuss in more detail the evidence we need when we consider vocational factors.

(3) Conduct his or her dealings in a manner that furthers the efficient, fair, and orderly conduct of the administrative decision-making 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. A

representative must know the significant issue(s) in a claim, have reasonable and adequate familiarity with the evidence in the case, and have a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations, the Social Security Rulings, and any other applicable provisions of law.

(ii) 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.

(iii) When requested, provide us, in a manner we specify, potential dates and times that the representative will be available for a hearing. We will inform the representative how many potential dates and times we require to coordinate the hearing schedule.

(iv) Only withdraw representation at a time and in a manner that does not disrupt the processing or adjudication of a claim and that provides the claimant adequate time to find new representation, if desired. A representative should not withdraw after we set the time and place for the hearing (see §416.1436) unless the representative can show that a withdrawal is necessary due to extraordinary circumstances, as we determine on a case-by-case basis.

(v) Maintain prompt and timely communication with the claimant, which includes, but is not limited to, reasonably informing the claimant of all matters concerning the representation, consulting with the claimant on an ongoing basis during the entire representational period, and promptly responding to a claimant's reasonable requests for information. When we evaluate whether a representative has maintained prompt and timely communication with the claimant, we will consider the difficulty the representative has in locating a particular claimant (e.g., because the claimant is homeless) and the representative's efforts to keep that claimant informed.

* * * * *

(5) Disclose in writing, at the time a medical or vocational opinion is submitted to us or as soon as the representative is aware of the submission to us, if:

(i) The representative's employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion; or

(ii) The representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of, the individual providing opinion evidence.

(6) Disclose to us immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against us.

(7) Disclose to us whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice, including instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action). If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disbarment or suspension to us.

(8) Disclose to us whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, including instances in which a Federal program or agency took administrative action to disqualify the representative in lieu of disciplinary proceedings (e.g. acceptance of voluntary resignation pending disciplinary action). If the disqualification occurs after the appointment of the representative, the representative will immediately disclose the disqualification to us.

(9) Disclose to us whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary. If the removal or suspension occurs after the appointment of the representative, the representative will immediately disclose the removal or suspension to us.

(10) Ensure that all of the representative's employees, assistants, partners, contractors, or any person assisting the representative on claims for which the representative has been appointed, comply with these rules of conduct and standards of responsibility for representatives, when the representative has managerial or supervisory authority over these individuals or otherwise has responsibility to oversee their work. This includes a duty to take remedial action when:

(i) The representative's employees, assistants, partners, contractors or other individuals' conduct violates these rules of conduct and standards of responsibility; and

(ii) The representative has reason to believe a violation of these rules of conduct and standards of responsibility occurred or will occur.

(c) * * *

(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. This prohibition includes misleading a claimant, or prospective claimant or beneficiary, about the representative's services and qualifications.

(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. This prohibition includes soliciting any gift or any other item of value, other than what is authorized by law.

(3) Make or present, or participate in the making or presentation of, false or misleading oral or written statements, evidence, assertions, or representations about a material fact or law concerning a matter within our jurisdiction, in matters where the representative knows or should have known that those statements, evidence, assertions or representations are false or misleading.

(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 decision-making 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 any means prohibited by law, or 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 decision-making 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) * * *

(ii) Behavior that has the effect of improperly disrupting proceedings or obstructing the adjudicative process, including but not limited to:

(A) Directing threatening or intimidating language, gestures, or actions at a presiding official, witness, contractor, or agency employee;

(B) Providing misleading information or misrepresenting facts that affect how we process a claim, including, but not limited to, information relating to the claimant's work activity or the claimant's place of residence or mailing address in matters where the representative knows or should have known that the information was misleading and the facts would constitute a misrepresentation; and

(C) Communicating with agency staff or adjudicators outside the normal course of business or other prescribed procedures in an attempt to inappropriately influence the processing or outcome of a claim(s).

(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 XVI of the Act, or to exercise the authority of a representative described in §416.1510.

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

(14) Fail to oversee the representative's employees, assistants, partners, contractors, or any other person assisting the representative on claims for which the representative has been appointed when the representative has managerial or supervisory authority over these individuals or otherwise has responsibility to oversee their work.

16. Amend §416.1545 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

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

* * * * *

(d) Has been, by reason of misconduct, disbarred or suspended from any bar or court to which he or she was previously admitted to practice (see §416.1570(a));

(e) Has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency (see §416.1570(a)); or

(f) Who, as a non-attorney, has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

17. Amend §416.1550 by revising paragraphs (c), (d), (e)(2), and (f) to read as follows:

§416.1550 Notice of charges against a representative.

* * * * *

(c) We will advise the representative to file an answer, within 14 business days from the date of the notice, or from the date the notice was delivered personally, stating why he or she should not be suspended or disqualified from acting as a representative in dealings with us.

(d) The General Counsel or other delegated official may extend the 14-day period specified in paragraph (c) of this section for good cause in accordance with §416.1411.

(e) * * *

(2) File the answer with the Social Security Administration, at the address specified on the notice, within the 14-day time period specified in paragraph (c) of this section.

(f) If the representative does not file an answer within the 14-day time period specified in paragraph (c) of this section (or the period extended in accordance with paragraph (d) of this section), he or she does not have the right to present evidence, except as may be provided in §416.1565(g).

18. 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) through (f) 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.

19. Amend §416.1565 by revising paragraphs (b)(1), (c), (d)(1) and (3), and (g)(1) and (3) as follows:

§416.1565 Hearing on charges.

* * * * *

(b) Hearing officer. (1) The Deputy Commissioner for the Office of Hearings Operations or other delegated official will assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(c) Time and place of hearing. The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 14 calendar days before the date set for the hearing. The notice will inform the parties whether the appearance of the parties or any witnesses will be in person, by video teleconferencing, or by telephone. The notice will also include requirements and instructions for filing motions, requesting witnesses, and entering exhibits.

(d) Change of time and place for hearing. (1) The hearing officer may change the time and place for the hearing, either on his or her own initiative, or at the request of the representative or the other party to the hearing. The hearing officer will not consider objections to the manner of appearance of parties or witnesses, unless the party shows good cause not to appear in the prescribed manner. To determine whether good cause exists for extending the deadline, we use the standards explained in §416.1411.

* * * * *

(3) Subject to the limitations in paragraph (g)(2) of this section, the hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing notice of the decision.

* * * * *

(g) Conduct of the hearing. (1) The representative or the other party may file a motion for decision on the basis of the record prior to the hearing. The hearing officer will give the representative and the other party a reasonable amount of time to submit any evidence and to file briefs or other written statements as to fact and law prior to deciding the motion. If the hearing officer concludes that there is no genuine dispute as to any material fact and the movant is entitled to a decision as a matter of law, the hearing officer may grant the motion and issue a decision in accordance with the provisions of §416.1570.

* * * * *

(3) The hearing officer will make the hearing open to the representative, to the other party, and to any persons the hearing officer or the parties consider necessary or proper. The

hearing officer will inquire fully into the matters being considered, hear the testimony of witnesses, and accept any documents that are material.

* * * * *

20. Revise §416.1575(b) to read as follows:

§416.1575 Requesting review of the hearing officer's decision.

* * * * *

(b) Time and place of filing request for review. The party requesting review will file the request for review in writing with the Appeals Council within 14 business days from the date the hearing officer mailed the notice. The party requesting review will certify that a copy of the request for review and of any documents that are submitted have been mailed to the opposing party.

21. Revise §416.1580(a) to read as follows:

§416.1580 Appeals Council's review of hearing officer's decision.

(a) Upon request, the Appeals Council will give the parties a reasonable time to file briefs or other written statements as to fact and law, and to request to appear before the Appeals Council to present oral argument. When oral argument is requested within the time designated by the Appeals Council, the Appeals Council will grant the request for oral argument and determine whether the parties will appear at the oral argument in person, by video teleconferencing, or by telephone. If oral argument is not requested within the time designated by the Appeals Council, the Appeals Council may deny the request.

* * * * *

22. Revise §416.1585 to read as follows:

§416.1585 Evidence permitted on review.

(a) General. Generally, the Appeals Council will not consider evidence in addition to that introduced at the hearing. However, if the Appeals Council finds the evidence offered is material to an issue it is considering, it may consider that evidence, as described in paragraph (b) of this section.

(b) Individual charged filed an answer. (1) When the Appeals Council finds that additional evidence material to the charges is available, and the individual charged filed an answer to the charges, the Appeals Council will allow the party with the information to submit the additional evidence.

(2) Before the Appeals Council admits additional evidence into the record, it will mail a notice to the parties, informing them that evidence about certain issues was submitted. The Appeals Council will give each party a reasonable opportunity to comment on the evidence and to present other evidence that is material to an issue it is considering.

(3) The Appeals Council will determine whether the additional evidence warrants a new review by a hearing officer or whether the Appeals Council will consider the additional evidence as part of its review of the case.

(c) Individual charged did not file an answer. If the representative did not file an answer to the charges, the representative may not introduce evidence that was not considered at the hearing.

23. Amend §416.1590 by revising paragraph (a) and adding paragraph (f) to read as follows:

§416.1590 Appeals Council's decision.

(a) The Appeals Council will base its decision upon the evidence in the hearing record and any other evidence it may permit on review. The Appeals Council will affirm the hearing officer's decision if the action, findings, and conclusions are supported by substantial evidence. If the hearing officer's decision is not supported by substantial evidence, the Appeals Council will either:

- (1) Reverse or modify the hearing officer's decision; or
- (2) Return a case to the hearing officer for further proceedings.

* * * * *

(f) The Appeals Council may designate and publish certain final decisions as precedent for other actions brought under its representative conduct provisions. Prior to making a decision public, we will remove or redact personally identifiable information from the decision.

24. Amend §416.1599 by revising paragraphs (a), (d)(2), and (f) to read as follows:

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

(a) After more than one year has passed, a person who has been suspended or disqualified may ask the Appeals Council for permission to serve as a representative again. The Appeals Council will assign and process a request for reinstatement using the same general procedures described in §416.1576.

* * * * *

(d)* * *

(2) If a person was disqualified because he or she had been disbarred, suspended, or removed from practice for the reasons described in §416.1545(d) through (f), the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she has been admitted (or readmitted) to and is in good standing with the court, bar, Federal program or agency, or other governmental or professional licensing authority from which he or she had been disbarred, suspended, or removed from practice.

* * * * *

(f) If the Appeals Council decides not to grant the request, it will not consider another request before the end of 3 years from the date of the notice of the previous denial.

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