collect earnings information, through a number of other collection instruments already approved by OMB. In most cases, we will obtain this information through forms W–2 and schedule SEs approved for use by IRS. In those cases where additional information is required, we expect to obtain that information during the initial claims interview through forms approved for use by SSA (primarily the SSA–1 (Application for Retirement Benefits; OMB Approval Number 0960–0007) and the SSA–795 (Statement of Claimant or Other Person; OMB Approval Number 0960–0045)). In addition, SSA has developed a new form to collect the additional information needed from employers to correctly adjust benefits in special wage payment situations. We will submit this form to OMB for its review under section 3507(d) of 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)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: November 1, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, part 404 of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404 (a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, and 902(a)(5)).

2. Section 404.452 is amended by revising paragraphs (a)(1) and (a)(2), revising the last sentence of paragraph (b), and revising paragraph (d) to read as follows:

§ 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment.

(a) * * *

(1) The individual attained the age of 70 in or before the first month of entitlement to benefits in the taxable year, or

(2) The individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which the individual was entitled to benefits and was under age 70.

(b) * * * The filing of an income tax return or a form W–2 with the Internal Revenue Service may serve as the report required to be filed under the provisions of this section where the income tax return or form W–2 shows the same wages and net earnings from self-employment that must be reported to the Administration under this section.

* * * * *

(d) *Information to be provided to us.* The report should show the name and social security claim number of the beneficiary about whom the report is made; identify the taxable year for which the report is made; show the total amount of wages for which the beneficiary rendered services during the taxable year (if applicable), the amount of net earnings from self-employment for such year (if applicable); and show the name and address of the individual making the report. To overcome the presumption that the beneficiary rendered services for wages exceeding the allowable amount and rendered substantial services in self-employment in each month (see § 404.435), we must also be told the specific months in which the beneficiary did not render services in employment for wages of more than the allowable amount (as described in § 404.435) and did not render substantial services in self-employment (as described in §§ 404.446 and 404.447).

* * * * *

[FR Doc. 97–100 Filed 1–2–97; 8:45 am]

BILLING CODE 4190–29–P

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD73

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

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: These proposed rules would revise our regulations governing representation of claimants seeking Social Security or supplemental security income (SSI) benefits under title II or XVI of the Social Security Act (the Act). They would establish standards of conduct and responsibility for persons serving as representatives and further define our expectations regarding their obligations to those they represent and to us. They would include statutorily and administratively imposed requirements and prohibitions.

DATES: To be sure that your comments are considered, we must receive them no later than March 4, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov'', or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758.

SUPPLEMENTARY INFORMATION

Purpose and Scope

Existing regulations governing representatives' conduct (§§ 404.1740, *et seq*. and 416.1540, *et seq*.) under titles II and XVI primarily reiterate various statutory provisions set forth in the Act. Sections 404.1745 and 416.1545 also provide that a representative may be suspended or disqualified if he or she has violated those rules, been convicted of a violation of section 206 of the Act or ''otherwise refused to comply with our rules and regulations on representing claimants in dealings with us.'' This is consistent with section 206(a)(1) of the Act, which provides that the Commissioner of Social Security (the Commissioner) may ''suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations * * *.'' Since their inception, the regulations have reflected the Commissioner's (formerly the Secretary of Health and Human Services' (the Secretary's)) broad authority over matters involving representatives' activities in their dealings with us.

These proposed rules specifically provide enforceable standards governing aspects of practice, performance and conduct for all persons who act as claimants' representatives. The proposed rules also recognize potential changes in the procedures used by the

Social Security Administration (SSA) to process claims, the increased participation of compensated representatives in the adjudicative process, the special circumstances presented by SSA's nonadversarial hearings, and statutory amendments, such as the anti-fraud provisions of the Social Security Independence and Program Improvements Act of 1994, Public Law (Pub. L.) 103–296. The existing regulations pertaining to representatives' conduct have been largely unchanged since their promulgation in 1980, and do not adequately address actual and potential problems resulting from the participation of representatives in the claims process.

Although we realize that most representatives do a conscientious job in assisting their clients, our experience has convinced us that there are sufficient instances of questionable conduct to warrant promulgation of additional regulatory authority. The existing regulations do not address a representative's willful or negligent delay, refusal to cooperate, failure to adequately prepare and present the claimant's case and other deficiencies. The proposed rules correct these omissions and are necessary to protect the claimant and the process from those individuals who are incapable of providing, or unwilling to provide, meaningful assistance in expeditiously resolving pending claims.

Although there are disparities in the levels of skill, experience, education and professional status among those who serve as representatives, we believe all such individuals must be bound by the same set of rules. In determining appropriate standards, we considered the requirements and intent of the Act and its implementing regulations, administrative law principles applicable to adjudication and the American Bar Association's (ABA) Model Rules of Professional Conduct and Model Code of Professional Responsibility.

There are comparable rules in part 410, subpart F (§§ 410.684, *et seq.*) governing representative conduct under the Black Lung benefits program. We are not revising those rules, however. Executive Order 12866, Regulatory Planning and Review, issued by the President on October 4, 1993 (58 FR 51735), provides that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need * * *.'' Because we have found no problems with representative conduct in claims involving Black Lung benefits comparable to those that have led to these proposed rules for titles II and XVI, there is no compelling need to revise the Black Lung rules.

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

To address the concerns of claimants and others with a stake or interest in the issue of claimant representation in drafting the proposed rules, we obtained information from various sources. We conducted focus groups with claimants and beneficiaries as part of our disability process redesign initiative. We also used information gathered in investigating nearly 600 complaints of representative misconduct made by claimants from 1988 to date.

Communication With Claimants

Participants in the public dialogue conducted in conjunction with our disability process redesign initiative frequently complained about the lack of timely or effective assistance on the part of claimants' representatives. They felt that some representatives delayed submitting evidence until the case reached the hearing level in order to increase the amount of past-due benefits and thereby increase the amount of their fees. Others did not believe that all representatives provided adequate assistance in the preparation or presentation of the case. In the latter category, there were recurring complaints that the claimant did not see or have any contact with the representative until shortly before the hearing when the representative, allegedly for the first time, would review the file. These claimants did not believe that the representative was adequately prepared to present their case, or had provided any assistance in ensuring that the record was complete. Some individuals complained that their representatives' failure to obtain medical documentation for inclusion in the record, despite being informed that the evidence was available and material, forced them personally to obtain the required documentation. The dissatisfaction with the quality and effectiveness of representatives' services was strong enough to prompt the Disability Process Redesign Team to include within its recommendations provisions aimed at correcting shortcomings in the representatives' performance.

The comments received from focus groups and at public meetings are consistent with written complaints we receive about representatives who do not participate or cooperate in the processing of claims. We have seen instances where a representative demands that all communications with the claimant be made through his or her office and refuses, at lower levels of adjudication, to produce available medical evidence or make his or her client available for a consultative examination. Some representatives, as a matter of practice, do not submit available evidence until the day of the hearing even though in some cases the matter might have been favorably decided some time before on the basis of new medical reports. In addition to delaying payment unnecessarily in some cases, this practice can further delay disposition of a claim when the administrative law judge or expert witnesses do not have an opportunity to review and consider the new evidence prior to the hearing.

Consultation With the Representative Community

In February 1995 we requested comments on a draft proposal from 33 separate groups and organizations comprising the attorney and non-attorney representative community. These groups included professional organizations, interest groups, think tanks, the Legal Services Corporation, and various private representative organizations.

We received 92 individual responses. Many were supportive, especially regarding the need to provide standards for non-attorney representatives. Many, however, were opposed to more regulation of their professional conduct. We carefully considered all of the individual views and concerns in formulating these proposed rules. A summary of the major views and concerns and our responses follows.

1. A common complaint was that the proposed standards used terms that were too vague and ambiguous, such as ''timely,'' ''diligence,'' ''as soon as possible'' and ''matters at issue.'' To be responsive to these concerns and further clarify our requirements, we have modified the language that was most often identified as ambiguous.

For example, the earlier language in what are now proposed §§ 404.1740(b)(1) and (2) and 416.1540(b)(1) and (2) called for representatives to diligently develop the record and submit evidence as soon as possible. In these proposed rules, we ask representatives to submit evidence ''as soon as practicable, but no later than

the due date designated by the Agency, except for good cause shown.'' We believe this standard is more specific, and gives representatives some discretion in the submission of information and evidence. Also, in place of the phrase ''matters at issue'' in what are now proposed §§ 404.1740(b)(2)(ii) and 416.1540(b)(2)(ii), we say ''pertaining to specifically identified issues.'' In proposed §§ 404.1740(b)(3)(i) and 416.1540(b)(3)(i), we narrowed the ''matters at issue'' to those matters ''establishing entitlement or eligibility to the claimed right or benefit.''

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

It is our position that the proposed rules define with specificity the types of conduct subject to regulation. Similar to other codes of conduct (e.g., the ABA Model Rules), the proposed regulations do not list every act or omission which might constitute a violation. Such a listing would be virtually impossible given the limitless factual situations involved in claims processing. Rather, we intend to deal with each complaint on a case-by-case basis to determine whether under the attending circumstances, a representative engaged in actionable misconduct. In making this determination we will apply an objective test, that is, whether a reasonable person, in light of all the circumstances, would consider the act or omission violative of the rule in question.

This has been our practice in the past. In all but the most egregious instances of potential misconduct, we give representatives notice of the alleged wrongdoing and an opportunity to respond before formal charges are ever proposed. Once it is determined that a formal complaint is warranted, the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate) reviews the proposal independently from the investigative component and makes a decision whether to file a complaint.

We believe that the internal checks and balances within our operating procedures provide adequate safeguards against abuse of discretion or arbitrary action. Even after a complaint is served, a representative is entitled to file an answer and petition for withdrawal of the complaint. Thereafter, the accused party has a right to a full evidentiary hearing, and a right to request review of the resulting decision. In view of these elaborate safeguards, administered at each step by independent decision makers, it is unlikely that an honest mistake or a reasonable misunderstanding on the part of a representative would result in sanctions.

2. A majority of responding attorneys complained that, since their conduct already is governed by their individual State bar codes of conduct and ethical rules, a separate SSA code of conduct is redundant. Several individuals expressed the opinion that SSA simply can refer an attorney to his or her State bar disciplinary authority when we suspect misconduct. Another recognized that State bar rules are not applicable to representatives who are not attorneys, but opined that there are not enough non-attorney representatives to warrant standards of conduct for non-attorneys.

Bar rules differ in language and format among the 50 States, the District of Columbia and the U.S. territories. As the administrator of a national program, however, SSA should not be expected or required to apply local rules, or local interpretations of the rules, to problems which extend beyond the boundaries of local jurisdictions. Furthermore, if we applied local rules or local interpretations rather than a national standard, it is conceivable that attorneys in one area could be subject to discipline for conduct that another jurisdiction would not find actionable. We do not believe it benefits the attorneys, the claimants or SSA to have this type of inconsistency in effecting the Commissioner's statutory obligation to regulate the conduct of representatives.

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

Also, under existing laws, referral of suspected attorney misconduct to a State bar disciplinary authority could possibly constitute a violation of the provisions of section 1106 of the Act and, under certain circumstances, the Privacy Act (5 U.S.C. 552a) on maintaining the confidentiality of personal information that we maintain in our files.

A major concern is the fact that currently there is no external authority enforcing standards or rules of conduct for representatives who are not attorneys. Contrary to one individual's opinion, individual non-attorney representatives and representative organizations represent a substantial number of claimants. Within the last 7 years, suspension/disqualification actions against non-attorneys comprised approximately 36 percent of SSA's representative disciplinary actions. Therefore, it is essential to provide rules that will govern the conduct of non-attorneys who practice before us. Moreover, it is only fair and equitable to hold all representatives who practice before us to the same standards.

3. A majority of responding individuals objected to the earlier wording of what now are proposed §§ 404.1740(b)(1) and 416.1540(b)(1), which required representatives to ''[e]xercise diligence in developing the record on behalf of his or her client by obtaining and submitting, as soon as possible, all information and evidence intended for inclusion in the record.''

They argued that SSA was attempting to improperly delegate to claimants and representatives its own duty to develop the record, which could place representatives at the mercy of arbitrary or unreasonable SSA requests for information. They also pointed out that the original language did not allow for discretion in situations involving uncooperative treating physicians and uncooperative or uneducated claimants.

The claimant has a right to receive benefits under the Act only after establishing that he or she satisfies the underlying statutory and regulatory requirements.

Historically, SSA has assisted claimants in gathering evidence and perfecting the claim. Current workloads and revised processing procedures will require, however, that the claimant take a more active role in establishing entitlement or eligibility. The representative, as the designated agent of the claimant, will be called upon to respond to our requests just as an unrepresented claimant will be required to cooperate.

Our intention is for the representative to ensure that the claimant's evidence is available for inclusion in the record when the claim is ready for adjudication, unless there is a valid reason for the delay. This is consistent with the ABA Model Rules, which state at Rule 3.2—Expediting Litigation, that ''[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.'' The comment accompanying the rule states that ''[d]elay should not be indulged merely for the convenience of the advocates,'' and ''[r]ealizing financial or other

benefit from otherwise improper delay in litigation is not a legitimate interest of the client.''

It is in the best interests of the claimant to have full adjudication of the claim as early in the adjudicative process as possible. Although there will be instances when evidence is not readily available despite reasonable effort, we believe that in most cases the information can be secured timely.

In our experience, some representatives do not submit evidence promptly and fail to cooperate with our attempts to obtain necessary information and evidence. Under our current rules at §§ 404.1715(a) and 416.1515(a), we are required to send the representative requests for information and evidence. Since we may not contact a represented claimant directly, the claimant often does not even know the claim is being delayed by the representative. Although this practice is not pervasive, when it does occur we are required to engage in unwarranted and time-consuming efforts to develop the evidence. More importantly, however, the claimant is harmed by delay in the disposition of the claim.

We do not believe that our proposed rules unduly burden claimants or representatives. The duties in question only require a good faith effort to assist the claimant in timely submission of material information and evidence that the claimant wants included in the record.

Many individuals complained that compliance with what are now proposed §§ 404.1740(b)(2) and 416.1540(b)(2), which originally asked representatives to ''[p]romptly comply, at every stage of the administrative review process, with our requests for information and evidence,'' might place them in violation of their own State bar rules requiring zealous advocacy and protection of confidential client information.

We recognize that State bar rules vary in their interpretation of an attorney's duty to maintain the confidences and secrets of the client. We believe that our proposed rules, as we have modified them in response to individual representatives' concerns, will permit an attorney to satisfy our requirements without risking unauthorized disclosures of information.

Under the ABA Model Rules, an attorney may reveal information that is ''impliedly authorized in order to carry out the representation.'' Moreover, Rule 1.6a provides that the attorney is not barred from making disclosures if ''the client consents after consultation.'' We believe that an attorney can act in accordance with State bar rules by informing the client that SSA requires certain information and evidence from claimants, and that as the claimant's representative, the attorney must either comply with these requests or tell SSA that the claimant declines to furnish the data. Taking these rules into consideration, we have modified proposed §§ 404.1740(b)(2) and 416.1540(b)(2) to permit representatives to protect a client's confidentiality by notifying SSA that ''the claimant does not consent to release of some or all of the [requested] material.''

We do not believe, however, that deliberate and purposeful withholding from us of information or evidence is justifiable under the various State bar rules. In fact, such actions may be illegal and subject to severe penalty. Section 206 of Public Law 103–296 adds a new section 1129 to the Social Security Act, providing that: ''Any person * * * who makes, or causes to be made, a statement or representation of a material fact for use in determining [the right to benefits under title II or title XVI] that the person knows or should know is false or misleading or knows or should know omits a material fact * * * shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 * * *.'' A material fact is defined as ''one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits * * *.'' (See sections 1129(a) (1) and (2) of the Act.)

Further, section 205(u)(1)(A) of the Act, as added by section 206(d) of Public Law 103–296, provides that the Commissioner ''shall immediately redetermine the entitlement of individuals to monthly insurance benefits under * * * [title II] if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits * * *.'' Section 1631(e)(6)(A)(i) of the Act, which also was added by section 206(d) of Public Law 103–296, is a comparable provision covering eligibility for title XVI benefits. Similar fault is defined in sections 205(u)(2) and 1631(e)(6)(B) of the Act as knowingly making ''an incorrect or incomplete statement that is material to the determination'' or knowingly concealing ''information that is material to the determination.'' Moreover, section 205(a) of the Act provides that the Commissioner shall adopt ''reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.'' This section is made applicable to the title XVI program by section 1631(d)(1) of the Act.

In our view, the provisions of proposed §§ 404.1740(b)(2) and 416.1540(b)(2) require the representative to comply with our requests made under statutory authority for full and accurate disclosure of material facts to the same extent that the claimant is required to do so. In assessing any allegation raised against a representative regarding failure to comply with our request for information, we will consider the reasonableness of the request, the relevance of the information requested, and any factors that may interfere with the procurement of requested information.

4. A few individuals questioned the need for any rules or standards of conduct, expressing their opinion that representatives rarely engage in misconduct sufficient to warrant formalized investigative and disciplinary procedures. Several speculated that only representatives who were not attorneys engaged in misconduct warranting SSA attention.

From August 1988 through August 1995, the Office of Hearings and Appeals received approximately 566 referrals of representative misconduct. Some of these referrals complained of questionable conduct which warranted corrective action, but which was not covered by any existing regulatory authority. Of the remaining referrals, we were able to close many without formal disciplinary action. In approximately 160 claims, we closed the disciplinary referral upon the representative's refund to a claimant or to SSA of monies collected without authorization or as a result of Agency overpayments to representatives. As of August 15, 1995, we have collected from these representatives a total of $279,411.98, returning $176,096 of this amount to the claimants who had been overcharged, and the remainder to SSA.

We also have filed approximately 136 formal complaints against representatives. We were able to resolve many complaints before a formal hearing. The remainder, however, have resulted in the suspension or disqualification of 57 representatives. Approximately 64 percent of the suspended or disqualified representatives were attorneys.

We believe these general statistics provide ample evidence of the need to continue our investigative and disciplinary role. We expect the proposed rules and standards to provide the representative community with improved notice of the conduct we view as inappropriate, and supply SSA with

the tools to address representatives' conduct that falls below our published standards.

5. Several individuals were confused about the addition of the word ''retain'' in what are now proposed §§ 404.1740(c)(2) and 416.1540(c)(2), which state that a representative shall not ''[k]nowingly charge, collect or retain * * * any fee for representational services in violation of applicable law or regulation.'' They questioned whether this was a change in SSA's policy permitting representatives to collect money toward payment of their fees before any fee is authorized, as long as the collection is placed in a trust or escrow account.

This is not a policy change. Social Security Ruling (SSR) 82–39 still permits representatives to solicit from claimants a deposit of money into a trust or escrow account as a means of assuring payment of the fees for services in connection with such representation, as long as the claimant willingly enters into the trust or escrow agreement and willingly deposits the money in the trust or escrow account; none of the money in the account is paid over to the representative unless and until SSA authorizes a fee, and then only in an amount up to, but not exceeding, the authorized fee; and any funds in the account in excess of the authorized fee are refunded promptly to the claimant.

We have added the word ''retain'' to cover those situations in which the representative has charged or collected a fee and has improperly retained the fee despite a claimant's or SSA's request for refund. If a representative places the money charged and collected from a claimant into a trust or escrow account, and complies with the conditions set forth in SSR 82–39, we will not consider that money to be an improperly retained fee.

6. A few individuals were concerned with what are now proposed §§ 404.1740(c)(3) and 416.1540(c)(3), which prohibit representatives from knowingly making or participating in the making or presentation of false oral or written statements, assertions or representations about a material fact concerning a matter within our jurisdiction. They suggested that it required them to be a guarantor of a claimant's testimony, or to impeach their own client if they suspected that the client was presenting false evidence or testimony.

This prohibition applies only to knowing presentations of false statements. There already exist both criminal and civil penalties for knowingly making or participating in the making of false representations to a claimant or to SSA. (See 18 U.S.C. 1001 and sections 208 and 1129 of the Act.) By incorporating this prohibition in our rules of conduct, we place representatives on notice that, in addition to the criminal and civil sanctions possible for this misconduct, the making or presentation of such false statements also may lead to their suspension or disqualification from representing claimants in matters before us.

We do not place an affirmative duty on representatives to impeach their clients or guarantee a client's honesty. Nonetheless, we do expect representatives who practice before us not to knowingly prompt, encourage or engage in false or misleading representations about material facts in connection with the representation of a claimant.

7. Several individuals expressed concern about what are now proposed §§ 404.1740(c)(4) and 416.1540(c)(4), which prohibit willfully or negligently delaying, or causing to be delayed, the processing of a claim. They suggested that it was overly broad, and could be interpreted to prohibit even such reasonable delays as scheduling conflicts, illness, family emergency and claimants' continuing treatment.

Black's Law Dictionary defines an act or omission as willfully done ''if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done.'' It includes actions engaged in with a bad motive or purpose, with indifference to the natural consequences, or without justifiable excuse. A negligent action involves the failure to exhibit the conduct or care a reasonable person would exhibit under similar circumstances. It is characterized chiefly by inadvertence, thoughtlessness and inattention.

Under our proposed standard prohibiting willful or negligent delay, SSA does not intend to penalize reasonable or justifiable delays, or delays that may occur even when reasonable care is taken in claim preparation. In determining whether a representative has violated this rule we will look to the gravity of the act or omission, the consequences for the claimant, whether the behavior reflects a pattern or practice, and other factual circumstances particular to the matter.

8. The draft proposal had language prohibiting representatives from engaging in disruptive, defiant or confrontational behavior or repeated challenges to the presiding official's authority, which clearly exceed the bounds of zealous advocacy. Many individuals found this provision to be vague and an interference with their duty to provide zealous advocacy.

In response to these concerns, we modified the language in proposed §§ 404.1740(c)(7)(ii) and 416.1540(c)(7)(ii) to prohibit ''[w]illful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process.'' We envision actionable conduct under this provision to include grossly undignified or discourteous behavior and inflammatory language directed at the presiding official which prejudice the orderly presentation and reception of evidence.

This rule is not intended to inhibit zealous advocacy or vigorous dissent, but to prevent conduct or language which significantly exceeds the bounds of civility, and disrupts a proceeding. In determining whether a representative has violated this provision, we will look at the totality of the circumstances, including the egregiousness of the conduct, its impact on the claimant or the Agency, possible provocation and whether the behavior reflects a pattern or practice.

9. The draft proposal included a prohibition against soliciting or accepting from SSA direct payment of fees from past-due benefits, in violation of law or regulation, for services performed by a person other than an attorney. Many individuals misunderstood the intent of this provision, believing that it meant either that non-attorney representatives could not be paid for their representational services, or that attorneys could not receive direct payment from SSA for persons other than attorneys who provided representational services under their direct supervision.

Because of the confusion involving this provision, and the fact that SSA currently is considering separate regulations to address direct payment of fees in more detail, this provision is not included in these proposed rules.

10. The draft proposal contained a prohibition against making off-the-record communications relevant to the merits of an adjudication to anyone involved in the administrative review process. Many individuals found this provision to be vague and undefined. They were concerned that it prohibited communications to SSA in claims that had extenuating circumstances, such as claimants who were terminally ill or suicidal. In their opinion, it would unduly formalize nonadversarial proceedings, would foster inefficiency by requiring increased documentation of SSA contacts, and would be in conflict

with SSA's goal of expediting claims processing.

We agreed that the provision was confusing and possibly counterproductive, so it is not included in these proposed rules.

11. The draft proposal also contained a prohibition against engaging in dilatory tactics or neglectful actions which are prejudicial to the fair or orderly conduct of oral proceedings. Some individuals pointed out that it was vague and duplicated an existing provision. We agreed, and this provision is not included in these proposed rules.

Explanation of Revisions

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

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

Proposed §§ 404.1740(b)(1) and 416.1540(b)(1) require the representative to exercise diligence in obtaining and submitting that evidence which the claimant wants the decision maker to consider in ruling on a claim.

Proposed §§ 404.1740(b)(2)(i) and 416.1540(b)(2)(i) require that the representative provide, upon request, information regarding the claimant's medical treatment, vocational factors or other specifically identified matters, or provide notification that the claimant does not consent to release the information.

Proposed §§ 404.1740(b)(2)(ii) and 416.1540(b)(2)(ii) require that the representative provide, upon request, evidence material to identified issues which the representative or claimant already has or may readily obtain. This rule requires furnishing evidence already in the possession of the representative or claimant, or obtaining copies of existing evidence not already of record. The provision also mandates that the representative and claimant furnish all the pertinent evidence requested, even if it is ostensibly unfavorable to the claimant, or provide notification by the representative that the claimant does not consent to its release.

Proposed §§ 404.1740(b)(3) and 416.1540(b)(3) are intended to establish minimum requirements governing the competency and behavior of representatives in their dealings with us. They seek to ensure that the representative does not become a hindrance, either through ignorance or willful obstruction, in our attempts to provide a fair and expeditious disposition of the claim for benefits.

We have weighed the possibility of testing or other formal certification procedures for non-attorney representatives, but rejected the idea as infeasible at this time. Nonetheless, in order to identify those persons who do not possess the requisite qualifications, we are considering possible revisions to §§ 404.1705 and 416.1505 to define in greater detail the minimum requirements to serve as a representative.

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

Proposed §§ 404.1740(b)(3)(i) and 416.1540(b)(3)(i) essentially state that the representative must understand what the claimant must prove in order to qualify for benefits, and know how to obtain and submit evidence regarding the claim.

Proposed §§ 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii) require the representative to promptly answer our requests and communications pertaining to the pending claim. It is not permissible for the representative to ignore official communications.

Proposed §§ 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii) require cooperation in developing the record, which may typically include transactions requiring the participation of the claimant, such as consenting to a treating source's release of medical records, scheduling consultative examinations and scheduling conferences or hearing dates.

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

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

Proposed §§ 404.1740(c)(2) and 416.1540(c)(2) are based on the provisions of sections 206 (a) and (b) of the Act and apply to all fee collections. With regard to section 206(a)(4) of the Act, we will assume in the absence of evidence to the contrary that work performed by support staff in a law office is performed under the supervision of an attorney, thereby permitting the attorney to validly claim direct payment from past-due benefits for those services in a title II claim. This assumption will not apply, however, when a person other than an attorney appears alone at a hearing to provide representation on behalf of a claimant.

In those cases, the person shall be considered the representative and will be required to file a fee petition or fee agreement for his or her services, and will not be entitled to receive direct payment from past-due benefits for the representation at the hearing.

Proposed §§ 404.1740(c)(3) and 416.1540(c)(3) are based generally on the criminal prohibitions in 18 U.S.C. 1001 and the provisions governing civil monetary penalties and assessments set forth in section 1129 of the Act and are self-explanatory.

Proposed §§ 404.1740(c)(4) and 416.1540(c)(4) are directed against practices where willful or negligent acts or omissions have the effect of delaying the disposition of a claim for benefits.

Proposed §§ 404.1740(c)(5) and 416.1540(c)(5) are based on the provisions of section 1106 of the Act, which prohibit disclosure by any person of information obtained by the Agency in conjunction with a claim, except as may be authorized by regulations prescribed by us.

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

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

Proposed §§ 404.1740(c)(7)(i) and 416.1540(c)(7)(i) prohibit repeated instances of unexcused absences or

tardiness because such conduct adversely affects claimants, diminishes the ability of the Agency to operate efficiently and harms other applicants by disrupting hearing schedules and work flow.

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

Proposed §§ 404.1740(c)(7)(iii) and 416.1540(c)(7)(iii) are based in part on the provisions of section 206(a)(5) of the Act, 18 U.S.C. 111 and 28 CFR 64.2(x). They prohibit threatening or intimidating the participants in an oral proceeding or the employees assigned to our offices. Actual or implied threats of violence will not be tolerated.

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

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

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

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

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

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

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

Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

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

Regulatory Flexibility Act

We certify that the proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The provisions of the proposed rules that involve entities were developed to allow them to provide representational services without generating any supplemental reporting requirements. The proposed rules will not result in any increased legal accounting or consulting costs to small businesses or small organizations, will not adversely affect competition in the marketplace, or create barriers to entry on the part of small entities. In fact, these rules may facilitate such entry into the representation sphere. The regulations will provide uniform standards applicable to all entities who engage in the business and tend to disqualify the unscrupulous and the incompetent practitioners, thereby expanding demand for others willing and able to perform the service. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

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

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

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

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

Dated: December 23, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart R, chapter III of title 20 of the Code of Federal

Regulations is proposed to be amended as set forth below.

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

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

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

2. Section 404.1740 is revised to read as follows:

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

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

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

(b) *Affirmative duties.* A representative shall:

(1) Promptly obtain all information and evidence which the claimant wants to submit in support of the claim and forward the same for consideration as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown;

(2) Comply with our requests for information or evidence at any stage of the administrative review process as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown. This includes the obligation to:

(i) Provide, upon request, identification of all known medical sources, updated information regarding medical treatment, new or corrected information regarding work activity, other specifically identified information pertaining to the claimed right or benefit, or notification by the representative after consultation with the claimant that the claimant does not consent to the release of some or all of the material; and

(ii) Provide, upon request, all evidence and documentation pertaining to specifically identified issues which the representative or the claimant either has within his or her possession or may readily obtain, or notification by the representative after consultation with the claimant that the claimant does not consent to the release of some or all of the material;

(3) Conduct his or her dealings in a manner which does not obstruct the efficient, fair or orderly conduct of the administrative review process, including duties to:

(i) Be cognizant of the matters at issue in establishing entitlement or eligibility to the claimed right or benefit, and knowledgeable of our evidentiary and procedural requirements in order to provide competent assistance to the party he or she represents;

(ii) Provide timely and responsive answers to requests from the Agency for information pertinent to processing of the claim; and

(iii) Cooperate with our attempts to obtain information and documentation, or complete processing requirements for a claimed right or benefit.

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

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

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

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

(4) Willfully or negligently delay, or cause to be delayed, by any act or omission, without good cause, the processing of a claim at any stage of the administrative review process;

(5) Divulge, except as may be authorized by regulations prescribed by us, any information we furnish or disclose about a claim or prospective claim of another person;

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

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

(i) Repeated instances of unauthorized absences, or persistent tardiness at scheduled proceedings;

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

(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee.

3. Section 404.1745 is revised to read as follows:

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

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

(a) Does not meet the qualifying requirements described in § 404.1705;

(b) Has violated the affirmative duties or engaged in the prohibited actions set forth in § 404.1740; or

(c) Has been convicted of a violation under section 206 of the Act.

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

§ 404.1750 Notice of charges against a representative.

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

* * * * *

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

* * * * *

5. Section 404.1765 is amended by revising paragraph (a), the second

sentence of paragraph (e), and paragraph (g)(3) to read as follows:

§ 404.1765 Hearing on charges.

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

* * * * *

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

* * * * *

(g) * * *

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

* * * * *

6. Section 404.1770 is amended by revising the first sentence of paragraph (a)(3) and by revising paragraph (b)(3) to read as follows:

§ 404.1770 Decision by hearing officer.

(a) * * *

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

(b) * * *

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

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

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

* * * * *

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

* * * * *

(e) * * * It shall also mail a copy to the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee.

* * * * *

For the reasons set forth in the preamble, part 416, subpart O, chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as set forth below.

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

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

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

9. Section 416.1540 is revised to read as follows:

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

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

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

(b) *Affirmative duties.* A representative shall:

(1) Promptly obtain all information and evidence which the claimant wants to submit in support of the claim and forward the same for consideration as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown;

(2) Comply with our requests for information or evidence at any stage of the administrative review process as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown. This includes the obligation to:

(i) Provide, upon request, identification of all known medical sources, updated information regarding medical treatment, new or corrected information regarding work activity, other specifically identified information pertaining to the claimed right or benefit, or notification by the representative after consultation with the claimant that the claimant does not consent to the release of some or all of the material; and

(ii) Provide, upon request, all evidence and documentation pertaining to specifically identified issues which the representative or the claimant either has within his or her possession or may readily obtain, or notification by the representative after consultation with the claimant that the claimant does not consent to the release of some or all of the material;

(3) Conduct his or her dealings in a manner which does not obstruct the efficient, fair or orderly conduct of the administrative review process, including duties to:

(i) Be cognizant of the matters at issue in establishing entitlement or eligibility to the claimed right or benefit, and knowledgeable of our evidentiary and procedural requirements in order to provide competent assistance to the party he or she represents;

(ii) Provide timely and responsive answers to requests from the Agency for information pertinent to processing of the claim; and

(iii) Cooperate with our attempts to obtain information and documentation, or complete processing requirements for a claimed right or benefit.

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

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

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

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

(4) Willfully or negligently delay, or cause to be delayed, by any act or

omission, without good cause, the processing of a claim at any stage of the administrative review process;

(5) Divulge, except as may be authorized by regulations prescribed by us, any information we furnish or disclose about a claim or prospective claim of another person;

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

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

(i) Repeated instances of unauthorized absences, or persistent tardiness at scheduled proceedings;

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

(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee.

10. Section 416.1545 is revised to read as follows:

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

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

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

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

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

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

§ 416.1550 Notice of charges against a representative.

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

* * * * *

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

* * * * *

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

§ 416.1565 Hearing on charges.

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

* * * * *

(e) *Parties.* * * * The Deputy Commissioner for Programs, Policy, Evaluation and Communi cations (or other official the Commissioner may designate), or his or her designee, shall also be a party to the hearing.

* * * * *

(g) * * *

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

* * * * *

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

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

* * * * *

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

* * * * *

(e) * * * It shall also mail a copy to the Deputy Commissioner for Programs, Policy, Evaluation and Communications (or other official the Commissioner may designate), or his or her designee.

* * * * *

[FR Doc. 97–38 Filed 1–2–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–252233–96]

RIN 1545–AU73

Continuity of Interest and Business Enterprise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes rules providing that for certain reorganizations, transfers by the acquiring corporation of target assets or stock to certain controlled corporations, and under prescribed conditions, transfers of target assets to partnerships, will not disqualify the transaction from satisfying the continuity of interest and continuity of business enterprise requirements. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by April 3, 1997. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, May 7, 1997 must be received by Wednesday, April 16, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–252233–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–252233–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC.