

we pay a fee directly to a representative from past-due benefits, we impose an assessment on the representative.

(2) The amount of the assessment is equal to the lesser of:

(i) The product we obtain by multiplying the amount of the fee we are paying to the representative by the percentage rate the Commissioner of Social Security determines is necessary to achieve full recovery of the costs of determining and paying fees directly to representatives, but not in excess of 6.3 percent; and

(ii) The maximum assessment amount. The maximum assessment amount was initially set at \$75, but by law is adjusted annually to reflect the increase in the cost of living. (See §§ 404.270 through 404.277 for an explanation of how the cost-of-living adjustment is computed.) If the adjusted amount is not a multiple of \$1, we round down the amount to the next lower \$1, but the amount will not be less than \$75. We will announce any increase in the maximum assessment amount, and explain how that increase was determined in the FEDERAL REGISTER.

(3) We collect the assessment by subtracting it from the amount of the fee to be paid to the representative. The representative who is subject to an assessment may not, directly or indirectly, request or otherwise obtain reimbursement of the assessment from you.

(e) *Effective dates for extension of direct payment of fee to attorneys.* The provisions of this subpart authorizing the direct payment of fees to attorneys and the withholding of title XVI benefits for that purpose, apply in claims for benefits with respect to which the agreement for representation is entered into before March 1, 2010.

[72 FR 16726, Apr. 5, 2007, as amended at 76 FR 45195, July 28, 2011]

**§ 416.1535 [Reserved]**

**§ 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 must, in their dealings with us,

faithfully execute their duties as agents and fiduciaries of a party. A representative must provide competent assistance to the claimant and recognize our authority to lawfully administer the process. The following provisions set forth certain affirmative duties and prohibited actions that will govern the relationship between the representative and us, including matters involving our administrative procedures and fee collections.

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

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

(1) Act with reasonable promptness to help obtain the information or evidence that the claimant must submit under our regulations, and forward the information or evidence to us for consideration as soon as practicable.

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

- (i) The claimant's medical source(s);
- (ii) The claimant's age;
- (iii) The claimant's education and training;
- (iv) The claimant's work experience;
- (v) The claimant's daily activities both before and after the date the claimant alleges that he or she became disabled;
- (vi) The claimant's efforts to work; and
- (vii) Any other factors showing how the claimant's impairment(s) affects his or her ability to work. In §§ 416.960

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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 communica-

tion 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.

(4) Conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (See §416.1513).

(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) *Prohibited actions.* A representative must 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. 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 con-

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

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

(ii) 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

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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.

[63 FR 41417, Aug. 4, 1998, as amended at 76 FR 56109, Sept. 12, 2011; 76 FR 80247, Dec. 23, 2011; 80 FR 14838, Mar. 20, 2015; 83 FR 30857, July 2, 2018]

### §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;

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

(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.

[63 FR 41418, Aug. 4, 1998, as amended at 71 FR 2877, Jan. 18, 2006; 83 FR 30858, July 2, 2018]

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

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

(b) We will send this notice to the representative either by certified or registered mail, to his or her last known address, or by personal delivery.

(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) The representative must—

(1) Answer the notice in writing under oath (or affirmation); and

(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