

enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

#### How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

#### What If You Do Not Have an Impairment(s) That Meets or Medically Equals a Listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the “sequential evaluation process” described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

#### 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).

Dated: March 21, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 05-7358 Filed 4-12-05; 8:45 am]

BILLING CODE 4191-02-P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AG15

#### Representation of Parties; Recognition, Disqualification, and Reinstatement of Representative

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

**SUMMARY:** We propose to revise our regulations to identify additional bases upon which we may bring charges to disqualify an individual from acting as a representative before the Social Security Administration (SSA), and to set forth the conditions under which we will reinstate an individual whom we have disqualified as a representative because the individual collected or received, and retains, a fee in excess of the amount we authorized. These proposed rules revise our regulations on the representation of parties to implement section 205 of the Social Security Protection Act of 2004 (SSPA) and to make additional changes in these regulations that relate to the changes required by this legislation. The rules also propose three technical changes in our regulations on the representation of parties.

**DATES:** To be sure that we consider your comments, we must receive them by June 13, 2005.

**ADDRESSES:** You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

#### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

#### FOR FURTHER INFORMATION CONTACT:

Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1758 or TTY (410) 966-5609. 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:

##### Who Is Permitted to Represent Claimants Before SSA?

Section 206(a)(1) of the Social Security Act (the Act) provides that attorneys and non-attorneys may represent claimants before SSA. Prior to enactment of the SSPA, Public Law 108-203, on March 2, 2004, section 206(a)(1) specified that “[a]n attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts’ is entitled to represent claimants before SSA. Section 206(a)(1) also authorized SSA to prescribe rules and regulations governing recognition of individuals other than attorneys.

Section 205 of the SSPA amended section 206(a)(1) of the Act with respect to the recognition and disqualification of certain attorneys as claimants’ representatives. As amended, section 206(a)(1) provides that the Commissioner of Social Security (the Commissioner), after due notice and opportunity for hearing, may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency. Section 206(a)(1) as amended further provides that the Commissioner may also, after due notice and opportunity for hearing, refuse to recognize, and may disqualify, as a non-attorney representative, any attorney who has been disbarred or suspended

from any court or bar to which he or she was previously admitted to practice.

Section 205 of the SSPA also amended section 206(a)(1) of the Act with respect to reinstatement of certain individuals (whether or not they are attorneys) who have been disqualified or suspended from appearing before SSA. Under the Act as amended, a representative who has been disqualified or suspended from appearing before SSA as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before SSA as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.

### Proposed Changes

As amended, section 206(a)(1) of the Act identifies certain specific bases upon which, after notice and opportunity for hearing, we may refuse to recognize an attorney as a representative or disqualify an attorney whom we have already recognized as a representative. We propose to implement these statutory provisions by revising our regulations at 20 CFR 404.1745 and 416.1545, which describe the circumstances in which we may file charges seeking to suspend or disqualify an individual from acting in a representational capacity before us. Specifically, we propose to revise these sections to expand the stated bases upon which we may file such charges to include those in which we have evidence that a representative has been, by reason of misconduct—

- Disbarred or suspended from any court or bar to which he or she was previously admitted to practice, or
- Disqualified from participating in or appearing before any Federal program or agency.

Sections 404.1745 and 416.1545 as a whole pertain to our bringing of charges that may seek either to suspend or to disqualify a representative. As we explain below in connection with changes we are proposing in our regulations dealing with the decisions hearing officers make on charges brought against representatives (20 CFR 404.1770 and 416.1570),

disqualification will be the sole sanction available if the charges against a representative are sustained because the representative has been, by reasons of misconduct, disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency.

Sections 404.1745 and 416.1545, as they currently exist and as they are proposed for revision, apply with respect to both attorney and non-attorney representatives. Under the proposed regulations, we will have authority to bring charges to disqualify a non-attorney representative if we have evidence that the representative has been, by reason of misconduct—

- Disbarred or suspended from any court or bar to which he or she was previously admitted to practice, or
- Disqualified from participating in or appearing before any Federal program or agency.

As amended by the SSPA, section 206(a)(1) of the Act specifically provides that, after providing due notice and an opportunity for hearing, SSA “may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice.” Thus, the Act provides that disbarment or suspension by a court or bar may be a basis for disqualifying an individual from representational functions before SSA irrespective of whether the individual seeks to represent individuals as an attorney or non-attorney. Although it provides that we may refuse to recognize or disqualify an attorney who has been disqualified from participating in or appearing before a Federal program or agency, the Act as amended does not also state that we may refuse to recognize a non-attorney (or former attorney) who has been disqualified from participating in or appearing before any Federal program or agency. We are proposing to make disqualification from participating in or appearing before any Federal program or agency a basis for bringing charges to disqualify a non-attorney in order to make our rules, with respect to recognition of non-attorneys, consistent with our rules for attorneys. By making this a basis for bringing charges against non-attorneys as well as attorneys, we can ensure that the additional protections provided by the SSPA are available for all claimants, regardless of whether their representatives are attorneys or non-attorneys.

We are proposing this rule regarding non-attorney representatives under the general authority of the Commissioner, as set forth in section 206(a)(1) of the Act, to prescribe rules and regulations “governing the recognition” of non-attorney representatives and to require such representatives to “show that they are of good character and in good repute” and capable of providing claimants valuable services. Under the

proposed rule, if we determine, after providing due notice and opportunity for a hearing, that a non-attorney individual has been disqualified from participating in or appearing before a Federal program or agency for reasons of misconduct, we will disqualify the individual as having failed to show that he or she is of good character and in good repute and will thereafter, absent reinstatement in accordance with the provisions of 20 CFR 404.1799 and 416.1599, refuse to recognize the individual as a representative. The effect of this rule is to require a non-attorney whom we charge with having been disqualified from participating in or appearing before a Federal program or agency for reasons of misconduct to show, in accordance with our rules at 20 CFR 404.1750ff. and 416.1550ff. on hearing and deciding charges against representatives, that he or she has not been disqualified from participating in or appearing before a Federal program or agency for reasons of misconduct and is thus, in that respect, of good character and in good repute.

This rule codifies a practice we currently apply under Program Operations Manual System section GN 03970.011, which sets forth a non-exclusive list of circumstances in which we may bring charges (under §§ 404.1745 and 416.1545) to suspend or disqualify a non-attorney from practice before us for lack of good character and reputation. We believe we should codify that disqualification by a Federal program or agency may be a basis for bringing charges against a non-attorney representative because the Act as amended by the SSPA is silent on that issue, even though it provides that we may bring charges against a non-attorney for disbarment or suspension by a court or bar. Our codification of this particular basis for bringing charges based on a lack of good character and reputation does not limit our discretion to bring charges against a non-attorney representative, as we do at present, whenever we believe that we have evidence that a non-attorney fails to meet the qualification requirement concerning good character and reputation included in the provisions of §§ 404.1705 and 416.1505 on “Who may be your representative.”

Under §§ 404.1745 and 416.1545 as proposed for revision, we have discretion in determining whether to bring charges when we have evidence that an individual has been disbarred, suspended or disqualified by a court, bar, Federal program or Federal agency. One factor we will consider in determining whether to bring charges is whether the individual has been

reinstated by the court, bar, Federal program or Federal agency that disbarred, suspended or disqualified the individual. Reinstatement will not necessarily preclude the bringing of charges. Further, we may also bring charges if the disbarment, suspension or disqualification by a court, bar, Federal program or agency became final prior to the enactment of section 205 of the SSPA.

Under the Act as amended by the SSPA, we have discretionary authority to refuse to permit an individual to function as a representative before us because that individual has been disbarred, suspended or disqualified by a court, bar or Federal agency. To implement that authority, we propose to revise §§ 404.1770 and 416.1570 to explain that in deciding whether to impose that sanction we will consider the reasons for the disbarment, suspension, or disqualification action of the court, bar or Federal agency and will not disqualify the individual from acting as a representative before SSA if the court, bar, or Federal agency action was taken for reasons unrelated to misconduct (*e.g.*, solely for administrative reasons such as failure to pay dues or failure to complete continuing legal education requirements). Sections 404.1770 and 416.1570 as proposed for revision also explain that this exception to disqualification will not apply if the administrative action was taken by the court, bar or Federal program or agency in lieu of disciplinary proceedings (*e.g.*, the acceptance of a voluntary resignation pending disciplinary action), and that although we will consider the reasons for the disbarment, suspension, or disqualification action in determining whether to disqualify an individual from appearing before us as a representative, we will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension or disqualification action.

As proposed for revision, §§ 404.1770 and 416.1570 will also explain what we mean by the terms “disqualified,” “Federal program,” and “Federal agency” for the purposes of deciding whether an individual has been disqualified from participating in or appearing before any Federal program or agency. For that purpose, “disqualified” will refer to any action that prohibits an individual from participating in or appearing before the program or agency, regardless of how long the prohibition lasts or the specific terminology used. The program or agency need not use the term “disqualified” to describe the action. For example, an agency may use analogous terms such as “suspend,”

“decertify,” “exclude,” “expel,” or “debar” to describe the individual’s disqualification from participating in the program or the agency. For the purposes of deciding whether an individual has been disqualified from participating in or appearing before any Federal program or agency, “Federal program” will refer to any program established by an Act of Congress or administered by a Federal agency and “Federal agency” will refer to any authority of the executive branch of the Government of the United States.

As previously noted, we also propose to revise §§ 404.1770 and 416.1570 to provide that disqualification will be the only sanction that may be applied if charges against a representative (attorney or non-attorney) are sustained because the representative has been, by reason of misconduct, disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency. The Act, as amended by the SSPA, states only that we may “refuse to recognize” and, where recognition has already occurred, “disqualify” an individual who has been disbarred, suspended or disqualified by a court, bar or Federal program or agency. Under our rules on reinstatement, a suspended representative is automatically reinstated at the end of the period of suspension (20 CFR 404.1797 and 416.1597). By contrast, under §§ 404.1799 and 416.1599 of our rules, if an individual has been disqualified, reinstatement can occur only if the individual asks the Appeals Council of our Office of Hearings and Appeals for permission to serve as a representative again and the Appeals Council decides that it is reasonable to expect that the individual will, in the future, act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. We cannot ensure that reinstatement is warranted on that basis in cases in which the sanction imposed by us is a suspension. Based on the above, we believe that disqualification is the only appropriate sanction where charges are sustained because we find that a representative has been, by reason of misconduct, disbarred, suspended or disqualified by a court, bar or Federal program or agency.

We also propose to revise §§ 404.1770 and 416.1570 to state that, if the charges against the representative are sustained because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized, disqualification will be the only sanction available. This

change is intended to ensure that such a representative is barred from appearing before SSA until full restitution has been made, as required by the Act as amended by the SSPA. The proposed rule recognizes that restitution is required only where the representative has not already made full restitution at the time at which we sustain charges of collecting or receiving an unauthorized fee. The representative “retains” an unauthorized fee that has been collected or received if full restitution has not been made for any reason. If a representative makes full restitution before the charges against the representative have been sustained, we are not precluded from finding that the representative has charged, collected, or retained a fee in violation of §§ 404.1740(c)(2) and/or 416.1540(c)(2), and suspending or disqualifying that representative from practice.

We propose to revise 20 CFR 404.1790 and 416.1590, which deal with decisions made by the Appeals Council where a party to the hearing requests review of a hearing officer’s decision in a sanction case, to conform these sections to the changes proposed in §§ 404.1770 and 416.1570 to limit the sanction available to disqualification where charges are sustained either because the representative has been, by reason of misconduct, disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency, or because the representative has collected or received, and retains, a fee in excess of the amount authorized. As proposed for revision, §§ 404.1790 and 416.1590 will provide that the Appeals Council may not modify a hearing officer’s decision to impose a suspension, instead of a disqualification, when disqualification is the only sanction available under §§ 404.1770 and 416.1570.

We also propose to revise our rules on reinstatement in §§ 404.1799 and 416.1599 to provide that, if the representative has been disqualified because he or she was disbarred or suspended from a court or bar, the Appeals Council will grant reinstatement to the individual as a representative only if the individual not only satisfies the Council with respect to the required expectation of future behavior, but also shows that he or she has been admitted (or readmitted) to and is in good standing with the court or bar from which he or she had been disbarred or suspended. This provision ensures that an individual will not be reinstated as a representative unless the individual can satisfy the court or bar

that disbarred or suspended the individual that he or she is fit to act in a representational capacity again.

We also propose to include in §§ 404.1799 and 416.1599 a similar rule for reinstatement of a representative who has been disqualified because he or she was disqualified from participating in or appearing before any Federal program or agency. This rule will provide that such an individual must not only satisfy the Appeals Council with respect to the required expectation of future behavior, but also show that he or she is once again qualified to participate in or appear before that Federal program or agency.

We propose further to revise §§ 404.1799 and 416.1599 to state that, if a representative has been disqualified as a result of collecting or receiving, and retaining, a fee for representational services in excess of the amount authorized, full restitution of the excess fee must be made before the person may be considered for reinstatement. This proposed change will implement the provision of the SSPA requiring us to bar from appearing before us, until full restitution is made, a representative who has been disqualified or suspended from appearing before us as a result of collecting or receiving a fee in excess of the amount authorized.

#### Other Proposed Changes

We propose to make a technical change to 20 CFR 404.1750(e)(2) and 416.1550(e)(2), which explain how a representative must answer a notice containing a statement of charges. Our current rules direct that the answer be filed with Special Counsel Staff in SSA's Office of Hearings and Appeals. This component no longer exists. (See 68 FR 59231 and 68 FR 61240.) The notice containing a statement of charges provides specific instructions on how and where to file an answer. Therefore, we propose to revise this rule to reflect that the representative must file the answer with SSA, at the address specified in the notice, within the 30-day time period.

We also propose to make a technical change to 20 CFR 404.1755 and 416.1555 to specify that the Deputy Commissioner for Disability and Income Security Programs, or his or her designee is, as the official who decides to initiate a representative sanction proceeding, also the official who may withdraw charges against a representative. This change is needed because questions have arisen about who in the agency has authority to withdraw charges.

Finally, we also propose to make a technical change to 20 CFR 404.1765

and 416.1565 to state that the Office of the General Counsel will represent the Deputy Commissioner for Disability and Income Security Programs in all representative sanction proceedings, including those involving a request for reinstatement by a suspended or disqualified individual. This amendment is necessary because the former Special Counsel Staff previously represented the Deputy Commissioner. (See 56 FR 24129.)

#### Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rules easier to understand?

#### Regulatory Procedures

##### *Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

##### *Regulatory Flexibility Act*

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

##### *Paperwork Reduction Act*

The proposed rules contain information collection activities at 20 CFR 404.1750(e)(2) and 416.1550(e)(2). However, the activities are exempt under 44 U.S.C. 3518(c) from the clearance requirements of 44 U.S.C. 3507 as amended by section 2 of Public Law 104-13 (May 22, 1995), 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; 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.

Dated: March 8, 2005.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend subpart R of part 404 and subpart O of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

##### **Subpart R—[Amended]**

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

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

2. Amend § 404.1745 by removing the word "or" at the end of paragraph (b), changing the period to a semicolon at the end of paragraph (c), and adding new paragraphs (d) and (e) to read as follows:

##### **§ 404.1745 Violation 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)); or

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

3. Amend § 404.1750 by revising paragraph (e)(2) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) File the answer with the Social Security Administration, at the address

specified on the notice, within the 30-day time period.

\* \* \* \* \*

4. Amend § 404.1755 by revising the first sentence to read as follows:

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

The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, may withdraw charges against a representative. \* \* \*

5. Amend § 404.1765(l) by adding a second sentence, to read as follows:

**§ 404.1765 Hearing on charges.**

\* \* \* \* \*

(l) *Representation.* \* \* \* The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, will be represented by one or more attorneys from the Office of the General Counsel.

\* \* \* \* \*

6. Amend § 404.1770 by redesignating existing paragraphs (a)(2) and (a)(3) as (a)(3) and (a)(4), by adding new paragraph (a)(2), and revising redesignated paragraph (a)(3)(ii), to read as follows:

**§ 404.1770 Decision by hearing officer.**

(a) \* \* \*

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

appearing before any Federal program or agency—

(i) *Disqualified* refers to any action that prohibits an individual from participating in or appearing before a Federal program or agency, regardless of how long the prohibition lasts or the specific terminology used.

(ii) *Federal program* refers to any program established by an Act of Congress or administered by a Federal agency.

(iii) *Federal agency* refers to any authority of the executive branch of the Government of the United States.

(3) \* \* \*

(ii) Disqualify the representative from acting as a representative in dealings with us until he or she may be reinstated under § 404.1799.

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

\* \* \* \* \*

7. Amend § 404.1790 by revising paragraph (b) to read as follows:

**§ 404.1790 Appeals Council's decision.**

\* \* \* \* \*

(b) The Appeals Council, in changing a hearing officer's decision to suspend a representative for a specified period, shall in no event reduce the period of suspension to less than 1 year. In modifying a hearing officer's decision to disqualify a representative, the Appeals Council shall in no event impose a period of suspension of less than 1 year. Further, the Appeals Council shall in no event impose a suspension when disqualification is the sole sanction available in accordance with § 404.1770(a)(3)(ii).

\* \* \* \* \*

8. Amend § 404.1799 by revising paragraph (d) to read as follows:

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

\* \* \* \* \*

(d)(1) The Appeals Council shall not grant the request unless it is reasonably satisfied that the person will in the future act according to the provisions of section 206(a) of the Act, and to our rules and regulations.

(2) If a person was disqualified because he or she had been disbarred or suspended from a court or bar, 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 or bar from which he or she had been disbarred or suspended.

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

(4) If the person was disqualified as a result of collecting or receiving, and retaining, a fee for representational services in excess of the amount authorized, the Appeals Council will grant the request only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that full restitution has been made.

\* \* \* \* \*

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

**Subpart O—[Amended]**

9. 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)).

10. Amend § 416.1545 by removing the word “or” at the end of paragraph (b), changing the period to a semicolon at the end of paragraph (c), and adding new paragraphs (d) and (e) to read as follows:

**§ 416.1545 Violation 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)); or

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

11. Amend § 416.1550 by revising paragraph (e)(2) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) File the answer with the Social Security Administration, at the address

specified on the notice, within the 30-day time period.

\* \* \* \* \*

12. Amend § 416.1555 by revising the first sentence to read as follows:

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

The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, may withdraw charges against a representative. \* \* \*

13. Amend § 416.1565(1) by adding a second sentence, to read as follows:

**§ 416.1565 Hearing on charges.**

\* \* \* \* \*

(1) *Representation.* \* \* \* The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, will be represented by one or more attorneys from the Office of the General Counsel.

\* \* \* \* \*

14. Amend § 416.1570 by redesignating existing paragraphs (a)(2) and (a)(3) as (a)(3) and (a)(4), by adding new paragraph (a)(2), and revising redesignated paragraph (a)(3)(ii), to read as follows:

**§ 416.1570 Decision by hearing officer.**

(a) \* \* \*

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

appearing before any Federal program or agency—

(i) *Disqualified* refers to any action that prohibits an individual from participating in or appearing before a Federal program or agency, regardless of how long the prohibition lasts or the specific terminology used.

(ii) *Federal program* refers to any program established by an Act of Congress or administered by a Federal agency.

(iii) *Federal agency* refers to any authority of the executive branch of the Government of the United States.

(3) \* \* \*

(ii) Disqualify the representative from acting as a representative in dealings with us until he or she may be reinstated under § 416.1599. Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

\* \* \* \* \*

15. Amend § 416.1590 by revising paragraph (b) to read as follows:

**§ 416.1590 Appeals Council's decision.**

\* \* \* \* \*

(b) The Appeals Council, in changing a hearing officer's decision to suspend a representative for a specified period, shall in no event reduce the period of suspension to less than 1 year. In modifying a hearing officer's decision to disqualify a representative, the Appeals Council shall in no event impose a period of suspension of less than 1 year. Further, the Appeals Council shall in no event impose a suspension when disqualification is the sole sanction available in accordance with § 416.1570(a)(3)(ii).

\* \* \* \* \*

16. Amend § 416.1599 by revising paragraph (d) to read as follows:

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

\* \* \* \* \*

(d)(1) The Appeals Council shall not grant the request unless it is reasonably satisfied that the person will in the future act according to the provisions of section 206(a) of the Act, and to our rules and regulations.

(2) If a person was disqualified because he or she had been disbarred or suspended from a court or bar, 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 or bar from which he or she had been disbarred or suspended.

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

(4) If the person was disqualified as a result of collecting or receiving, and retaining, a fee for representational services in excess of the amount authorized, the Appeals Council will grant the request only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that full restitution has been made.

\* \* \* \* \*

[FR Doc. 05-7353 Filed 4-12-05; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 29**

RIN 1505-AB55

**Federal Benefit Payments Under Certain District of Columbia Retirement Plans**

**AGENCY:** Departmental Offices, Treasury.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of the Treasury proposes to amend its DC Pensions rules promulgated pursuant to the Balanced Budget Act of 1997, as amended (the Act). The Act was effective on October 1, 1997. The Act assigns to the Secretary of the Treasury responsibility for payment of benefits based on service accrued as of June 30, 1997, under the retirement plans for District of Columbia teachers and police officers and firefighters, and payment of benefits under the retirement plan for District of Columbia judges regardless of when service accrued. The amended regulations will implement the Secretary's authority under the Act to ensure the accuracy of payments made to annuitants before the effective date of the Act. The amended regulations will also reflect changes made in the District of Columbia Retirement Protection