

MODULE 8E Advocate Advanced Topics
SPECIAL SUBJECTS
L1 Ethics and Conduct

The new guidelines revised Secs. 404.1740 (b) and 416.1540 (b) to include affirmative duties. Affirmative duties are certain obligations that representatives must actively perform when they represent claimants before SSA. Although these duties have been more clearly specified, they do not represent a change in the regulations concerning SSA's existing rules governing the duties and responsibilities of a representative.

For example: SSA specifically cites a representative's duty to assist the claimant in complying as soon as possible with SSA's request for information or evidence. SSA has removed language that would have required that a representative provide upon request information regarding the claimant's medical treatment, vocational factors or other specifically identified matters.

SSA has established an affirmative duty of competency. Affirmative duty of competency is "government speak" for understanding the issues of the case. This vague requirement includes the necessity that a representative know the significant issues in a claim and have a working knowledge of the applicable provisions of the Act.

A representative must also know how to obtain and submit evidence regarding a claim. A representative does not have to acquire evidence of record for SSA, but he is required to cooperate or coordinate with SSA in the acquisition of all needed evidence.

Under the new regulations, a representative is specifically prohibited from threatening, intimidating or coercing a claimant or a member of the Social Security staff. A representative may not disrupt the adjudicative process during the course of an oral proceeding. The new regulations also prohibit repeated absences or persistent tardiness at scheduled proceedings without good cause.

The new provisions also allow that an honest mistake may not be construed as knowingly misleading a claimant. In determining whether a representative knowingly misled a claimant, SSA will consider whether the action involved matters that the representative should have known were untrue.

The confidentiality rule remains essentially the same. The Act prohibits the disclosure by any person of information obtained as a result of representation of a disability claim. The new regulations also prohibit a representative from offering or giving anything of value to persons involved in the adjudication of a claim except remuneration to a witness for legitimate expenses or services rendered. The intent is to prevent the appearance of influencing or attempting to influence the disposition of a claim by bestowing gifts or favors on individuals in a position to materially affect the outcome of a claim.

[Regulatory Flexibility Act:](#)

The Regulatory Flexibility Act requires that if new rules are created for this service, they must not result in a substantial barrier to performing that service.

The following are SSA's conclusions pertaining to the Flexibility Act.

Under the provisions of the Regulatory Flexibility Act, SSA certifies that the new regulations will not have a significant economic impact on a substantial number of small representational entities. The provisions of the rules that involve entities were developed to allow them to provide representational services without generating any supplemental reporting requirements.

The new rules will not result in any increased legal, accounting or consulting costs to small businesses or organizations. The rules will also not adversely affect competition in the marketplace or create barriers to entry into the representational field. In fact, SSA feels that "the new rules will facilitate such entry into the representational sphere and provide uniform standards applicable to all entities who engage in the business of representation and tend to disqualify the unscrupulous and the incompetent practitioner."

SSA also states that, "the new rules will have the effect of expanding demand for others willing and able to perform this service." For this reason, Social Security will not perform a regulatory flexibility analysis as provided in the Regulatory Flexibility Act.

Here is the link to [SSA Representative Rules and Regulations](#). Use these rules to protect yourself against those SSA employees who either do not know their own job duties or who simply don't want to do the extra work required to deal appropriately with an authorized representative.