

## § 403.110

record you request, we will notify you as provided in § 403.145. We will also send you any notices required by part 401 or 402.

### § 403.110 What special definitions apply to this part?

The following definitions apply:

(a) *Application* means a written request for testimony that conforms to the requirements of § 403.120.

(b)(1) *Employee* includes—

(i) Any person employed in any capacity by SSA, currently or in the past;

(ii) Any person appointed by, or subject to the supervision, jurisdiction, or control of SSA, the Commissioner of Social Security, or any other SSA official, currently or in the past; and

(iii) Any person who is not described elsewhere in this definition but whose disclosure of information is subject to the regulations at 20 CFR part 401, currently or in the past.

(2) For purposes of this paragraph (b), a person subject to SSA's jurisdiction or control includes any person hired as a contractor by SSA, any person performing services for SSA under an agreement (such as an officer or employee of a State agency involved in determining disability for SSA), and any consultant (including medical or vocational experts or medical services or consultative examination providers), contractor, or subcontractor of such person. Such a person would also include any person who has served or is serving in any advisory capacity, formal or informal.

(3) For purposes of this paragraph (b), a person employed by SSA in the past is considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at SSA; where the matter concerns official information that the employee acquired while working, such as sensitive or confidential agency information; where the person purports to speak for SSA; or where significant SSA resources would be required to prepare the person to testify. Such a person would not be considered an employee when the person will rely only on expertise or general knowledge he or she acquired while working at SSA.

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(c) *Commissioner* means the Commissioner of Social Security or his or her designee(s).

(d) *Legal proceeding* includes any pre-trial, trial, and post-trial stage of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. *Legal proceeding* also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony by an attorney or any other person.

(e) *Record* has the same meaning as “record” in 20 CFR 402.30.

(f) *Request* means any attempt to obtain the production, disclosure, or release of information, records, or the testimony of an SSA employee, including any order, subpoena, or other command issued in a legal proceeding as well as any informal or other attempt (by any method) by a party or a party's representative.

(g) *SSA* means the Social Security Administration.

(h) *Testimony* includes any sworn statement (oral or written), including (but not limited to)—

(1) Any statement provided through personal appearance; deposition; or recorded interview; or provided by telephone, television, or videotape;

(2) Any response during discovery or other similar proceedings that would involve more than the mere physical production of records; and

(3) Any declaration made under penalty of perjury or any affidavit.

(i) *We* or *our* means the Social Security Administration.

(j) *You* or *your* means an individual or entity that submits a request for records, information or testimony.

### § 403.115 When does this part apply?

(a) Except as specified in paragraph (b) of this section, this part applies to any request in connection with any legal proceeding for SSA records or other information or for testimony from SSA or its employees. This part applies to requests for testimony related to SSA's functions or to any information or record created or acquired

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by SSA as a result of the discharge of its official duties.

(b) This part does not apply to requests for testimony—

(1) In an SSA administrative proceeding;

(2) In a legal proceeding to which SSA is a party (“SSA” here includes the Commissioner and any employee acting in his or her official capacity);

(3) From the United States Department of Justice;

(4) In a criminal proceeding in which the United States is a party;

(5) In a legal proceeding initiated by state or local authorities arising from an investigation or audit initiated by, or conducted in cooperation with, SSA’s Office of the Inspector General;

(6) From either house of Congress;

(7) In a law enforcement proceeding related to threats or acts against SSA, its employees, or its operations (“SSA” here includes the Commissioner and any employee acting in his or her official capacity); or

(8) Where Federal law or regulations expressly require a Federal employee to provide testimony.

### § 403.120 How do you request testimony?

(a) You must submit a written application for testimony of an SSA employee. Your application must—

(1) Describe in detail the nature and relevance of the testimony sought in the legal proceeding;

(2) Include a detailed explanation as to why you need the testimony, why you cannot obtain the information you need from an alternative source, and why providing it to you would be in SSA’s interest; and

(3) Provide the date and time that you need the testimony and the place where SSA would present it.

(b) You must submit a complete application to SSA at least 30 days in advance of the date that you need the testimony. If your application is submitted fewer than 30 days before that date, you must provide, in addition to the requirements set out above, a detailed explanation as to why—

(1) You did not apply in a timely fashion; and

(2) It is in SSA’s interest to review the untimely application.

(c) You must send your application for testimony to: Social Security Administration, Office of the General Counsel, Office of General Law, P.O. Box 17779, Baltimore, MD 21235-7779, Attn: Touhy Officer. (If you are requesting testimony of an employee of the Office of the Inspector General, send your application to the address in § 403.125.)

(d) The Commissioner has the sole discretion to waive any requirement in this section.

(e) If your application does not include each of the items required by paragraph (a) of this section, we may return it to you for additional information. Unless the Commissioner waives one or more requirements, we will not process an incomplete or untimely application.

[66 FR 2809, Jan. 12, 2001; 66 FR 14316, Mar. 12, 2001]

### § 403.125 How will we handle requests for records, information, or testimony involving SSA’s Office of the Inspector General?

A request for records or information of the Office of the Inspector General or the testimony of an employee of the Office of the Inspector General will be handled in accordance with the provisions of this part, except that the Inspector General or the Inspector General’s designee will make those determinations that the Commissioner otherwise would make. Send your request for records or information pertaining to the Office of the Inspector General or your application for testimony of an employee of the Office of the Inspector General to: Office of the Inspector General, Social Security Administration, 300 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235-6401.

### § 403.130 What factors may the Commissioner consider in determining whether SSA will grant your application for testimony?

In deciding whether to authorize the testimony of an SSA employee, the Commissioner will consider applicable law and factors relating to your need and the burden to SSA. The considerations include, but are not limited to, the following: