

§ 403.135

(a) *Risk of law violation or compromise of Government privilege.*

(1) Would providing the testimony violate a statute (such as 26 U.S.C. 6103 or section 1106 of the Social Security Act, 42 U.S.C. 1306), Executive Order, or regulation (such as 20 CFR part 401)?

(2) Would providing the testimony put confidential, sensitive, or privileged information at risk?

(b) *Burden on SSA.* (1) Would granting the application unduly expend for private purposes the resources of the United States (including the time of SSA employees needed for official duties)?

(2) Would the testimony be available in a less burdensome form or from another source?

(3) Would the testimony be limited to the purpose of the request?

(4) Did you previously request the same testimony in the same or a related proceeding?

(c) *Interests served by allowing testimony.* (1) Would providing the testimony serve SSA's interest?

(2) Would providing the testimony maintain SSA's policy of impartiality among private litigants?

(3) Is another government agency involved in the proceeding?

(4) Do you need the testimony to prevent fraud or similar misconduct?

(5) Would providing the testimony be necessary to prevent a miscarriage of justice or to preserve the rights of an accused individual to due process in a criminal proceeding?

§ 403.135 What happens to your application for testimony?

(a) If 20 CFR part 401 or 402 does not permit disclosure of information about which you seek testimony from an SSA employee, we will notify you under § 403.145.

(b) If 20 CFR part 401 or 402 permits disclosure of the information about which you seek testimony,

(1) The Commissioner makes the final decision on your application;

(2) All final decisions are in the sole discretion of the Commissioner; and

(3) We will notify you of the final decision on your application.

20 CFR Ch. III (4-1-04 Edition)

§ 403.140 If the Commissioner authorizes testimony, what will be the scope and form of that testimony?

The employee's testimony must be limited to matters that were specifically approved. We will provide testimony in the form that is least burdensome to SSA unless you provide sufficient information in your application for SSA to justify a different form. For example, we will provide an affidavit or declaration rather than a deposition and a deposition rather than trial testimony.

§ 403.145 What will SSA do if you have not satisfied the conditions in this part or in 20 CFR part 401 or 402?

(a) We will provide the following information, as appropriate, to you or the court or other tribunal conducting the legal proceeding if your request states that a response is due on a particular date and the conditions prescribed in this part, or the conditions for disclosure in 20 CFR part 401 or 402, are not satisfied or we anticipate that they will not be satisfied by that date:

(1) A statement that compliance with the request is not authorized under 20 CFR part 401 or 402, or is prohibited without the Commissioner's approval;

(2) The requirements for obtaining the approval of the Commissioner for testimony or for obtaining information, records, or testimony under 20 CFR part 401 or 402; and

(3) If the request complies with § 403.120, the estimated time necessary for a decision. We will make every reasonable effort to provide this information in writing on or before the date specified in your request.

(b) Generally, if a response to a request for information, records, or testimony is due before the conditions of this Part or the conditions for disclosure in 20 CFR part 401 or 402 are met, no SSA employee will appear.

(c) SSA will seek the advice and assistance of the Department of Justice when appropriate.

§ 403.150 Is there a fee for our services?

(a) *General.* Unless the Commissioner grants a waiver, you must pay fees for our services in providing information, records, or testimony. You must pay