

Social Security Administration

§ 403.125

(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 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.

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§ 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

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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:

(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?

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(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.

§ 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;